

# Request for Bids

## Streambank Stabilization

Sauk County Land Resources and Environment Department

December 27, 2022

**Point of contact:** Melissa Schlupp  
Conservation Manager  
505 Broadway  
Baraboo, WI 53913  
(608) 355-4838  
[melissa.schlupp@saukcountywi.gov](mailto:melissa.schlupp@saukcountywi.gov)

**Bid due date:** Bids must be received, and date stamped as received no later than 12:00 PM, Central Time, January 26, 2023. Faxes and emails are not acceptable. Bids or amendments received by Sauk County after 12:00 PM Central Time, on January 26, 2023, regardless of postmark, may not be considered. Public opening of Bids will be conducted at the Land Resources and Environment Department at 505 Broadway, Baraboo, WI 53913 on January 26, 2023 at 12:30 PM Central Time.

**All Bids must be addressed to:** Melissa Schlupp  
Sauk County LRE  
505 Broadway  
Baraboo, WI 53913

The words "**SAUK COUNTY FARM STREAMBANK STABILIZATION**" must be clearly marked on the sealed envelope.

- Part 1:** Introduction and General Information
- Part 2:** Scope of Work
- Part 3:** General Bid Process
- Part 4:** Standard Terms and Conditions

**Appendix A:** Sauk County Farm Streambank Stabilization Construction Plans  
**Appendix B:** Sauk County Farm Lined Waterway Construction Plans

## Part 1: Introduction and General Information

**1.1 Introduction.** Notice is hereby given that Sauk County will receive Bids per specifications until 12:00 PM, Central Time, January 26, 2023 (Closing), to provide streambank stabilization at the Sauk County Farm located at the intersection of Highway 154 and Highway 23, Town of Reedsburg.

**1.2 Definitions.** For this Request for Bid (RFB), the entity submitting the Bid will be referred to as Contractor and Sauk County will be referred to as County.

**1.3 Contact Information.** Technical questions can be sent electronically to Gus Johnson, Sauk County Conservation Technician at the below address.

Gus Johnson, Conservation Technician  
Sauk County LRE  
505 Broadway  
Baraboo, WI 53913  
(608) 355-4839 | [gus.johnson@saukcountywi.gov](mailto:gus.johnson@saukcountywi.gov)

**1.4 Bid Information.** Bids must be received, and date stamped as received no later than 12:00 PM, Central Time, January 26, 2023. Faxes and emails are not acceptable. Bids or amendments received by Sauk County after 12:00 PM Central Time, on January 26, 2023, regardless of postmark, may not be considered.

Bids must be addressed to Melissa Schlupp, LRE Conservation Manager, 505 Broadway, Baraboo, WI 53913. The words **"SAUK COUNTY STREAMBANK STABILIZATION"** must be clearly marked on the sealed envelope.

Public opening of Bids will be conducted at the Sauk County Land Resources and Environment Department at 505 Broadway, Baraboo, WI 53913 on January 26, 2023, at 12:30 PM Central Time.

The County reserves the right to reject any and all Bids not in compliance with all prescribed public RFB procedures and requirements and may reject for good cause any and all Bids upon finding that it is in the public interest to do so and to waive any and all informalities in the public interest. In the award of the contract, the County will accept the Bid or Bids which in their estimation will best serve the interests of the County and will reserve the right to award the contract to the Contractor whose Bid must be best for the public good.

A contract incorporating the terms of this RFB shall be entered into by the successful Contractor after award of the project and before the work may commence. The County encourages Bids from minority, women and small business enterprises.

### 1.5 Tentative Schedule of Events

RFB issued: December 27, 2022

Deadline to submit clarifying questions: January 19, 2023 at 4:00 PM Central Time

Bids due: January 26, 2023 at 12:00 PM Central Time

Bids opened: January 26, 2023 at 12:30 PM Central Time

Contract awarded: February 9, 2023

Anticipated start date: March 1, 2023

Deadline to complete project: June 30, 2023

## **Part 2: Scope of Work**

**2.1 Location.** The project will occur on a tributary to Narrows Creek located on the Sauk County Farm. Appendices A and B for exact worksite locations.

