STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DIVISION OF FACILITIES DEVELOPMENT (DFD)
DOA-4532 (R03/13)

Mailing Address: **Post Office Box 7866, Madison, WI 53707-7866**
Street Address: **101 E. Wilson Street, 7th Floor, Madison, WI 53703**
Phone: **608 / 266-2731**; *FAX*: **608 / 267-2710**
http://www.doa.state.wi.us/dfd

CONDITIONS OF THE CONTRACT FOR SMALL PROJECTS

This document is intended for use on: 1) delegated projects, 2) projects using solicited bid procedures, and 3) small projects bid under s.16.855 procedures that have only one prime contract.

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1. CONTRACT DOCUMENTS

A. The Contract Documents consist of the documents listed in the table of contents of this specification or in the Owner's invitation to bid the contract, in addition to which may be addenda, change orders, and other documents pertaining to the project.

B. The intention of the Contract Documents is to describe the labor, materials, equipment, performance standards, schedules, and costs set forward and agreed to by the Contractor and the Owner. In the event of a conflict or ambiguity in the Contract Documents, they shall be interpreted to include all necessary Work needed for a complete, working installation.

2. DEFINITIONS

A. "Architect/Engineer (A/E)"…A person, firm, or corporation who is under contract with DFD, or a DFD or State agency employee, who is responsible for preparation of the drawings, specifications, and other related design and construction inspection services.

B. "Bidding and Contract Requirements"... means all items except Technical Specifications and Drawings as described in the Table of Contents of this Letter of Solicitation including "Bidding Requirements", "Contract Forms", "General Conditions", "Supplementary General Conditions", "General Requirements".

C. "Contract Documents"...means collectively, all documents enumerated in the Table of Contents of this Letter of Solicitation, excluding Bidding and Contract Requirements. These include the Technical Specifications, the Drawings, Addenda, Change Orders, Notice-to-

Proceed, and any changes in the Work negotiated and agreed to in writing by DFD and the Contractor before the execution of the Contract.

D. "Contractor"…A person, firm, or corporation who enters into a contractual agreement to assume responsibility for performing and completing all Work as set forth in the Contract Documents.

E. "Equals/Substitutions"…Means materials, equipment, or methods not specified in the Contract Documents that the Contractor proposes and warrants as suitable for the use intended and conforms to all other physical, functional, and performance requirements. Requests for Equals/Substitutions must be submitted to the Owner's Project Representative and electronic approval received prior to incorporation into the Work.

F. “Owner”...The Department of Administration’s Division of Facilities Development (DFD). The Owner exercises the powers and duties prescribed by Section 16.85 Wisconsin Statutes. A Wisconsin State agency may exercise authority as the Owner as prescribed by Section 16.85 Wisconsin Statutes for Work on this project only. An Owner's Project Representative will be designated who will have authority to act on behalf of the Owner for administration of this contract.

G. “Shop Drawings/Submittals”...Defines drawings, product data, samples, or other information to be submitted by the Contractor to the A/E for approval before fabrication or installation. Shop Drawings/Submittals that are needed are identified in the Contract Documents or will be identified at the preconstruction meeting. The Contractor is responsible for assuring the drawing/submittals conformance with the requirements of this contract. Review and acceptance by the A/E does not relieve the Contractor from responsibility for errors or omissions.

H. “Substantial Completion”...Defines the point in time when the Work is completed to the extent that the Owner can make beneficial use of the Work for the purposes intended and the point in time when warranties and guarantees go into effect. There may be a "Punch List" of minor items of the Work or deficiencies that remain to be completed or corrected following Substantial Completion.

I. “Work”...Defines all labor, materials, equipment and special project requirements necessary to produce the end result described by the Contract Documents.

3. MATERIALS AND WORKMANSHIP

A. The Contractor shall provide all labor, materials, and equipment in a good-workman like manner in accordance with the Contract Documents and applicable industry standards, and to furnish upon request, to the Owner, information and test results having to do with the kind and quality of materials.

