

**Wicomico County Purchasing Department
125 N. Division Street, Room B-3
Salisbury, Maryland 21801**



INVITATION FOR BID

PROJECT: Sample Ballot Mailing – 2016 Presidential General Election

DEPARTMENT: Board of Elections

VENDOR:

NAME: _____

ADDRESS: _____

BID OPENING:

DATE: August 3, 2016

TIME: 2:00 PM

There is an optional pre-bid meeting scheduled on Monday July 25, 2016 at 9:30 am at the Wicomico County Board of Elections Office, 123 Bateman Street, Salisbury, MD 21804

I. BID INSTRUCTIONS

A. SUBMISSION OF BIDS

1. Three full copies of the bid form and any required attachments must be submitted in the solicitation and can be submitted in the same envelope unless otherwise instructed.
2. The bid forms shall be signed and submitted in a sealed envelope clearly identified on the outside of the mailing envelope with the name of the bid/project and date and time of the scheduled bid opening as indicated in the advertisement.
3. Electronically mailed bids are **not** considered sealed bids and will **not** be accepted.

B. DELIVERY OF BIDS

1. Bids should be mailed or hand carried to Wicomico County Purchasing Department, 125 N. Division Street, Government Office Building, Room B-3, Salisbury, MD 21801, in order to be received in the office of the Purchasing Agent **prior** to the announced bid deadline. *Bids received after said time or delivered to the wrong location will be returned to the bidder unopened.*
2. If you are delivering a bid in person please keep in mind to allow time to sign-in at the security station in the lobby. It is fully the responsibility of the bidder to insure that the bid is received on time.
3. The County will not speculate as to reasonableness of the postmark, nor comment on the apparent failure of a public carrier to have made prompt delivery of the bid.

C. QUESTIONS/ADDENDUM

1. Bids are subject to change in the form of an addendum. Questions must be addressed in writing to Wicomico County Purchasing at purchasing@wicomocounty.org.
2. All questions should be asked no later than seven (7) calendar days in advance of the bid. Addenda are posted on the County website at www.wicomocounty.org under Government: Departments: Purchasing: at www.wicomocounty.org/bids.aspx at least five (5) calendar days before bid opening.
3. It is the bidders responsibly to make sure all addenda are acknowledged in their bid. Failure to do so could result in the bid being disqualified.

D. QUALIFICATIONS

1. The Bidder must be in compliance with the laws regarding conducting business in the State of Maryland.

All Bidders shall provide a copy Certificate of Status from the Maryland Department of Assessments and Taxation, evidencing the Bidder is in good standing with the State of Maryland. See https://sdatcert1.resiusa.org/certificate_net/ for information on obtaining the Certificate of Status. *Certificates of status are not available for trade names, name reservations, government agencies, sole proprietorships, and some other accounts as these are not legal entities and thus are not required for these categories of bidders.* For more information on the Certificate of Status please see <http://www.dat.state.md.us/sdatweb/COSinfo.html> .

2. Wicomico County reserves the right, at its sole discretion, to extend the date this documentation must be provided. The Bidder's inability to provide this documentation could result in the bid being rejected.
3. All vendors who wish to bid on County projects and contracts need to register as a bidder at www.wicomicocounty.org/list.aspx?Mode=Subscribe#bids by checking off the categories for which you wish to be informed of future bids.

E. DESCRIPTIVE LITERATURE

1. The proposed descriptive literature fully describing the product bid is what is intended to be included as the price. Failure to do so may be cause for rejection of the bid.
2. Any items, systems or devices supplied in this bid that are proprietary in nature relative to maintenance, repair, servicing or updating must be disclosed on the bid form.

F. EXCEPTIONS/ SUBSTITUTIONS

1. Any exceptions or substitutions to the specifications requested should be marked on the bid form and listed on a separate sheet of paper attached to the bid.
2. An exception to the specifications may not necessarily disqualify the bid. The County will determine if the exception is an essential deviation or a minor item.
3. In the case of a minor deviation, the County maintains the option to award to that bidder if it determines the performance is not adversely affected by the exception.