**2.2 Background.** The Sauk County Farm is a roughly 566-acre property located within the unincorporated Town of Reedsburg, approximately three miles south of the City of Reedsburg, in Sauk County, Wisconsin. A property master plan for the County Farm was approved in March 2022 to ensure the continued management of the site's agricultural and natural resources, the preservation of its historic features, and the transformation of the space into an educational amenity for the Sauk County community. Restoration of the stream corridor is identified in phase one of the master plan. The Department's website is a valuable resource for information about the County Farm and the property master plan. Please access the website at: <https://www.co.sauk.wi.us/landconservation/sauk-county-farm>.

**2.3 Project Scope.** Approximately 277 feet of streambank are planned for stabilization along with approximately 60 feet of an eroded waterway. Required construction specifications can be found in Appendices A and B.

Permits from the Wisconsin Department of Natural Resources and Department of Transportation are currently being applied for. Some timing restrictions may be required after obtaining these permits.

**2.4 Timeframe.** The project must be completed by June 30, 2023.

**2.5 Opportunity to Inspect.** To fully understand the project, a potential Contractor can request an opportunity to meet at the project site. Contact Gus Johnson at the address listed in Part 1.3 to schedule a date and time.

## **Part 3: General Bid Process**

**3.1 Modification or Withdrawal of Bid.** Any Bid may be modified or withdrawn at any time prior to the Closing, provided that a written request is received by the Sauk County Land Resources and Environment Department, prior to the Closing. The withdrawal of a Bid will not prejudice the right of a Contractor to submit a new Bid.

**3.2 Requests for Clarification and Requests for Change.** Contractors may submit questions regarding the specifications of the RFB. Questions must be received **in writing via email** on or before January 19, 2023, 4:00 PM Central Time to the contact information as listed in Part 1.3 of this RFB. Requests for changes must include the reason for the change and any proposed changes to the requirements. The purpose of this requirement is to allow Sauk County the opportunity to provide clarifications or adjust RFB terms or technical requirements prior to the opening of Bids. The County will consider all requested changes and, if appropriate, amend the RFB. The County will provide reasonable notice of its decision to all Contractors that have provided an address (email or U.S. postal service) to the Sauk County Land Resources and Environment Department for this procurement. No

oral or written instructions or information concerning this RFB from County managers, employees or agents to prospective Bids must bind County unless included in an Addendum to the RFB.

**3.3 Addenda.** If any part of this RFB is changed, an addendum will be provided to Contractors that have provided an address, email or U.S. Postal Service, to the Sauk County Land Resources and Environment Department for this procurement. It must be the Contractor's responsibility to regularly check the Bids and RFPs webpage at [www.co.sauk.wi.us/rfps](http://www.co.sauk.wi.us/rfps) for any published Addenda or response to clarifying questions.

**3.4 Submission of Bids.** Bids must be submitted in accordance with this RFB. If a Bid is submitted by a firm or partnership, the name and address of the firm or partnership must be shown, together with the names and addresses of the members. If the Bid is submitted by a corporation, it must be signed in the name of such corporation by an official who is authorized to bind the Contractor. No late Bids will be accepted. Bids submitted after the Closing will be considered late and will be returned.

**3.5 Evaluation Criteria.** The award of a contract resulting from this RFB shall be based on the most responsible, responsive Contractor in combination with the pricing, conforming to the specifications, terms and conditions. Sauk County reserves the right to award based upon evaluation of the Bids, which the County deems to be in its best interest. Sauk County reserves the right to reject any and all Bids or portions thereof.

If only one Bid is received in response to this RFB, the County reserves the right to negotiate the terms and conditions, including the price, as proposed in the sole Contractor's Bid. In addition, as part of such negotiations, Sauk County reserves the right to require supporting cost, pricing, and other data from the Contractor in order to determine the reasonableness and acceptability of the Bid.

All Contractors must complete, sign and return the bid sheets attached to this RFB with their Bid.

**3.6 Post-Selection Review and Protest of Award.** The County will name the apparent successful Contractor in a "Notice of Intent to Award" letter. Identification of the apparent successful Contractor is procedural only and creates no right of the named Contractor to award of the contract.

**3.7 Investigation of References.** The County reserves the right to investigate all references in addition to those supplied references and investigate past performance of any Contractor with respect to its successful performance of similar services, its compliance with specifications and contractual obligations, its completion or delivery of a project on schedule, its lawful payment of subcontractors and workers, and any other factor relevant to this RFB. The County may postpone the award or the execution of the contract after the announcement of the apparent successful Contractor to complete its investigation.

