

## **STANDARD TERMS AND CONDITIONS**

### **1. AWARD:**

Awards shall be made by either the Procurement Director or the Board of Supervisors in accordance with the Pima County Procurement Code. Pima County (COUNTY) reserves the right to reject any or all offers, or to waive irregularities and informalities if it is deemed in the best interest of the COUNTY. Unless expressly agreed otherwise, resulting agreements are not exclusive, are for the sole convenience of COUNTY, and COUNTY reserves the right to obtain like goods or services from other sources.

A fully executed blanket contract, purchase order or contract document mailed, or otherwise furnished, to the selected respondent will result in a binding contract without further action by either party.

### **2. WAIVER:**

Each respondent, by submission of an offer, proclaims and agrees and does waive any and all claims for damages against COUNTY or its officers or employees when any of the rights reserved by COUNTY may be exercised.

### **3. INTERPRETATION and APPLICABLE LAW:**

The contract shall be interpreted, construed and given effect in all respects according to the laws of the State of Arizona. If any of seller's terms or conditions is not in agreement with COUNTY's terms and conditions as set forth herein, COUNTY's shall govern. This Agreement incorporates the complete agreement of the parties with respect to the subject matter of this Agreement. No oral agreement or other understanding shall in any way modify these terms and conditions.

### **4. WARRANTY:**

Seller warrants goods or services to be satisfactory and free from defects.

### **5. QUANTITY:**

The quantity of goods ordered shall not be exceeded or reduced without **written** permission in the form of a properly executed blanket contract, purchase order or contract revision or amendment as required by COUNTY Procurement Code except in conformity with acknowledged industry tolerances. All quantities are estimates and no guarantee regarding actual usage is provided.

### **6. PACKING:**

No extra charges shall be made for packaging or packing material. Seller shall be responsible for safe packaging conforming to carrier's requirements. All packages shall bear the content(s) quantity, product identification, purchase order number, and destination address plainly marked in indelible ink on the exterior of each package.

### **7. DELIVERY:**

On -time delivery of goods and services is an essential part of the consideration to be received by COUNTY.

A guaranteed delivery date, or interval period from order release date to delivery, must be given if requested by the Price Bid document. Upon receipt of notification of delivery delay, COUNTY at its sole option and at no cost to the County may cancel the order or extend delivery times. Such extension of delivery times will not be valid unless extended in writing by an authorized representative of the County.

To mitigate or prevent damages caused by delayed delivery, County may require Supplier to deliver additional quantity utilizing express modes of transport, and or overtime, all costs to be Supplier responsibility. County reserves the right to cancel any delinquent order, procure from alternate source, and/or refuse receipt of or return delayed deliveries, at no cost to County. County reserves the right to cancel any order and/or refuse delivery upon default by Supplier concerning time, cost, or manner of delivery.

Supplier will not be held responsible for unforeseen delays caused by fires, strikes, acts of God, or other causes beyond Supplier's control, provided that Supplier provide immediate notice of delay.

**STANDARD TERMS AND CONDITIONS** *(continued)*

**8. SPECIFICATION CHANGES:**

County shall have the right to make changes in the specifications, services, or terms and conditions of an order. If such changes cause an increase or decrease in the amount due under an order or in time required for performance, an acceptable adjustment shall be made and the order shall be modified in writing. Any agreement for adjustment must be made in writing. Nothing in this clause shall reduce Supplier's responsibility to proceed without delay in the delivery or performance of an order.

**9. INSPECTION:**

All goods and services are subject to inspection and testing at place of manufacture, the destination, or both, by COUNTY. Goods failing to meet specifications of the order or contract shall be held at seller's risk and may be returned to seller with costs for transportation, unpacking, inspection, repacking, reshipping, restocking or other like expenses to be the responsibility of seller. In lieu of return of nonconforming supplies, COUNTY, at its sole discretion and without prejudice to County's rights, may waive any nonconformity, receive the delivery, and treat the defect(s) as a warranty item, but waiver of any condition shall not be considered a waiver of that condition for subsequent shipments or deliveries.

**10. SHIPPING TERMS:**

Unless stated otherwise by the agreement documents, delivery terms are to be "destination-prepaid" and freight costs are to be included in the Unit Price offered by Supplier and accepted by the County.

**11. PAYMENT TERMS:**

Payment terms are net 30, unless otherwise specified by the agreement documents.

