

REQUEST FOR PROPOSALS

RFP-APA-01-2022

- Copy Paper -

NOTICE TO SUBMITTERS

The City of Evansville ("CITY") and Vanderburgh County ("COUNTY") (hereinafter, collectively or alternately as applicable, "CITY/COUNTY") is now accepting sealed proposals for Copy Paper. Sealed proposals will be publicly opened at 1:30 pm CST on Thursday, April 7, 2022 at City of Evansville Council Chambers located at 1 N.W. Martin Luther King Jr. Boulevard, Room 301, Evansville, IN 47708. Vendors wishing to deliver proposals should deliver one (1) original, and one (1) copy of the proposal in a sealed envelope with the RFP title RFP-APA-01-2022 clearly marked on the outside by 1:00 pm CST on Thursday, April 7, 2022 to Evansville Vanderburgh County Purchasing Department located at 1 N. W. Martin Luther King Jr. Boulevard, Room 323, Evansville, IN 47708. Proposals may also be submitted to the Board of Public Works personnel until 1:15 pm CST the day of the bid opening in Room 301.

SCOPE

It is the intent of this Request for Proposals to establish a 12-month agreement with a vendor for:

- 1) DUAL PURPOSE COPY PAPER, 8 ½" x 11"
- 2) DUAL PURPOSE COPY PAPER, 8 ½" x 14"
- 3) DUAL PURPOSE COPY PAPER, 11" x 17"

The awarded contracts from each of the CITY and COUNTY will be in effect for **12 months** from date of award and may be extended for three (3) one-year increments. We ask that pricing be held for the 12-month agreement. Please provide pricing for both "Drop ship" (bulk orders), and "Just in time" (desktop) deliveries, as we may purchase both ways throughout the year. Winning offeror will be required to sign separate agreements with the CITY and the COUNTY according to terms and conditions required by CITY and COUNTY members.

SAMPLES

One ream of each specified size is required with the proposal response and should be delivered in a separate container from your proposal. Samples are to be identified as to proposal number, manufacturer, brand name, recycled content and submitter's name. These samples are to be supplied at no expense to the CITY or COUNTY. Proposals which do not comply with these requirements may be subject to rejection.

At the public opening, only the names of the companies responding will be disclosed so as to avoid disclosure of contents to competing offerors during the process of negotiation (IC 5-22-9-4).

An evaluation team will evaluate proposals on a variety of criteria, including price. The proposal selected shall provide the most cost-effective approach that meets the stated requirements. The lowest price proposal will not necessarily be selected.

The primary criteria for vendor evaluation and consideration, starting with the most important, are:

- Price 25%
- Ability to provide Next Day Delivery 20%
- Quality of Paper 20%
- Adherence to RFP Requirements (Responsiveness) 15%
- Transportation Charges 10%
- Local Vendor Status 5%
- M/WBE Status 5%

Evaluations of the proposals are expected to be completed within 30 days after the receipt. The agency reserves the right to a) reject any or all proposals, or to make no award, b) require modifications to initial proposals or c) to make partial or multiple awards. The agency further reserves the right to excuse technical defects in a proposal when, in its sole discretion, such excuse is beneficial to the agency.

The agency may award based on initial proposals received, without discussion of such proposals. However, the CITY and COUNTY reserve the right to conduct discussion with responsible offerors, who submit responses determined to be reasonably susceptible of being selected for award. Selected vendors may be invited to make oral presentations to the evaluation team.

All documents submitted as part of the vendor's proposal will be deemed confidential during the evaluation process. Vendor proposals will not be available for review by anyone other than the evaluation team or its designated agents. There shall be no disclosure of any vendor's information to a competing vendor prior to award of the contract.

SECURITY - *Vendors are required to submit a bond security within their proposal.*

As evidence of financial responsibility, all responses to this RFP require a bond or certified check in an amount of \$1,000. All proposals not accompanied by a bond or certified check payable to the City of Evansville and Vanderburgh County will be rejected as non-responsive.

Vendors may be required to submit a Performance Bond during contract negotiations.

In the event that the CITY/COUNTY enters into final contract negotiations with a vendor or vendors, the CITY/COUNTY reserves the right to require vendor(s) to provide a performance bond up to 100% of the contracted amount, which may be used to satisfy any direct damages to the CITY or COUNTY resulting from a vendor's failure and/or refusal to engage in good faith negotiations and/or honor the terms of its proposal and/or contract. The bond must remain in effect for the duration of the contract.

It shall be the offeror's responsibility to read this entire document (terms and conditions, instructions), review all enclosures and attachments, and comply with all requirements specified herein. Not doing so could result in offeror's proposal being designated as unresponsive.

CHECKLIST

- Proposal response
- Proposal cover
- Bond check
- MBE/WBE form
- E-verify affidavit
- Non-collusion affidavit
- Specification sheet
- Certificate of insurance (naming CITY and COUNTY as additional insured)
- Samples

Name _____ Signature _____

PROPOSAL RESPONSE

RFP-APA-01-2022

Copy Paper

Quantity (12 months): DUAL PURPOSE COPY PAPER, 8 ½" x 11" estimated 1000 cases
DUAL PURPOSE COPY PAPER, 8 ½" x 14" estimated 60 cases
DUAL PURPOSE COPY PAPER, 11" x 17" estimated 50 cases

Company Name: _____

Name _____ Signature _____

Size	Description	Manufacturer and Brand	Price Per Carton desktop	Price Per Carton bulk delivery (include min. Quantity shipped)
8 ½" x 11"	8 ½" x 11", 20lb, 92 bright, 10 reams per carton			
8 ½" x 14"	8 ½" x 14", 20lb, 92 bright			
11" x 17"	11" x 17", 20lb, 92 bright			
Indicate if you will provide next day deliver, if not please indicate number of days for delivery				

Order / Delivery / Locations

- All CITY and COUNTY government offices will place individual orders and billing must be separated into individual departments. No minimum order requirements will be honored. All orders are expected to be desktop deliveries to various offices at various locations.
- Delivery locations are all CITY and COUNTY properties.
- **Vendor shall not impose a minimum order, and no delivery charges will be honored.**
- Please provide pricing for both "Drop ship" (bulk orders), and "Just in time" (desktop) deliveries, as we may purchase both ways throughout the year.