**3.8 Bid Preparation Costs and Other Costs.** Contractor costs of developing the Bid, cost of attendance at an interview (if requested by the County), or any other costs are entirely the responsibility of the Contractor and will not be reimbursed in any manner by the County. Contractor must not include any such expenses as part of the price proposed in response to this RFB. The Department must be held harmless and free from any and all liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this RFB.

**3.9 Clarification and Clarity.** The County reserves the right to seek clarification of each Bid, or to make an award without further discussion of Bids received. Therefore, it is important that each Bid be submitted initially in the most complete, clear, and favorable manner possible.

**3.10 Right to Reject Bids.** The County reserves the right to reject any and all Bids or to withdraw any item from the award, if such rejection or withdrawal would be in the public interest, as determined by the County.

**3.11 Cancellation.** The County reserves the right to cancel or postpone this RFB at any time or to award no contract.

**3.12 Bid Terms.** All Bids, including any price quotes, will be valid and firm through a period of ninety (90) calendar days following the Closing date. The County may require an extension of this firm offer period. Contractors will be required to agree to the longer time frame to be further considered in the procurement process.

**3.13 Oral Presentations.** At the County's sole option, Contractors may be required to give an oral presentation of their Bids. A process which would provide an opportunity for the Contractor to clarify or elaborate on the Bid but will in no material way change Contractor's original Bid. If the County request presentations, the Sauk County Land Resources and Environment Department will schedule the time and location for said presentation. Any costs of participating in such presentations will be borne solely by Contractor and will not be reimbursed by the County.

**3.14 Usage.** It is the intention of the County to utilize the services of the successful Contractor(s) to provide services as outlined in Part 2: Scope of Work.

**3.15 Review for Responsiveness.** Upon receipt of all Bids, the Sauk County Land Resources and Environment Department or designee will determine the responsiveness of all Bids. If a Bid is incomplete or non-responsive in significant part or in whole, it will be rejected and will not be submitted to the evaluation committee. The County reserves the right to determine if an error is solely clerical or is a minor informality which may be waived, and then to determine if an error is grounds for disqualifying a Bid. The Contractor's contact person identified on the Bid will be notified, identifying the reason(s) the Bid is non-responsive. One copy of the Bid will be archived, and all others discarded.

**3.16 RFB Incorporated into Contract.** This RFB will become part of the Contract between the County and the selected Contractor(s). The Contractor(s) will be bound to perform according to the terms of this RFB, their Bid(s), and the terms of a contract.

**3.17 Communication Blackout Period.** Except as called for in this RFB, Contractors may not communicate with members of the Sauk County Board or other County employees or representatives about the RFB during the procurement process until the apparent successful Contractor is selected, and all protests, if any, have been resolved. Communication in violation of this restriction may result in rejection of a Contractor. Refer to Section 3.2 Requests for Clarification and Requests for Change.

**3.18 Prohibition on Commissions and Subcontractors.** The County will contract directly with persons/entities capable of performing the requirements of this RFB. Contractors must be represented directly. Participation by brokers or commissioned agents will not be allowed during the Bid process.

**3.19 Ownership of Bids.** All Bids in response to this RFB are the sole property of the County, and subject to the provisions of public records.

**3.20 Clerical Errors in Awards.** The County reserves the right to correct inaccurate awards resulting from its clerical errors.

**3.21 Rejection of Qualified Bids.** Bids may be rejected in whole or in part if they attempt to limit or modify any of the terms, conditions, or specifications of the RFB.

**3.22 Collusion.** By responding, the Contractor states that the Bid is not made in connection with any competing Contractor submitting a separate response to the RFB and is in all aspects fair and without collusion or fraud. Contractor also certifies that no officer, agent, elected official, or employee of County has a pecuniary interest in this RFB.

**3.23 Commencement of Work.** The Contractor must commence no work until all insurance requirements have been met, a date has been agreed upon with the Contractor, County and landowner, and a Notice to Proceed has been issued by the County.

**3.24 Nondiscrimination.** The successful Contractor agrees that, in performing the work called for by this RFB and in securing and supplying materials, Contractor will not discriminate against any person based on race, color, religious creed, political ideas, sex, age, marital status, sexual orientation, gender identity, veteran status, physical or mental handicap, national origin or ancestry, or any other class protected by applicable law.

