

TERMS & CONDITIONS

I. GENERAL

The following terms and conditions apply to all supplies, services, and construction furnished under this contract:

A. Definitions

- a. "City" means the municipal government for the City of Racine, Wisconsin, the buyer.
- b. "Contractor" means the person or business, however formed, or other entity furnishing supplies, services, or construction to the City of Racine, Wisconsin.
- c. "Supplies" means all property, including, but not limited to, goods, commodities, equipment, parts, materials, printing, and leases on real and personal property.
- d. "Services" means the furnishing of labor, time or effort by a Contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term includes "professional services" but it does not include employment agreements or collective bargaining agreements.
- e. "Construction" means the process of building, altering, repairing, improving or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

B. Taxes The City of Racine is exempt from all State sales taxes and Federal excise taxes. The supply or supplies described in this purchase order or the attachments to it are purchased from the named seller ("Ordered From") for the exclusive use of the City of Racine, Wisconsin. It is understood that the exemption from tax in the case of sales of supplies is limited to the sale of supplies purchased for the exclusive use of the City, and it is agreed that if supplies purchased tax free are used otherwise or are sold to employees or others, such fact will be reported to the manufacturer of the supply or supplies. It is also understood that the fraudulent use of tax exemptions will subject all guilty parties to a fine of not more than \$10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

C. Assignments. This contract shall not be assigned to another party without the express written consent of the City.

D. Termination

- a. The City reserves the right to terminate its obligations under this purchase order or any part hereof if any delivery is not made or performance not completed within the time specified or if the material delivered is not as specified. Such right shall be in addition to City's other legal rights, whether set forth in this purchase order or not. Seller will deliver to City any of the materials for which City shall make written request at or after termination and City will pay Seller fair value for any of such material so requested and delivered.
- b. The City reserves the right to cancel in the event the Bidder defaults in any of the covenant, agreements, commitments or conditions and any such default shall continue unremedied for a period of 10 days after written notice to the bidder, the City, may at its option and in addition to all other rights and remedies which it may have, terminate the agreement and all the rights of the bidder under the agreement.
- c. Failure to maintain the required certificates of insurance, permits, licenses and bonds will be cause for contract termination. If the Bidder fails to maintain and keep in force the insurance, if required, the City shall have the right to cancel and terminate the contract without notice.

E. Entire Agreement. This contract contains the entire agreement of the parties unless otherwise stated by the City on this Purchase Order. This contract may not be modified or terminated orally, and no claimed modification, termination or waiver shall be binding on the City unless in writing signed by the City's contracting officer. No modification or waiver shall be deemed affected by Seller's acknowledgment or confirmation containing other or different terms. All titles to clauses contained in this order are for identification only and shall not be construed as being a substantive part of the agreement.

II. SUPPLIES

The following terms and conditions apply when **supplies** are furnished under this contract:

A. Delivery and Acceptance. The City reserves the right to refuse any supplies and to cancel all or any part of the supplies not conforming to applicable specifications, drawings, samples or descriptions. Acceptance of any part of the order shall not bind the City to accept future shipments, nor deprive it of the right to return supplies already accepted.

B. Risk of Loss. Delivery shall not be deemed to be complete until all supplies have been actually received and accepted by the City.

C. Defects. Contractor acknowledges that the supplies furnished under this contract are satisfactory for the purpose intended by the City, if disclosed, and that any defect in such supplies may occasion special damage to the City.

D. Conforming Supplies. Acceptance of all or any of the supplies shall not be deemed to be a waiver of the City's right either to cancel or to return, all or any portion of the supplies because of failure to conform to the specification or description, or by reason of defects, latent or patent, or other breach of warranty, or to make any claim for damages not caused by the City. Such rights shall be in addition to any other remedies provided by law.

E. Patent Infringement. Contractor agrees to indemnify and hold the City harmless pursuant to Section IV of this Agreement from and against any actual or claimed trademark, patent or copyright infringement, or any litigation based thereon, with respect to any part of the supplies furnished under this contract, and such obligation shall survive acceptance of the supplies and payment therefor by the City.

F. Warranty. Contractor expressly warrants that the supplies furnished under this contract are of merchantable quality and satisfactory and safe for consumer use. Delivery of the supplies shall constitute an agreement by Contractor to indemnify and hold the City harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by City by reason of the failure of the supplies to conform to such warranties. Such indemnity shall be in addition to any other remedies provided by law and shall include consequential damages as provided under the Uniform Commercial Code.