B. References to a standard specification of an association or manufacturer or to a State code means the most recent printed edition or catalog in effect on the date the contract is signed.

C. No material, equipment, or supply shall be purchased by the Contractor that is subject to any conditional agreement where title is retained by the seller. Any material, equipment, or supply will be furnished clear of any lien or claim.

D. Reference in the documents to a manufacturer’s trade name or number establishes a standard, and the Owner may consider any material or item that will perform adequately under the Contract Documents as Equals/Substitutions, subject to prior approval. No compromise in quality level is acceptable.

E. Use of any material or equipment other than what has been specified or approved by the Owner is not acceptable under the contract and shall be removed and replaced at the Contractor's expense.

4. PERMITS, REGULATIONS, AND TAXES

A. The Contractor shall obtain all permits, licenses, and approvals needed for the performance of the Work and will give all notices and comply with all laws, codes, rules and regulations that pertain to the performance of the Work.

B. The Contractor will pay all taxes required by law.

C. The Contractor shall notify the Owner of any variance in the Contract Documents needed to comply with codes, rules, and regulation upon which the Owner will correct the documents at no additional cost to the Contractor.

D. The Contractor shall include all charges in its bid and pay for water, sewer, and other utility connections made by municipalities.

5. CONTRACTOR'S OBLIGATIONS AND SUPERINTENDENCE

A. The Contractor shall provide and pay for all equipment, materials, supplies, and labor necessary for the completion of the Work within the time agreed, including transportation, storing, superintending, and installing. The Contractor shall be responsible for insuring that all Work strictly conforms to the requirements of this contract and shall maintain adequate inspection and quality control procedures to assure the same. The presence and observation of the Work by the Owner shall not relieve the Contractor of any obligations.

B. The Contractor shall attend a preconstruction meeting and any subsequent construction related meetings that are scheduled by the Owner's Project Representative. The Contractor shall make a timely submittal of all shop drawing/submittals that are required to describe how it will fulfill its responsibility under this contract. While the Contract Documents may identify minimum performance characteristics and brand names to establish the required level of quality, Equals/Substitutions may be considered. However, the Contractor shall be responsible to document the qualifications of a proposed Equal/Substitution, and any additional costs for achieving required performance shall be borne by the Contractor.

C. The Contractor shall give personal superintendence to the Work through a designated superintendent or foreperson knowledgeable and experienced with the Work and able to act for the Contractor in all matters. The Contractor shall schedule Work and coordinate the activities of any subcontractors to assure timely completion, and shall coordinate site access, storage, and construction activities with the Owner to minimize impacts on program operations.

D. The Contractor certifies that it is familiar with the site conditions that may affect the Work or its costs and shall perform the Work without additional expense to the State, except for Changes in the Work or unforeseen conditions that may arise.

E. The Contractor shall maintain a clean and safe work environment. Barricades and other appropriate safety measures required by Federal, State, or other governmental authority having jurisdiction shall be provided. Unused, discarded, or hazardous materials generated by the Work shall be properly managed and recycled or disposed in accordance with applicable rules or regulations. Disposal of hazardous materials shall be coordinated through the Owner's Project Representative.

F. The Contractor shall safely guard the Owner's and any adjacent property from injury or loss in connection with the Work and shall make good any loss from damage due to the

Contractor's actions or lack of actions. Stormwater runoff from excavations shall be properly managed to prevent soil erosion off site or into lakes, streams, or other surface waters.

G. The Contractor shall grant access to the Owner's Project Representative, A/E, and other authorized persons. Should it be necessary in order to examine the Work to tear out or remove portions, the Contractor shall immediately furnish all facilities necessary. If the Work is found defective, the Contractor shall assume all expenses for tearing out, inspecting, and satisfactory reconstruction. If the defective Work is found to be in compliance with the Contract Documents, the Contractor will be reimbursed for the direct costs involved.

H. The Contractor may use existing water and electrical sources available at the Work site, and existing toilet facilities, at no cost. Arrangements for use must be made through the Owner's Project Representative. The Contractor shall make it's own arrangements and pay for telecommunications services as needed.

