

## SECTION B: SPECIAL CONDITIONS

1. Proprietary Right: Material submitted in response to this solicitation document is subject to the Wisconsin Open Records Law. Once negotiations are complete and the contract has been awarded, prices are always open. Other information usually cannot be kept confidential unless it involves a trade secret as defined in S.134.90(1)(c), Wis. Stats.. The City will respect confidential and proprietary data within said legal constraints. Proposers shall clearly mark confidential and proprietary data as such. Failure to do so may mean that all information provided as part of the proposal response will be open to examination and copying. The Proposer/Contractor agrees to hold the City harmless for any damages arising out of the release of any material unless they are specifically identified. In the event the designation of confidentiality of this information is challenged, the Proposer/Contractor also agrees to provide legal counsel or other necessary assistance to defend the designation of confidentiality and, further, agrees to hold the City harmless from any penalties, costs, damages and fees, including attorneys' fees, awarded to the requestor and ordered to paid by the City, in any such legal action.
2. Assignability: Contractor shall not assign or subcontract any interest or obligation under this contract without the City's prior written approval. All of the services required hereunder will be performed by Contractor and employees of Contractor.
3. Amendment of Contract: This contract shall be binding on the parties hereto, their respective heirs, devisees, and successors, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto. Any other change in any provision of this contract may only be made by a written amendment, signed by the duly authorized agent or agents who executed this contract.
4. Extra Service or Decreased Service: The City may require the Contractor to perform extra services or decreased services. Extra services or decreased services means services which are not different in kind or nature from the services called for in the Scope of Services, but which may increase or decrease the quantity and kind of labor or materials or expense of performing the services. Extra services may not increase the total contract price, unless the contract is amended as provided in Section 3above.
5. Terms of Payment: In accordance with Federal Transit Administration's Circular 4220.1E, the City of Madison authorizes progress payments only for work completed. When progress payments are made, fifteen percent (15%) of the invoice shall be retained by the City, until final payment is made. Payment to the Selected Contractor shall be made once a month in amounts equal to the total charges and expenses of providing the services, less any retainage. Fully-supported invoices, with accompanying written progress reports, received by the 10<sup>th</sup> of the month will be paid by the 10<sup>th</sup> of the following month.

No funds will be released without a fully supported original invoice. The invoices are to identify each employee's or subcontractor's name along with their labor category, service performed, billing rate per hour per activity and number of hours worked per activity, enumerate direct expenses, and outline the fee, retainage amount (15% of total invoice) and net due. The invoices are also to identify the percentage of work completed by task. Invoices are to be supported by invoices, delivery tickets, time sheets, vouchers or the like. In addition, an itemized year-to-date invoice history shall be submitted.

The invoices are to be mailed to: David M. Trowbridge, Planning & Development, 215 Martin Luther King Jr. Blvd., Rm LL 100, Madison, WI 53710 or 608/266-8739 (FAX). Do not send invoices or reports to City Comptroller's Office or Purchasing Services.

Upon satisfactory performance and completion of the project, the City shall release any retainage funds withheld. Payment in full shall be made within thirty (30) working days after City acceptance and receipt of a properly prepared final invoice. The City will accept or reject, in writing, within fifteen (15) working days after delivery, all work performed by the Selected Contractor.

6. No Waiver: No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of City or the Selected Contractor shall operate as a waiver thereof, nor shall any single or partial exercise of any other right, power or remedy preclude any other or further exercise thereof or the exercise of any other right,

power or remedy. No express waiver shall affect any event or default other than the event of default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by City or the Selected Contractor therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

7. Non-Discrimination: In the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or student status. Contractor further agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex, or national origin.

8. Affirmative Action:

The Contractor agrees that, within thirty (30) days after the effective date of this contract, the Contractor will provide to the City of Madison Department of Affirmative Action certain workforce utilization statistics, using a form to be furnished by the City.

If the contract is still in effect, or if the City enters into a new agreement with the Contractor, within one year after the date on which the form was required to be provided, the Contractor will provide updated workforce information using a second form, also to be furnished by the City. The second form will be submitted to the City Department of Affirmative Action no later than one year after the date on which the first form was required to be provided.

The Contractor further agrees that, for at least twelve (12) months after the effective date of this contract, it will notify the City of Madison Department of Affirmative Action of each of its job openings at facilities in Dane County for which applicants not already employees of the Contractor are to be considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines. The Contractor agrees to interview and consider candidates referred by the Department of Affirmative Action if the candidate meets the minimum qualification standards established by the Contractor, and if the referral is timely. A referral is timely if it is received by the Contractor on or before the date stated in the notice.