Additional Requirements:

- All paper submitted for the length of the contract must be made, milled, and packaged in the United States.
- Reams shall be sealed, and be in packages of one ream (500 sheets) securely wrapped, not banded.
- Ream wrapper shall be snug and sealed so as not to allow shifting of contents within the package. All paper shall be precisely mill cut, and wrapping should be clearly marked with specifications.
- Delivery will be made at a maximum of 48 business hours from order placement.
- All orders will be made via email or phone call.

PROPOSAL COVER

RFP-APA-01-2022

Copy Paper

AUTHORIZED SIGNATURE

DATE

NAME & TITLE (PLEASE PRINT)

TELEPHONE

COMPANY NAME

EMAIL

ADDRESS (STREET)

CITY, STATE, ZIP

In an effort to increase business opportunities for minorities and women in our community and to promote diversity and equal opportunity in our business relationships, the CITY and COUNTY encourage all offerors to allow certified Minority Owned Business Enterprises and Woman Owned Business Enterprises (“WBE”) to participate in this opportunity between vendor and CITY/COUNTY. Please complete the following:

STATEMENT OF PROPOSED M/WBE UTILIZATION (FORM A)

Bid Package _____
 Will Bidder's firm be supplying all of the products/services to be purchased? Yes _____ No _____ OR In the case of a construction project will Bidder be doing all of the work with its own forces? Yes _____ No _____ If no, what percentage of work will Bidder self perform? _____
 Is Bidder certified as a Minority/Women Business Enterprise (M/WBE)? Yes _____ No _____ If yes, which MBE _____ WBE _____

List below all proposed M/WBE Subcontractors and Suppliers to be used for the work. Total dollar amount and percentage must equal that on the Bid form. Clearly indicate in the Scope of Work column if the M/WBE will be a supplier only. Also, if M/WBE will contract with a Subcontractor or Bidder and not directly with the Bidder, indicate “Subcontractor of _____” or similar statement in the Scope of Work column. Use additional sheets if necessary.

M/WBE Company Name Address, Phone, Contact & Email	MBE or WBE	% of Bid	Dollar Amount	Scope of Work or Commodity to be Supplied	Base Bid Amount

Bidder's Company Name _____ Signature (of Corporate Officer) _____
 Date _____ Name & Title (Print) _____
 Total Dollar Amount \$ _____
 Total MBE Participation \$ _____
 Total WBE Participation \$ _____ Number of City / County Ordinance _____



Affidavit
E-Verify Program

The undersigned being duly sworn upon their oath, now says that I, _____(name),
_____ (title/position) at _____, (Company)
do hereby state that _____ (Company) does not
knowingly employ unauthorized aliens and participates in the E-Verify Program (I.C. 22-5-1.7),
when it hires new employees to confirm their work eligibility.

I swear or affirm, under the penalties for perjury, that the foregoing statements are true.

Signature of affiant

Title

Name of Business Entity

NON-COLLUSION AFFIDAVIT

STATE OF INDIANA)
) ss:
_____ COUNTY)

The undersigned bidder or agent, being duly sworn on oath, says that he/she has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by bidder, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to induce anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding.

Bidder further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee, gift, commission or thing of value on account of such sale.

Bidder (Firm)

