

ADDENDUM 5: TERMS AND CONDITIONS

The information contained in this section is a partial listing of standard terms commonly appearing in contracts awarded by the University of Nebraska – Lincoln (UNL). All proposals are subject to these terms, unless otherwise explicitly stated.

5.1 GENERAL:

The specifications, terms, and conditions set forth in this RFP and any related award document shall be incorporated by reference, without Bidder exception, into any resulting contract between the University and the successful bidder. Any additional or different terms proposed by the successful bidder are not accepted, unless the same are expressly accepted in writing by UNL. The contract may not be changed in any way except by an instrument in writing signed by both parties. The contract cancels and supersedes any prior understandings or agreements between the parties with respect to the subject matter hereof. Failure of any party to enforce its right under the contract shall not constitute a waiver of such rights or of any other rights under the contract.

5.2 TERMINATION FOR CAUSE:

UNL may terminate the contract at any time if the successful bidder fails to carry out its terms or fails to make substantial progress toward the fulfillment of those terms. In such an event, the PPC shall provide the successful bidder with a thirty (30) day written notice of the terms in breach. If after such notice, the successful bidder fails to remedy the breach within those 30 days, UNL may immediately cancel the contract.

5.3 CONTRACT ASSIGNMENT:

Contracts granted pursuant to this RFP shall not be transferred or assigned without prior written consent of UNL.

5.4 INDEMNITY, GENERAL AND PATENT:

The successful bidder shall indemnify and save harmless UNL and its respective officers, agents and employees from and against any and all liabilities and losses whatsoever, including without limitation, costs and expenses in connection therewith, on account of, or by reason of, injury to or death of, any person whosoever, or loss of or damage to any property whatsoever, suffered or sustained in the case of, or in connection with, the performance of the contract, except for that liability and loss arising from the acts or omissions of UNL or its agents.

With respect to anything provided to UNL by the bidder pursuant to this RFP, the bidder shall indemnify the University and its respective officers, agents and employees against liability, including costs and attorney's fees for infringement of any United States patent, copyright, trade infringement or other intellectual property right arising out of the manufacture, delivery and use of such by UNL.

5.5 GOVERNING LAW; VENUE:

The laws of the State of Nebraska shall govern any contract awarded to the successful bidder. Any dispute arising under any contract awarded, which is not settled by agreement of the parties, shall be resolved in forums (except for applicable federal appellate courts) located in the State of Nebraska.

5.6 FORCE MAJEURE:

Neither party to the contract shall be liable to the other for damages for any delay in performance arising out of causes beyond its reasonable control and without its fault or negligence, including without limitation: (1) fire, flood or water damage, elements of nature or other acts of God, including any of the foregoing that are harmful to electronic circuitry; (2) outbreak or escalation of hostilities, war, riots, or civil disorders in any country; (3) act or omission of the other party or any governmental authority, (4) labor disputes (whether or not the employees' demands are reasonable or within the party's power to satisfy), (5) non-performance by a third party (including any voice or data telecommunications common carrier), (6) failures or fluctuations in telephone, computer or other telecommunications equipment or lines or other equipment, (7) the real, potential, or credible threat of terrorist activity, or (8) a health emergency (e.g. serious outbreak of contagious disease such as a influenza pandemic) which in the judgment of UNL poses a serious threat to the public health. In the case of any such excusable delay, the non-performing party will be excused from performance of any affected obligation only for so long as the cause of the excusable delay prevails and such party continues to use commercially reasonable efforts to re-commence performance of its obligations as soon as possible; provided however, that the parties may mutually agree that such excusable delay is cause to cancel the contract in its entirety, in which case neither party shall be liable to the other for any further performance in relation obligations arising after cancellation.

5.7 COMPLIANCE WITH LAWS AND REGULATIONS; GRAMM LEACH BLILEY; UNIVERSITY OF NEBRASKA POLICIES:

This contract must comply with all applicable federal, state and local laws, specifically including all laws and regulations related to the protection and security of any personal information gathered by the successful bidder, such as the Gramm Leach Bliley Act implemented at the University of Nebraska by Presidential Executive Memorandum No. 26 which requires specific vendor contract provisions; and all other applicable policies of the University of Nebraska. Bidder agrees to indemnify UNL against any loss, cost, liability, or damage by reason of bidder's violation of any applicable law or regulation. Any successful bidder must be qualified to conduct the business necessary to the performance of the contract in the State of Nebraska throughout the duration of the contract term or any renewal thereof. The successful bidder shall obtain, at its own cost and expense, all necessary licenses, professional certifications and permits and shall assume the responsibility for and pay all applicable fees and all other taxes, which are now or may be imposed in the future by any governmental authority arising out of the conduct of bidder's business.

