

GENERAL CONDITIONS

1.1 REQUIREMENTS

The following documents, as applicable, shall be held to be essential portions of the complete contract:

- a. Invitation to Bid.
- b. Specifications
- c. General Conditions
- d. Successful vendor's bid
- e. Certificate of Insurance
- f. Contract – Independent Contractor Short Form Agreement
- g. Any addenda
- h. Change Orders

1.2 BID GUARANTEE

- A. Failure to furnish a Bid Guarantee in the proper form and in an amount equal to at least five percent (5%) of the specified base bid by the time set for the opening of Bids may be cause for rejection of the Bid.
- B. The Bidder shall furnish a Bid Guarantee in the form of a firm commitment such as a bid bond, postal money order, certified check or cashier's check payable to KING COUNTY LIBRARY SYSTEM. The Owner will return Bid Guarantees, other than bid bonds:
 1. To all but the lowest Bidders as soon as practicable after the opening of Bids, and
 2. To the successful Bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the Bid as accepted.
 3. To the second lowest Bidder, when a Bid has been accepted or sixty (60) days have elapsed after the date Bids were opened.

1.3 LAWS AND REGULATION

The Bidr is assumed to be familiar with all federal, state, county, and local laws and regulations which in any manner affect those engaged or employed in the Work, or the material or equipment used in the proposed construction, or which in any way affects the conduct of the Work, and no pleas of misunderstanding will be considered on account of ignorance thereof. If the Bidr shall discover any provision in the Quoting Documents that is contrary to or inconsistent with any law or regulation, the Bidr shall forthwith report it to the Engineer.

1.4 INDEMNIFICATION

In addition to the liability imposed by law upon Contractor on account of damages to property or personal injury, including death, arising from operations under the Contract, Contractor hereby agrees to defend, indemnify and save harmless Owner and its employees against any and all loss, damage, liability, claims, demands or costs including reasonable attorneys' fees and court costs, at trial or on appeal, resulting from 1) Contractor's negligence or breach of this Contract, and from 2) injury or harm to persons or property (including, without limitation, Contractor's employees or property) arising out of or in any way connected with Contractor's performance hereof, excepting only such injury or harm as may have been caused solely by the fault or negligence of Owner or its employees. Contractor's activities shall be deemed to include those of subcontractors. Without limiting the generality of the foregoing, Contractor's indemnity includes claims caused by the use, misuse or failure of any vehicle, rigging, blocking, scaffolding or other things used by Contractor, even though such vehicle, rigging, scaffolding or other things be rented, loaned or furnished to Contractor by Owner or a third party. Furthermore, this obligation specifically applies to operations in close proximity to power lines. The indemnifications contained in this Article shall be effective whether or not a person injured or harmed is entitled to compensation pursuant to any workmen's compensation or employer's liability law.

Notwithstanding anything herein to the contrary, if (and only if) the provisions of RCW 4.24.115 apply to the Work and any such injuries to persons or property arising out of performance of this Contract are caused by or result from the concurrent negligence of Contractor or its agents or employees, and the Owner or its agents or employees, the Contractor's indemnification applies only to the extent of the negligence of the Contractor, its agents or employees. The Contractor specifically assumes potential liability for actions brought by the Contractor's own employees against the Owner and for that purpose the Contractor specifically waives any immunity against claims by Owner under the Workers Compensation Act, RCW Title 51; AND THE CONTRACTOR ACKNOWLEDGES THAT THIS WAIVER WAS SPECIFICALLY ENTERED INTO PURSUANT TO THE PROVISIONS OF RCW 4.24.115 AND WAS THE SUBJECT OF MUTUAL NEGOTIATION.

1.5 INSURANCE

Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in Washington State the insurance to protect Contractor and Owner from the claims set forth below which may arise out of or result from Contractors operations under the Contract and for which Contractor may be legally liable, whether such operations be by Contractor or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (a) Claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- (b) Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

- (c) Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
- (d) Claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by Contractor, or (2) by another person;
- (e) Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and
- (f) Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle.