I. All Work must be complete, tested, and ready for use by the Owner prior to Substantial Completion. The Contractor shall also provide operating and maintenance instructions for each item of equipment or device installed, including parts lists, description of control cycles, and wiring diagrams.

J. The Contractor shall maintain a set of record drawings on which changes and deviations from Contract Documents shall be recorded. All buried or concealed piping, conduit, or similar items shall be located by dimensions and elevations on the record drawings. At the completion of the project, the Contractor shall submit the marked-up record drawings to the Owner's Project Representative prior to final payment.

6. CHANGES IN THE WORK

A. All changes shall be documented by an electronic Change Order to adjust the contract amount. Changes may be either an add or a deduct. Changes may be initiated either by an electronic Field Order from the Owner's Project Representative prior to determination of the final cost, or by an electronic Change Order that is based upon the final agreed upon total cost. Except in cases of emergencies, no change in the Work shall be made without the prior approval of the Owner.

B. Field Orders or other proposed changes in the Work can only be authorized by the Owner's Project Representative. When a change is initiated, the Contractor shall provide the Owner's Project Representative with an electronic proposal within 10 working days, unless both parties agree upon a different time period. The Contractor's proposal shall state the proposed cost of the change, with appropriate cost breakdown, any effect on the contract completion date, and pertinent information concerning the circumstances and scope of the change.

C. The cost of the change to be added or subtracted from the contract amount shall be calculated using one of the following methods:

1) By Unit Prices that are part of the approved contract or as agreed upon by the Owner's Project Representative.

2) A Lump Sum that is based upon the anticipated cost of labor, materials, equipment or large tool rental, and overhead and profit.

3) By Actual costs that are based upon documented labor and materials costs expended. Labor rates and other costs shall be established as outlined in "Procedures for the Change Order Proposal" guideline document that is available from DFD.

D. The overhead and profit markup on changes shall not exceed 15%. The markup for that portion of Work performed by a subcontractor shall be limited to 7.5%. A reasonable credit for overhead and profit shall be included in the amount of a deduct change. Overhead and profit includes expenses for estimating, change order processing, supervision, installation layout, small tools and supplies, job related general expenses, record drawings, and all other costs relative to change order proposals and field and office supervision.

7. TIME FOR COMPLETION AND SUBSTANTIAL COMPLETION

A. The date of beginning the Work and the time of completion are essential conditions to the contract. All Work shall be prosecuted regularly and diligently and the Contractor agrees that the time for completion is reasonable.

B. The Contractor shall keep the Owner informed about Work activities, progress, delays, and anticipated completion date. Should delays be caused by reasons beyond the control of the Contractor, an extension of the contract completion date may be requested. All such requests shall be delivered to the Owner's Project Representative within ten (10) working days from the beginning of such delay, or within ten (10) working days from the time when the circumstance with potential for delay becomes reasonably known to the Contractor, whichever is earlier Permitting the change shall not serve as a waiver on the part of the Owner of any right under the contract. The Contractor shall be responsible for damages resulting from delays that were not beyond the Contractor's control.

C. When the Contractor considers that the Work is Substantially Complete, the Owner's Project Representative will conduct an inspection to verify completion of the Work and provide an electronic list of any incomplete or defective Work. When in the judgment of the Owner's Project Representative the Work is Substantially Complete, electronic notice will be provided to the Contractor and the Agency, a time will be fixed for completion of any remaining minor Punch List items, and responsibility will be established for operation, maintenance, and security.

8. CORRECTION OF THE WORK

A. Labor, materials, and equipment involved in the Work are subject to inspection at any time by the Owner. Labor, materials, and equipment that do not comply with contract requirements shall be replaced at the Contractor's expense. Rejected items shall be immediately removed from the site.

B. If the Contractor neglects to perform the Work in accordance with the Contract Documents, the Owner may, after ten days written notice to the Contractor, repair the deficiency. The Owner will then issue a change order to deduct from the amount owed the Contractor the cost of correcting the deficiency.