Signature of Bidder or Agent

Subscribed and sworn to before me this _____ day of _____, 20____

My Commission Expires: _____

County of Residence: _____

Instructions to Bidders

1. **READ, REVIEW AND COMPLY:** It shall be the bidder's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
2. **LANGUAGE, WORDS USED INTERCHANGEABLY:** Throughout the Instructions to Bidders, the Standard Terms and Conditions, and the Scope of Work, the following shall apply:
 - CITY refers to the City of Evansville, Indiana
 - COUNTY refers to Vanderburgh County, Indiana
 - BIDDER refers to the Company, firm, corporation, partnership, individual, vendor, etc. submitting an offer to sell its goods or services to the CITY/COUNTY
 - The words QUOTATION, QUOTE, BID and PROPOSAL are all offers from a BIDDER but may represent different methods of obtaining price and other information from the BIDDER
 - Masculine pronouns shall be read to include feminine pronouns and the singular of any word or phrase shall be read to include the plural and vice versa.
3. **NOTICE TO BIDDERS:** All bids are subject to the provisions of the Instructions to Bidders, special terms and conditions specific to this Invitation for Bids, the specifications, and the CITY/COUNTY General Contract Terms and Conditions. The CITY/COUNTY objects to and will not evaluate or consider any additional terms and conditions submitted with a bidder response. This applies to any language appearing in or attached to the document as part of the responder's response. **DO NOT ATTACH ANY ADDITIONAL TERMS AND CONDITIONS.** By execution and delivery of this document, the responder agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.
4. **BID PROPOSAL:** Failure to sign proposal section will render bid invalid.
5. **TIME FOR CONSIDERATION:** Unless otherwise indicated in the Bid Proposal section of this document, the offer shall be valid for 60 days from the date of bid opening. Preference may be given to bids allowing over 60 days for consideration and acceptance.
6. **PROMPT PAYMENT DISCOUNTS:** Bidders are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
7. **SPECIFICATIONS:** All bids/quotes submitted should be as closely sized, equipped, etc. to the desired specifications. Any exceptions to the specifications will be evaluated based on the best interest of the CITY/COUNTY. Any deviation from specifications indicated herein must be clearly pointed out; otherwise, it will be considered that items offered are in strict compliance with these specifications, and bidder will be held responsible therefore. Deviations shall be explained in detail. **The bidder shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable.**
8. **PROCUREMENT STATEMENT OF NON-PREFERENCE:** It is the intent of the CITY/COUNTY to procure a product and/or service in the size, quality, and parameters of the following specifications. Sometimes, for facilitation of bidding/quoting procedures only, a certain manufacturer, product, or vendor will be utilized to help streamline this process. However, The CITY/COUNTY invites and encourages all other qualified bidders to submit equivalent bids/quotes. The primary purpose is to ensure that no interested party is excluded or limited from the bidding/quoting process.
9. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this bid, the order of precedence shall be (1) special terms and conditions specific to this bid, (2) specifications, (3) CITY/COUNTY Contract Terms and Conditions, and (4) Instructions to Bidders.
10. **INFORMATION AND DESCRIPTIVE LITERATURE:** Bidder is to furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this bid, each bidder must submit with their bid sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous offer will not satisfy this provision. Bids which do not comply with these requirements will be subject to rejection.
11. **MANUFACTURER DATA:** If a requested item is a tangible or physical product, each BIDDER shall submit the following data:
 - Name of Manufacturer, Model Number and Supplier
 - A statement indicating whether the products are manufactured in the United States.
 - A statement listing the nearest factory authorized parts & service facility. Local service facility is preferred
 - A statement that the proposed material/equipment conform to the specifications or a statement indicating the exceptions to the specifications
 - If appropriate, a statement indicating whether the material/equipment conform to recognized mandated standards including, but not limited to, OSHA requirements or ANSI Standards, for that type of material/equipment. Include Material Safety Data Sheets (MSDA) when appropriate.
12. **RECYCLING AND SOURCE REDUCTION:** It is considered sound purchasing practice to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of commodities purchased. However, no sacrifice in quality of packaging will be acceptable. The company remains responsible for providing

packaging that will protect the commodity and contain it for its intended use. **Companies are strongly urged to bring to the attention of the purchasers at the CITY/COUNTY those products or packaging they offer which have recycled content and that are recyclable.**

13. **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the purchaser named on the cover sheet of this document. Do not contact the CITY/COUNTY participating members directly. Any and all revisions to this document shall be made only by written addendum from the CITY/COUNTY. The responder is cautioned that the requirements of this bid can be altered only by written addendum and that verbal communications from whatever source are of no effect.

14. **BID SUBMITTAL: Include price in written proposals.**

All bids must be received on or before the time and date indicated in the Notice to Bidders. Late bids will not be considered and will be returned, unopened, to the bidder. The responsibility for submitting bids to the CITY/COUNTY is solely that of the bidder. The CITY/COUNTY will not be responsible for delays in mail delivery or delays caused by any other occurrence. **Late bids will not be accepted.**

The Bidder shall submit their bid(s) on the attached PROPOSAL FORM, supplying all the required information. Failure to comply with this or any other paragraph of the Instructions to Bidders shall be sufficient reason for invalidation of the bid.

Bids must be submitted on either the Bid Offer and Proposal Form or SBOA Form 96 which must be properly signed, dated and notarized to be accepted. Each Bidder shall submit an original and additional copies as required on the forms attached.

Bidders are required to provide all requested information. Bid submittals should be submitted in a sealed envelope showing the bidder's name, business address, bid title, date and time of opening on the front of the envelope. Only information provided inside this envelope will be considered, unless otherwise instructed. Failure to follow this instruction or any other instruction contained in this Request for Bids may result in the rejection of your bid.

Bid modifications are not allowed. Complete withdrawal or complete exchange of bid is acceptable, **if** done before scheduled bid opening.

All bids/quotes must be signed by an authorized official of the firm. Bids may be rejected if they show any omissions, alterations of form, additions not called for, conditional bid, or any exceptions or irregularities of any kind.

15. **PROOF OF INSURANCE:** Bidder, at its own expense, shall procure and maintain during the entire term of this Agreement and any extensions thereof, insurance so as to cover all risk which shall arise directly or indirectly from Bidder's obligations and activities. Satisfactory proof of coverage must be from a reliable company licensed to do business in the State of Indiana, before commencing any work. Such proof shall consist of certificates executed by the respective insurance companies, filed with the CITY/COUNTY and listing the City of Evansville and Vanderburgh County as additional insureds. The certificates of insurance shall show the name and address of the insurance company, expiration date or dates, and the policy number or numbers. The CITY/COUNTY reserves the right to require complete, certified copies of all required insurance policies at any time.

Proof of insurance shall be maintained up to date, and failure to maintain adequate coverage and proof shall be deemed sufficient reason for cancellation of the contract. All insurance shall provide that the policy shall not be canceled, terminated or modified unless thirty (30) days prior to such cancellation, termination or modification written notice is given to the CITY and COUNTY. No policy may be modified, terminated or canceled by the vendor without the prior written approval of the CITY and COUNTY.

16. **PUBLIC OPENING PROCEDURES:** The purpose of a public bid opening is for a reading of bids/quotes received. Under normal circumstances, no award will be made or implied at this time, unless otherwise indicated. Only the following information will be given: Vendor name and total price, except when award is made on a unit price basis / grand total for all or none items.