G. APPROVED EQUALS

1. In all specifications where a material or article is defined by describing a proprietary product or by using the name of a vendor or manufacturer, it can be assumed that an approved equal can be substituted.
2. The use of a named product is an attempt to set a particular standard of quality and type that is familiar to the County. Such references are not intended to be restrictive.
3. However, the County shall decide if a product does in fact meet or exceed the quality of the specifications listed in the solicitation. It shall be the responsibility of the vendor that claims his product is an equal to provide documentation to support such a claim.

H. SALES TAX

1. In buying products directly from a vendor Wicomico County is exempt from being *directly* charged Federal excise and Maryland sales tax. A copy of an exemption certificate shall be furnished upon request.
2. According to the Office of the Comptroller of Maryland, a *Contractor is responsible for paying sales tax* on his/her purchases relating to any projects or services and should incorporate it into their bid.
3. Contractors cannot use the County tax exemption to buy materials or products used on County projects.

I. DELIVERY

1. All items shall be delivered F.O.B. destination and delivery costs and charges included in the bid unless otherwise stated in the specifications or bid form.

J. INSURANCE

1. If required by the General Conditions or Terms and Conditions, the bidder shall provide the County with Certificates of Insurance within ten (10) days of bid award notification evidencing the required coverage.
2. Bidder must provide Certificates of Insurance before commencing work in connection with the contract.

K. BID EVALUATION

1. If some characteristic of the bid requires that the bid must be reviewed by the County Council, the award can be expected within 30 days.

2. Bid tabulations will be posted on the County website at www.wicomicocounty.org/bids.aspx and click on the box Show Closed/Awarded/Cancelled Bids and find the bid tabulation for the bid you are interested in. The tabulations will typically be posted within 24 hours of the bid opening.
3. Bid evaluations typically take 1-2 weeks.

L. RIGHT TO REJECT

1. Wicomico County reserves the right to reject any and/or all bids or to waive any technicality it deems in the best interest of the County.

M. AWARD OF BID

1. The County shall award the bid to the best, responsive and responsible bidder complying with the provisions of the Invitation for Bid.
2. All bid awards are contingent upon available funding.
3. The Purchasing Agent reserves the right to award a bid by individual items, in aggregate, or in combination thereof as deemed necessary to fulfill the anticipated requirements of the County.
4. All awards over \$1000.00 require a Purchase Order to be executed before any work can be started. Some awards will require a County contract.

N. PIGGYBACKING

1. Wicomico County may authorize, upon request, any governmental entity (hereafter Authorized User) within the County to purchase items under the contract awarded pursuant to this bid solicitation.
2. All purchase orders issued against the contract by an authorized User shall be honored by the Contractor in accordance with all terms and conditions of this contract.
3. The issuance of a purchase order by an Authorized User pursuant to this provision shall constitute an express assumption of all contractual obligations, covenants, conditions and terms of the contract. A breach of the contract by any particular Authorized User shall neither constitute nor be deemed a breach of the contract as a whole which shall remain in full force and effect, and shall not affect the validity of the contract nor the obligations of the Contractor thereunder respecting the County.

4. The County specifically and expressly disclaims any and all liability for any breach by an authorized User other than the County and each such Authorized User and Contractor guarantee to save the County, its officers, agents and employees harmless from any liability that may be or is imposed by the Authorized User's failure to perform in accordance with its obligations under the contract.

O. PUBLIC INFORMATION ACT (PIA)

1. Wicomico County is subject to the Maryland Public Information Act and may be required to release bid submissions in accordance with the Act.
2. Any materials the bidder deems to be proprietary or copyrighted must be marked as such; however, the material may still be subject to analysis under the Maryland Public Information Act.

II. BID SPECIFICATIONS

SCOPE OF PROJECT:

- Printing and mailing approximately 73,000 Sample Ballots – anticipated to be on 11”x17” paper folded two times plus an 8 ½” x 11” insert. Three separate mailings.
- If a vendor is capable of doing so, they may submit an additional bid based on producing a 25 ½” x 11” sheet, folded twice with no insert required. (Vendors who exercise this option must also submit a bid based on using an 11” x 17” paper folded two times plus the paper insert.)