## **Part 4: Standard Terms and Conditions**

**4.1 Applicability.** These standard terms and conditions apply to Requests for Written Quotes (RFWQ), Bids (RFB), Proposals (RFP), contracts and all other applicable transactions whereby the County acquires goods or services, or both. The terms of this section shall be incorporated into the Contract for Services. By submitting a Bid, the Contractor is agreeing to be bound by these terms and conditions along with any other terms or conditions set forth elsewhere in this RFB. Special provisions for a contract may also apply.

**4.2 Specifications.** The listed specifications are the minimum acceptable. When specific manufacturer and model numbers are used, they are to establish a design, type of construction, quality, functional capability or performance level, or any combination thereof, desired. When alternates are Bid, they must be identified by manufacturer, stock number, and such other information necessary to establish equivalency. Sauk County must be the sole judge of equivalency. Contractors are cautioned to avoid proposing alternates to the specifications that may result in rejection of their Bid.

**4.3 Deviations and Exceptions.** Deviations and exceptions from terms, conditions, or specifications are not accepted and the Bid must be made as in strict compliance with all terms, conditions, and specifications and the contractor must be bound to the provisions.

**4.4 Quality.** Unless otherwise indicated in the request, all material must be first quality. Items which are used, pre-owned, demonstrators, obsolete, seconds, defective, or which have been discontinued are unacceptable without prior written approval by Sauk County.

**4.5 Quantities.** The quantities shown on this request are based on estimated needs. The County reserves the right to increase or decrease quantities to meet actual needs.

**4.6 Delivery.** Deliveries must be "Free on Board" to the destination listed on the purchase order or contract. Title and risk of loss of goods must not pass to the County of Sauk until receipt and acceptance takes place at the FOB point. Contractor will be responsible to deliver to the destination shown on the purchase order, with inside delivery required at no additional charge to Sauk County. County will reject shipments sent C.O.D. or freight collect.

**4.7 Pricing and Content.** Sauk County qualifies for governmental discounts; unit prices must reflect these discounts.

Unit prices shown on the Bid or contract must be the price per unit of sale as stated on the request or contract. For any given item, the quantity multiplied by the unit price must establish the extended price; the unit price must govern in the Bid evaluation, permits, inspections, and all other contract administration.

Prices established in continuing agreements and term contracts may be lowered due to general market conditions, but prices must not be subject to increase for term specified in the award. Contractor must submit proposed increases to the contracting department thirty (30) calendar days before the proposed effective date of the price increase. Proposed increases must be limited to fully documented cost increases to the contractor that are demonstrated to be industry wide. Price

increases may not be granted unless they are expressed in Bid documents and contracts or agreements.

Submission of a Bid constitutes Contractor's certification that no financial or personal relationship exists between the Contractor and any County official or employee except as specially set forth in writing attached to and made part of the Bid. The successful Contractor must disclose any such relationship which develops during the term of the contract. See Sauk County Code of Ordinances Chapter 36, Code of Ethics.

**4.8 Acceptance-Rejection.** Sauk County reserves the right to accept or reject any or all Bids, to waive any technicality in any Bid submitted, and to accept any part of a Bid as deemed to be in the best interests of Sauk County. Submission of a Bid constitutes the making of an offer to contract and gives the County an option valid for 90 days after the date of submission to the County. The County reserves the right to perform background and reference checks on contractors providing goods and/or services to the County.

Bids MUST be date and time stamped by Sauk County on or before the date and time that the Bid is due. Bids dated and time stamped after the deadline will be rejected. Actual receipt by the County is necessary. THERE WILL BE NO EXCEPTIONS TO THIS POLICY.

**4.9 Ordering/Acceptance.** Written notice of award to a contractor in the form of a purchase order or other document, mailed or delivered to the address shown on the Bid will be considered sufficient notice of acceptance of Bid. A formal contract signed by both parties must be used.

**4.10 Payment Terms and Invoicing.** Unless otherwise agreed, Sauk County will pay properly submitted contractor invoices within forty-five (45) days of receipt of goods and services. Payment will not be made until goods and/or services are delivered, installed (if required), and accepted as specified. Invoices presented for payment must be submitted in accordance with the contract. A good-faith dispute creates an exception to prompt payment.