Bids or related documents may not be reviewed at the bid opening. No discussion of any nature concerning brand names, deliveries, samples, etc. can be entered into between any Purchasing personnel and any vendor during or after the bid opening until the evaluation of bids has been completed and a recommendation for award has been made.

A copy of the bid tabulation will be available for review upon completion of the recommended award. Vendors who wish to review or request copies of bids may do so by contacting the Purchasing Department. A copy fee will be charged for copies.

17. **ACCEPTANCE AND REJECTION:** The CITY and COUNTY reserve the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the bidder, to accept any item in the bid that is in its best interest. If either a unit price or extended price is obviously in error or the other is obviously correct, the incorrect price will be disregarded.

18. **REFERENCES:** The CITY and COUNTY reserve the right to require a list of users of the exact item offered. The CITY and COUNTY may contact these users to determine quality level of the offered product and acceptability of the bid. Such information may be considered in the evaluation of the bid.

19. **BIDDER/OFFEROR QUALIFICATIONS:** If requested, Bidders/Offerors shall be required to submit satisfactory evidence that they have a practical knowledge of the particular supply/service bid and that they have the necessary financial resources to provide the proposed supply/service as described in the attached specifications. Bidders must possess the necessary occupational licenses(s) to perform such work. Bidders shall provide proof of insurance as specified.

20. **HISTORICALLY UNDERUTILIZED BUSINESSES:** The CITY/COUNTY invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled, in accordance with the policies and ordinances of the CITY and COUNTY.
21. **ADVERSARIAL PARTIES:** Any party responding to a bid, quote, or Request for Proposal for any contract with the CITY or COUNTY shall be required to disclose any current adversarial litigation, contract dispute, or other adversarial proceeding against the CITY or COUNTY. Any such disclosure of current adversarial litigation, contract dispute or other adversarial proceeding against the CITY or COUNTY shall be considered a factor in determining the qualification, responsiveness and responsibility of such party in responding to a bid, quote, or Request for Proposal; and the matter shall be referred to the Law Department for investigation and recommendation prior to the award of any contract.
22. **BOND REQUIREMENTS:** A Bid Bond, Certified Check, Cashier's Check or Bank Draft in the amount of \$1,000 shall accompany each bid as a guarantee that all provisions of the specifications shall be met. Bid Bonds and Checks will be returned to the unsuccessful Bidder(s) after award of purchase by the CITY/COUNTY, and to the successful Bidder(s) after the performance bond, if required, has been received and accepted. Bid Bonds must be executed by a corporate surety licensed under the laws of Indiana to execute such bonds. The surety must be a corporate surety authorized to do business in Indiana and Power of Attorney must accompany the Bid Bond. When specified, a Performance Bond in the amount of One Hundred percent (100%) of the total bid will be required of the successful bidder, prior to work beginning, as a guarantee that all provisions of the bid, specifications and resulting contract, shall be met. The Performance Bond is to be posted with the awarding body within ten (10) business days after bid award. Failure to post said Bond may result in the immediate revocation of Bid award. In place of the bond, a certified check or cashier's check in the full amount of the contract may be provided. Such deposits must be filed with the executed contract documents and made a part thereof. It shall be the responsibility of the bidder to include the cost of the Performance Bond in the bid. The CITY/COUNTY will not pay an additional amount at a later date.
23. **AWARD OF CONTRACT:** Bids/Quotes shall be awarded to the lowest responsive and responsible bidder taking into consideration reliability, productivity, and cost of maintenance, quality, performance and time of delivery. As directed by precedent, qualified bids will be evaluated and acceptance may be made of the lowest and best bid most advantageous to the CITY/COUNTY as determined upon consideration of such factors as:
- prices offered
 - the quality of the articles offered
 - the general reputation and performance capabilities of the bidder
 - the substantial conformity with the specifications and other conditions set forth in the bid/quote
 - the suitability of the articles for the intended use
 - the related services needed
 - the date or dates of delivery and performance
 - other factors deemed by the CITY/COUNTY to be pertinent or peculiar to the purchase in question.

Unless otherwise specified by the CITY/COUNTY or the bidder, the CITY/COUNTY reserves the right to accept any item or group of items on a multi-item bid. In addition, on TERM CONTRACTS, the CITY/COUNTY reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by the CITY/COUNTY to be pertinent or peculiar to the purchase in question.

24. **CONFIDENTIAL INFORMATION:** As provided by statute and rule, the CITY/COUNTY considers keeping trade secrets which the bidder does not wish disclosed confidential. Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the bidder. Cost information shall not be deemed confidential. In spite of what is labeled as a trade secret, the determination whether it is or not will be determined by Indiana law.
25. **TAXES:**
- **FEDERAL:** All agencies participating in this contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the contractor will be executed and returned by the using agency.
 - **OTHER:** Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the Indiana Department of Revenue.
26. **SAMPLES:** Sample of items, when required, must be furnished as stipulated herein, free of expense, and if not destroyed will, upon request be returned at the bidder's expense. Request for the return of samples must be made within 10 days following date of bid opening. Otherwise, the samples will become the property of the CITY/COUNTY. Each individual sample must be labeled with the bidder's name, bid number, and item number. A sample, on which an award is made, will be retained until the contract is completed, and then returned, if requested, as specified above.
27. **PROTEST PROCEDURES:** When a Bidder wants to protest a contract award pursuant to this solicitation, they must submit a written request to the Director of Purchasing for the City of Evansville – Vanderburgh County. This request must be received within thirty (30) consecutive calendar days from the date of the contract award, and must contain specific sound reasons and any supporting documentation for the protest. Note: Contract award notices are sent only to those actually awarded contracts, and not to every person or firm responding to this solicitation. Bidders may call the purchasing official listed on the first page of this document to obtain a verbal status of contract award. If the Director of Purchasing can render a decision based on the facts without a meeting, a written response with a decision will be rendered within 10 consecutive calendar days of the receipt of the protest letter. If not, the Director of Purchasing will schedule a meeting with the protesting party to hear their complaint. This meeting will

be held within 30 consecutive calendar days after receipt of the written protest. The Director of Purchasing will respond to the protesting party in writing with a decision within 30 consecutive calendar days from the date of the protest meeting. All decisions of the Director of Purchasing shall be the final administrative review.

