

1. CONTRACT TERMS AND CONDITIONS

This section of the RFP/IFB may include contractual requirements and provisions that will govern the contract after RFP/IFB award. The contents of this section include mandatory provisions that must be adhered to by Clay County and the contractor unless changed by a contract amendment. Response to this section by the offeror is not necessary as all provisions are mandatory.

1.1 Contract:

1.1.1 A binding contract may consist of:

- The RFP/IFB, addendums thereto, and any Best and Final Offer (BAFO) request(s) with RFP/IFB changes/additions
- The contractor's proposal/bid including any contractor BAFO response(s),
- Clarification of the proposal/bid, if any, and
- Clay County's acceptance of the proposal/bid by Contract Resolution notice of award.
All Exhibits and Attachments included in the RFP/IFB shall be incorporated into the contract by reference.

- a. Order of Precedence: Any inconsistency in the binding contract shall be resolved by giving precedence in the following order:
 - The Clay County RFP/IFB including addendums thereto, and any Best and Final Offer (BAFO) request(s) with RFP/IFB changes/additions;
 - Written clarification communications between Clay County Purchasing Staff and Offeror (emails, letters, memos, etc. of the proposal/bid), if any that are specifically accepted as included in the Contract Resolution notice of award;
 - The Offeror's Proposal/Bid including any BAFO response(s);
 - Clay County's acceptance of the Proposal/Bid by Contract Resolution Notice of Award; and
 - Any boilerplate vendor, professional service, licensing, or consulting agreements included as part of the offeror's proposal/bid responses; however, such vendor boilerplate agreements must not conflict with the terms and conditions of the Clay County RFP/IFB document.
- b. A Notice of Award issued by Clay County does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services for Clay County, the contractor must receive a properly authorized purchase order or other form of authorization given to the contractor at the discretion of the Clay County entity.
- c. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein.
- d. Any change to the contract, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and Clay County Purchasing Manager prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification to the contract.

1.2 Non-Exclusive Agreement:

1.2.1 The parties agree that no terms of the contract agreement or attached exhibits shall be deemed to create an exclusive agreement. Clay County shall retain the discretionary right to elect to bid or negotiate with other vendors for any project or services.

1.2.2 Contract Period: The original contract period shall be as stated on page 1 of the RFP/IFB. The contract shall not bind, nor purport to bind, the County for any contractual commitment in excess of the original contract period.

1.3 Renewal Options:

1.3.1 Clay County shall have the right, at its sole option, to automatically renew the contract for four (4) additional one-year periods, or any portion thereof. In the event Clay County exercises such right, all terms and conditions, requirements and specifications of the contract may remain the same and apply during the renewal period. Any increase in cost at the beginning of each renewal period shall be negotiated as needed.

1.4 Contract Extension:

1.4.1 In the event of an extended re-procurement effort and the contract's available renewal options have been exhausted, Clay County shall have the right to extend the contract. If exercised, the extension shall be for a reasonable period of time not to exceed 120 business days as mutually agreed to by the County and the contractor at the same terms, conditions, provisions, and pricing in order to complete the procurement process and to transition to the new contract.

1.5 Price:

All prices shall be firm, fixed and as indicated in Pricing Page Exhibit. Clay County shall not pay nor be liable for any other additional costs including but not limited to taxes, shipping charges, insurance, interest, penalties, termination payments, attorney fees, liquidated damages, etc. Unless stated in Pricing Page Exhibit, the County shall assume absolutely no other costs exist to satisfy the RFP/IFB requirements. Therefore, the awarded contractor shall be responsible for any additional costs.

- a. **Permits:** Upon issuance of a contract to the successful contractor and prior to beginning any work, it shall be the contractor's responsibility to secure the appropriate permits imposed by law and ordinance, pay all charges and fees related to such permit, and shall provide proof of the permit upon request, to be kept in bid file, as part of the permanent record.
- b. **Licenses:** Upon issuance of a contract to the successful contractor and prior to beginning any work, it shall be the contractor's responsibility to secure the appropriate licenses imposed by law and ordinance, pay all charges and fees, and shall provide proof of the licenses upon request, to be kept in bid file, as part of the permanent record.

