PRIMA'S 2017 RISK MANAGEMENT
WEBINAR SERIES

The Nuts and Bolts of Contract Risk

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Disclaimer

The material being provided in this presentation is for your general information, and is not a substitute for legal advice. Please consult your entity's attorney for advice concerning specific situations.

Contracts

- Are defined as a voluntary arrangement between two or more parties that is enforceable by law as a binding legal agreement;
- Specify the rights and duties that arise from agreements;
- Arise when the parties agree that there is an agreement;
- Require an offer, acceptance, consideration and a mutual intent to be bound; and
- Parties to the contract must have capacity to enter the agreement.

Wikipedia

Types of Contracts

Express Contracts:

- May be verbal or written
- Definite offer and acceptance
- Consent is formally achieved

Implied Contracts:

- Implied in fact
- Suggested from facts and circumstances
- Arise out of a common understanding
- Demonstrate intent

Bilateral versus Unilateral

Bilateral:

- Both parties to the contract agree to a mutually acceptable series of terms and conditions with reciprocal promises

Unilateral:

- One party provides goods or services to the other based upon a proposal requested and response provided

Contracts of Adhesion

- Drafted by an entity that has a distinct advantage of providing a good or service
- To adhere is to accept the contract as is
- Terms and conditions are fixed
- Burden is on the entity drafting the contract
- Examples include insurance, software, and telecommunications contracts

Offer and Acceptance

Offer:

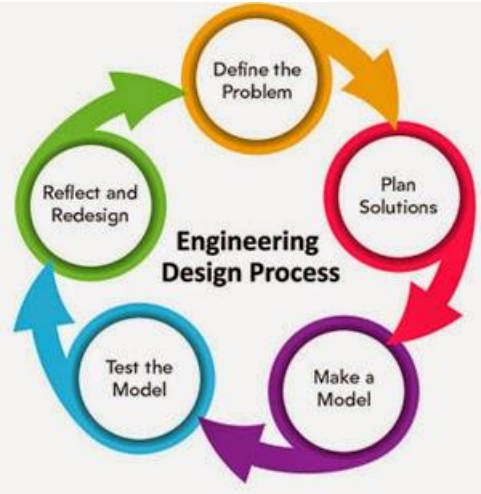
- A promise of performance
- Communication of terms and conditions associated with the performance

Acceptance:

- Consent of the terms and conditions
- Knowledge of the offer is inherent in the acceptance

Public Entity Types of Contracts: Professional Requiring Licensure

- Architecture
- Design
- Drug Testing
- Engineering
- Education and Training
- Environmental Remediation
- Financial
- Healthcare
- Legal
- Planning and Economic



Public Entity Types of Contracts: Construction

- Building
- Design/Build
- Fire Protection
- Remodeling
- Roadway-Highway
- Security Systems
- Traffic



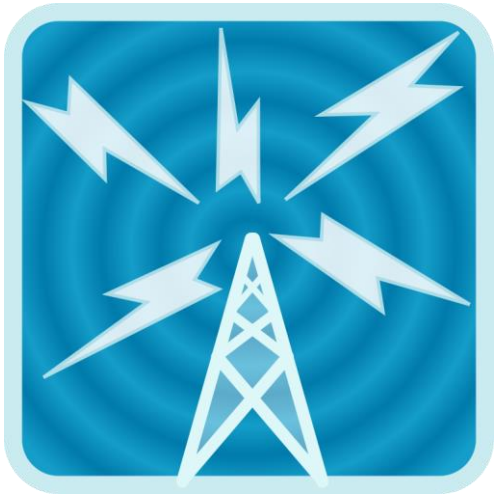
Public Entity Types of Contracts: Software

- License to use software
- Municipal Finance
- Human Resource Management Systems
- Time and Attendance
- Parking Ticket Management Systems
- OSHA Education and Training Programming
- Certificate of Insurance Programming
- SDS (MSDS)
- GIS, AutoCad and Engineering Software
- Backup Server Software
- Monitoring Software
- Office Application and Operating Systems