28. **E-VERIFY:** Pursuant to Indiana Code 22-5-1.7-11(b)(2) the Bidder shall provide documentation that it is enrolled and is participating in the E-Verify program. Bidder is required to submit proof from the E-Verify Program that it is currently enrolled in the Program. An example of confirmation is the confirmation e-mail received from E-Verify that the Bidder has successfully enrolled in E-Verify.

City of Evansville-Vanderburgh County Standard Terms and Conditions

1. **Acceptance.** Seller's acknowledgment of the terms of this purchase order (this "Order"), without timely express written objection, or Seller's shipment or performance of any part of this Order, constitutes an agreement to (i) all terms and conditions set forth or referenced herein and on the face of this Order, (ii) on any attachments hereto, (iii) any applicable solicitation documentation related to this Order (including without limitation any request for proposals or invitation for bids or Seller's response thereto) that deal with the same subject matter as this Order, and (iv) any other terms and conditions of a written agreement signed by Seller and the CITY or COUNTY that deals with the same subject matter as this Order (collectively, the "Contract Documents"). The terms and provisions set forth in the Contract Documents shall constitute the entire agreement between Seller and CITY/COUNTY with respect to the purchase by CITY/COUNTY of the (i) goods ("Goods") and/or (ii) services provided or work performed ("Services") as described in the Contract Documents. The agreements set forth in the Contract Documents are sometimes referred to herein as the "Contract." In the event of any conflict between any terms and conditions of the Contract Documents, the terms and conditions most favorable to CITY/COUNTY shall control. This Order constitutes an offer by CITY/COUNTY and expressly limits acceptance to the terms and conditions stated herein. No additional or supplemental provision or provisions in variance herewith that may appear in Seller's quotation, acknowledgment, and invoice or in any other communication from Seller to CITY/COUNTY shall be deemed accepted by or binding on CITY/COUNTY. CITY/COUNTY hereby expressly rejects all such provisions which supplement, modify or otherwise vary from the terms of the Contract Documents, and such provisions are superseded by the terms and conditions stated in the Contract Documents, unless and until CITY/COUNTY's authorized representatives expressly assent, in writing, to such provisions. Stenographic and clerical errors and omissions by CITY/COUNTY are subject to correction.

2. **Quantities.** Shipments must equal exact amounts ordered unless otherwise agreed in writing by CITY/COUNTY. The award of this Contract neither implies nor guarantees any minimum or maximum purchases.

3. **Prices.** If Seller's price or the regular market price of any of the Goods or Services covered hereunder is lower than the price stated in the Contract Documents on the date of shipment of such Goods or Services, Seller agrees to give CITY/COUNTY the benefit of such lower price on any such Goods or Services. In no event shall Seller's price be higher than the price last quoted or last charged to CITY/COUNTY unless otherwise agreed in writing. No charges for transportation, boxing, crating, etc. are allowable unless such charges are included in the Contract Documents.

4. **Price Adjustments** Any price changes (decrease or increase) which might be permitted during the contract period, must be general, either by reason of market change or on the part of the Seller to other customers.

a. **Notification:** Must be given to CITY/COUNTY in writing 90 days prior concerning any proposed price adjustments. Such notification shall be accompanied by a copy of manufacturer's official notice or other acceptable evidence that the change is general in nature.

b. **Decreases:** CITY/COUNTY shall receive full a proportionate benefit immediately at any time during the contract period.

c. **Increases:** All prices shall be firm against any increase for 180 days from the effective date of the Contract. After this period, a request for increase may be submitted with CITY/COUNTY reserving the right to accept or reject the increase, or cancel the Contract. Such action by CITY/COUNTY shall occur not later than 15 days after the receipt by CITY/COUNTY of a properly documented request for price increase. Any increases accepted shall become effective not later than 30 days after the expiration of the original 15 days reserved to evaluate the request for increase.

5. **Invoices:** It is understood and agreed that orders will be shipped at the established Contract prices in effect on dates that orders are placed. Invoicing at variance with this provision will subject the Contract to cancellation. Invoices shall be sent to CITY/COUNTY's member accounts payable department.

6. **Freight on Board.** All shipments of Goods are freight on board destination unless otherwise stated in the Contract Documents. All costs for packing, delivery, drayage, postage, freight, express, or for any other purpose are to be borne by the bidder. All deliveries will be made to CITY/COUNTY properties. However, CITY/COUNTY reserves the right to alter delivery location to other facilities inside Vanderburgh County.

7. **Taxes.** Any applicable taxes shall be invoiced as a separate item. Do not include taxes in bid figures. The CITY/COUNTY and its members are exempt from state and federal taxes. An exemption certificate will be provided upon request.

8. **Payment Terms.** Payment terms are Net 45 days after receipt of correct invoice or acceptance of Goods or Services, whichever is later.

9. **Condition and Packaging.** Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.

10. **Delays in Shipment.** Time and date of delivery are of the essence, except when delay is due to causes beyond Seller's reasonable control and without Seller's fault or negligence.

11. **Risk of Loss.** Seller shall have the risk of loss of and damage to the Goods subject to the Contract Documents until such Goods are delivered to the destination and accepted by CITY/COUNTY or its nominee.