**4.11 No Waiver of Default.** In no event must the making of any payment or acceptance of any service or product constitute or be construed as a waiver by the County of any breach of the covenants of a contract, or a waiver of any default of the successful contractor. The making of any such payment or acceptance of any such service or product by the County while any such default or breach must exist must in no way impair or prejudice the right of the County with respect to recovery of damages or other remedy as a result of such breach or default.

**4.12 Taxes.** Sauk County and its departments are exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin excise taxes as described below. Sauk County, including all its departments, is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. Sauk County may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Contractors performing construction activities are required to pay state use tax on the cost of materials.

**4.13 Entire Agreement.** These Standard Terms and Conditions must apply to any contract or order awarded as a result of this request. Special requirements of a resulting contract may also apply. The

written contract and/or order with referenced parts and attachments must constitute the entire agreement, and no other terms and conditions in any document, acceptance, or acknowledgment must be effective or binding unless expressly agreed to in writing by the County.

**4.14 Guaranteed Delivery.** Failure of the contractor to adhere to delivery schedules as specified or to promptly replace rejected materials must render the contractor liable for all costs in excess of the contract price when alternate procurement is necessary. Excess costs must include administrative costs to retain such replacement.

**4.15 Applicable Law.** This contract must be governed by the laws of the State of Wisconsin, and venue for any legal action between the parties must be in the Sauk County Circuit Court. The contractor must always comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct. Sauk County also reserves the right to cancel this contract if the County learns the contractor is debarred from a local governmental entity, the State of Wisconsin or federally debarred contractor or a contractor that is presently identified on the list of parties excluded from local or federal procurement and non-procurement contracts.

**4.16 Antitrust Compliance.** Those parties contracting with the County, or submitting Bids under this Request for Bid, certify that with respect to all aspects of this Bid and any subsequent agreement they have complied and will comply with all Federal and State Anti-Trust and Restraint of Trade laws and regulations. FURTHERMORE, said party agrees to defend and hold harmless the County of Sauk against any claims to the contrary.

**4.17 Assignment.** No right or duty in whole or in part of the contractor under a contract may be assigned or delegated without the prior written consent of Sauk County.

**4.18 Subcontracting.** If sub-contractors are to be used, this must be clearly explained in the Bid. Awarded contractor(s) will not be permitted to sublet, sell, transfer, assign or otherwise dispose of the contract or any portion therein, or its right, title, or interest in the contract to any person, contractor(s) or other organization without prior written consent of the County. No subcontract must, under any circumstances, relieve the contractor of liability and obligation under this contract. The awarded contractor must be fully responsible for the acts, errors, and omission of subcontractor(s).

**4.19 Nondiscrimination/Affirmative Action.** The contractor agrees, in accordance with Sec. 111.321, Wis. Stats. not to discriminate against any person, whether an applicant or recipient of services, an employee, or applicant for employment, on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record or conviction record, military participation or membership in the national guard, state defense force or any other reserve component of the military forces of the United States, or political beliefs. The contractor must provide a harassment-free work environment. These provisions must include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, training, including apprenticeships, rates of pay or other forms of compensation. Failure to comply with these Terms and Conditions may result in the contractor being debarred, termination of the contract and/or withholding of payment.

**4.20 Safety Requirements.** All employer practices, employee practices, materials, equipment, and supplies provided to Sauk County must comply fully with all safety requirements as set forth by the Wisconsin Administrative Code and all applicable OSHA Standards. The contractor must comply with the County’s worksite rules. Contractor must comply, train, and accept exclusive responsibility for its employees while on County property.

**4.21 Safety Data Sheets.** If any item(s) on an order(s) resulting from this award(s) is a hazardous chemical, as defined under 29CFR 1910.1200, the contractor must provide one (1) copy of Safety Data Sheets for each item with the shipped container(s) and one (1) copy with the invoice(s).

**4.22 Warranty.** Unless specifically expressed otherwise in writing, goods and equipment purchased as a result of this request or contract must be warranted against defects by the contractor for one (1) year from date of receipt. An equipment manufacturer’s standard warranty must apply as a minimum and must be honored by the contractor.

**4.23 Indemnification and Insurance.** The contractor must bear the full and complete responsibility for all risk of damage of premises, equipment, procedure, or money resulting from any cause whatsoever and must not penalize the County for any losses incurred.