**12. ACCEPTANCE OF MATERIALS AND SERVICES:**

COUNTY will not execute an acceptance or authorize payment for any service, equipment or component prior to delivery and verification that all agreement requirements have been met.

**13. RIGHTS AND REMEDIES OF PIMA COUNTY FOR DEFAULT:**

In the event any item furnished by the Supplier in the performance of the agreement should fail to conform to the specifications thereof, or to the sample submitted by the Supplier, COUNTY may reject same, and it shall thereupon become the duty of the Supplier to reclaim and remove the same, without expense to COUNTY, and immediately replace all such rejected items with others conforming to the specifications or samples. Should the Supplier fail, neglect, or refuse immediately to do so, COUNTY, shall have the right to purchase in the open market, in lieu thereof, a corresponding quantity of any such items and to deduct from any monies due or that may become due to the seller the difference between the price named in the contract or purchase order and actual cost to COUNTY. In the event the seller shall fail to make prompt delivery as specified of any item, the same conditions as to the rights of COUNTY to purchase in the open market and invoke the reimbursement condition above shall apply, except when delivery is delayed by fire, strike, freight embargo, or acts of god or of the government. In the event of cancellation of the contract or purchase order, either in whole or in part, by reason of the default or breach by the seller, any loss or damage sustained by COUNTY in procuring any items which the seller agreed to supply shall be borne and paid for by the seller. The rights and remedies of COUNTY provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

**14. FRAUD AND COLLUSION:**

Each respondent, by submission of a bid, proclaims and agrees that no officer or employee of COUNTY or of any subdivision thereof has: 1) aided or assisted the Supplier in securing or attempting to secure a contract to furnish labor, materials or supplies at a higher price than that proposed by any other Supplier; 2) favored one Supplier over another by giving or withholding information or by willfully misleading the bidder in regard to the character of the material or supplies called for or the conditions under which the proposed work is to be done; 3) will knowingly accept materials or supplies of a quality inferior to those called for by any contract; 4) any direct or indirect financial interest in the offer or resulting agreement. Additionally, during the conduct of business with COUNTY, the respondent will not knowingly certify, or induce others to certify, to a greater amount of labor performed than has been actually performed, or to the receipt of a greater amount or different kind of material or supplies that has been actually received. If at any time it shall be found that the awardee(s) has in presenting any offer(s) colluded with any other party or parties for the purpose of preventing any other offer being made, then the agreement so awarded shall be terminated and that person or entity shall be liable for all damages sustained by COUNTY.

## **STANDARD TERMS AND CONDITIONS (continued)**

### **15. COOPERATIVE USE OF RESULTING AGREEMENT:**

As allowed by law, the County has entered into cooperative procurement agreements that enable other Public Agencies to utilize procurement agreements developed by the County. The Contractor may be contacted by participating agencies and requested to provide services and products pursuant to the pricing, terms and conditions defined by the County contract. Minor adjustments are allowed subject to agreement by both Contractor and Requesting Party to accommodate additional cost or other factors not present in the County agreement and required to satisfy particular Public Agency code or functional requirements and are within the intended scope of the solicitation and resulting agreement. Any such usage shall be in accordance with State, County and other Public Agency procurement rules, regulations and requirements and shall be transacted by contract or purchase order between the requesting party and Contractor. Contractor shall hold harmless County, its officers, employees, and agents from and against all liability, including without limitation payment and performance associated with such use. A list of agencies that are authorized to use County agreements can be viewed at the Procurement Department Internet home page: <http://www.pima.gov/procure> by selecting the link titled *Authorized Use of County Agreements*.

### **16. PATENT INDEMNITY:**

Supplier shall hold COUNTY, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the contract or purchase order. Bidders may be required to furnish a bond or other indemnification to COUNTY against any and all loss, damage, costs, expenses, claims and liability for patent or copyright infringement.

### **17. INDEMNIFICATION:**

Supplier shall indemnify, defend, and hold harmless COUNTY, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of any act, omission, fault or negligence by the Supplier, its agents, employees or anyone under its direction or control or on its behalf in connection with performance of this Contract. Supplier warrants that all products and services provided under this contract are non-infringing. Supplier will indemnify, defend and hold COUNTY harmless from any claim of infringement arising from services provided under this contract or from the provision, license, transfer or use for their intended purpose of any products provided under this Contract.