12. **Rejection.** All Goods and Services shall be received subject to CITY/COUNTY's inspection. Goods or Services that are defective in workmanship or material or otherwise not in conformity with the requirements of the Contract Documents may be rejected and returned at Seller's expense or may be accepted at an appropriate reduction in price. CITY/COUNTY may require Seller to promptly replace or correct any rejected Goods or Services and, if Seller fails to promptly replace or correct such Goods or Services, CITY/COUNTY may contract with a third party to replace such Goods and Services and charge Seller the additional cost.

13. **Compliance with all Laws.** Seller warrants that all performance hereunder shall be in accordance with all applicable federal, state and local laws, regulations and orders applicable to the bidding and performance of the Contract.

14. **Warranties.** Seller warrants that all Goods and Services delivered hereunder will be free from defects in materials and workmanship and will conform strictly to the specifications, drawings, or samples specified or furnished. This warranty shall survive any inspection, delivery, acceptance or payment by CITY/COUNTY of the Goods and Services and shall run to CITY/COUNTY and any user of the Goods or Services. This express warranty is in addition to Seller's implied warranties of merchantability and fitness for a particular purpose which shall not be disclaimed, and is also in addition to any other rights available at law or equity, including but not limited to consequential and incidental damages.

15. **Indemnification.** Seller shall indemnify and hold harmless CITY/COUNTY, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorneys' fees and liability that any of them may sustain (a) arising out of Seller's failure to comply with any applicable law, ordinance, regulation, or industry standard or (b) arising directly or indirectly out of Seller's performance or lack of performance of the terms and conditions of the Contract. In the event that any Goods or Services sold and delivered or sold and performed under the Contract Documents shall be defective in any respect whatsoever, Seller shall indemnify and save harmless CITY/COUNTY, its officers, agents, employees and assigns from all loss or the payment of all sums of money by reason of all accidents, injuries or damages to persons or property that shall happen or occur in connection with the use or sale of such Goods or Services and are contributed to by said condition. In the event Seller, its employees, agents, subcontractors and or lower-tier subcontractors enter premises occupied by or under the control of CITY/COUNTY in the performance of the Contract Documents, Seller agrees that it will indemnify and hold harmless CITY/COUNTY, its officers, agents, employees and assigns, from any loss, costs, damage, expense or liability by reason of property damage or personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with such entry.

16. **Insurance.** Unless such insurance requirements are waived or modified by CITY/COUNTY, Seller certifies that it currently has and agrees to purchase and maintain during its performance under the Contract the following insurance from one or more insurance companies acceptable to CITY/COUNTY and authorized to do business in the State of Indiana. In the absence of regulations, the amount of coverage shall be as follows:

- **Commercial General Liability** - Seller shall maintain commercial general liability insurance that shall protect Seller from claims of bodily injury or property damage which arise from performance under the Contract. This insurance shall include coverage for contractual liability. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each occurrence/\$1,000,000 annual aggregate.
- **Products & Completed Operations Aggregate** – Seller shall maintain a coverage limit not less than \$1,000,000
- **Personal & Advertising Injury** - Seller shall maintain a coverage limit not less than \$1,000,000
- **Fire Damage (Any one fire)** - Seller shall maintain a coverage limit not less than \$50,000
- **Medical Expense (Any one person)** - Seller shall maintain a coverage limit not less than \$5,000
- **Automobile** - Seller shall maintain bodily injury and property damage liability insurance covering all owned, non-owned and hired automobiles. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each person/each occurrence.
- **Worker's Compensation and Employers' Liability Insurance** – If applicable to Seller, Seller shall meet the statutory requirements of the State of Indiana for worker's compensation coverage and employers' liability insurance.
- Seller shall also provide any other insurance or bonding specifically recommended in writing by the CITY/COUNTY or required by applicable law.

Satisfactory proof of coverage must be from a reliable company licensed to do business in the State of Indiana, and furnished by Seller to CITY/COUNTY before commencing any work. Such proof shall consist of certificates executed by the respective insurance companies, filed with the CITY/COUNTY and listing the City of Evansville and Vanderburgh County as additional insured. Certificates of such insurance shall contain the provision that CITY/COUNTY be given 30 days' written notice of any intent to amend or terminate by either Seller or the insuring company. Failure to furnish insurance certificates or to maintain such insurance shall be a default under the Contract and shall be grounds for immediate termination of the Contract.

17. **Termination for Convenience.** In addition to all of the other rights which CITY/COUNTY may have to cancel this Order, CITY/COUNTY shall have the further right, without assigning any reason therefore, to terminate any work under the Contract Documents, in whole or in part, at any time at its complete discretion by providing 30 days-notice in writing from CITY/COUNTY to Seller. If the Contract is terminated by CITY/COUNTY in accordance with this paragraph, Seller will be paid in an amount which bears

the same ratio to the total compensation as does the Goods or Services actually delivered or performed to the total originally contemplated in the Contract. CITY/COUNTY will not be liable to Seller for any costs for completed Goods, Goods in process or materials acquired or contracted for, if such costs were incurred prior to the date of this Order.

18. **Termination for Default.** CITY/COUNTY may terminate the Contract, in whole or in part, immediately and without prior notice upon breach of the Contract by Seller. In addition to any other remedies available to CITY/COUNTY law or equity, CITY/COUNTY may procure upon such terms as CITY/COUNTY shall deem appropriate, Goods or Services substantially similar to those so terminated, in which case Seller shall be liable to CITY/COUNTY for any excess costs for such similar supplies or services and any expenses incurred in connection therewith.