5.8 SEXUAL HARASSMENT:

State and federal law, as well as the policies of the Board of Regents of the University of Nebraska, prohibit sexual harassment of members of the PPC community. Sexual harassment includes any unwelcome sexual advance, any request for a sexual favor, or any other verbal or physical conduct of a sexual nature that is so pervasive as to create a hostile or offensive environment. UNL contractors, subcontractors and suppliers for this project are required to exercise control over their employees so as to prohibit acts of sexual harassment of UNL employees, students and other members of the PPC community. The employer of any person who UNL, in its reasonable judgment, determines has committed an act of sexual harassment agrees as a term and condition of any contract awarded hereunder to cause such person to be removed from the

project site and from UNL premises and to take such other action as may be reasonably necessary to cause the sexual harassment to cease.

5.9 DRUG FREE WORKPLACE:

The successful bidder agrees that in the performance of this contract, neither the bidder nor any of its employees shall engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity covered by the contract. UNL reserves the right to request a copy of the bidder's Drug Free Workplace Policy. The bidder further agrees to insert a provision similar to this statement in all subcontracts or services required in response to this RFP.

5.10 WEAPONS POLICY:

Possession of dangerous weapons (concealed or unconcealed) on UNL property, on the work site, in UNL vehicles, or in personal vehicles when on UNL property shall be a violation of UNL policy. (A dangerous weapon shall include guns, knives, explosives, or any other device as determined by UNL, which in the manner used or intended is capable of producing death or bodily injury. Devices authorized by the Vice Chancellor for Business and Finance and/or provided to its employees for the purpose of carrying out work responsibilities shall not be deemed dangerous weapons for the purpose of this policy.) Violations of this policy shall make the offender subject to appropriate disciplinary action. Should UNL in its reasonable judgment determine that the bidder or its employee or agent has committed an act in violation of this policy, the bidder agrees as a term and condition of the contract awarded hereunder to cause such person and weapon to be removed from the project site and from UNL premises and to take such other action as may be reasonably necessary to ensure compliance with this weapons policy.

5.11 EQUAL OPPORTUNITY IN PROCUREMENT AND CONTRACTS:

The University of Nebraska recognizes the importance of a strong culturally diverse business community and the positive impact that successful businesses have upon the people of the State of Nebraska. The University of Nebraska assumes a leadership role in actions that will provide business opportunities for all businesses in the State of Nebraska.

Accordingly, the University of Nebraska reaffirms its policy of providing equal opportunity to small business enterprises and to minority, disadvantaged and women owned business enterprises in all aspects of the University of Nebraska's procurement and contracting activities. This includes procurement of contracts for operational supplies and equipment, construction projects and materials, service contracts and License agreements. It is also the University of Nebraska's policy that any person or business seeking the opportunity to do business with the University of Nebraska shall not be discriminated against on the basis of race, color, religion, sex, national or ethnic origin, age, disability, marital status, or veteran status. The University of Nebraska conducts its procurement and contracting activities in a manner designed to prevent unlawful discrimination. University of Nebraska policies are consistent with applicable state and federal laws and regulations prohibiting unlawful discrimination.

5.12 PROPRIETARY INFORMATION; CONFIDENTIAL EMPLOYEE INFORMATION; HIPAA; FERPA:

It is to be expected that the parties to the contract may find it necessary to reveal certain proprietary information to each other. The contract may, when proprietary information is exchanged, include certain provisions to mutually protect against the use and disclosure of the proprietary information of each party. In the unusual circumstance that the contract should result in the sharing of employee information protected by the law or University of Nebraska policy, information protected by the Health Insurance Portability and Accountability Act, information protected by the Family Educational Rights and Privacy Act of 1974, or any other information deemed confidential and protected by the law, the parties to the contract agree to maintain the confidentiality of such information to the extent and manner required by the law and University policy.

5.13 SUBCONTRACTORS:

The successful bidder shall not subcontract all or substantially all of any facet of the Proposal without the prior written approval of UNL. The successful bidder shall be fully responsible for the acts and omissions of its subcontractors and of the persons directly or indirectly employed by them. Every subcontractor shall be bound by the terms of any contract awarded under this RFP; provided however, that no contractual relationship shall exist between any subcontractor and UNL, unless it is evidenced in a separate contract independent of the contract with the successful bidder.

5.14 LEGISLATIVE FUNDING OUT CLAUSE:

Notwithstanding any provision in the contract to the contrary, if the legislative body appropriating funds, does not allocate sufficient funds to allow UNL to make any periodic payment agreed to in the contract for any future fiscal period, UNL will not be obligated to pay the contract balance remaining at the time of the governmental funding short-fall.

5.15 BUILDING RULES AND REGULATIONS; TOBACCO USE:

Employees of the successful bidder and any subcontractors shall comply with all UNL rules and regulations pertaining to conduct in UNL's facilities. UNL reserves the right to request the removal or replacement of any bidder or subcontractor employee who fails to comply with such rules and regulations.

All buildings and University owned vehicles on the PPC campus are tobacco-free. Use of tobacco products is not permitted inside any UNL facility. The successful bidder is expected to respect this tobacco-free policy and fully comply with it.

5.16 USE OF PREMISES:

To the extent that any contract awarded requires the successful bidder or its employees or agents to be present on or within UNL's properties, then the bidder shall limit its presence and activities to such areas as are reasonably necessary in order to perform under the contract. The successful bidder shall take such precautions as are required to avoid damage to buildings, facilities, utilities, ground resources, trees and landscape amenities, and other properties adjacent to the bidder's activities within the scope of the contract and agrees to be responsible and/or carry out any repairs for which it is liable, as a result of its performance under the contract.

5.17 DELIVERY; F.O.B.; SHIPPING:

The successful bidder shall bear all costs of transportation, packing, crating, delivery, installation, storage, and service under warranty for any goods or related services, delivered pursuant to the contract. The successful bidder shall be responsible for and make delivery, including costs of delivery, cartage, temporary storage, off-loading costs, and insurance, F.O.B. destination: University of Nebraska -Lincoln, Lincoln, Nebraska. Unless otherwise specified, all shipments will utilize the best commercial practice to insure safe arrival at UNL delivery point.

5.18 QUANTITY:

With respect to quantity of any good purchased under the contract, UNL need not accept any variation in quantity except as specified in the contract. Over-shipments may be returned to the bidder at its expense, which shall include a reasonable cost for UNL handling, or be retained by UNL at no increase in price.

5.19 FEDERAL, STATE AND LOCAL SALES TAXES; FEDERAL EXCISE TAXES:

Purchases made by the University of Nebraska are exempt from the payment of State Sales and Use Taxes and Federal Excise Taxes. Certification of these exemptions will be provided to the successful bidder upon request.

5.20 AMBIGUITIES:

Should the successful bidder perceive an ambiguity in the contract, the successful bidder shall request an interpretation from UNL before proceeding. If a successful bidder fails to make such a request, failure to perform with respect to the alleged ambiguity shall not be excused.

5.21 RECYCLING POLICY:

When purchasing products, materials, or supplies for use, the University, when making such purchases shall actively pursue the purchase of products, materials, or supplies which are manufactured or produced with at least 10% post-consumer recycled materials. This policy shall not operate when it would result in the purchase of products, materials, or supplies that are of inadequate quality, not readily available or substantially higher in cost. It is the intent of the University to continually increase the percentage produced from post-consumer recycled material, and, to increase each year the types and variety of products, materials, or supplies purchased with post-consumer recycled material.

5.22 LEGAL RELATIONSHIP:

The contractor shall under no circumstances be considered as an agent or employee of the University and shall have no right or authority to, in any manner, obligate the University to any person or company except as authorized in writing by the University.

5.23 USE OF UNIVERSITY NAMES AND LOGOS:

The contractor shall not use any University name, sign, logo, symbol, etc. for any purpose, without the prior written approval of the University. Use of University brands generally requires licensing.

5.24 IMPROPER BUSINESS RELATIONSHIPS AND CONFLICT OF INTEREST PROHIBITED:

In connection with this RFP, each bidder shall ensure that no improper, unethical, or illegal relationships, or conflict of interest exists between or among the bidders, the University and any staff and faculty, and any other party to this RFP. The University reserves the right to determine the materiality of such relationships, when discovered or disclosed, whether intended or not; and to decide whether or not bidder disqualification and/or cancellation of award shall result. Such disqualification and/or cancellation shall be at no fault or liability whatsoever to the University.

5.25 ELECTRONIC AND INFORMATION TECHNOLOGY ACCESSIBILITY:

All electronic and information technology procurements, agreements, and contracts shall comply with Section 508 of the Rehabilitation Act of 1998 as amended.