

**TERMS AND CONDITIONS**

**ADDENDA:** When specifications are revised, the Cameron County Purchasing Department will issue an addendum addressing the nature of the change. Proposers must **sign and include it in the returned RFP/RFQ package.**

**ADVERTISING:** Seller shall not advertise or publish, without Buyer's Prior consent, the fact that Buyer has entered into this contract, except to the extent necessary to comply with proper request for information from an authorized representative of the federal, state or local government.

**AWARD:** Cameron County may hold all Rfp/Rfq's for a period of sixty (60) days. Cameron County reserves the right to delete any item it considers too expensive. Rfp/Rfq prices are to be F.O.B. Cameron County. All discounts will be considered in determining the lowest, responsible Proposer. Cameron County reserves the right to award this contract on the basis of EVALUATION CRITERIA (AS STATED IN RFP/RFQ) in accordance with the laws of the State of Texas, to waive any formality or irregularity, to make awards to more than one Proposer, to reject any or all Rfp/Rfq's.

**BONDS:** If this Rfp/Rfq requires submission of Rfp/Rfq guarantee and performance bond, there will be a separate page explaining those requirements. Rfp/Rfq's submitted without the required RFP/RFQ bond or cashier's check are not acceptable.

**CANCELLATION AND TERMINATION:** Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breaches any of the terms hereof, including warranties of Seller or if the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to, and not in lieu of, any other remedies which Buyer may have in law or equity.

**TERMINATION:** The performance of work under this order may be terminated in whole, or in part, by the Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to the Seller of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to, and not in lieu of, rights of Buyer set forth. Cameron County reserves the right to terminate the contract for default if Proposer breaches any of the terms therein, including warranties of Proposer or if the Proposer becomes insolvent or commits acts of bankruptcy. Such right of termination is in addition to and not in lieu of any other remedies which Cameron County may have in law or equity. Default may be construed as, but not limited to, failure to deliver the proper goods and/or services within the proper amount of time, and/or to properly perform any and all services required to Cameron County's satisfaction and/or to meet all other obligations and requirements. Cameron County may terminate the contract without cause upon thirty (30) days written notice.

**CONTRACT RENEWALS:** Renewals may be made ONLY by Commissioners Court approval and agreement between Cameron County and the offeror. **To determine Annual / Anniversary renewal status - if renewed by Commissioners Court or terminated - please contact Elisa Cisneros at 956-982-5405 e-mail: [Elisa.Cisneros2@co.cameron.tx.us](mailto:Elisa.Cisneros2@co.cameron.tx.us) Purchasing Dept. or Dylbia Jeffries 956-550-1340 [djefferies@co.cameron.tx.us](mailto:djefferies@co.cameron.tx.us) Bruce Hodge at 956-550-7229 at [bhodge@co.cameron.tx.us](mailto:bhodge@co.cameron.tx.us) at County Legal Dept..** Any price escalations are limited to those stated by the original RFP/RFQ. Annual RFP/RFQ renewal – Price Increases: All Annual RFP/RFQ's with a one (1) year renewal option requires that the awarded Proposer must notify Cameron County of any anticipated price increases to the current Annual RFP/RFQ (in writing) at least two months prior to the annual renewal award date unless otherwise specified within the specific provisions of the RFP. This allows the County sufficient time to plan for re-advertising for Proposals due to a vendor required price increase. If Vendor fails to notify the County within time noted it shall be assumed that there will be no price increase for the following year's award period if renewed. This procedure does not apply to any Annual RFP/RFQ's which allow for Open Market Price increases or Cost allowance increases during the RFP/RFQ award period (as so specified in the RFP/RFQ documents).

**DISCRIMINATION:** In order to comply with the provisions of fair employment practices, the contractor agrees as follows: 1.) the contractor will not discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin; 2) in all solicitations or advertisements for employees, the contractor will state that all qualified applicants will receive consideration without regard to race, color, sex, age, religion, handicap or national origin; 3) the contractor will furnish such relevant information and reports as requested by the Cameron County for the purpose of determining compliance

with these regulations; and 4) failure of the contractor to comply with these laws will be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part.