SERVICES NEEDED:

1. The vendor who is awarded this bid must meet with the Election Office staff and the USPS bulk mailing unit officials at the office of entry, in person or via conference call.
2. First mailing: Final content provided to printer approx. Mon, Sept 19, 2016. (If content is provided earlier, production should begin immediately.) First CD with voter data provided to the printer on Fri, Sept 16. Vendor notifies Election Office staff when they can come out and proof the finished mail pieces before they go to the Post Office for mailing. Ballots taken to the Post office **no later than 10 a.m. on Friday, Oct 7, 2016 for delivery on Wednesday, Oct 12, 2016.** (See the timeline chart below. If the mailing is approved by the Election Office staff prior to Oct 7, vendor should take it to Post Office as soon as it is ready to go.)
3. In addition, the vendor should deliver to the Election Office 500 unaddressed sample ballots, which can be handed out to walk-in customers, as soon as they are ready.
4. Second mailing: Second CD with voter data provided to the printer on Fri, Sept 30. Vendor notifies Election Office staff when they can come out and proof the finished mail pieces before they go to the Post Office for mailing. Ballots taken to the Post office **no later than 10 a.m. on Friday, Oct 14, 2016 for delivery on Wednesday, Oct 19, 2016.** (See the timeline chart below. If the mailing is approved by the Election Office staff prior to Oct 14, vendor should take it to Post Office as soon as it is ready to go.)
5. Third and final mailing: Third CD with voter data provided to the printer on Fri, Oct 21. Vendor notifies Election Office staff when they can come out and proof the finished mail pieces before they go to the Post Office for mailing. Ballots taken to the Post office **no later than 10 a.m. on Monday, Oct 24, 2016 for delivery on Wednesday, Oct 26, 2016.** (See the timeline chart below. If the mailing is approved by the Election Office staff prior to Oct 24, vendor should take it to Post Office as soon as it is ready to go.)
6. The vendor must immediately report by e-mail to Debra Hickman, the Election Office contact, the date and time each of the three mailings were taken to the post office.
7. The vendor will use white paper, black ink, 24 lb. or 60 lb. The paper size is 11” x 17”. This will be double-folded with two mailing tabs.

8. If a vendor is capable of producing a single, 25 ½" x 11" sheet of paper, folded twice with no paper insert required, they may choose to submit an additional bid using that production method. (Since the State Board office might mandate that we use the paper insert method by the time we do this mailing, which is why all bidders must submit at least one bid based on using an 11" x 17" sheet folded two times plus the paper insert.)
9. A Word or Excel file will be sent to the winning bidder of a chart with approx. 54 precincts and approx. 32 polling places and the number of voters assigned to each location.
10. Every sample ballot mailing piece will use the same ballot image pdf. There will be only one ballot style used for the entire mailing.
11. The winning bidder will be awarded both the printing and mailing. The bid will not be split between two vendors.
12. The mailing will be First Class service, Return Service Requested. No forwarding, only return with new address notification provided by the USPS, or a reason for non-delivery provided by the USPS.
13. The vendor will use the information provided directly from the Election Office database information provided with no changes.
14. Each voter's correct assigned polling place must appear on the outside of the mailing. The vendor will use the district-precinct chart provided by the Election Office to determine each voter's assigned polling place.
15. The vendor will use the residential address for each voter. However, if the database indicates that a voter has a mailing address, the vendor will use that mailing address instead and not use any of the residential address information.
16. It is mandatory that all sample ballots in each of the three mailings must be taken to the Post Office at the same time. (This is to prevent voters from one party from receiving their sample ballots sooner than voters of another party or sooner than unaffiliated voters, nor should voters who live in one part of the County receive their sample ballots sooner than voters in another part of the County.)
17. Each voter's correct unique polling place must appear on the outside of the mailing.
18. The printer must provide our office a way to proof the actual items which go to the Post office, to our satisfaction.
19. The printer should provide a proof of a successfully completed project comparable to this project, matching multiple precincts with multiple polling places and multiple recipients.
20. By fully completing the "Bid Form" below, the printer will provide a separate breakdown of estimated production cost, postage cost and total cost (production plus postage costs). The County will provide a deposit to cover the estimated postage. The printer will pay the postage.
21. The Printer will provide an initial invoice for the projected total postage cost for mailing all 73,000 pieces. Upon completion of the final mailing, the printer will provide a final

invoice for the actual production costs and any remaining postage cost. The printer must submit all necessary paperwork to the Wicomico County Purchasing Office in order to be a registered Wicomico county Vendor.