9. OWNER'S RIGHT TO TERMINATE CONTRACT

A. Should any provision of the contract be violated by the Contractor or any subcontractor, the Owner may serve written notice on the Contractor of its intention to terminate the contract and, unless the violation ceases and satisfactory corrections are made within ten days, the contract shall then terminate. The Owner will notify the contractor of the termination. The Owner may then take over and complete the Work by contract or otherwise and may take and use all materials on site necessary to complete the Work. The Contractor shall be liable for all excess costs involved in the completion.

B. The Owner shall also have the right to terminate this contract at any time without cause following the expiration of thirty days written notice to the Contractor. The Contractor shall be paid for all Work performed or expenses incurred prior to the date of termination. Expenses must be documented and shall not include lost profits. Materials not incorporated into the Work shall be turned over to the Owner.

10. CONTRACT SURETY

A. A Payment and Performance Bond will not be required for the project unless such a requirement is included in the project documents. However, the following provisions for assurance of payment and performance do apply.

1) All contracts involving $50,000 or more require that the Contractor maintain a list of all subcontractors and suppliers performing labor or furnishing materials under the contract.

2) For contracts between $10,000 and $100,000, payments will generally be limited to a single payment for all Work upon completion of the project. Exceptions may be made for seasonal Work or Work delayed by the Owner. The Contractor shall provide a wavier of lien for labor and materials provided for any partial payments authorized.

B. Prior to final payment, the Contractor shall furnish to the Owner a certification that all debts and claims have been paid or otherwise satisfied.

11. PAYMENTS TO THE CONTRACTOR AND BY THE CONTRACTOR

A. Requests for payment shall be in electronic form from the Contractor, or in the form of a "Request and Certification for Payment", as determined in the notice to proceed. Any partial payments may have 10% of the amount retained until final payment is made.

B. All requests for payment shall be submitted to the Owner's Project Representative. The Contractor shall furnish any records or other satisfactory evidence requested by the Owner to establish the sum requested in the request for payment represents the value of Work completed.

C. Payments will not be made for incomplete or deficient Work. The Contractor shall certify that its invoice or request for payment is true and accurate and that all sums are earned and payable.

D. The Contractor shall within seven calendar days following receipt of payment from the Owner, make payment to each and every person or entity who furnished goods or services for the progress of the Work on the project, the value of which were included in the Contractors invoice or "Request and Certification for Payment". Upon request of the Owner, the Contractor shall furnish satisfactory evidence of payment under this article.

E. In the event the Owner receives notice from any person, Contractor, subcontractor, or other third party, that the Contractor has failed to pay such person(s) for Work performed in accordance with the Contract Documents, the Contractor shall, at the request of the Owner, and in no more than 10 calendar days, provide all documentation the Owner believes necessary to determine whether such payment is due, or reasons for non-payment of disputed amounts. In the event the Owner determines the claim to be valid and payment is due, or in the absence of aforementioned documentation, the Owner may authorize direct payment of any unpaid bills, withholding from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such claims until satisfactory documentation is furnished that all liabilities have been fully discharged or reasons for non-payment of disputed amounts are provided by the Contractor. In no event shall these provisions be construed to impose any obligations upon the State to the Contractor.

F. Final Payment will not be made until:

1) Project is substantially complete and all equipment tests and punch list items have been satisfactorily completed.

2) A certification has been submitted that all debts and claims have been paid or otherwise have been satisfied.

3) An affidavit of compliance with wage rates has been submitted, if applicable.

4) All record drawings, written warranties and special guarantees required for the project have been submitted.

5) All maintenance and operating instructions, part lists, description of control cycles and wiring diagrams, on-site training, keys or special tools have been completed or submitted as required.

G. Final payment to the Contractor constitutes a waiver of all claims by the Owner except those arising from unsettled liens, faulty or defective Work appearing after Substantial Completion, failure of the Work to comply with the Contract Documents, or terms of any special guarantees required by the contract.

H. Acceptance of final payment constitutes a waiver of all claims by the Contractor.

I. The Contractor may not assign any part of this contract or any money due under this contract without the written consent of the Owner.