Contractor must indemnify, hold harmless, and defend Sauk County, its officers, boards, commissions, agents and employees from any and all liability, claims, demands, losses (including, but not limited to, property damage, bodily injury and loss of life), costs, expenses or damages which Sauk County, its officers, employees, agents, boards, or commissions may sustain, incur or be required to pay by reason of contractor furnishing goods or services required to be provided pursuant to this contract where such liability is founded upon or grows out of acts or omissions of any agents or employees of the contractor. Nothing contained herein must require contractor to defend or indemnify the County for losses, damages, injuries, or death arising out of the negligence of the County, its agents or employees. The obligations of contractor under this paragraph must survive the expiration or termination of the contract or agreement.

To secure contractor’s obligation to hold harmless and indemnify the County, contractor must procure and maintain the following insurance:

Worker’s Compensation Insurance as prescribed by the laws of the State of Wisconsin.

**General Liability**

General Aggregate:	\$1,000,000.00
Products-Comp/Op Agg:	\$1,000,000.00
Personal & Adv. Injury:	\$1,000,000.00
Each Occurrence:	\$1,000,000.00

**Automobile:** (Combined single limit) \$1,000,000.00

**Excess Liability:** (Umbrella) \$1,000,000.00  
(Each occurrence and aggregate)

The contractor must add Sauk County, its officers, agents, and employees as must be named as an additional named insured.

Contractor must provide policy, countersigned by an insurer licensed to do business in the State of Wisconsin, covering the period of the agreement/contract indicating that Sauk County is an additional named insured on public liability, professional liability and property damage insurance required above.

Contractor must provide insurance certificates indicating required coverage, countersigned by an insurer licensed to do business in Wisconsin, covering the period of the agreement/contract. The insurance

certificate is required to be presented prior to the issuance of the purchase order or before commencement of the contract.

**4.24 Termination for Default.** Failure of the awardee to perform any of the provisions of the contract must constitute a breach of contract, in which case, the County may require corrective action within ten calendar days (10) from date of receipt of written notice citing the exact nature of such breach. Failure to take corrective action or failure to provide a written reply within the prescribed 10 days must constitute a default of the contract. If defaulted, the contractor must be liable for liquidated damages, if any. Sauk County reserves the right to enforce the performance of this contract in any manner prescribed by law in the event of breach of default of this contract and may contract with another party with or without solicitation of Bids or further negotiations. As a minimum, contractor must be required to pay any difference in the cost of securing the products or services covered by this contract or compensate for any loss to County should it become necessary to contract with another source because of this default, plus reasonable administrative costs, reasonable attorney's fees, court cost and expenses.

**4.25 Termination for Convenience.** Upon seven (7) calendar days written notice delivered by first class postpaid United States Mail, to the address indicated in the Bid, to the successful Contractor, Sauk County may without cause and without prejudice to any other right to remedy, terminate the agreement for Sauk County's convenience whenever Sauk County determines that such termination is in the best interest of the County. Where the agreement is terminated for convenience of Sauk County the notice of termination must state that the contract is being terminated to the convenience of Sauk County under the termination clause and the extent of the termination. Upon receipt of such notice, the contractor must promptly discontinue all work at the time and to the extent indicated on the notice of termination. The contractor must also terminate all outstanding sub-contractors and purchase orders to the extent that they relate to the terminated portion of the contract and refrain from placing further orders and subcontracts except, as they may be necessary and complete any continued portions of the work.

**4.26 Non-Appropriation of Funds.** Sauk County intends to make all payments required to be made under any Agreement resulting from this RFB/RFP. However, in the event Sauk County's legislative body, the Sauk County Board of Supervisors, does not appropriate funds for the continuation of the Agreement for any fiscal year after the first fiscal year, said agreement will be terminated without damages or cost for such termination.

**4.27 Recordkeeping and Record Retention – Public Works Contracts.** The contractor on a public works contract must establish and maintain adequate payroll records for all labor utilized as well as records for all expenditures incurred under the contract. All records must be kept in accordance with

generally accepted accounting procedures. All procedures must be kept in accordance with generally accepted accounting procedures. Sauk County must have the right to audit, review, examine, copy, and transcribe any such records or documents relating to any contract resulting from this Bid held by the contractor. The contractor will retain all documents applicable to a contract for a period of not less than five (5) years after final payment is made.