The insurance shall be written for not less than One Million Dollars (\$1,000,000) or, in the case of subcontractors, a lesser amount as agreed between Owner and Contractor. Coverages shall include:

- (a) Contractual Liability Insurance with respect to the liability and indemnification provisions of this Contract;
- (b) Premises operations (including X, C and U coverages, as applicable);
- (c) Completed Operations and Product Liability Insurance for one (1) year beyond completion and acceptance of the Project.
- (d) Explosion, collapse and underground property damage hazard insurance;
- (e) Broad Form Property Damage Insurance;
- (f) Contractor's Protective Liability Insurance;
- (g) Workmen's Compensation including Occupational Disease and Employer's Liability Insurance in amounts and for coverage as required by statute;
- (h) Commercial Liability Insurance (including coverage for direct operations, sublet work, contractual liability and completed operations with limits not less than those stated below):
 - (i) Bodily injury--including personal injury: \$1,000,000 each person; \$1,000,000 each occurrence
 - (ii) Property Damage Liability: \$500,000 each occurrence; \$1,000,000 aggregate
- (i) Comprehensive Automobile Insurance (including coverage for owned, non-owned and hired vehicles with limits not less than those stated below:

- (i) Bodily Injury Liability: \$1,000,000 each person; \$1,000,000 each occurrence
- (ii) Property Damage Liability: \$100,000 each occurrence; \$100,000 aggregate

Maintenance of insurance by Contractor as specified in this Article shall in no way be interpreted as relieving the Contractor of any responsibility whatever and Contractor may carry, at its own expense, such additional insurance as it deems necessary. Contractor's insurance shall be primary and any duplicative insurance obtained by Owner shall be secondary.

Contractor shall submit certificates of insurance to Owner. The certificates shall include:

- (a) Name and address of the insured;
- (b) Name and location of the Project;
- (c) Types of insurance;
- (d) Policy numbers;
- (e) Expiration dates;
- (f) Limits of liability for bodily injury and for property damage;
- (g) Endorsements required to make policies conform with the insurance requirements;
- (h) An endorsement requiring the insurer to provide to the Owner prior written notice of thirty (30) days before the coverage under such policies may be canceled, materially modified, or nonrenewed; and

"King County Library System, its officers, agents, and employees" are named as Additional Insureds.

1.6 FORCE MAJEURE

Delay or failure of either party in the performance of its obligations hereunder shall be excused if caused by circumstances beyond the control of the party affected, including, without limitation, acts of God, strikes, fire, flood, windstorm, action or request of governmental authority other than action against the party for noncompliance with the law, and inability to obtain material, equipment, or services, provided that a prompt notice of such delay or failure is given and the affected party diligently attempts to remove the cause.

1.7 DISPUTES

- a. Whenever the Contractor has knowledge that any actual or potential labor dispute threatens to delay the timely performance of the contract, the Contractor shall immediately give notice thereof, including all relevant information to the Owner.
- b. All claims, disputes and other matters in questions arising out of, or relating to, this Contract or by breach thereof, shall be decided by litigation in the King County Superior Court, King County, Washington, and not by arbitration. Contractor shall carry on the Work and maintain the progress schedule during any arbitration or judicial proceedings, unless otherwise agreed by Contractor and Owner in writing.

1.8 CHANGE ORDERS

Overhead and profit included in the cost to the Owner for any Change shall not exceed the following rates:

- a. For the Contractor, for cost of work performed by the Contractor's own forces, ten percent (10%) overhead and five percent (5%) profit.
- b. For the Contractor, for cost of work performed by the Contractor's Subcontractor, five percent (5%) overhead and five percent (5%) profit.

1.9 PREVAILING WAGE RATES

A. SCHEDULE OF PREVAILING WAGE RATES

The most current Schedule of Washington State Prevailing Wage Rates for King County can be attained at www.lni.wa.gov/TradesLicensing/PrevailingWage/default.asp.