22. Prospective bidders may attend an optional pre-bid meeting on **Monday July 25, 2016 at 9:30 am EST** and will be held at the Wicomico County Board of Elections Office, 123 Bateman Street, Salisbury, MD 21804.

The following is the projected timeline for this sample ballot mailing:

July or early Aug 2016	Election Office staff and vendor meet with USPS bulk mailing unit officials at the office of entry.
Mon, Aug 15	List of polling places with precincts, along with all content <u>except ballot images</u> , sent to the vendor. Vendor prepares proofs for Election staff approval.
Mon, Aug 15	Election Office staff requests a check be issued by the County Finance Office to the vendor to cover postage cost <u>for all 3 mailings</u> . Vendor should receive the check in the mail in 2 – 3 weeks.
Between Aug 15 and Sept 19	Vendor provides Election Office staff the final sample ballot proof, <u>not including ballot images and special wording</u> , for preliminary approval.
Mon, Sept 19	Election Office staff provides ballot image pdfs and any special wording mandated by State Board office.
Week of Sept 19	Vendor provides Election Office staff the final sample ballot proof, including ballot images and special wording, for final approval.
Fri, Sept 16, 9 a.m. (approx. 69,000 voter files)	<ul style="list-style-type: none"> • Election Office staff delivers 1st CD with voter data to the vendor. • Vendor allows Election Office staff to proof the finished pieces. • <u>This first batch of sample ballots must be taken to the Post Office no later than 10 a.m., Fri, Oct 7. (Do not wait until Oct 7 – vendor should mail them as soon as they are approved and ready to go.)</u>
Fri, Sept 30, 9 a.m. (approx. 2,000 voter files)	<ul style="list-style-type: none"> • Election Office staff delivers 2nd CD with voter data to the vendor. • Vendor allows Election Office staff to proof the finished pieces. • <u>This second batch of sample ballots must be taken to the Post Office no later than 10 a.m., Fri, Oct 14. (Do not wait until Oct 14 – vendor should mail them as soon as they are approved and ready to go.)</u>
Fri, Oct 7	First batch of sample ballots taken to Post Office for mailing – <u>or sooner</u> . Vendor also delivers 500 unaddressed sample ballots to the Election Office.
Fri, Oct 14	Second batch of sample ballots taken to Post Office for mailing – <u>or sooner</u> .
Fri, Oct 21, 3 p.m. (approx. 1,000 voter files)	<ul style="list-style-type: none"> • Election Office staff delivers 3rd CD with voter data to the vendor. • Vendor allows Election Office staff to proof the finished pieces. • <u>This third (final) batch of sample ballots must be taken to the Post Office no later than 10 a.m., Mon, Oct 24. (Do not wait until Oct 24 – vendor should mail them as soon as they are approved and ready to go.)</u>
Mon, Oct 24	Final batch of sample ballots taken to Post Office for mailing – <u>or sooner</u> .

III. BID FORM

Date: _____

TO: Wicomico County Purchasing Department
Government Office Building
125 North Division Street, Room B-3
Salisbury, MD 21801

BID Sample Ballot Mailing – 2016 Presidential Primary

Production Method for this bid:

_____ 11” x 17” folded twice with 8 ½” x 11” paper insert OR
_____ 25 ½” x 11” folded with no paper insert

<u>QTY.</u>	<u>ITEM</u>	<u>UNIT</u>	<u>TOTAL</u>
73,000	Sample Ballots Printed	\$ _____	\$ _____
73,000	Sample Ballots Mailed	\$ _____	\$ _____
<u>Total:</u>			\$ _____

Three (3) copies of the bid are required for a bonafide bid.