The remaining portion of this paragraph is not applicable to Contractors who are determined to be "Exempt" in the following table.

VALUE OF AGGREGATE ANNUAL BUSINESS WITH THE CITY\*

NUMBER OF EMPLOYEES	LESS THAN \$25,000.	\$25,000 OR MORE
14 or Less	Exempt	Exempt
15 or More	Exempt	Not Exempt

\*As determined by the City Comptroller

**ARTICLES OF AGREEMENT**

ARTICLE I

The Contractor shall take affirmative action in accordance with the provisions of this contract to insure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex or national origin and that the employer shall provide harassment-free work environment for the realization of the potential of each employee. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of

compensation and selection for training including apprenticeship insofar as it is within the control of the Contractor. The Contractor agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses in this contract.

#### ARTICLE II

The Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractors state that all qualified or qualifiable applicants will be employed without regard to race, religion, color, age, marital status, disability, sex or national origin.

#### ARTICLE III

The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the City advising the labor union or workers representative of the Contractor's equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

#### ARTICLE IV

(This Article applies to non-public works contracts.)

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison including the contract compliance requirements. The Contractor warrants and certifies that, of the following two paragraphs, paragraph A or B is true. (Check A or B below)

A. \_\_\_\_ It has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No, 4, 41 CFR part 60-2, as established by 43 FR 51400 November 3, 1978, including appendices required by City of Madison ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council.

B. \_\_\_\_ Within thirty (30) days after the effective date of this contract, it will complete an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR Part 60-2, as established by 43 FR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this contract, it will complete a model affirmative action plan approved by the Madison Common Council.

#### ARTICLE V

(This Article applies only to public works contracts.)

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison, including the contract compliance requirements. The Contractor agrees to submit the model affirmative action plan for public works Contractors in a form approved by the Director of Affirmative Action.

#### ARTICLE VI

The Contractor will maintain records as required by Section 3.58(9)(f) of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section 3.58(9)(f). The City agrees to keep all such records confidential, except to the extent that public inspection is required by law.

#### ARTICLE VII

In the event of the Contractor's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action provisions of this contract or Sections 3.23 and 3.58 of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

- A. Cancel, terminate or suspend this contract in whole or in part.
- B. Declare the Contractor ineligible for further City contracts until the Affirmative Action requirements are met.
- C. Recover on behalf of the City from the prime Contractor 0.5 percent of the contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the contract price, or five thousand dollars (\$5,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime Contractor in the manner described above. The preceding sentence shall not be construed to prohibit a prime Contractor from recovering the amount of such damage from the noncomplying subcontractor.

#### ARTICLE VIII

(This Article applies to public works contracts only.)

The Contractor shall include the above provisions of this contract in every subcontract so that such provisions will be binding upon each subcontractor. The Contractor shall take such action with respect to any subcontractor as necessary to enforce such provisions, including sanctions provided for noncompliance.

#### ARTICLE IX

The Contractor shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this contract. (In federally funded contracts the terms "DBE, MBE, and WBE" shall be substituted for the term "small business" in this Article.)

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

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

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

10. Severability and Intent: It is mutually agreed that in case any provision of this contract is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this contract remain in full force and effect.

11. Status of Contractor/Independent /Tax Filing: It is agreed that Contractor is an independent Contractor and not an employee of the City, and that any persons who the Contractor utilizes and provides for services under this contract are employees of the Contractor and are not employees of the City of Madison. The Contractor's taxpayer identification number is \_\_\_\_ (if applicable). The Contractor's social security number is (if applicable) \_\_\_\_\_. The Contractor is informed that as an independent Contractor, he/she may have a responsibility to make estimated tax returns, file tax returns, and pay income taxes and make social security payments on the amounts received under this contract and that no amounts will be withheld from payments made to this Contractor for these purposes and that payment of taxes and making social security payments are solely the responsibility and obligation of the Contractor. The Contractor is further informed that he/she may be subject to civil and/or criminal penalties if he/she fails to properly report income and pay taxes and social security taxes on the amount received under this contract.

(THIS PROVISION IS FOR NON-CORPORATE CONTRACTORS ONLY.)

12. Goodwill: Any and all goodwill arising out of this contract inures solely to the benefit of the City; Contractor waives all claims to benefit of such goodwill.

13. Third Party Rights: This contract is intended to be solely between the parties hereto. No part of this contract shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.