B. REQUIREMENTS

In accordance to the Washington Public Works Act, Chapter 39.12 RCW, Contractor and subcontractors shall pay employees for each trade or occupation, performing work on this Public Works Project, not less than the minimum, current Prevailing Wage Rate and shall comply in all respects to this Act or other requirements as defined by:

Prevailing Wage Section, ESAC
Department of Labor and Industries
P.O. Box 44540
Olympia, Washington 98504-4540
Tel. (360) 902-5335

Prevailing Wage Rate is defined as the hourly wage, fringe benefits, and overtime in accordance with provisions of the Washington Public Works Act (most current rules and regulations).

1. Contractor and subcontractors must pay a wage-and-fringe benefits package to workers that is equal to or exceeds the prevailing wage & prevailing fringe benefit amounts added

together.

2. Contractor and subcontractors must observe overtime, holiday, and Code provisions that are part of the Prevailing Wage Rate.

"Statement of Intent to Pay Prevailing Wages", as approved by Department of Labor and Industry's "industrial statistician", is required to be submitted from Contractor and subcontractors with each Application for Payment and before payment is made.

1. Posting of "Statement of Intent to Pay Prevailing Wages" is required to be posted by Contractor at job site Field Office.

Retainage of funds from each payment to Contractor will be withheld until the Owner receives a Letter of Release from the Employment Securities Department and the Department of Revenue. Amount retained will be five percent (5%) of each payment, determined by Owner, as sufficient to pay any unpaid wage claims, taxes and costs as well as attorney fees, should a claim against the bond and retainage fund be filed.

1. At conclusion of Project, Contractor and subcontractors shall submit to Owner "Affidavit of Wages Paid", as approved by Department of Industry's "industrial statistician", before Owner will release retainage and interest withheld.

The Department of Labor and Industries requires a fee, to be paid at the time of submittal, for both the Intent to Pay Prevailing Wages forms and the Affidavit of Wages Paid forms. All fees required by the Department of labor and Industries shall be paid by the Contractor.

1.10 PAYMENT

- A. The Contractor shall be responsible for applying for the building permit and shall pay all required building permit fees. Upon submittal of supporting receipts, the Owner will pay the direct costs of these fees only. The building permit costs shall not be included in the base Bid and will be paid to the Contractor as a reimbursable expense. All other permits and governmental fees, licenses and inspections are the responsibility of the Contractor.
- B. In each Application for Payment, Contractor shall certify that: "There are no known mechanics' or materialmen's liens outstanding at the date of this Application; all due and payable bills with respect to the Work have been paid to date or shall be paid from the proceeds of this application for Payment; there is no known basis for the filing of any mechanics' or materialmen's liens on the Work; and waivers from all subcontractors and materialmen have been obtained in such form as to constitute an effective waiver of lien under the applicable laws of the State of Washington to the extent of payments that have been made or shall be made concurrently herewith."
- C. Contractor shall also include with each Application for Payment, including the first, a list of all subcontractors and suppliers providing labor and material for the Work, copies of their respective payment applications, and lien releases in such form as Owner may reasonably

require pursuant to which Contractor, any subcontractor, and any material supplier providing labor or materials to the Project, have waived and released all liens covering the work for which payment is being requested. No application for payment will be processed unless accompanied by such releases. In the event that Owner becomes aware of any materialman's or mechanic's lien filed against the Project, Owner shall notify Contractor. If Contractor, within ten (10) days following Contractor's receipt of Owner's notice, fails to cause the lien to be satisfied and released, Contractor shall provide a bond as contemplated by RCW 60.04.161 protecting Owner and the lien claimant from the claim on which the lien is based, and shall cause the Project property to be released from the lien claim. Contractor shall reimburse to Owner upon demand all attorneys' fees and costs incurred by Owner in regard to the Owner's efforts to remove the lien as an encumbrance on the Project property or otherwise satisfy the lien.