J. If the Contractor fails to submit a Request for Final Payment or make satisfactory arrangements with DFD within thirty (30) calendar days of notification, no further payments will be mad and the contract will be closed. The last Request for Certification for Payment will be considered the Final Payment under the terms and conditions of the contract.

12. MINIMUM HOURLY WAGE RATES

A. Minimum prevailing wage rate requirements will apply to this project if the cost exceeds thresholds established by the Department of Work Force Development for Work performed by a single occupation classification.

B. Wage rate requirements will be determined by the Owner and included in the Contract Documents when applicable. The Contractor shall comply with any wage rate requirements for the project and provide and affidavit of compliance prior to final payment, if applicable.

13. NONDISCRIMINATION/AFFIRMATIVE ACTION

A. In connection with the Work under this contract, the Contractor shall not discriminate against any employe or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Section 16.765 Wisconsin Statutes and Wisconsin Administrative Code ADM 50, sexual orientation or national origin. This provision includes but is not limited to employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. Except with respect to sexual orientation, the Contractor shall take affirmative action to ensure equal employment opportunities.

B. The Contractor shall post in conspicuous places notices to be provided by the Owner setting forth the provisions of the non-discrimination clause.

C. Contracts with a value of thirty thousand dollars ($30,000) or more require the Contractor to submit a written affirmative action plan acceptable under Wisconsin Statutes and Administrative Code. An exemption occurs from this requirement if the Contractor has a Work force of less than thirty (30) employees. Contractors are responsible for obtaining affirmative action compliance from their Subcontractors. Instructions on satisfying these requirements will be sent with the Notice to Proceed. Technical assistance regarding this Article 13 is available from the Wisconsin Office of Contract Compliance, telephone (608) 266-5462.

14. SUBSTANCE ABUSE PREVENTION

The State of Wisconsin recognizes and supports drug-free workplace programs as an important element in the national strategy to reduce the devastating effects of drug and alcohol abuse in our society. The State urges contractors, subcontractors, suppliers and vendors to establish and enforce drug-free workplace policies and programs.

The possession, use of, distribution or purchase of illegal drugs, or use of alcohol at work by any employe on State of Wisconsin construction job sites is strictly prohibited.

The terms of this Substance Abuse Statement covers all construction personnel who are working on State of Wisconsin job sites. This includes employes of all contractors, subcontractors, contractor suppliers, and their employes, who come to the job sites to do work.

The State is not responsible for any cost of substance abuse testing, rehabilitation or medical reviews related to substance abuse. The contractor further agrees to indemnify and hold the State harmless from any damages or other costs incurred which are related to the implementation or enforcement of any substance abuse policy or program.

15. SUBCONTRACTS

A. Subject to approval by the Owner, the Contractor may subcontract portions of the Work to be performed under this contract. However, this does not relieve the Contractor from responsibility or liability for execution of the Work.

B. Requests for approval of subcontractors shall be submitted and approved in writing before their employment on the project. The Owner may request that the Contractor provide information to substantiate the proposed subcontractor's qualifications or ability to perform the Work.

16. WARRANTIES

A. The Contractor warrants to the Owner that all materials, equipment, and supply used in the Work are free from liens, claims or encumbrances, of good quality, and new unless otherwise permitted by the Contract Documents. The Contractor also warrants that the Work will be free from defects and strictly conform to the requirements of the Contract Documents.

B. The Contractor shall remedy and repair all defective Work and materials and pay for any damage to other Work resulting therefrom, which may appear within the warrantee period, providing such defects and damages are not due to abuse or misuse by the Owner. The Owner will give notice of defects or damages with promptness.

C. The warrantee period shall be one year from the date of Substantial Completion, or where warrantees are required in sections of the specification that are in excess of one year, the longer terms shall apply.