Public Entity Types of Contracts: Telecommunications

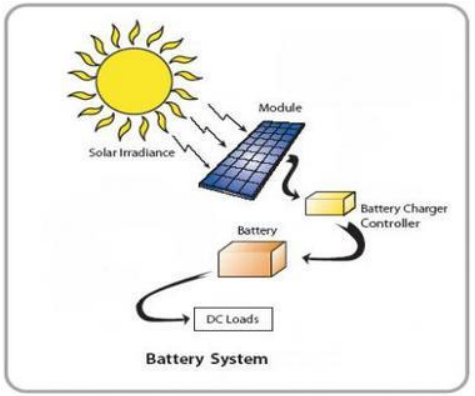
- 911 Providers
- Cable
- Cellular Service Providers
- Landline Telephone Providers
- Internet Providers
- Wireless Programming Providers (ie Electric Power Station Providers)



Public Entity Types of Contracts: Utilities

May be governed by state and federal tariff:

- Gas
- Electric
- Energy
- Hybrids
- Solar
- Water
- Wind







Public Entity Types of Contracts: Maintenance

- Building Management
- Electrical
- Garbage
- Housekeeping
- Landscaping
- Plumbing
- Snow removal
- Security







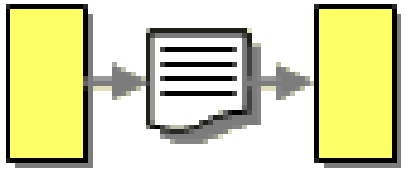
Beginning Contract Drafts

What information do you need to draft your contractual relationship?

- Information on the relationship and the service to be provided for your entity
- Assigned Project Number
- City department responsible for the project
- Company name and address
- Company's primary contact person name, title, cell phone number and email

Contractual Risk Transfer

The use of contractual obligations such as indemnity and exculpatory agreements, waivers of recovery rights, and insurance requirements to pass along to others what would otherwise be one's own risks of loss.



IRMI.com

Terms and Conditions

"The devil is in the details."



Scope of Agreement

- In response to a request for a pricing proposal requested by (*your public entity*) for (*specify services to be provided*), the Vendor and/or Service Provider submitted proposals dated _____ (the "Proposals/Statement of Work"), which are attached hereto as Exhibit A. The Vendor and/or Service Provider shall provide to (*your public entity*) the products and services set forth therein.
- The Vendor and/or Service Provider assumes full responsibility for the provision of the products and services made available in this Agreement. The Vendor and/or Service Provider shall be so liable even when the Vendor and/or Service Provider subcontract the provision of a portion of the products and services.
- Subcontracting shall be permitted only with the prior written approval of (*your public entity*). The Vendor and/or Service Provider assumes all risks in the performance of all its activities authorized by this Agreement.

Term of the Agreement

- The term of this Agreement shall commence per the date of approval of this Agreement by (*your public entity*) . This Agreement shall continue in force from the effective date until the work provided as described herein is satisfactorily completed or by _____.
- Any modification of the work performed by the Vendor and/or Service Provider shall be made in writing and shall not be undertaken until (*your public entity*) agrees to the modification.
- The Vendor and/or Service Provider assume full responsibility for the provision of the products and services contracted for in this Agreement. The Vendor and/or Service Provider shall be so liable even when the Vendor and/or Service Provider subcontract the provision of a portion of the products and services. **Subcontracting shall be permitted only with prior written notice and written approval of (*your public entity*).**
- The Vendor and/or Service Provider will provide his or her own equipment and materials as necessary to perform the work except as identified within this agreement.
- The Vendor and/or Service Provider assume all risks in the performance of all its activities authorized by this Agreement.

Terms of Payment

- Vendor and/or Service Provider will invoice (*your public entity*) on a monthly basis and (*your public entity*) will pay all invoices within thirty (30) days of receipt of the invoice or as practicable.
- (*Your public entity*) shall pay the Vendor and/or Service Provider in accordance with the Purchasing Guidelines established by (*your public entity*).
- All work performed under this agreement must be in accordance with the (your state's) Department of Labor Prevailing Wage Regulations.
- The Costs, fees, and disbursements associated with the provisions of the products and services shall be determined in accordance with the proposal submitted not to exceed _____, a copy of which is annexed hereto and made a part hereof.
- Detailed original invoices not received within forty five (45) calendar days of the completed transaction could result in a delay of payment.

Legal Notices

- Any notices sent to (*your public entity*) under this Agreement will be effective five (5) business days after the postmarked date of mailing by certified mail, return receipt requested. The _____ of (*your public entity*) is the designated Project Manager for this Agreement and shall represent (*your public entity*) in all matters and has the authority to affect the delivery of products and/or services.
- The Project Manager for the Vendor and/or Service Provider is _____.
- Any notice, request, demand or other communication required or provided for in this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person or mailed in a sealed envelope, postage prepaid, addressed as follows:

- **To (*Your public entity*) :**

- **With a copy to:**

- **To Vendor and/or Service Provider:**_____

Conflicts of Interest

The Vendor and/or Service Provider represents and warrants that it has no conflict, actual or perceived, that would prevent it from performing its duties and responsibilities under the Agreement.

Your Entity's Contracted Exclusive Property Requirements

Your Public Entity's Property

All information and materials received hereunder by the Vendor and/or Service Provider from (*your public entity*) are and shall remain the sole and exclusive property of (*your public entity*) and the Vendor and/or Service Provider shall have no right, title, or interest in or to any such information or materials by virtue of their use or possession hereunder by the Vendor and/or Service Provider.

Intellectual Property

All intellectual property, created by the Vendor and/or Service Provider hereunder as a product or as a service to (*your public entity*) shall be the sole and exclusive property of (*your public entity*) . Effective upon their creation pursuant to the terms of this Agreement, the Vendor and/or Service Provider conveys, assigns and transfers to (*your public entity*) the sole and exclusive rights, title and interest in all documents, electronic databases, and custom programs, whether preliminary, final or otherwise, including all trademarks and copyrights.

Requested Protections

- The Vendor and/or Service Provider hereby agrees to take all necessary and appropriate steps to ensure that the custom products are protected against unauthorized copying, reproduction and marketing by or through the Vendor and/or Service Provider, its agents, employees, or subcontractors.
- Nothing herein shall preclude the Vendor and/or Service Provider from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under this Agreement in the course of the Vendor and/or Service Provider's business.

Licensing What You're Paying For

- The Contractor grants to (*your public entity*) a perpetual, nonexclusive, royalty-free, unlimited use license to use, execute, reproduce, display, modify and distribute any pre-existing software, tools or techniques delivered by the Vendor and/or Service Provider under this Agreement.
- Any written reports, opinions and advice rendered by the Vendor and/or Service Provider shall become the sole and exclusive property of (*your public entity*) , and the Vendor and/or Service Provider shall have no right, title, or interest in or to any such information or materials by virtue of their use or possession hereunder by the Vendor and/or Service Provider.

Retention of Records

The Vendor and/or Service Provider shall make available to (*your public entity*) all information pertinent to the project, including reports, studies, drawings, and any other data. All original records generated as a result of the project shall be maintained by the Vendor and/or Service Provider for a period of six (6) years after expiration of the Agreement. Upon request, copies of those records shall be provided to (*your public entity*) at no cost.

Independent Contractors

The IRS says:

"The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done."

Independent Status

- It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting the Vendor and/or Service Provider's staff as the agents, representatives or employees of (*your public entity*) for any purpose in any manner whatsoever.
- The Vendor and/or Service Provider and its staff are to be and shall remain an independent Vendor and/or Service Provider with respect to all services performed under this Agreement.
- The Vendor and/or Service Provider represents that it has, or will secure at its own expense, all personnel required in performing services under this Agreement.
- Any and all personnel of the Vendor and/or Service Provider or other persons, while engaged in the performance of any work or services required by the Vendor and/or Service Provider under this Agreement, shall not be considered employees of (*your public entity*), and any and all claims that may or might arise under the Workers' Compensation Laws of the State of _____ on behalf of said personnel or other persons while so engaged, and any and all claims whatsoever on behalf of any such person or personnel arising out of employment or alleged employment including, without limitation, claims of discrimination against the Vendor and/or Service Provider, its officers, agents, Vendor and/or Service Providers or employees shall in no way be the responsibility of (*your public entity*); and the Vendor and/or Service Provider shall defend, indemnify and hold (your public entity), its officers, agents and employees harmless from any and all such claims regardless of any determination of any pertinent tribunal, agency, board, commission or court.
- Personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from (*your public entity*), including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Compensation, disability, and severance pay.