Addendums acknowledgement: YES _____ Numbers _____

Exceptions: YES _____ NO _____

(If yes please specify on additional page)

Certificate of Insurance is required. Please acknowledge by checking “yes” YES _____

Certificate of Insurance is not required at time of bid, however must be submitted prior to commencement of work.

The bidder agrees that the bid will be good for at least 30 days unless otherwise indicated in the bid specifications. I have read, understood, and agreed to the terms and conditions of all contents of this BID. The undersigned agrees to furnish the commodity or service stipulated in this BID as stated above.

SIGNATURE: _____

NAME: _____ TITLE: _____

COMPANY: _____

ADDRESS: _____

TELEPHONE: _____ FAX: _____

EMAIL: _____

EXHIBIT A

WICOMICO COUNTY, MARYLAND STANDARD TERMS AND CONDITIONS

This document sets out provisions generally applicable to all Wicomico County (“County”) contracts. These provisions do not constitute a complete agreement, and must be appended to a document, executed by all parties, which identifies the specific work to be performed, compensation, term, incorporated attachments, and any special conditions. This document and the Contract are intended to be complementary and shall be construed accordingly. Should there be a direct contradiction between these terms and conditions and the Contract, then the Contract shall govern and control those contradictory terms and conditions. The term “Department” includes the County, its various departments, unit, agencies, employees or agents as may be appropriate. The term “Contract” shall include a document entitled “agreement” or any other title on a document that is denoting a contract. The Wicomico County Executive is the person authorized to enter into contracts for Wicomico County.

Amendment. This Contract constitutes the entire agreement between the parties and all other communications prior to its execution, whether written or oral, with reference to the subject matter of this Contract are superseded by this Contract. No amendment to this Contract shall be binding unless in writing and signed by the parties.

Bankruptcy. Upon filing for any bankruptcy 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 County immediately. Upon notice of such filing, the County reserves the right at its sole discretion either to cancel the Contract or to affirm the Contract and hold the Contractor responsible for damages. The exercise of this right is in addition to any other rights the County may have as provided in this County or by law.

Compliance with Law. The Contractor hereby represents and warrants that:

- A. It has the power and authority to enter into and perform the Contract, that the Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
- B. Its performance under the Contract shall be in a good and workmanlike manner and in accordance with the professional standards;
- C. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- D. It is not in arrears in the payment of any obligations due and owing to the County or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- E. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract;
- F. It shall obtain, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

Contingent Fee Prohibition. The Contractor, architect or engineer (as applicable) warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, architect or engineer, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee or agent, any commission, percentage, brokerage or contingent fee or other consideration contingent on the making of this Contract.

Counterparts and Signature. This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute one and the same instrument. Unless otherwise specified by the County, this Contract may be signed in writing, or by electronic signature, including by email. An electronic signature, or a facsimile copy or computer image, such as a PDF or tiff image, of a signature, shall be treated as and shall have the same effect as an original signature. An electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document.

Force Majeure. Neither the County nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, County declaration of emergency, or war where such cause was beyond, respectively, the County’s or Contractor’s reasonable control. The County and Contractor shall make all reasonable efforts to remove or eliminate

such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Maryland and Wicomico County without regard to principles of conflicts of law.

Indemnification. The Contractor shall protect, hold free and harmless, defend and indemnify the County including its officers, agents and employees from all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments (including Attorney's fees) resulting from injury to, or death of, any person or damage to property of any kind, which injury, death or damage arises out of, or is in any way connected with the performance of the work or failure to perform its obligations under this Contract. This obligation of indemnification shall apply to any acts or omissions, negligent conduct, whether active or passive, including acts or omissions of Contractor's agents or employees; except that it shall not be applicable to injury, death or damage to the property arising from the sole negligence of Wicomico County, its officers, agents and employees.

Independent Contractor.