**4.28 Independent Contractor Status.** Contractor holds itself out as an independent contractor. Contractor: is a separate and independent enterprise from the County; has a full opportunity to find other business; has made its own investment in its business, trade or profession; possesses the equipment, instrumentalities, materials, and office necessary to perform the work; controls the means of performing the work; and risks profit and loss as a result of the work. Contractor is acting as an independent contractor in providing and performing the services contemplated by this contract. It is not intended that anything in, or done pursuant to, this contract create the relationship of employer and employee, principal and agent, partners, or joint venture between County and Contractor. This contract does not create an employee/employer relationship between the parties. It is the parties' intention that the Contractor is an independent contractor and not the County's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, and the provisions of the Internal Revenue Code, the state revenue and taxation law, the state workers' compensation law and the state unemployment insurance law. It is not the intention of the parties that this contract create any joint employment relationship between the Contractor and the County, and the county shall not be liable for any obligation incurred by the Contractor, including but not limited to unpaid minimum wages, overtime premiums, unemployment insurance benefits, worker's compensation benefits, health insurance, health benefits, disability benefits, or retirement benefits. Contractor is not entitled to receive any benefits from County or to participate in any County benefit plan.

**4.29 Public Records, General.** It is the intention of the County to maintain an open and public process in the solicitation, submission, review, and approval of procurement activities. Bid openings are public unless otherwise specified. If awarded this contract, Contractor must assist Sauk County in complying with any public records request made under Wisconsin Law or Federal Freedom of Information Act.

The Parties acknowledge that Sauk County is a municipal corporation legally bound to comply with the Wisconsin Public Records Law and Open Meetings Law (see sections 19.32-19.39 & 19.81-19.98, Wis. Statutes) and that, unless otherwise clearly allowed by law to be an exception to the Public Record Law and confidential, all aspects of this Agreement are subject to open disclosure and are a matter of public record. It is further agreed to that neither party will take any action to obstruct the operation of these laws. To comply with any request under said Public Record Law, the provider/contractor herein must produce copies of all materials gathered or produced or modified pursuant to this contract to Sauk County, in their original (i.e., electronic or digital, etc.) format at actual cost of reproduction, without profit. According to Wisconsin case law, even if records are created or maintained by, or in the custody of, the provider as an independent contractor, they, along with the raw data used to create the record, are nevertheless public records that must be made available to the public within a reasonable time and without delay upon request by any person, and in

the format in which they were created. Provider/contractor agrees to hold Sauk County, its agents, officials and employees harmless and to indemnify them and Sauk County for all costs, fees, including all reasonable attorney fees and expense of all kinds, and any judgments, orders, injunctions, writs of mandamus, and damages or expense of whatever kind for which Sauk County or its agents, officials or employees may expend or be held liable due to the Provider/contractor's failure to comply with the Wisconsin Public Records and Open Meetings laws, or with this agreement.

Any Public Record Law request received directly by a contractor related to this contract with Sauk County must immediately be reported to the County Administrator for the County.

**4.30 Public Records, Trade Secrets/Proprietary Information.** Any restrictions on the use of data contained within a request must be clearly stated information identified on a document created by the Contractor labeled "Trade Secret, Confidential and Proprietary Information Form" included with the Bid. Proprietary information submitted in response to a request will be handled in accordance with applicable the Wisconsin Public Records Law. If the contractor asserts in the Bid that any of its books and records of its business practices and other matters collectively constitute a trade secret as that term is defined in s. 134.90(1)(c), Wis. Stats., County will not release such records to the public without first notifying the contractor of the request for the records and affording the contractor an opportunity to challenge in a court of competent jurisdiction the requester's right to access such records. The entire burden of maintaining and defending the trade secret designation must be upon the contractor. The contractor acknowledges and agrees that if the contractor fails to initiate legal action to defend the trade secret designation within 5 business days of written notification of Public Records Request, or be unsuccessful in its defense of that designation, County shall be required to and will release the records.

In the event that Sauk County becomes involved in an action under the Wisconsin Open Records law, or other applicable law or laws relating in any way to of any trade secret or any information designated as Proprietary information on the "Trade Secret, Confidential and Proprietary Information Form" Contractor shall, at its sole cost and expense, fully cooperate with Sauk County in the defense of said action, including but not limited to providing access to Sauk County to materials needed, or potentially needed for discovery and defense of the action. In the event that Sauk County becomes involved in an action under the Wisconsin Open Records law, or other applicable law or laws relating in any way to a trade secret listed on "Trade Secret, Confidential and Proprietary Information Form", and such item is determined by a court of competent jurisdiction to be releasable to any person under any such law, then, Contractor shall pay all of the costs of litigation of the Sauk County, including but not limited to actual attorney's fees, and also all fines or penalties levied against Sauk County or any of its supervisors, employees, or agents for failure to release.