- D. Within sixty (60) calendar days after receipt of each Application for Payment, properly documented and duly certified by Architect, Owner will make partial payment to Contractor, but Owner shall reserve a Contract retainage not to exceed 5% of the monies earned by Contractor as a trust fund for the protection and payment of the claims of any person arising under the Contract and of the State of Washington with respect to taxes imposed pursuant to title 82 RCW which may be due from Contractor. The rights and obligations of Owner, Contractor and others with an interest in the Contract retainage shall be governed by RCW 60.28.011 which addresses in part: notice of lien requirements; Contractor's right to request reduction or release of the retainage amount; limitations on Owner's right to hold retainage for more than sixty (60) days after completion of all Contract work; Contractor's right to require that retained funds be deposited in an interest bearing account or placed in escrow; limitations on the amount which Contractor and its subcontractors may withhold from subcontractors and sub-subcontractors or suppliers; and Contractor's right to submit a bond for all or any portion of the retainage.
- E. RCW 60.28.050 requires that, before paying the retained percentage to any person performing any public works contract, state officers shall require such persons to secure from the State Department of Revenue a certificate that all taxes due with respect to such Contract have been paid in full. Contractor, therefore, is required to secure such certificates before payment of the retained percentage will be made.
- F. Contractor shall promptly pay each subcontractor (including suppliers, laborers and materialmen) performing labor or furnishing material for the Work upon receipt of payment from Owner out of the amount paid to Contractor on account of the Work of such subcontractor, supplier, laborer, materialman, the amount which said subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to Contractor on account of such Work. Contractor shall, by an appropriate agreement with each subcontractor, also require each subcontractor to make payments to his sub-subcontractors in similar manner. Contractor or and its subcontractors may withhold payment of not more than 5% from the monies earned by any subcontractor or any sub-subcontractor or supplier in accordance with RCW 60-28.010(3) as it now exists or may hereafter be amended.

1.11 BID ACCEPTANCE

A. Unless otherwise specified in the Bid, the Bidder will:

1. Allow sixty (60) days for acceptance of its Bid.
2. Submit executed Contract, Insurance Certificate, and Performance Bonds within ten (10) days after receipt of the forms from the Owner.

If the successful Bidder, upon acceptance of its Bid by the Owner within the period specified for acceptance, fails to execute all contractual documents or give a Performance Bond(s) and insurance as required by the Solicitation within the time specified, the Owner may terminate the Contract for default.

1.12 TERMINATION BY OWNER FOR CONVENIENCE

At any time, Owner may terminate the Contract for Owner's convenience and without cause. Upon receipt of written notice from Owner of termination for convenience, Contractor shall:

- (a) Cease operations as directed by Owner in the notice;
- (b) Take actions necessary, or that Owner may direct, for the protection and preservation of the Work; and
- (c) Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of such termination for Owner's convenience, Contractor shall be entitled to receive payment from Owner for all work executed and for proven loss with respect to materials, equipment, tools and construction equipment and machinery. Contractor shall not be entitled to recover overhead, profit or damages based on work not performed.

1.13 TERMINATION BY OWNER FOR CAUSE

If the Contractor defaults or fails or neglects to carry out the Work in accordance with the Contract Documents or fails to perform a provision of the Contract, the Owner may:

- (a) After seven (7) days' written notice to the Contractor and without prejudice to any other remedy the Owner may have, may make good such deficiencies and may deduct the cost thereof, including compensation for the Consultant's services and expenses made necessary thereby, from the payment due the Contractor. Or
- (b) The Owner has the option, and upon certification by the Consultant that sufficient cause exists to justify such action, the Owner may terminate the Contract and take possession of the site and of all materials, equipment, tools,

and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method the Owner may deem expedient. If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including compensation for the Consultant's services and expenses made necessary thereby, such excess shall be paid to the Contractor, but if such costs exceed such unpaid balance, the Contractor shall pay the difference to the Owner.

1.14 MISCELLANEOUS

The contract is subject to cancellation by either party upon thirty (30) days advanced written notice. The Owner may award contracts to other vendors for similar products or service.