19. **Withholding Payment:** In the event a contract is canceled under any provision herein, the CITY/COUNTY may withhold from the successful vendor any monies owed on that or any contract, an amount sufficient to compensate for damages suffered because of the violation resulting in cancellation.

20. **Contract Funding.** It is understood and agreed between Seller and CITY/COUNTY that CITY/COUNTY's obligation under the Contract is contingent upon the availability of appropriated funds from which payment for Contract purposes can be made. No legal liability on the part of CITY/COUNTY for any payment may arise until funds are made available to CITY/COUNTY. Should such funds not be appropriated or allocated, the Contract shall immediately be terminated. CITY/COUNTY shall not be liable to Seller for damages of any kind (general, special, consequential or exemplary) as a result of such termination.

21. **Accounting Procedures.** Seller shall comply with any accounting and fiscal management procedures prescribed by CITY/COUNTY to apply to the Contract. Seller shall assure such fiscal control and accounting procedures as may be necessary for proper disbursement of and accounting for all project funds.

22. **Improper Payments.** Seller shall assume all risks attendant to any improper expenditure of funds under the Contract. Seller shall refund to CITY/COUNTY any payment made pursuant to the Contract if it is subsequently determined by audit that such payment was improper under any applicable law, regulation or procedure. Seller shall make such refunds within 30 days after CITY/COUNTY notifies Seller in writing that a payment has been determined to be improper.

23. **Contract Transfer.** Seller shall not assign, subcontract or otherwise transfer any interest in the Contract without the prior written approval of CITY/COUNTY.

24. **Contract Personnel.** Seller agrees that it has, or will secure at its own expense, all personnel required to perform the services set forth in the Contract.

25. **Key Personnel.** Seller shall not substitute for key personnel assigned to the performance of the Contract without prior written approval from CITY/COUNTY Purchasing Agent. "Key personnel" are defined as those individuals identified by name or title in the Contract Documents or in written communication from Seller. "CITY/COUNTY Purchasing Agent" is the individual at CITY/COUNTY responsible for administering the Contract.

26. **Contract Modifications.** The Contract may be amended only by written amendment duly executed by both CITY/COUNTY and Seller. However, minor modifications may be made by CITY/COUNTY Purchasing Agent that take advantage of unforeseen opportunities that: (a) do not change the intent of the Contract or the scope of Seller's performance; (b) do not increase Seller's total compensation or method of payment; and (c) either improve the overall quality of the product or service to CITY/COUNTY without increasing the cost, or reduce the total cost of the product or service without reducing the quantity or quality. All such minor modifications to the Contract must be recorded in writing and signed by both the Project Coordinator and Seller, and placed on file with the Contract. No price adjustments will be made unless the procedure has been included in the Contract and a maximum allowable amount stipulated.

27. **Relationship of Parties.** Seller is an independent contractor and not an employee of CITY/COUNTY. The conduct and control of the work will lie solely with Seller. The Contract shall not be construed as establishing a joint venture, partnership or any principal-agent relationship for any purpose between Seller and CITY/COUNTY. Employees of Seller shall remain subject to the exclusive control and supervision of Seller, which is solely responsible for their compensation.

28. **Advertisement.** The Contract will not be used in connection with any advertising by Seller without prior written approval by CITY/COUNTY.

29. **Nondiscrimination.** During the performance of the Contract, Seller shall not discriminate against or deny the Contract's benefits to any person on the basis of sexual orientation, national origin, ancestry, race, ethnic background, color, religion, gender, age or disability.

30. **Equal Employment Opportunity:** The Equal Employment Opportunity Statement included herein is a condition of the bid. The successful bidder must comply with the equal employment opportunity condition in the execution of the Contract.

31. **Conflict of Interest.** Seller represents and warrants that no member of CITY/COUNTY or any of its employees or officers has a personal or financial interest or will benefit from the performance of the Contract or has any interest in any Contract, subcontract or other agreement related to the Contract. Seller shall not permit any member of CITY/COUNTY or any of its employees or officers to obtain a personal or financial interest or benefit from the performance of the Contract or to have any interest in any Contract, subcontract or other agreement related to the Contract, during the term of the Contract. Seller shall cause this paragraph to be included in all Contracts, subcontracts and other agreements related to the Contract.

32. **Gratuities to CITY/COUNTY.** The right of Seller to proceed may be terminated by written notice if CITY/COUNTY determines that Seller, its agent or another representative offered or gave a gratuity to an official or employee of CITY/COUNTY in violation of policies of CITY/COUNTY.

33. **Kickbacks to Seller.** Seller shall not permit any kickbacks or gratuities to be provided, directly or indirectly, to itself, its employees, subcontractors or subcontractor employees for the purpose of improperly obtaining or rewarding favorable treatment in connection with a CITY/COUNTY Contract or in connection with a subcontract relating to a CITY/COUNTY Contract. When Seller has grounds to believe that a violation of this clause may have occurred, Seller shall promptly report to CITY/COUNTY in writing the possible violation.

34. **Monitoring and Evaluation.** Seller shall cooperate with CITY/COUNTY, or with any other person or agency as directed by CITY/COUNTY, in monitoring, inspecting, auditing or investigating activities related to the Contract. Seller shall permit CITY/COUNTY to evaluate all activities conducted under the Contract. CITY/COUNTY has the right at its sole discretion to require that Seller remove any employee of Seller from CITY/COUNTY property and from performing services under the Contract following provision of notice to Seller of the reasons for CITY/COUNTY's dissatisfaction with the services of Seller's employee.