17. CLAIMS

A. In the event a dispute arises, the Contractor shall present its written claim to the Owner's Project Representative. If the Project Representative rejects this claim, the Contractor may then appeal in writing to the Administrator of the Division of Facilities Development. The DFD Administrator will act on this appeal within 21 calendar days after its receipt and notify the Contractor accordingly. If no appeal is made, the Contractor shall waive it's right to pursue the claim any further.

B. If the Contractor's claim is rejected by the DFD Administrator, the Contractor may make its claim to the State Claims Board per Section 16.007 Wisconsin Statutes.

C. If the Contractor's claim is rejected by the State Claims Board, the Contractor may commence an action against the State under Section 775.01 Wisconsin Statutes. Venue for any judicial action shall be Dane County, Wisconsin.

D. DFD and the Contractor shall act in good faith to efficiently and fairly resolve claims and disputes arising under the contract. The Contractor shall proceed with the performance of the Work as directed by the Owner's Representative during the period of any claim or dispute.

18. INSURANCE

A. Insurance to be carried by the Contractor:

The Contractor shall not commence Work until the Contractor has obtained all the insurance required under this section and the Owner has approved such insurance. The Contractor shall not allow any subcontractor to commence Work until the insurance required of the subcontractor has been obtained and approved. The Contractor shall provide an insurance certificate showing coverage provided from a company licensed to do business in Wisconsin. The Contractor may either require each subcontractor to maintain insurance equal to the following requirements or insure them under the Contractor's policy.

1) Compensation Insurance: The Contractor shall maintain worker's compensation insurance as required by Wisconsin Statutes for all of the Contractor's employees engaged in Work.

2) Contractor's Commercial General Liability and Auto Liability Insurance: The Contractor shall maintain the following:

Commercial General Liability Insurance including coverage for Independent Contractors, against any claims that may occur in carrying out the Work under this contract.

Minimum limits shall be:	$1,000,000 per occurrence
	$1,000,000 General Aggregate (applies per project)
	$1,000,000 Personal Injury
	$1,000,000 Completed Operations.

The Contractor shall also maintain business auto coverage form insurance covering owned, non-owned, and hired automobiles.

Minimum coverage shall be: $1,000,000 for each accident limit.

The above limits are minimum acceptable insurance limits and do not represent the coverage and limits necessary to protect the contractor. The limits should not be construed in any way to limit the contractor's liability to the State.

3) Scope of Insurance and Special Hazards: The Contractor's commercial general liability insurance shall provide adequate protection against damage claims which may arise from operations under this contract, whether such operations be by the insured or by anyone directly or indirectly employed by the insured, and also against any of the special hazards which may be encountered in the performance of this contract. The Contractor is responsible for determining the special hazards that must be insured for on this project. Special hazards may include loading and unloading, excavating, filling, drilling, blasting, explosions, demolition, underpinning, elevator, or hoist. Insurer must also document on the insurance certificate that they have been notified, when applicable, of the Contractor's involvement in asbestos abatement and that insurance coverage provided specifically covers that activity.

4) Builder's Risk (Property) Insurance: The Contractor shall procure and maintain during the life of this Contract and until interest in the property ceases (the policy shall allow for

partial occupancy) in a company or companies lawfully authorized to do business in the State of Wisconsin, property insurance in the amount of, at least, the initial Contract sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis. Such property Insurance shall be written on a Builder's Risk Form that shall include insurance for physical loss or damage to the Work, temporary buildings, and equipment or material consumed in the construction of the Work. This Builder's Risk Form shall include coverage for, but not limited to, the following perils: All Risk.

5) Remodeling, Maintenance and/or Repair; on approval by DFD, the Contractor shall procure and maintain during the life of this contract and until interest in the property ceases (this policy shall allow for partial occupancy) in a company or companies lawfully authorized to do business in the State of Wisconsin, and installation floater and extension endorsement or other such instrument, in the amount of the Contract sum as well as subsequent modifications thereto for the entire Work at the site on replacement cost basis. Such installation floater shall include the Contractor's cost of labor, physical loss or damage to the Work, temporary buildings, and equipment or material consumed in the construction of the Work.

B. Insurance to be carried by the Owner:

None.