- A. Contractor shall perform the work required by this Contract as an "Independent Contractor." Although the County reserves the right to determine the delivery schedule for the work to be performed and to evaluate the quality of the completed performance, the County cannot and will not control the means or manner of the Contractor's performance. The Contractor shall comply promptly with any requests by the County relating to the emphasis or relative emphasis to be placed on various aspects of the work or to such other matters pertaining to the work under this Contract. Contractor is responsible for determining the appropriate means and manner of performing the work.
- B. Contractor represents and warrants that Contractor is not an employee of the County, is not currently employed by the Federal Government, and is not an officer, employee or agent of the County.
- C. Contractor shall be responsible for all federal or state taxes applicable to any compensation or payments paid to Contractor under this Contract. Contractor is not eligible for any federal Social Security, unemployment insurance, or workers' compensation benefits from compensation or payments paid to Contractor under this Contract.
- D. Contractor agrees to immediately provide the County notice of any claim made against Contractor by any third party. Contractor also agrees not to assign to any third party, without the County's written consent, any obligation of the County to indemnify Contractor for any actions under this Contract.

Insurance Requirements.

- A. Contractor shall obtain, and at all times keep in effect, Commercial General Liability Insurance in the amounts listed below for its activities and operations. The insurance shall include coverage for personal injury, discrimination and civil rights violation claims. All such insurance shall name County, its employees, and agents as ADDITIONAL INSURED. A copy of the certificate of insurance shall be filed with the County prior to the time this Contract is executed, providing coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 general aggregate and \$500,000 for property damage. Coverage shall be written on an occurrence form.
- B. Contractor shall obtain, and at all times keep in effect, automobile insurance on all vehicles used in this Contract with the County to protect Contractor against claims for damages resulting from bodily injury, including wrongful death, and property damage that may arise from the operations of any owned or hired automobiles used by Contractor in connection with the carrying out of this Contract. All such insurance shall name County, its employees, and agents as ADDITIONAL INSURED.
- C. Contractor shall provide the County with certification of Workers' Compensation Insurance, with employer's liability in the minimum amount required by Maryland law in effect for each year of this Contract.
- D. All insurance policies shall have a minimum 30 days notice of cancellation. Immediate written notice to the County shall be required in the event of cancellation or restriction by the insurance company of any insurance policy referred to in this section.
- E. When insurance coverage is renewed Contractor shall provide new certificates of insurance prior to expiration of current policies.

Nondiscrimination. A contractor who is the recipient of County funds, or who proposes to perform any work or furnish any goods under this Contract shall not discriminate against any worker, employee or applicant because of religion, race, sex, age, sexual orientation, physical or mental disability, or perceived disability. Contractor further agrees that this provision will be incorporated in all sub-contracts entered into in connection with this Contract.

Ownership of Documents and Materials.

- A. The Contractor agrees that all documents and materials, including but not limited to, reports, drawings, studies, specifications, estimates, maps, photographs, designs, graphics, mechanicals, artwork, and computations prepared by or for the Contractor under the terms of this Contract shall at any time during the performance of the services be made available to the County upon request by the County and shall become and remain the exclusive property of the County upon termination or completion of the services. The County shall have the right to use the same without restriction or limitation and without compensation to the Contractor other than that provided in this Contract. The County shall be the owner for the purposes of copyright, patent or trademark registration.
- B. If the Contractor obtains or uses for purposes of this Contract, or subcontracts for, any design, device, material, or process covered by letters of patent or copyright, it shall provide an assignment to the County of ownership for purposes of copyright, patent or trademark and of all right to possess and to use such design, device, material or process and a legally sufficient agreement with the patentee or owner, and a copy of such agreement shall be filed with the County.
- C. The Contractor shall indemnify and save harmless the County from any and all claims for infringement by reason of the use of any such patented design, device, materials, or process, or any trademark or copyright, and shall indemnify, protect and save harmless the County, its officers, agents, and employees with respect to any claim, action, costs or infringement, for royalties or user fees, arising out of purchase or use of materials, construction, supplies, equipment or services covered by this Contract.

Payments. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the County's receipt of a proper invoice from the Contractor. If an invoice remains unpaid 45 days after the invoice was received, interest shall be charged at a rate of six percent (6%) per annum.

Records. Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance hereunder. Contractor acknowledges and agrees that the County and its duly authorized representatives shall have access to such fiscal records and all other books, documents, papers, plans, and writings of the Contractor that are pertinent to this Contract. All such fiscal records, books, documents, papers, plans, and writing shall be retained by Contractor and kept accessible for a minimum of three years, except as required longer by law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Contract, whichever date is later. All subcontracts shall also comply with these provisions.