1.6 Tax Exempt:

1.6.1 The County and its Departments are exempt from payment of Missouri Sales and Use Tax in accordance with Section 144,040 and 144,615 RSMO 1969 and is exempt from payment of Federal Excise Taxes in accordance with Title 26 United States Code, Annotated from State and local sales taxes. Sites of all transactions derived from this proposal/bid shall be deemed to have been accomplished within the state of Missouri.

1.7 Fund Allocation:

1.7.1 Continuance of any resulting Resolution, Agreement or issuance of Purchase Order shall be contingent upon the available funding and allocation of County funds. The Vendor understands that the obligation of the County to pay for goods and/or services under the agreement shall be limited to payment from available revenues and shall constitute a current expense of the County and shall not in any way be construed to be a debt of the County in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the County nor shall anything contained in the agreement constitute a pledge of the general tax revenues, funds or moneys of the County, and all provisions of the contract shall be construed so as to give effect to such intent.

1.8 Liabilities:

1.8.1 The contractor shall be responsible for any and all personal injury (including death) or property damage and for the loss of, or damage to, the county's records or data as a result of the contractor's negligence or willful misconduct involving any equipment, product, or service provided under the terms and conditions, requirements and specifications of the contract. In addition, the contractor assumes the obligation to save Clay County, including its entities, employees, and assignees, from every expense,

liability, or payment arising out of such negligent or willful act. The contractor also agrees to hold Clay County, including its entities, employees, and assignees, harmless for any negligent or willful act or omission committed by any subcontractor or other person employed by or under the supervision of the contractor under the terms of the contract.

1.8.2 The contractor shall not be responsible for any injury or damage occurring as a result of any negligent act or omission committed by Clay County, including its entities, employees, and assignees.

1.8.3 Under no circumstances shall the contractor be liable for any of the following: (1) third party claims against the County for losses or damages (other than those listed above); or (2) economic consequential damages (including lost profits or savings) or incidental damages, even if the contractor is informed of their possibility.

1.9 Disclaimer of Liability:

1.9.1 The County, or any County Offices/ Departments, shall not hold harmless or indemnify any vendor/contractor for any liability whatsoever.

1.10 Indemnity and Hold Harmless:

1.10.1 The contractor agrees to indemnify, release, defend, and forever hold harmless the County, its officers, agents, employees, and elected officials, each in their official and individual capacities, from and against all claims, demands, damages, loss or liabilities, including costs, expenses, and attorney's fees incurred in the defense of such claims, demands, damages, losses or liabilities, or incurred in the establishment of the right to indemnity hereunder, caused in whole or in part by the contractor, their sub-contractors, employees or agents, and arising out of services performed by the contractor, their subcontractors, employees or agents under this agreement.

FOR USE ONLY IN PUBLIC WORK BIDS

1.11 Public Work Performance Bond Requirement:

1.11.1 Clay County shall require all contractors performing public work to furnish a performance bond in the amount of 110 percent of the public work's cost. The bond shall be conditioned for the payment of any and all materials, incorporated, consumed or used in connection with the construction, for all insurance premiums and for all labor performed in such work by either the contractor or sub-contractor. Performance bonds shall be required on all public work exceeding \$10,000.00. Surety shall be licensed to do business in the state of Missouri and shall have an A.M. Best rating of at least A-7.

FOR USE ONLY IN PUBLIC WORK/CONSTRUCTION/INSTALLATION BIDS

1.12 Prevailing Wage:

1.12.1 The contractor shall comply with Section 290.250 RSMo by paying, to all personnel employed for applicable services actually provided under the contract, not less than the prevailing hourly rate of wages as determined by the Department of Labor and Industrial Relations, Division of Labor Standards, specified at the following website: <http://labor.mo.gov/DLS/PrevailingWage>. The contractor must retain payroll records for five (5) years and make those records available for inspection by Clay County or the State of Missouri Department of Labor and Industrial Relations. The contractor must submit monthly certification of payroll records to the Clay County entity. The prevailing wage rates incorporated as a part of this document by the referenced annual wage order(s) shall remain in effect for the duration of the contract period stated on page 1.

1.12.2 A determination by the State of Missouri Department of Labor and Industrial Relations of debarment for violation of the Prevailing Wage Act shall result in the contractor being automatically deemed non-responsible for the period of debarment without further proceedings by the County.

1.12.3 For each renewal period, if any, exercised by the County, the contractor shall comply with Section 290.250 RSMo by paying, to all personnel employed for applicable services actually provided under the contract, not less than the prevailing hourly rate of wages as determined by the Department of Labor and Industrial Relations, Division of Labor Standards, specified at the above aforementioned website.