35. **Financial Responsibility.** Seller is financially solvent and able to perform under the Contract. If requested by CITY/COUNTY, Seller agrees to provide a copy of its latest audited annual financial statements or other financial statements as deemed acceptable by CITY/COUNTY's Chief Finance Officer. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, the inability of Seller to meet its debts as they become due or in the event of the appointment, with or without Seller's consent, of an assignee for the benefit of creditors or of a receiver, then CITY/COUNTY shall be entitled, at its sole option, to cancel any unfulfilled part of the Contract without any liability whatsoever.

36. **Governmental Restrictions.** In the event any governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the Seller to notify, in writing, the issuing purchasing office at once, indicating the specific regulation which required such alterations. CITY/COUNTY reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.

37. **Inspection at Seller's Site.** CITY/COUNTY reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to Contract award, and during the Contract term as necessary for CITY/COUNTY determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.

38. **Confidentiality Information. Employee Personnel Information.** If, during the course of Seller's performance of the Contract, Seller should obtain any information pertaining to employees of CITY/COUNTY's personnel records, Seller agrees to keep any such information confidential and to not disclose or permit to be disclosed, directly or indirectly, to any person or entity any such personnel information. **Other Confidential Information.** (a) Seller agrees that it will at all times hold in confidence for CITY/COUNTY all designs, know-how, techniques, devices, drawings, specifications, patterns, technical information, documents, business plans, item requirements, forecasts and similar data, oral, written or otherwise, conveyed by CITY/COUNTY to Seller in connection herewith or procured, developed, produced, manufactured or fabricated by Seller in connection herewith or procured, developed, produced, manufactured or fabricated by Seller in connection with Seller's performance hereunder (collectively, "Information"). Seller shall exercise the same degree of care to prevent disclosure of any Information to others as it takes to preserve and safeguard its own proprietary information, but in any event, no less than a reasonable degree of care. Seller shall not, without the prior written consent of CITY/COUNTY, reproduce any Information; nor disclose Information to any party; nor use any Information for any purpose other than performance for the benefit of Seller hereunder. (b) Any technical knowledge or information of Seller which Seller shall have disclosed or may hereafter disclose to CITY/COUNTY in connection with the Goods or other performance covered by the Contract shall not, unless otherwise specifically agreed upon in writing by CITY/COUNTY, be deemed to be confidential or proprietary information and shall be acquired by CITY/COUNTY free from any restrictions as part of the consideration of the Contract.

39. **Intellectual Property.** Seller agrees, at its own expense, to indemnify, defend and save CITY/COUNTY harmless from all liability, loss or expense, including costs of settlement and attorney's fees, resulting from any claim that CITY/COUNTY's use, possession or sale of the Goods or Services infringes any copyright, patent or trademark or is a misappropriation of any trade secret.

40. **No Pre-Judgment or Post-Judgment Interest.** In the event of any action by Seller for breach of contract in connection with the Contract, any amount awarded shall not bear interest either before or after any judgment, and Seller specifically waives any claim for interest.

41. **Background Checks.** At the request of CITY/COUNTY's Project Coordinator, Seller (if an individual) or any individual employees of Seller shall submit to CITY/COUNTY criminal background check and drug testing procedures.

42. **Mediation.** If a dispute arises out of or relates to the Contract, or the breach of the Contract, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to litigation.

43. **No Third-Party Benefits.** The Contract shall not be considered by Seller to create any benefits on behalf of any third party. Seller shall include in all contracts, subcontracts or other agreements relating to the Contract an acknowledgment by the contracting parties that the Contract creates no third-party benefits.

44. **Force Majeure.** If CITY/COUNTY is unable to perform its obligations or to accept the Services or Goods because of Force Majeure (as hereinafter defined), the time for such performance by CITY/COUNTY or acceptance of Services will be equitably adjusted by allowing additional time for performance or acceptance of Services equal to any periods of Force Majeure. "Force Majeure" shall mean any delays caused by acts of God, riot, war, terrorism, inclement weather, labor strikes, material shortages and other causes beyond the reasonable control of CITY/COUNTY.

45. **Ownership of Documents.** All documents created pursuant to the Contract shall, unless expressly provided otherwise in writing, be owned by CITY/COUNTY. Upon the termination or expiration of the Contract, any and all finished or unfinished documents and other materials produced by Seller pursuant to the Contract shall, at the request of CITY/COUNTY, be turned over to CITY/COUNTY. Any technical knowledge or information of Seller which Seller shall have disclosed or may hereafter disclose to CITY/COUNTY shall not, unless otherwise specifically agreed upon in writing by CITY/COUNTY, be deemed to be confidential or proprietary information and shall be acquired by CITY/COUNTY free from any restrictions as part of the consideration of the Contract.

46. **Strict Compliance.** CITY/COUNTY may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous course of dealing or course of performance between the parties to the contrary.

47. **General Provisions.** CITY/COUNTY's remedies as set forth herein are not exclusive. Any delay or omission in exercising any right hereunder, or any waiver of any single breach or default hereunder, shall not be deemed to be a waiver of such right or of any other right, breach, or default. If action is instituted by Seller hereunder, CITY/COUNTY shall be entitled to recover costs and reasonable attorney's fees. Seller may not assign, pledge, or in any manner encumber Seller's rights under this Order, or delegate the performance of any of its obligations hereunder, without CITY/COUNTY's prior, express written consent.

48. **Contract Situs.** All matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of the Contract, will be determined in Evansville, Indiana. Indiana law will govern the interpretation and construction of the Contract.

49. **Choice of Law and Venue.** Any dispute that arises out of or relating to the terms of this Agreement shall be brought in the Superior or Circuit Court of Vanderburgh County, Indiana or in the Federal District Court for the Southern District of Indiana, Evansville Division. The law of the State of Indiana shall govern any dispute.