14. Audit and Retaining of Documents: The Contractor agrees to provide all reports requested by the City including, but not limited to, financial statements and reports, reports and accounting of services rendered, and any other reports or documents requested. Financial and service reports shall be provided according to a schedule (when applicable) to be included in this contract. Any other reports or documents shall be provided within five (5) working days after the Contractor receives the City's written requests, unless the parties agree in writing on a longer period. Payroll records and any other documents relating to the performance of services under the terms of this Contract shall be retained by the Contractor for a period of three (3) years after completion of all work under this contract, in order to be available for audit by the City or its designee.

15. Governing Law: This contract shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin and Wisconsin Courts.

16. Compliance with Applicable Laws: The Contractor shall become familiar with, and shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations which in any manner affect the services or conduct of the Contractor and its agents and employees.

17. Conflict of Interest:

- A. The Contractor warrants that it and its agents and employees have no public or private interest, and will not acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the services under this agreement.
- B. The Contractor shall not employ or contract with any person currently employed by the City for any services included under the provisions of this agreement.

18. Bases for Payment:

A. GENERAL

- (1) The City will pay the Contractor for the completed and accepted services rendered under this contract. The City will pay the Contractor for completed and approved "extra services", if any, if such "extra services" are authorized according to the procedure established in this section. The rate of payment for "extra services" shall be the rate established in this contract. Such payment shall be full compensation for services rendered and for all labor, material, supplies, equipment and incidentals necessary to complete the services.
- (2) The Contractor shall submit invoices, on the form or format approved by the City, specified in "Terms of Payment", Section 5. The City will pay the Contractor in accordance with the schedule set forth in the Scope of Services. The final invoice shall be submitted to the City within three months of completion of services under this agreement.
- (3) Should this agreement contain more than one service, a separate invoice and a separate final statement shall be submitted for each individual service.
- (4) Payment shall not be construed as City acceptance of unsatisfactory or defective services or improper materials.
- (5) Final payment of any balance due the Contractor will be made upon acceptance by the City of the services under the agreement and upon receipt by the City of documents required to be returned or to be furnished by the Contractor under this agreement.
- (6) The City has the equitable right to set off against any sum due and payable to the Contractor under this agreement, any amount the City determines the Contractor owes the City, whether arising under this agreement or under any other agreement or otherwise.
- (7) Compensation in excess of the total contract price will not be allowed unless authorized by an amendment under Section 3, AMENDMENT.
- (8) The City will not compensate for unsatisfactory performance by the Contractor.

B. SERVICE ORDERS, EXTRA SERVICE, OR DECREASED SERVICE.

- (1) Written orders regarding the services, including extra services or decreased services, will be given by the City.
- (2) The City may, by written order, request extra services or decreased services, as defined in Section 4. Unless the Contractor believes the extra services entitle it to extra compensation or additional time, the Contractor shall proceed to furnish the necessary labor, materials, and professional services to complete the services within the time limits specified in the Scope of Services, of this agreement, including any amendments under Section 3 of this agreement.
- (3) If in the Contractor's opinion the order for extra service would entitle it to extra compensation or extra time, or both, the Contractor shall not proceed to carry out the extra service, but shall notify the City. The notification shall include the justification for the claim for extra compensation or extra time, or both, and the amount of additional fee or time requested.
- (4) The City shall review the Contractor's submittal and respond in writing, either authorizing the Contractor to perform the extra service, or refusing to authorize it. The Contractor shall not receive additional compensation or time unless the extra compensation is authorized by the City in writing.

19. Breaches and Dispute Resolutions: Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the Transit General Manager. This decision shall be final and conclusive unless within ten (10) calendar days from date of receipt of its copy, the Selected Contractor mails or otherwise furnishes a written appeal to Dean Brassler, City Comptroller. At a minimum, the challenge shall include the name and address of the Selected Contractor; the telephone and FAX numbers of the Selected Contractor; the action which is the subject of the protest; the reason for the protest; and a statement of the remedy sought. The letter should include all information available to the Selected Contractor relevant to the appeal. The challenge should be specific. A protest will not be considered by the City Comptroller if it is insufficiently supported

or if it is not received within the specified time limits. The decision of the City Comptroller shall be binding upon the Selected Contractor and the Selected Contractor shall abide by the decision. In the letter outlining the decision, the City Comptroller shall respond to each material issue raised in the appeal.

Unless otherwise directed by the City, the Selected Contractor shall continue performance under this Contract while matters in dispute are being resolved.

20. Termination of Contract:

- A. In the event Contractor shall default in any of the covenants, agreements, commitments, or conditions herein contained, and any such default shall continue unremedied for a period of ten (10) days after written notice thereof to Contractor, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Contractor, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this contract and all rights of Contractor under this contract.
- B. Notwithstanding paragraph A., above, the City may in its sole discretion and without any reason terminate this agreement at any time by furnishing the Contractor with ten (10) days' written notice of termination. In the event of termination under this subsection, the City will pay for all work completed by the Contractor and accepted by the City.