Remedies.

- A. Corrections of errors, defect and omissions. Contractor agrees to perform the work as may be necessary to correct errors, defects, and omissions in the services required under this Contract, without undue delays and without cost to the County. The acceptance of the work set forth herein by the County shall not relieve the Contractor of the responsibility of subsequent corrections of such errors.
- B. Set Off. The County may deduct from and set-off against any amounts due and payable to the Contractor any back-charges, penalties, or damages sustained by the County, its agents, employees of recipients of its services, by virtue of any breach of this Contract by the Contractor or by virtue of the failure or refusal of the Contractor to perform the services or any part of the services in a satisfactory manner. Nothing herein shall be construed to relieve the Contractor of liability for additional costs resulting from a failure to satisfactorily perform the services.
- C. Cumulative. All rights and remedies of County and Contractor shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of the County by law.

Responsibility of Contractor.

- A. The Contractor shall perform the services with the standard of care, skill, and diligence normally provided by a Contractor in the performance of services similar the services hereunder.
- B. Notwithstanding any review, approval, acceptance or payment for the services by the County, the Contractor shall be responsible for the professional and technical accuracy of its work, design, drawings, specifications and other materials furnished by the Contractor under this Contract.
- C. If the Contractor fails to perform the services, or any part of the services, in conformance with the standard set forth in subparagraph A above it shall, if required by the County, perform at its own expense and without additional cost to the County, those services necessary for the correction of any deficiencies of damages resulting, in whole or in part, from the Contractor's failure. This obligation is in addition to and not in substitution for any other remedy available to the County under the "Remedies" paragraph, or otherwise available by law.

Severability/Waiver. The County and Contractor agree that, if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid. The failure of either party to enforce any provision of this Contract shall not constitute a waiver by that party of that or any other provision of this Contract.

Subcontracting or Assignment. The benefits and obligations of this Contract shall inure to and be binding upon the parties and neither this Contract nor the services to be performed shall be subcontracted, or assigned or otherwise disposed of, either in whole or in part, except with the prior written consent of the County. The County has the right to withhold such consent for any reason the County deems appropriate.

Substance Abuse and Drug Testing. Contractors and contract employees are subject to the provisions of the County's policy on substance abuse and drug testing regarding the use, possession, or sale of drugs or alcohol while performing County business or while in a County facility. Violation of these provisions or refusal to cooperate with implementation of the County's policy on substance abuse and drug testing can result in the barring of contract personnel from County facilities or from participating in County operations.

Survival. The terms, conditions, representations, and all warranties contained in this Contract shall survive the termination or expiration of this Contract.

Termination. If the Contractor fails to fulfill its obligations under the Contract properly and on time, or otherwise violates any provision of the Contract, the County may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the County's option, become the County's property. The County shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the County can affirmatively collect damages.

Termination of Contract for Convenience. The performance of work under this Contract may be terminated by the County, in whole or in part, upon written notice to the Contractor, when the County determines such termination is in the best interest of the County. The termination for convenience is effective on the date specified in the County's written notice. The County will pay for all reasonable costs allocable to the Contract for work or costs incurred by the Contractor up to the date of termination. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.

Termination of Multi-year Contract. If the County fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the County's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the County from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the

reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The County shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

Third Party Beneficiaries. The County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

Time is of the essence. Time is of the essence in Contractor's performance of each and every obligation and duty under this Contract.

Use of County Facilities. Contractor and its employees or agents shall have the right to use only those facilities of the County that are necessary to perform the services under this Contract and shall have no right of access to any facility of the County without prior approval of County Administration. County shall have no responsibility for the loss, theft, mysterious disappearance of or damage to equipment, tools, materials, supplies, and other personal property of Contractor or its employees, subcontractors or agents which may be stored on County premises.

Whole Contract. This Contract constitutes the complete and exclusive statement of the Contract between the parties relevant to the purpose described herein and supersedes all prior agreements or proposals, oral or written, and all other communication between the parties relating to the subject matter of this Contract.