1.12.4 The above-stated prevailing wage requirements shall also apply to all subcontractors employed by

the contractor to perform services under the contract.

FOR USE ONLY IN PUBLIC WORK/CONSTRUCTION/INSTALLATION BIDS

2. Prevailing Wage Price Adjustment:

2.1.1 The contractor shall be required to pay the current prevailing wage, which may be adjusted during the term of the agreement or renewal, with no adjustment in the agreement price. In the event the parties agree to renew the contracted services for additional periods, the labor prices stated in the RFP/IFB may be adjusted the then-current prevailing wage and such adjustment shall govern the agreement price during the renewal period. No adjustment shall be made to the amount of mark- up.

2.2 Law Governing:

2.2.1 The laws of the State of Missouri shall govern this agreement. Any action in regard to the consent or arising out of the terms and conditions shall be instituted and litigated in the courts of the State of Missouri, County of Clay and in no other. In accordance, the parties submit to the jurisdiction of the courts of the State of Missouri and to venue in Clay County.

2.2.2 The contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.

2.2.3 To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and Clay County.

2.2.4 The contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations.

2.2.5 The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.

2.2.6 The contractor shall only employ personnel authorized to work in the United States in accordance with applicable federal and state laws and Executive Order 07-13 for work performed in the United States.

2.3 Compliance with Applicable Law:

2.3.1 The contractor shall comply with all federal, state or local laws, resolutions, ordinances, rules, regulations and administrative orders, including but not limited to Wage, Labor, Unauthorized Aliens, Immigration Reform and Control Act (IRCA), EEO and OSHA-type requirements which are applicable to the contractor's performance under this agreement. The contractor shall indemnify and hold the County harmless on account of any violations thereof relating to the contractor's performance under this agreement, including imposition of fines and penalties which result from the violation of such laws, and further agrees to insert the foregoing provision in all subcontracts awarded hereunder.

2.4 Remedies and Rights:

No provision in the contract shall be construed, expressly or implied, as a waiver by Clay County of any existing or future right and/or remedy available by law in the event of any claim by Clay County of the contractor's default or breach of contract.

2.5 Force Majeure:

2.5.1 The contractor shall not be liable for any excess costs for delayed delivery of goods or services to Clay County, if the failure to perform the contract arises out of causes beyond the control of, and without the fault or negligence of the contractor. Such causes may include, however are not restricted to: acts of God, fires, floods, epidemics, quarantine restrictions, strikes, and freight embargoes. In all cases, the failure to perform must be beyond the control of, and without the fault or negligence of, either the contractor or any subcontractor(s). The contractor shall take all possible steps to recover from any such

occurrences. Failure of the contractor to employ adequate personnel to complete the contract requirements shall not constitute a Force Majeure event. The contractor must give written notice of any Force Majeure event to the Clay County entity within twenty-four (24) hours after its occurrence in order to receive the liability protections of this paragraph.

2.6 Termination:

2.6.1 Clay County shall have the right to terminate the contract at any time, for the convenience of Clay County, without penalty or recourse, by giving written notice to the contractor at least thirty (30) calendar days prior to the effective date of such termination. The contractor shall be entitled to receive compensation for services and/or supplies delivered to and accepted by the County pursuant to the contract prior to the effective date of termination.

2.6.2 If county, state and/or federal funds are not appropriated, continued, or available at a sufficient level to fund this contract or agreement, or in the event of a change in relevant laws to this contract or agreement, the obligations of each party may, at the sole discretion of Clay County, be terminated in whole or in part, effective immediately or as determined by Clay County, upon written notice to the contractor from the Purchasing Department

2.6.3 In the event of termination of the contract or cancellation for material breach, all documents, data, reports, supplies, equipment, and accomplishments prepared, furnished or completed by the contractor pursuant to the terms of the contract shall, at the option of the Clay County entity, become the property of the Clay County entity, as authorized by law.

2.7 Subcontractors:

2.7.1 Any subcontracts for the products/services described herein must include appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by the contractor and Clay County and to ensure that Clay County is indemnified, saved, and held harmless from and against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontract in those matters described in the contract between Clay County and the contractor. The contractor shall expressly understand and agree that he/she shall assume and be solely responsible for all legal and financial responsibilities related to the execution of a subcontract. The contractor shall agree and understand that utilization of a subcontractor to provide any of the products/services in the contract shall in no way relieve the contractor of the responsibility for providing the products/services as described and set forth herein. The contractor must obtain the approval of Clay County prior to establishing any new subcontracting arrangements and before changing any subcontractors. The approval shall not be arbitrarily withheld.