**4.31 Public Records, Confidential Information (Not subject to Section 4.30 above).** Information supplied by Contractor to Sauk County is subject to Subchapter II, Chapter 19 of the Wisconsin Statutes (the Wisconsin Open Records law). For the purposes of this contract the only information supplied by Contractor to Sauk County that may be considered confidential information not subject to Section 4.30 above shall include only the information identified on a document created by the Contractor labeled "Trade Secret, Confidential and Proprietary Information Form" included with the Bid. It is expressly agreed by the parties that this contract itself is not a trade secret, and, therefore,

need not be held in confidence by Sauk County. The parties agree that, Contractor would not enter this contract, and would not release to Sauk County the items listed on the "Trade Secret, Confidential and Proprietary Information Form" as confidential/proprietary without this restriction.

Notwithstanding the foregoing, confidential information shall not include information that the receiving party can document was independently developed by them without use of the other party's confidential information, known prior to disclosure or acquired from a third party free of disclosure obligations. The confidentiality restriction is subject and subordinate to the Wisconsin Open Records Law and other applicable laws relating to public records. Contractor understands and agrees that, because Sauk County is party to this contract, provisions of the Wisconsin Open Records Law and other laws relating to public records may apply to records kept by Contractor. Contractor agrees to fully comply with such laws, and to cooperate with Sauk County in its compliance with such laws. Cooperation shall include, but not be limited to, the provision of records, or copies of records to County or others upon the request of the county. Compliance and cooperation of Contractor shall be at its sole cost and expense. In the event that Sauk County becomes involved in an action under the Wisconsin Open Records law, or other applicable law or laws relating in any way to the confidentiality of any item listed on "Trade Secret, Confidential and Proprietary Information Form" Contractor shall, at its sole cost and expense, fully cooperate with Sauk County in the defense of said action, including but not limited to providing access to Sauk County to materials needed, or potentially needed for discovery and defense of the action. In the event that Sauk County becomes involved in an action under the Wisconsin Open Records law, or other applicable law or laws relating in any way to the confidentiality of any item listed on "Trade Secret, Confidential and Proprietary Information Form", and such item is determined by a court of competent jurisdiction to be releasable to any person under any such law, then, Contractor shall pay all of the costs of litigation of the Sauk County, including but not limited to actual attorney's fees, and also all fines or penalties levied against Sauk County or any of its supervisors, employees or agents for failure to release. Contractor asserts, and County understands that, without this pledge of confidentiality, Contractor would not provide the confidential information to County and would not enter into this contract with County.

**4.32 Patent, Copyright and Trademark Infringement.** The contractor guarantees goods sold to the County were manufactured or produced in accordance with applicable federal labor laws, and that the sale or use of the articles described herein do not infringe any patent, copyright, software or trademark. The contractor covenants that it will, at its own expense, defend and hold harmless the County from every suit which must be brought against Sauk County (provided that such contractor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent, copyright, software or trademark by reason of the sale or use of such articles, and agrees that it will pay all costs, damages, and profits, reasonable expenses, reasonable attorney fees in defense of such actions, recoverable in any such suit.

**4.33 Licensure, Certification, and Statutory Requirements.** Contractor is responsible to comply with all statutory rules and regulations. All federal, state, and local laws, rules, and regulations governing the goods or service described in the specification will apply and will be deemed incorporated into the contract. These requirements must be at contractor's expense. When required any and all permits and inspections must be included in the Bid price and must not be an additional cost to the County.

**4.34 Promotional Releases.** Contractor agrees not to refer to award of this contract in commercial advertising in such a manner as to state or imply that the services provided are endorsed or preferred by Sauk County.

**4.35 Force Majeure.** Neither party must be in default under this Agreement if nonperformance of any condition is due to reasons beyond the reasonable control of the party, and nonperformance is not due to a party's negligence. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the United States government in either its sovereign or contractual capacity, fires, floods, pandemics, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather.