

## LINK 2 - RFP TERMS AND CONDITIONS

### A. **CONFLICTING TERMS**

To the extent other terms and conditions attached hereto conflict with the terms and conditions stated herein, the resulting contract agreement shall control.

### B. **CONTRACT DOCUMENTS**

The Contract Documents comprise the Contract and consist of all documents contained in the Ebid and documents submitted by the proposer during the RFP process.

### C. **TERMINATION**

This Contract may be terminated by the following:

1. Termination for Convenience. Either party may terminate this Contract upon thirty (30) days written notice to the other party for any reason without penalty.
2. Termination for Cause. The Owners may terminate the contract for cause if the Contractor:
  - a. Refuses or fails to supply the proper labor, materials and equipment necessary to provide services and/or commodities.
  - b. Disregards Federal, State or local laws, ordinances, regulations, resolutions or orders.
  - c. Otherwise commits a substantial breach or default of any provision of the Contract Document. In the event of a substantial breach or default the Owners will provide the firm written notice of said breach or default and allow the firm ten (10) days from the date of the written notice to cure such breach or default. If said breach or default is not cured within ten (10) days from the date of notice, then the contract shall terminate.

### D. **SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS**

In the event funding is not available to continue with services as written, the Owner(s) reserve the right to cancel the contract for convenience with no financial obligation to the firm, Subcontractors or other stakeholders besides the amount due for services rendered prior to notice of cancellation.

The Owner(s) may terminate the resulting contract in whole or in part when funding is not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, or otherwise not forthcoming through no fault of the Owner(s). In the event of unavailability of funds to pay any amounts due under the resulting contract, the Owner(s) shall immediately notify the firm and the resulting contract shall terminate without penalty or expense to the Owner(s). Upon termination, the Owner(s) shall pay firm for any approved and documented services completed up to the date of termination, but not to exceed the maximum amount allowed by the resulting contract.

### E. **IMPLIED REQUIREMENTS**

All products and services not specifically mentioned in this contract, but which are necessary to provide the functional capabilities described by the RFP documents, shall be included.

### F. **CONTRACT MODIFICATION**

The resulting contract shall be modified only by the written agreement and approval of the parties through a contract amendment. No alteration variation of the terms and conditions of the contract shall be valid unless made in writing and signed by the parties through a contract amendment. Every amendment shall specify the date on which its provisions shall be effective.

**G. ASSIGNMENT, SALE OR MERGER**

The contract established from this RFP process shall not be transferred to/or assigned without prior written consent confirming approval by the Owner and must be handled through the Owner's document approval process.

The Consultant retains the right to enter into a sale, merger, acquisition, internal reorganization, or similar transaction involving Consultant's business. Consultant agrees to cooperate with the Owner in executing amendments to the contract to all for the transaction. If a third party or entity is involved in the transaction, the Contractor will remain responsible for performance of the contract until such time as the person or entity involved in the transaction agrees in writing to be contractually bound by this contract and perform the obligations of the contract.

**H. LIQUIDATED DAMAGES**

Liquidated Damages will be outlined in the RFP Document if applicable.

**I. LAWS**

The Laws of the State of Nebraska shall govern the rights, obligations, and remedies of the Parties under this proposal and any agreement reached as a result of this process.

**J. SEVERABILITY**

If any provision of the resulting contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected and each provision of the resulting contract shall be enforced to the fullest extent permitted by law.

**K. LIVING WAGE**

The firms agree to pay all employees employed in the performance of this contract, a base wage of not less than the City Living Wage per Section 2.81 of the Lincoln Municipal Code. This wage is subject to change every July. This provision is only applicable to City of Lincoln projects.

**L. INDEPENDENT CONTRACTOR**

It is the express intent of the parties that the contract awarded shall not create an employer-employee relationship. Employees of the Contractor shall not be deemed to be employees of the Owners and employees of the Owners shall not be deemed to be employees of the firm. The firm and the Owners shall be responsible to their respective employees for all salary and benefits. Neither the firm's employees nor the Owners' employees shall be entitled to any salary, wages, or benefits from the other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. Firm shall also be responsible for maintaining workers' compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to its employees' compensation.

**M. STAFF QUALIFICATIONS**

The firm shall warrant that all persons assigned by it to the performance of this contract shall be the employees of the firm (or specified Subcontractor) and shall be fully qualified to perform the work required. The firm shall include a similar provision in any contract with any Subcontractor selected to perform work under this contract.

Failure of the firm to provide qualified staffing at the level required by the awarded contract may result in termination of the contract or damages.

**N. OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES**

All data, forms, procedures, software, manuals, system descriptions and work flows developed or accumulated by the firm under the contract resulting from this RFP shall be owned by the using

agency. The firm may not release any materials without the written approval of the using department.

**O. CITY AUDIT ADVISORY BOARD**

All parties of any City agreement shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to the contract/purchase order, as allowed by law. This provision is only applicable to City of Lincoln Projects.

**P. PROHIBITION AGAINST ADVANCE PAYMENT**

Owners will not pay for services or equipment in advance of receipt and approval of such product or service throughout the term of the contract unless specifically listed in the final contract document.

**Q. TERMS OF PAYMENT**

The payment schedule for the project is tied to specific dates and deliverables as outlined in the awarded contract. Invoices may be submitted by the Contractor on specific dates based on the completion and acceptance of related deliverables. No invoice will be approved unless the associated deliverables have been approved by the Owner's designee. A percentage of the total contract cost may then be invoiced based on the schedule.

**R. TAXES AND TAX-EXEMPT CERTIFICATE**

The Owner is generally exempt from any taxes imposed by the State or Federal Government. A Tax Exemption Certificate will be provided as applicable.

The exception to this statement is the Water Division of the City of Lincoln. All service and supplies are taxable per Reg. 066.14A and no exemption certificate will be issued.

**S. INVOICES**

Consultant's invoice(s) for payment of services and products must be sent to the appropriate department according to contract terms with all applicable information included to ensure proper billing and final payment. Invoices shall include the following:

1. Consultant's information:
  - a. Company Name;
  - b. Address; and
  - c. Phone number for billing inquiries.
2. Owner's information:
  - a. Name of requesting department;
  - b. Contact name;
  - c. Address
  - d. Phone number
  - e. Specific list of duties performed and rates charged.

Failure to provide invoices in this manner may result in late payment to the firm with no repercussion to the Owners.

**T. PAYMENT SCHEDULE**

The payment schedule for the project is tied to specific dates and deliverables as outlined in the awarded contract. Invoices may be submitted by the firm on specific dates based on the completion and acceptance of related deliverables. No invoice will be approved unless the associated deliverables have been approved by the Owners' designee. A percentage of the total contract cost may then be invoiced based on the schedule. Other payment schedules may be incorporated in the RFP Document or through negotiations.