**DISQUALIFICATION OF PROPOSER:** Upon signing this RFP/RFQ document, an Proposer offering to sell supplies, materials, services, or equipment to Cameron County certifies that the Proposer has not violated the antitrust laws of this state codified in Texas Business and Commerce Code §15.01, et seq., as amended, or the federal antitrust laws, and has not communicated directly or indirectly the RFP/RFQ made to any competitor or any other person engaged in such line of business. Any or all RFP/RFQ's may be rejected if the Cameron County believes that collusion exists among the Proposers. RFP/RFQs in which the prices are obviously unbalanced may be rejected. If multiples are submitted by an Proposer and after the RFP/RFQ's are opened, one of the RFP/RFQ's are withdrawn, the result will be that all of the RFP/RFQs submitted by that Proposer will be withdrawn; however, nothing herein prohibits a Proposer from submitting multiples for different products or services.

**EVALUATION:** All proposals will be evaluated in accordance with law and reviewed to assure they are in the best interest of Cameron County. Evaluations shall be based on criteria, bearing on price, and performance of the items/services in the user environment. Any specific criteria section or sections identified elsewhere in this request for proposals may be evaluated by one or more evaluators once the basis and details of this process has been approved by the Purchasing Officer and acknowledged by the Evaluation Committee. Detailed information pertaining to this selective evaluation process is available to Proposers and the Commissioners Court upon request. Evaluation sheets and summary of all RFP/RFQ's are subject to review by the Cameron County Purchasing Department and Evaluation Committee's recommendation to Cameron County Commissioners Court. Compliance with all RFP/RFQ requirements, delivery and needs of the using department are considerations in evaluating RFP/RFQ's. **Pricing is NOT the only criterion for making a recommendation (see criteria and relative importance of price and other evaluation factors, if any, specified elsewhere in this request for proposals. ).** The Cameron County Purchasing Department reserves the right to contact any Proposer, at any time, to clarify, verify or request information with regard to any RFP/RFQ. The Cameron County Purchasing Department further reserves the right to hold negotiation discussions with any responsible Proposer submitting proposals determined to be reasonably susceptible of being selected for award in accordance with law.

**PROTEST PROCEDURES:** Procedure - This protest procedure is available to vendors responding to this Bid requesting a debriefing conference.

Debriefing Conference – A debriefing conference must be requested in writing to the Purchasing Department within five (5) business days from the date of the Bid award by the Cameron County Commissioners' Court. Debriefing questions must be submitted (in writing - to the Purchasing Department) no later than two (2) business days before the scheduled date for the Debriefing Conference. These questions will be answered at the debriefing conference. Follow-up question must be submitted (in writing) no later than one (1) business day after the date of the Debriefing Conference and answered no later than two (2) business days after the date of the Debriefing Conference. Follow-up answers will be sent via e-mail or fax (if e-mail not available). For RFP/RFQ's proposers are given the opportunity to ask questions of the Evaluation Committee relative to their Proposal and scores received by their firm.

Protests are made - 1. To the Purchasing Department after the debriefing conference. Vendor protests shall be received, in writing, by the Purchasing Department within five (5) business days after the vendor debriefing conference. 2. To the Protest Committee, only after the protest to the Purchasing Department was not resolved satisfactory to the protestor. Protests to the Protest Committee shall be made within five (5) business days after the vendor has received notification from the County Purchasing Department of his/her decision.

Grounds for protest – 1. Errors were made in computing the score. 2. The County failed to follow procedures established in the Bid, the Purchasing policy: Acquisition or applicable state or federal laws or regulations. 3. Bias, discrimination or conflict of interest on the part of an evaluator. Protests not based on these criteria shall not be considered.

Format and Content - Protesting vendors shall include, in their written protest to the Cameron County Purchasing Department, all facts and arguments upon which they rely. Vendors shall, at a minimum, provide: 1. Information about the protesting vendor; name of firm, mailing address, phone number and name of individual responsible for submission of the protest. 2. Information about the acquisition and the acquisition method. 3. Specific and complete statement of the County's action(s) protested. 4. Specific reference to the grounds for the protest. 5. Description of the relief or corrective action requested. 6. For protests to the Protest Committee, a copy of the Purchasing Department's written decision on the protest.

Review Process – 1. Upon receipt of a vendor protest, the Purchasing Department shall postpone further steps in the acquisition process until the vendor protest has been resolved. 2. The Department's internal protest review procedures consist of the following: a) The Purchasing Department shall perform an objective review of the protest by individuals not involved in the acquisition protested. The review shall be based on the written protest material submitted by the vendor. b) A written decision

will be delivered to the vendor within five business days after receipt of the protest, unless more time is needed. The protesting vendor shall be notified if additional time is necessary.

**Final Determination** - The final determination shall 1. Find the protest lacking in merit and uphold the agency's action; or 2. Find only technical or harmless errors in the agency's acquisition process conduct, determine the agency to be in substantial compliance, and reject the protest; or 3. Find merit in the protest and provide the agency options which may include a) Correct its errors and reevaluate all proposals, and/or b) Reissue the vendor solicitation document; or c) Make other findings and determine other courses of action as appropriate.

**Protest Committee Review Process** - Protests to the Protest Committee may be made only for Protest Committee approved acquisitions, and only after review by County Purchasing Department. Protests of the decisions of County Purchasing Department shall be made by letter to the Protest Committee, who may establish procedures to resolve the protest. Protests shall be received by the Protest Committee, within five business days after the decision of Purchasing Department in order to be considered. The resulting decision is final, with no further administrative appeal available.

**FISCAL FUNDING:** A multi-year lease or lease/purchase arrangement (if requested by the Special Requirements/Instructions), or any contract continuing as a result of an extension option, must include fiscal funding out. If, for any reason, funds are not appropriated to continue the lease or contract, said lease or contract shall become null and void on the last day of the current appropriation of funds. After expiration of the lease, leased equipment shall be removed by the Proposer from the using department without penalty of any kind or form to Cameron County. All charges and physical activity related to delivery, installation, removal and redelivery shall be the responsibility of the Proposer.

**GRATUITIES AND PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** Any elected or appointed official who has any substantial interest, either direct or indirect, in any business entity seeking to contract with the Cameron County, shall, before any vote or decision on any matter involving the business entity, file an affidavit stating the nature and extent of interest and shall abstain from any participation in the matter. This is not required if the vote or decision will not have any special effect on the entity other than its effect on the public. However, if a majority of the governing body is also required to file, and do file similar affidavits, than the member is not required to abstain from further participation. Attached and included is a disclosure of all of this Company's business or pecuniary financial relationships with officers or employees of Cameron County or Cameron County entities (if any such relationships exists) must be attached and included with RFP/RFQ submitted. The Buyer may, by written notice to the Seller, cancel this contract without liability to Seller if it is determined by Buyer that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Seller, or any agent, or representative of the Seller, to any officer or employee of Cameron County with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making or any determinations with respect to the performing of such a contract. In the event this contract is cancelled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities. Consistent and continued tie RFP's/RFQ's could cause rejection of RFP/RFQ's by the Cameron County and/or investigation for Anti-Trust violations. Proposer guarantees that he has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business.

**HISTORICALLY UNDERUTILIZED BUSINESS (HUB) CERTIFICATION :** If Proposer is a Certified Historically Underutilized Business (HUB), please include a copy of your HUB Certificate with your Proposal. This information will assist Cameron County in the percentage tracking of HUB utilization.

**MAINTENANCE:** Maintenance required for equipment RFP/RFQ should be available in Cameron County by a manufacturer authorized maintenance facility. Costs for this service shall be shown on the Pricing/Delivery Information form. If Cameron County opts to include maintenance, it shall be so stated in the purchase order and said cost will be included. Service will commence only upon expiration of applicable warranties and should be priced accordingly.

**MATERIAL SAFETY DATA SHEETS:** Under the "Hazardous Communication Act", commonly known as the "Texas Right To Know Act", an Proposer must provide to the Cameron County with each delivery, material safety data sheets which are applicable to hazardous substances defined in the Act. Failure of the offeror to furnish this documentation will be cause to reject any RFP/RFQ applying thereto.

**NAME BRANDS:** Specifications may reference name brands and model numbers. It is not the intent of Cameron County to restrict these RFP/RFQs in such cases, but to establish a desired quality level of merchandise or to meet a pre-established standard due to like existing items. Proposers may offer items of equal stature and the burden of proof of such stature rests with Proposers. Cameron County shall act as sole judge in determining equality and acceptability of products offered.

**PRICING:** Prices for all goods and/or services shall be firm for the duration of this contract and shall be stated on the Pricing/Delivery Information form. **Prices shall be all inclusive: No price changes, additions, or subsequent qualifications will be honored during the course of the contract.** All prices must be written in ink or typewritten. Pricing on all transportation, freight, drayage and other charges are to be prepaid by the contractor and included in the RFP/RFQ prices. If there are any additional charges of any kind, other than those mentioned above, specified or unspecified, Proposer MUST indicate the items required and attendant costs or forfeit the right to payment for such items. Where unit pricing and extended pricing differ, unit pricing prevails.

**RECYCLED MATERIALS:** Cameron County encourages the use of products made of recycled materials and shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality. Cameron County will be the sole judge in determining product preference application.

**SCANNED RE-TYPED RESPONSE – FLOPPY DISK:** If in its RFP/RFQ response, Proposer either electronically scans, re-types, or in some way reproduces the Cameron County's published RFP/RFQ package, then in event of any conflict between the terms and provisions of the Cameron County's published RFP/RFQ specifications, or any portion thereof, and the terms and provisions of the RFP/RFQ response made by Proposer, the Cameron County's RFP/RFQ specifications as **published** shall control. Furthermore, if an alteration of any kind to the Cameron County's published RFP/RFQ specifications is only discovered after the contract is executed and is or is not being performed, the contract is subject to immediate cancellation.

**SILENCE OF SPECIFICATIONS:** The apparent silence of specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of specifications shall be made on the basis of this statement. The items furnished under this contract shall be new, unused of the latest product in production to commercial trade and shall be of the highest quality as to materials used and workmanship. Manufacturer furnishing these items shall be experienced in design and construction of such items and shall be an established supplier of the item RFP/RFQ. **Substitute items will not be accepted unless approved (in advance).**

**SUPPLEMENTAL MATERIALS:** Proposers are responsible for including all pertinent product data in the returned RFP/RFQ package. Literature, brochures, data sheets, specification information, completed forms requested as part of the RFP/RFQ package and any other facts which may affect the evaluation and subsequent contract award should be included. Materials such as legal documents and contractual agreements, which the Proposer wishes to include as a condition of the RFP/RFQ, must also be in the returned RFP/RFQ package. Failure to include all necessary and proper supplemental materials may be cause to reject the entire RFP/RFQ.

**TITLE TRANSFER:** Title and Risk of Loss of goods shall not pass to Cameron Count until Cameron County actually receives and takes possession of the goods at the point or points of delivery. Receiving times may vary with the using department. Generally, deliveries may be made between 8:30 a.m. and 4:00 p.m., Monday through Friday. Proposers are advised to consult the using department for instructions. The place of delivery shall be shown under the "Special Requirements/Instructions" section of this RFP/RFQ package and/or on the Purchase Order as a "Deliver To:" address.

**USAGE REPORTS:** Cameron County reserves the right to request, and receive at no additional cost, up to two (2) times during the contract period, a usage report detailing the products and/or services furnished to date under a contract resulting from this ITB. The reports must be furnished no later than five (5) working days after written request and itemize all purchases to date by Cameron County department, description of each item purchased, including manufacturer, quantity of each item purchased, per unit and extended price of each item purchased, and total amount and price of all items purchased.

**WARRANTY PRICE:** (a) The price to be paid by the Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on orders by others for products of the kind and specification covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on orders by others, or in the alternative, Buyer may cancel this contract without liability to Seller for breach or Seller's actual expense. (b) The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach or violation of this warranty, the Buyer shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee. Offerors shall furnish all data pertinent to warranties or guarantees which may apply to items in the bid. Offerors may not limit or exclude any implied warranties. Offeror warrants that product sold and services provided to the County shall conform to the standards and laws established by the U.S. Department of Labor, U.S. Department of Homeland Security, Occupational Safety and Health Administration and O.S.H.A. Act of 1970. In the

event product does not conform to OSHA Standards, where applicable, Cameron County may return the product for correction or replacement at the offeror's expense. If offeror fails to make the appropriate correction within a reasonable time, Cameron County may correct at the offeror's expense.

Offerer warrants that product sold and services provided to the County shall conform to the standards and laws established by the U.S. Department of Homeland Security, Occupational Safety and Health Administration and O.S.H.A. Act of 1970.

**WARRANTY PRODUCTS:** Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specifications, drawings and descriptions listed in the RFP/RFQ invitation and to the sample(s) furnished by Seller, if any. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern.

**SAFETY WARRANTY:** Seller warrants that the product sold to Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction made by Buyer will be at Seller's expense. Have you attached the required warranty information to the RFP/RFQ (if applicable)?  Yes,  No.

### APPLICABLE LAW

This agreement shall be governed by the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning "the Uniform Commercial Code" as adopted in the State of Texas as effective and in force on the date of this agreement.

**ASSIGNMENT DELEGATION:** No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph. Any contract entered into pursuant to this request is not assignable, nor the duties thereunder, by either party, without the written consent of the other party in the contract Cameron County Judge and Cameron County Auditor.

**CONTRACT OBLIGATION:** Cameron County Commissioners Court must award the contract and the Cameron County Judge or other person authorized by the Cameron County must sign the contract before it becomes binding on Cameron County or the Proposers. Department heads are NOT authorized to sign agreements for Cameron County. Binding agreements shall remain in effect until all products and/or services covered by this purchase have been satisfactorily delivered and accepted.

**ERRORS AND OMISSIONS:** Errors and Omissions in the RFP / RFQ of any provision herein described will not be construed as to relieve the Proposer of any responsibility or obligation, requisite to the complete and satisfactory implementation, operation, and support of any and all equipment, systems or services.

**FORCE MAJEURE:** If, by reason of Force Majeure, either party hereto shall be rendered unable wholly, or in part, to carry out its obligations under this agreement, then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely with the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgement of the party having the difficulty.

**HOLD HARMLESS AGREEMENT:** Contractor, the successful Proposer, shall indemnify and hold Cameron County harmless from all claims for personal injury, death and/or property damage resulting directly or indirectly from contractor's performance. Contractor shall procure and maintain, with respect to the subject matter of this RFP/RFQ, appropriate insurance coverage including, as a minimum, public liability and property damage with adequate limits to cover contractor's liability as may arise directly or indirectly from work performed under terms of this RFP/RFQ. Certification of such coverage must be provided to the Cameron County upon request.

**INFRINGEMENTS:** There will be no warranty by buyer against infringements. As part of this contract for sales, Seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to this agreement will give rise to the rightful claim of any third person by way of infringement or the like. Buyer makes no warranty that the production of goods according to the specification will not give rise to such a claim, and in no event shall Buyer be liable to Seller for indemnification in the event that Seller is sued on the grounds of infringement or the like. If Seller is of the opinion that an infringement or the like will result, he will notify Buyer to this effect in writing within two (2) weeks after the signing of this agreement. If Buyer does not receive notice and is subsequently held liable for the infringement or the like, Seller will hold Buyer harmless. If Seller in good faith ascertains that production of the goods in accordance with the specifications will result in infringement or the like, this contract shall be null and void, except that Buyer will pay Seller the reasonable cost of his/her search as to infringement. The contractor agrees to protect the Cameron County from claims involving infringement of patents or copyrights.

**INTERPRETATION PAROLE EVIDENCE:** This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement, even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to Control.

**MODIFICATIONS:** This contract can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.

**O.S.H.A.:** Proposer must meet all Federal and State OSHA requirements.

**RIGHT TO ASSURANCE:** Whenever one (1) party to this contract in good faith has reason to question the other party's intent to perform, he/she may demand that the other party give written assurance of their intent to perform. In the event that a demand is made, and no assurance is given within five (5) days the demanding party may treat this failure as an anticipatory repudiation of the contract.

**SEVERABILITY:** If any section, subsection, paragraph, sentence, clause, phrase or word of these requirements or the specifications shall be held invalid, such holding shall not affect the remaining portions of these requirements and the specifications and it is hereby declared that such remaining portions would have been included in these requirements and the specifications as though the invalid portion had been omitted.

**VENUE:** Both parties agree that venue for any litigation arising from this contract shall lie in Cameron County, Texas.