FOR USE ONLY IF CONTRACT SERVICES VALUE EXCEEDS \$5,000

2.7.2 Pursuant to subsection 1 of section 285.530, RSMo, no contractor or subcontractor shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri. In accordance with sections 285.525 to 285.550, RSMo, a general contractor or subcontractor of any tier shall not be liable when such contractor or subcontractor contracts with its direct subcontractor who violates subsection 1 of section 285.530, RSMo, if the contract binding the contractor and subcontractor affirmatively states that:

- the direct subcontractor is not knowingly in violation of subsection 1 of section 285.530, RSMo
- shall not henceforth be in such violation
- the contractor or subcontractor receives a sworn affidavit under the penalty of perjury attesting to the fact that the direct subcontractor's employees are lawfully present in the United States.

2.7.3 Subcontractors Prevailing Wage: If subcontractors are used, the contractor shall require that the subcontractor comply with all Prevailing Wage Act requirements.

FOR USE ONLY IF CONTRACT SERVICES VALUE EXCEEDS \$5,000

2.8 Contractor's Personnel:

2.8.1 The contractor shall only utilize personnel authorized to work in the United States in accordance with applicable federal and state laws. This includes but is not limited to the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and INA Section 274A.

2.8.2 If the contractor is found to be in violation of this requirement or the applicable state, federal and local laws and regulations, and if Clay County has reasonable cause to believe that the contractor has knowingly employed individuals who are not eligible to work in the United States, the County shall have the right to cancel the contract immediately without penalty or recourse and suspend or debar the contractor from doing business with the County. The County may also withhold up to twenty-five percent of the total amount due to the contractor.

2.8.3 The contractor shall agree to fully cooperate with any audit or investigation from federal, state, or local law enforcement agencies.

2.9 Assignment:

2.9.1 The contractor shall not transfer, convey, sublet, assign any interest, rights, title, powers to execute in the contract, whether by assignment or otherwise, to any other person, company or corporation without the prior written consent of the Clay County.

FOR USE ONLY IN BID THAT INVOLVES THE PURCHASE OF PRODUCTS

2.10 Inventions, Patents, and Copyrights:

2.10.1 The contractor shall report to Clay County promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of the contract of which the contractor has knowledge.

2.10.2 Clay County agrees that the contractor has the right to defend or at its option to settle, and the contractor agrees to defend at its own expense or at its option to settle, any claim, suit or proceeding brought against the County on the issue of infringement of any United States patent or copyright by any product, or any part thereof, supplied by the contractor to the state under this agreement. The contractor agrees to pay, subject to the limitations hereinafter set forth in this paragraph, any final judgment entered against the state on such issue in any suit or proceeding defended by the contractor. The County agrees that the contractor at its sole option shall be relieved of the foregoing obligations unless the County notifies the contractor promptly in writing of any such claim, suit, or proceeding, and at the contractor's expense, gives the contractor proper and full information needed to settle and/or to defend any such claim, suit, or proceeding. If the product, or any part thereof, furnished by the contractor to the state becomes, or in the opinion of the contractor may become, the subject of any claim, suit, or proceeding for infringement of any United States patent or copyright, or in the event of any adjudication that such product or part infringes any United States patent or copyright, or if the use, lease, or sale of such product or part is enjoined, the contractor may, at its option and its expense:

- (1) Procure for Clay County the right under such patent or copyright to use, lease, or sell as appropriate such product or part,
- (2) Replace such product or part with other product or part suitable to the County,
- (3) Suitably modify such product or part,
- (4) Discontinue the use of such product or part and refund the aggregated payments and transportation costs paid therefore by the County, less a reasonable sum for use and damage.

2.10.3 The contractor shall have no liability for any infringement based upon: (1) the combination of such product or part with any other product or part not furnished to the County by the contractor, or (2) the modification of such product or part unless such modification was made by the contractor, or (3) the use of such product or part in manner for which it was not designed.