21. Ownership of Contract Product: All of the work product, including, but not limited to, documents, materials, files, reports, data, including magnetic tapes, disks of computer-aided designs or other electronically stored data or information (the "Documents"), which the Contractor prepares pursuant to the terms and conditions of this contract are the sole property of the City. The Contractor will not publish any such materials or use them for any research or publication, other than as expressly required or permitted by this contract, without the prior written permission of the City. The grant or denial of such permission shall be at the City's sole discretion.

The Selected Contractor intends that the copyright to the Documents shall be owned by the City, whether as author (as a work for hire), or by assignment from the Selected Contractor to the City. The parties expressly agree that the Documents shall be considered a Work Made For Hire as defined by Title 17, United States Code, Section 101(2).

As further consider for the City entering into this contract, the Selected Contractor hereby assigns to the City all of the Selected Contractor's rights, title, interest, and ownership in the Documents, including the right to procure the copyright therein and the right to secure any renewals, reissues and extensions of any such copyright in any foreign country. The City shall be entitled to the sole and exclusive benefit of the Documents, including the copyright thereto, and whenever required by the City, the Selected Contractor shall at no additional compensation, execute all documents of assignment of the full and exclusive benefit and copyright thereof to the City. Any subcontractors and other independent contractors who prepare portions of the Documents shall be required by the Selected Contractor to execute an assignment of ownership in favor of the City before commencing work.

The City's use of any information covered under this provision for any other purposes other than its intended purpose under this contract shall be at the City's sole risk and expense.

22 Entire Agreement. These standard terms and conditions shall apply to any contract or order as a result of this Request for Bid/Proposal except where special requirements are stated elsewhere in the Request, in such cases, the special requirements shall apply. Further, the written contract and/or order with referenced parts and attachments shall constitute the entire agreement and no other terms and conditions in any documents, acceptance, or acknowledgment shall be effective or binding unless expressly agreed to in writing by the City.

23. Living Wage. (Applicable to Service Contracts Exceeding \$5,000.) The bidder agrees to pay all employees employed in the performance of this contract, whether on full-time or part-time basis, a base wage of not less than the City minimum hourly wage as required by Section 4.20, Madison General Ordinances. Additional information is available on our website: [www.ci.madison.wi.us/comp/livewage/lw-index.htm](http://www.ci.madison.wi.us/comp/livewage/lw-index.htm)

24. Prevailing Wage Rate. When skilled labor is required for any service project, the Contractor warrants that the current minimum rate of wage scale established by the Common Council, under provisions of Section 23.01 of the City Ordinances, be paid to all trades and occupations. Wage scale is on file with the Clerk of the City of Madison. Additional information is available on our website: [www.ci.madison.wi.us/purch.html](http://www.ci.madison.wi.us/purch.html)

25. Insurance.

The Contractor will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated:

a. Commercial General Liability - Covering as insured the Contractor and naming the City as an additional insured, with no less than the following limits of liability: Bodily injury, death and property damage of \$1,000,000 in the aggregate. This policy shall also be endorsed for contractual liability in the same amount. The subcontractor shall maintain a similar policy covering as insured each subcontractor.

b. Automobile Liability - Covering as insured the Contractor and naming the City as an additional insured, with no less than the following limits of liability: \$1,000,000 combined single limits for bodily injury, and property damage. Subcontractors shall maintain a similar policy covering as insured each subcontractor.

c. Worker's Compensation - Securing compensation for the benefit of the employees of the Contractor and the employees of each subcontractor, as required by Wisconsin Worker's Compensation Law.

d. Professional Liability - The Contractor shall maintain professional liability insurance with coverage of not less than \$1,000,000. If such policy is a "claims made" policy, all renewals thereof during the life of the contract shall include "prior acts coverage" covering at all times all claims made with respect to Contractor's work performed under the contract. This Professional Liability coverage must be kept in force for a period of six (6) years after the services have been accepted by the City.

As evidence of the above listed coverages, a Certificate of Insurance shall be forwarded to the City Risk Management Office, 406 City-County Bldg., Madison, WI 53703 prior to the beginning of work under this contract.

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

27. Indemnification: The Contractor shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of Contractor and any of Contractor's subcontractors in the performance of this agreement, whether caused by or contributed to by negligent acts of the City or its agents or its employees.

28. Compliance.

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

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



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