- G. **Labor Disputes.** Whenever any actual or potential labor dispute delays or threatens to delay the timely performance of this order, Contractor shall immediately give notice thereof to City.

III. SERVICES/CONSTRUCTION

The following terms and conditions apply to all **services** and/or **construction** furnished under this contract:

- A. **Worker's Compensation and Employers Liability Insurance.** The Contractor shall provide statutory coverage, under the applicable Wisconsin laws relating to worker's compensation insurance, for all of their employees in accordance with the law in the State of Wisconsin. The Contractor shall provide employer's liability insurance with limits of no less than \$100,000 for each employee.
- B. **Services Contract Insurance Requirements.** The Contractor shall maintain limits as outlined at www.cityofracine.org/terms.
- C. **Construction Contract Insurance Requirements.** The Contractor shall maintain limits as outlined at www.cityofracine.org/terms.
- D. **Additional Required Insurance Provisions** – The Contractor shall maintain limits as outlined at www.cityofracine.org/terms.
- E. **Evidences of Insurance** - Prior to execution of the agreement, the Contractor shall file with the City of Racine a certificate of insurance (Acord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this agreement. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions 1-8.
- Sub-Contractors - In the event that the Contractor employs other contractors (subcontractors) as part of the work covered by this agreement, it shall be the Contractor's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above.
- F. **The Contractor warrants** that all materials used are of first quality and that the completed work will be free from defects in design and workmanship. It is understood that the completed work will be subject to the City's inspection and written acceptance before final payment shall be due, and that neither payment to the Contractor nor any provision of this contract relieves the Contractor of the responsibility under this warranty and this warranty shall continue in force for one year after acceptance and final payment for the work.
- G. **The Contractor shall provide** all labor, materials, supplies, tools and equipment necessary to perform the work and complete the project specified in this contract.
- H. **All work performed under this contract** shall comply with all applicable Federal, State and local laws, rules and regulations.
- I. **The City reserves the right** to make changes in the work or delay the performance thereof. If such changes or delays required by the City affect the Contractor's cost, the contract price will be increased or decreased as appropriate, and the contract completion date will be altered as agreed upon.
- J. **The City may terminate** all or any part of this contract by giving written notice to the Contractor. If the contract is terminated by the City and the Contractor is not in default hereunder, the City shall pay the Contractor for satisfactory work completed.
- K. **All specifications, drawings, blueprints, photocopies, and all other information furnished** to the Contractor in connection with this contract are and remain the property of the City. Where the product of the contract is a document, printing plates, artwork, designs, blueprints, photographic negatives or plates or anything that is reproducible, such material or product including the original thereof, shall be and remain the property of the City, whether or not it is stored on the Contractor's premises. The Contractor shall treat all such material in a confidential manner and will not use or reproduce such material except in connection with performance of this contract.
- L. **Responsibility for Work** - Until the completion and final acceptance by the City of Racine of all the work under and implied by this agreement, the work shall be under the Contractor's responsibility care and control. The Contractor shall rebuild, repair, restore and make good all injuries, damages, re-erections, and repairs occasioned or rendered necessary by causes of any nature whatsoever.
- M. **Delays or default** by the Contractor or the City caused by factors (such as strikes, acts of nature, civil disturbances, riots, etc.) beyond the control of the party delaying or in default shall be excused.
- N. **Waiver by the City** of any breach of any provision hereof by the Contractor shall not constitute a waiver of any other breach of such provision or of any other provision hereof.
- L. **Compliance with City of Racine Prevailing Wage Ordinance.** Contractor shall compensate its employees at the prevailing wage rate in accordance with §66.0903, Wis. Stats., Chapter DWD 290, Wis. Adm. Code, and §3.18.041 of the City of Racine Code. The Contractor shall maintain weekly payroll records of its employees, subcontractors and agents. The Contractor shall submit these payroll records to the City upon completion of the project along with an affidavit stating that the prevailing wage requirements were met on the project, that the Contractor received evidence of compliance from the subcontractors and agents used on the project, and the names and addresses of those subcontractors and agents. The City may withhold any final payment or retainage until Contractor provides the City with the required payroll records and affidavit of compliance. Failure to comply with this paragraph and the provisions of the laws, regulations and ordinances it references shall constitute default of this contract.

IV. INDEMNITY AND HOLD HARMLESS – LIABILITY AND DAMAGE

Outlined at www.cityofracine.org/terms