2.10.4 The contractor shall not be liable for any cost, expense, or compromise, incurred or made by Clay

County in conjunction with any issue of infringement without the contractor's prior written authorization. The foregoing defines the entire warranty by the contractor and the exclusive remedy of Clay County with respect to any alleged patent infringement by such product or part.

2.10.5 If any copyrighted material is developed as a result of the contract, the Clay County entity shall have a royalty-free, nonexclusive and irrevocable right to publish or use, and to authorize others to use, the work for the Clay County entity purposes or the purpose of Clay County.

2.11 Insurance:

2.11.1 The contractor shall understand and agree that Clay County cannot save and hold harmless and/or indemnify the contractor or employees against any liability incurred or arising as a result of any activity of the contractor or any activity of the contractor's employees related to the contractor's performance under the contract. Therefore, the contractor must acquire and maintain adequate liability insurance in the form(s) and amount(s) sufficient to protect Clay County, its entities, its employees, its clients, and the general public against any such loss, damage and/or expense related to his/her performance under the contract. The insurance shall include an endorsement that adds Clay County as an additional insured.

2.11.2 The contractor shall provide the insurance certificate when County notifies them of Recommendation for Award:

a. The contractor shall purchase and maintain, at their expense, insurance of such types, and in such amounts as are specified in this RFP/IFB, to protect the County and the contractor from claims which may arise out of or result from the contractor's operations under the agreement documents, whether such operations be by the contractor or by any subcontractor:

- Worker's Compensation Laws
- Disability Benefit Laws
- Occupational Sickness or Disease Laws
- Other similar employee benefit laws

b. Failure of the contractor to maintain proper insurance coverage shall not relieve the contractor of any contractual responsibility or obligations. If part of the work is to be subcontracted, the contractor shall either cover any and all subcontractors in contractor's insurance policy or require each subcontractor not so covered, to obtain insurance of same type and with the same limits as the contractor is required to carry. Any payment of an insured loss under policies of property insurance, including but not limited to, the insurance required shall be made payable to the County.

c. The contractor shall provide the following insurance coverage and limits of coverage:

- Worker's Compensation: Statutory
- Employer's Liability: \$300,000/each employee
- General Liability: \$2,000,000/each occurrence
 - The contractor shall supply a General Liability Combined Single limit of \$1,000,000 per Occurrence with a \$2,000,000 Aggregate for Both bodily injury and property damage and a \$1,000,000 umbrella for a total liability limit of \$2,000,000 naming Clay County as additionally insured, unless otherwise specified.
- Property Damage: \$300,000/each occurrence

2.11.3 It shall be the responsibility of the contractor to provide a copy of this proposal/bid to their insurance carrier.

2.11.4 It may also be required that the contractor's insurer and coverage be approved by County prior to execution of the contract.

2.11.5 No work shall be started until Clay County is in receipt of the contractor's Certificate of Insurance.

2.11.6 Insurance certificates shall reference project name and RFP/IFB Number and be sent to Clay

County Administration Building, Attn: Purchasing Staff, 1st floor, Department of Purchasing & Contract Services at 1 Courthouse Square, Liberty, MO 64068.

2.11.7 The insurance carrier of the insured shall be required to notify Clay County of termination of any or all of these coverage's, prior to the completion of any contract, at least 30 days prior to expiration.

2.12 Changes in Insurance Coverage:

2.12.1 The contractor shall notify the County of changes in insurance coverage in writing within 30 days.

2.13 Insurance Rating:

2.13.1 All of the above-specified types of insurance shall be obtained from companies that have at least an A-VII rating in Best's Guide or the equivalent.

FOR USE ONLY IF FEDERAL FUNDS ARE INVOLVED

2.14 Federal Funds Requirement:

2.14.1 The contractor shall understand and agree that this procurement may involve the expenditure of federal funds.

2.14.2 In accordance with the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, Public Law 101-166, Section 511, "Steven's Amendment", the contractor shall not issue any statements, press releases, and other documents describing projects or programs funded in whole or in part with Federal money unless the prior approval of the County is obtained and unless they clearly state the following as provided by the County:

- the percentage of the total costs of the program or project which will be financed with Federal money
- the dollar amount of Federal funds for the project or program
- percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.

2.15 Conflicts:

2.15.1 No salaried officer or employee of the County and no member of the County Commission shall have a financial interest, direct or indirect, in this contract agreement. A violation of this provision renders the agreement void. Federal conflict of interest regulations and applicable provisions of Sections 105.450 – 105.496 shall not be violated. The contractor covenants that they presently have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services to be performed under this agreement. The contractor further covenants that in the performance of this agreement no person having such interest shall be employed.

2.15.2 The contractor hereby covenants that at the time of the submission of the proposal/bid the contractor has no other contractual relationships which would create any actual or perceived conflict of interest. The contractor further agrees that during the term of the contract neither the contractor nor any of its employees shall acquire any other contractual relationships which create such a conflict.

2.16 Contractor Status:

2.16.1 The contractor represents himself or herself to be an independent contractor offering such services to the general public and shall not represent himself/herself or his/her employees to be an employee of Clay County. Therefore, the contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold Clay County, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney fees); and damage of any kind related to such matters.

2.17 Cooperative Procurement Program:

2.17.1 If the contractor has indicated agreement with participation in the Cooperative Procurement Program, the contractor shall provide their services as described under the requirements and specifications of the contract, including prices, to other government entities. The contractor shall further understand and agree that participation by other governmental entities is discretionary on the part of that governmental entity and Clay County bears no financial responsibility for any payments due the contractor by such governmental entities.

2.18 Coordination:

2.18.1 The contractor shall fully coordinate all contract activities with those activities of the Clay County entity. As the work of the contractor progresses, advice and information on matters covered by the contract shall be made available by the contractor to the Clay County entity or the Clay County Purchasing Agent throughout the effective period of the contract.

2.19 Document Retention:

2.19.1 The contractor shall retain all books, records, and other documents relevant to the contract for a period of five (5) years after final payment or the completion of an audit, whichever is later, or as otherwise designated by the funding entity and stated in the contract. The contractor shall allow authorized representatives of the Clay County entity, state, and federal government to inspect these records upon request. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the five (5) year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five (5) year period, whichever is later. Failure to retain adequate documentation for any product or service billed may result in recovery of payments for product/services not adequately documented.

2.20 Transition:

2.20.1 Upon award of the contract, the contractor shall work with the Clay County entity and any other organizations designated by the Clay County entity to insure an orderly transition of services and responsibilities under the contract and to insure the continuity of those services required by the County.

2.20.2 Upon expiration, termination, or cancellation of the contract, the contractor shall assist the County to insure an orderly transfer of responsibility and/or the continuity of those services required under the terms of the contract to an organization designated by the County, if requested in writing. The contractor shall provide and/or perform any or all of the following responsibilities:

- a. The contractor shall deliver, FOB destination, all records, documentation, reports, data, recommendations, or printing elements, etc., which were required to be produced under the terms of the contract to the County and/or to the entity's designee within seven (7) calendar days after receipt of the written request in a format and condition that are acceptable to the County.
- b. The contractor shall agree to continue providing any part or all of the services in accordance with the terms and conditions, requirements and specifications of the contract for a period not to exceed one hundred twenty (120) calendar days after the expiration, termination or cancellation date of the contract for a price not to exceed those prices set forth in the contract.
- c. The contractor shall discontinue providing service or accepting new assignments under the terms of the contract, on the date specified by the County, in order to insure the completion of such service prior to the expiration of the contract.

2.21 Substitution of Personnel:

2.21.1 The contractor agrees and understands that Clay County’s agreement to the contract is predicated in part on the utilization of the specific key individual(s) and/or personnel qualifications identified in the proposal/bid. Therefore, the contractor agrees that no substitution of such specific key individual(s) and/or personnel qualifications shall be made without the prior written approval of the Clay County entity. The contractor further agrees that any substitution made pursuant to this paragraph must be equal or better than originally proposed and that the Clay County entity’s approval of a substitution shall not be construed as an acceptance of the substitution's performance potential. Clay County agrees that an approval of a substitution will not be unreasonably withheld.

2.22 Replacement of Damaged Product:

2.22.1 The contractor shall be responsible for replacing any item received in damaged condition at no cost to the County. This includes all shipping costs for returning non-functional items to the contractor for replacement.

2.23 Substitutions of Products/Services:

2.23.1 The contractor shall not substitute any item(s) that has been awarded to the contractor without the prior written approval of the Clay County Purchasing Department.

2.23.2 The County shall have the right to allow the contractor to substitute any new product or service offered by the contractor on all undelivered and future orders if the quality is equal to or greater than the product/service under contract and if the prices are equal to or less than the contract prices. The DP&CS shall be the final authority as to acceptability.