### **18. UNFAIR COMPETITION AND OTHER LAWS:**

Responses shall be in accordance with Arizona trade and commerce laws (Title 44 A.R.S.) and all other applicable County, State, and Federal laws and regulations.

### **19. COMPLIANCE WITH LAWS:**

Supplier shall comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation. The laws and regulations of the State of Arizona shall govern the rights, performance and disputes of and between the parties. Any action relating to this Contract shall be brought in a court of the State of Arizona in COUNTY. Any changes in the governing laws, rules, and regulations during an agreement shall apply, but do not require an amendment.

### **20. ASSIGNMENT:**

Supplier shall not assign its rights to the resultant agreement, in whole or in part, without prior written approval of the County. Approval may be withheld at the sole discretion of County, provided that such approval shall not be unreasonably withheld.

### **21. CONFLICT OF INTEREST:**

All agreements are subject to the provisions of A.R.S. § 38-511, the pertinent provisions of which are incorporated into and made part of all resultant contracts or purchase orders as if set forth in full herein.

### **22. NON-DISCRIMINATION:**

Respondent shall not discriminate against any County employee, client or individual in any way because of the person's age, race, creed, color, religion, sex, disability or national origin in the course of performing the respondent's duties pursuant to any contract or purchase order issued as a result of this solicitation. Respondent shall comply with executive order 75-5, as amended by executive order 99-4, which is incorporated into this solicitation by reference as if set forth in full herein.

**STANDARD TERMS AND CONDITIONS (continued)**

**23. NON-APPROPRIATION OF FUNDS:**

Pursuant to the provisions of A.R.S. § 11-251, sub-section 42, this agreement may be canceled if for any reason the COUNTY Board of Supervisors does not appropriate funds for the stated purpose of maintaining any agreement. In the event of such cancellation, COUNTY shall have no further obligation, other than for services or goods that have already been received.

**24. PUBLIC INFORMATION:**

Pursuant to A.R.S. § 39-121.01 et seq., all information submitted in response to this solicitation, including, but not limited to, pricing, product specifications, work plans, and any supporting data becomes public information and upon request, is subject to release and/or review by the general public including competitors.

**25. AMERICANS WITH DISABILITIES ACT:**

Respondent shall comply with all applicable provisions of the Americans with Disabilities Act (public law 101-336, 42 USC 12101-12213) and all applicable federal regulations under the act, including 28 CFR parts 35 and 36.

**26. NON-EXCLUSIVE:**

Agreements resulting from this solicitation are non-exclusive and are for the sole convenience of COUNTY. COUNTY reserves the right to obtain like goods and services from other sources for any reason.

**27. CANCELLATION:**

County reserves the right to terminate any contract, purchase order, or award, in whole or in part at anytime, when in the best interests of the County, without penalty or recourse. Upon receipt of written notice, supplier shall immediately cease all work as directed by the notice, notify all subcontractors of the effective date of termination and take appropriate actions to minimize further costs to the County. In the event of termination under this paragraph, all documents, data, and reports prepared by the contractor under the contract shall become the property of and be promptly delivered to the County. The contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures defined by A.A.C. R2-7-701 shall apply.

**28. CONFLICTS:**

In the event there are inconsistencies between the agreement documents, following is the order of precedence (superior to subordinate); contract or blanket contract document; purchase order document; purchase agreement document; standard terms and conditions.

**29. INDEPENDENT CONTRACTOR:**

The status of the Supplier shall be that of an independent contractor. Neither Supplier, nor Supplier's officers agents or employees shall be considered an employee of COUNTY or be entitled to receive any employment-related fringe benefits under the COUNTY Merit System. Supplier shall be responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Contract and shall indemnify and hold COUNTY harmless from any and all liability which COUNTY may incur because of Supplier's failure to pay such taxes. Supplier shall be solely responsible for program development and operation.

**30. BOOKS AND RECORDS**

Supplier shall keep and maintain proper and complete books, records and accounts, which shall be open at all reasonable times for inspection and audit by duly authorized representatives of COUNTY.

In addition, supplier shall retain all records relating to this contract at least 5 years after its termination or cancellation or, if later, until any related pending proceeding or litigation has been closed.

**END OF STANDARD TERMS AND CONDITIONS (May 2006)**