2.23.3 In event of manufacturer discontinuation, the contractor shall substitute item(s) with equal or better capabilities for equal or less cost than the discontinued item(s). The contractor shall not substitute any item(s) without the prior written approval of the Purchasing Department. The Purchasing Department shall be the final authority as to acceptability of requested substitutions and reserves the right to accept or reject any substitution requests.

2.23.4 Single Point of Contact: The contractor must function as the single point of contact for the County, regardless of any subcontract arrangements for all products and services. This shall include assuming responsibility and liabilities for all problems relating to all equipment, products, software and services provided.

2.24 Invoicing and Payment:

2.24.1 Invoices shall contain the following information:

- Contract agreement number
- Description of products/services
- Pricing
 - Invoices for newly installed equipment shall list materials and labor unit costs, clearly stated by location.

2.24.2 Notwithstanding any other payment provision of the contract, if the contractor fails to perform required work or services, fails to submit reports when due, or is indebted to the United States, Clay County may withhold payment or reject invoices under the contract.

2.24.3 Final, accurate invoices are due by no later than thirty (30) calendar days of the expiration of the contract, unless otherwise stated in the contract. Clay County shall have no obligation to pay any invoice submitted after the due date.

2.24.4 If a request by the contractor for payment or reimbursement is denied, Clay County shall provide the contractor with the written notice of the reason(s) for denial.

2.24.5 If the contractor is overpaid by Clay County, upon official notification by the entity, the contractor shall provide the entity with a check payable as instructed by the entity in the amount of such overpayment. The contractor shall submit the overpayment to the County at the address specified by the County.

2.24.6 Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the RFP/IFB.

2.24.7 The County assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to the County's rejection and shall be returned at the contractor's expense.

2.24.8 All invoices for equipment, supplies, and/or services purchased by Clay County shall be subject to late payment charges pursuant to the following:

- After the forty-fifth (45th) day following the later of the date of delivery of the supplies and services or the date upon which the invoice is duly approved and processed, interest retroactive to the thirtieth (30th) day shall be paid on any unpaid balance. The rate of such interest shall be three percentage points above the average predominant prime rate quoted by commercial banks to large businesses, as determined by the Board of Governors of the Federal Reserve System.

2.24.9 Clay County shall have the right to purchase goods and services using a Purchasing Card.

2.25 Contract Monitoring:

2.25.1 The County shall have the right to monitor the contract throughout the effective period of the contract to ensure financial and contractual compliance. If the County determines the contractor to be at high-risk for non-compliance, the County shall have the right to impose special conditions or restrictions. Written notification will be provided to the contractor of the determination of high-risk and of any special conditions or restrictions to be imposed. The special conditions or restrictions may include, but not limited to, those conditions specified below.

- Withholding authority to proceed to the next phase of the project until the Clay County entity receives evidence of acceptable performance within a given contract period;
- Requiring additional, more detailed financial reports or other documentation;
- Additional contract monitoring;
- Requiring the contractor to obtain technical or management assistance; and/or
- Establishing additional prior approvals from the County.

2.26 Property of Clay County:

2.26.1 All documents, data, reports, supplies, equipment, and accomplishments prepared, furnished, or completed by the contractor pursuant to the terms of the contract shall become the property of Clay County. Upon expiration, termination, or cancellation of the contract, said items shall become the property of the County.

2.27 Inspection and Acceptance:

2.27.1 No equipment, supplies, and/or services received by Clay County pursuant to a contract shall be deemed accepted until the County has had reasonable opportunity to inspect said equipment, supplies, and/or services.

2.27.2 The contractor shall understand and agree that all equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, the contractor shall understand and agree that all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.

2.27.3 Clay County shall have the right to return any such rejected shipment at the contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.

2.27.4 Clay County's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the County may have.

2.28 Warranties:

2.28.1 The contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to the Purchasing Department, (2) be fit and sufficient for the purpose expressed in the RFP/IFB, (3) be of good materials and workmanship, and (4) be substantially free from defect.

FOR USE IF NEEDED FOR EQUIPMENT/IT PRODUCTS

2.28.2 The contractor must provide warranty on all products provided, which shall commence upon date of product(s) *installation or delivery* through twelve consecutive months.

2.28.3 The contractor shall warrant that the product(s) shall conform to the mandatory technical, functional and performance requirements described in this RFP/IFB, including Exhibits thereto. The contractor shall also warrant that the product(s) shall perform and operate in accordance with the contractor's published specification documentation, including user manuals, manufacturer's specification sheets, etc. regarding the products.

FOR USE ONLY IN INFORMATION TECHNOLOGY PROPOSALS/BIDS

2.28.4 Compatibility Warranty: The contractor shall warrant that all products acquired pursuant to this contract shall be data, program, and communications compatible to all other products that will be acquired under the contract and compatible to the software and hardware environments that currently exist in the County's computer environment as described herein.

- The contractor shall notify the County as to any inaccuracies or known deficiencies or incompatibility with any related order.

2.28.4 Such warranty shall survive delivery and shall not be deemed waived either by reason of the County's acceptance of or payment for said equipment, supplies, and/or services.

2.29 Safety:

2.29.1 The contractor shall understand and agree that all practices, materials, supplies, and equipment shall comply with the Federal Occupational Safety and Health Act, as well as any pertinent Federal, State and/or local safety or environmental codes.

2.30 Applicable Codes and Ordinances:

2.30.1 The contractor shall hereby certify that all materials used conform to all articles and sections of all current applicable National Building Codes and other relevant construction-related codes. Workmanship and materials shall conform to all local applicable codes and ordinances.

2.31 Breach of Contract and Contract Cancellation:

2.31.1 In the event of material breach of the contractual obligations by the contractor, Clay County may cancel the contract. At its sole discretion, the County may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than 10 business days from notification, or at a minimum the contractor must provide the County within 10 business days from notification a written plan detailing how the contractor intends to cure the breach.

2.31.2 If the contractor fails to cure the breach or if circumstances demand immediate action, the County will issue a notice of cancellation terminating the contract immediately. If it is determined the County improperly cancelled the contract, such cancellation shall be deemed a termination for convenience in accordance with the contract.

2.31.3 If the County cancels the contract for breach, the County shall have the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the County deems appropriate and charge the contractor for any additional costs incurred thereby.

2.31.4 Notice of Default: In the event the contractor fails to cure the breach to the satisfaction of County within 10 days, or within the written cure plan as agreed to by the County, the County may elect to do all or any of the following:

- The County may elect to remedy the default by curing the default with department staff or contracting with another vendor to do the work in question. In this event, the contractor shall be invoiced the costs incurred by the County plus an additional fifty percent (50%).
- The County may immediately prohibit the contractor from having access to the property or conducting business on the property.
- The County Commission, after consideration of the default, may terminate the agreement. In this event, the contractor shall be required to immediately vacate the premises, shall not be entitled to any additional opportunities to remedy the default and shall not be entitled to any additional compensation.

2.31.5 Non-Appropriation of Funds: The contractor understands and agrees that funds required to fund the contract must be appropriated by the County Commission for each fiscal year included within the contract period. The contract shall not be binding upon the County for any period in which funds have not been appropriated, and the County shall not be liable for any costs associated with termination caused by lack of appropriations.

2.32 Communications and Notices:

2.32.1 Any notice to the offeror/contractor shall be deemed sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, transmitted by e-mail with confirmed receipt or hand-carried and presented to an authorized employee of the offeror/contractor.

2.33 Bankruptcy or Insolvency:

2.33.1 Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor must notify the DP&CS immediately.

2.33.2 Upon learning of any such actions, the County shall have the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.

2.34 Non-Discrimination and Affirmative Action:

2.34.1 In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status unless otherwise provided by law. If the contractor or subcontractor employs at least 50 persons, they shall have and maintain an affirmative action program which shall include:

- a. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
- b. The identification of a person designated to handle affirmative action;
- c. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to layoff, recall, discharge, demotion, and discipline;
- d. The exclusion of discrimination from all collective bargaining agreements; and
- e. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

2.34.2 If discrimination by a contractor is found to exist, the County shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by the County until corrective action by the contractor is made and ensured, and referral to the Attorney General's Office, whichever enforcement action may be deemed most appropriate.

2.35 Americans with Disabilities Act:

2.35.1 In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA).

2.36 Drug Free Workplace:

2.36.1 The contractor (whether an individual or company) shall agree to provide a drug free workplace.

2.37 Titles:

2.37.1 Titles of paragraphs used herein are for the purpose of facilitating reference only and shall not be construed to infer a contractual construction of language.