Insurance: Terms and Conditions

The Vendor and/or Service Provider shall:

- procure and maintain during the term of this Agreement, at the Vendor and/or Service Provider's expense, the insurance policies listed with limits equal to or greater than the enumerated limits;
- be solely responsible for any self-insured retention or deductible losses under each of the required policies;
- ensure every required policy, including any required endorsements and any umbrella or excess policy, shall be primary insurance; [Insurance carried by (<u>your public entity</u>), its officers, or its employees, if any, shall be excess and not contributory insurance to that provided by the Vendor and/or Service Provider};
- purchase or have the required coverage type on an "occurrence basis" with the exception of Professional Errors and Omissions Coverage which may be "claims made" coverage, but may utilize umbrella/excess liability coverage to achieve the limits required hereunder; such coverage must be at least as broad as the primary coverage (follow form).

The Office _____ must approve all insurance certificates.

Insurance: Terms and Conditions

Your public entity:

- Reserves its right to request certified copies of any policy or endorsement thereto. All insurance shall be provided by insurance carriers **licensed and admitted to do business in the State of _____** and must be rated "A–:VII" or better by A.M. Best (Current Rate Guide).
- Shall bill the Vendor and/or Service Provider for all monies for insurance coverage for the project as paid by (your public entity) upon demand, or may be offset against any monies due to the Vendor and/or Service Provider.

If the Vendor and/or Service Provider fails to procure and maintain the required coverage(s) and minimum limits such failure shall constitute a material breach of contract, whereupon (your public entity) may exercise any rights it has in law or equity, including but not limited to the following:

(1) immediate termination of the Agreement; (2) withholding any/all payment(s) due under this Agreement or any other Agreement it has with the Vendor and/or Service Provider (common law set-off); OR (3) procuring or renewing any required coverage(s) or any extended reporting period thereto and paying any premiums in connection therewith.

Insurance Basic Limits: Generic Construction

A. For **projects whose total value is between Zero and $100,000**:

- **Commercial General Liability** Including Completed Products and Operations and Personal Liability Insurance: One Million Dollars per Occurrence with Two Million Dollars Aggregate***;***
- **Commercial Automobile Insurance:** One Million Dollars Combined Single Limit for Owned, Hired and Non-owned Vehicles;
- **Excess Insurance:** One Million Dollars per Occurrence Aggregate; AND
- **NYS Statutory Workers Compensation, Employer's Liability and Disability Insurance:** Failure to secure compensation for the benefit of, and keep insured during the life of this agreement, employees required in compliance with the provisions of Workers' Compensation Law shall make this Agreement void and of no effect.

B. For **projects whose total value is between $100,000 and $500,000**:

- **Commercial General Liability** Including Completed Products and Operations and Personal Liability Insurance: One Million Dollars per Occurrence with Two Million Dollars Aggregate***;***
- **Commercial Automobile Insurance:** One Million Dollars Combined Single Limit for Owned, Hired and Non-owned Vehicles;
- **Excess Insurance:** Three Million Dollars per Occurrence Aggregate; AND
- **NYS Statutory Workers Compensation, Employer's Liability and Disability Insurance:** Failure to secure compensation for the benefit of, and keep insured during the life of this agreement, employees required in compliance with the provisions of Workers' Compensation Law shall make this Agreement void and of no effect.

C. For **projects whose total value is between $500,000 and $1,000,000**:

- **Commercial General Liability** Including Completed Products and Operations and Personal Liability Insurance: One Million Dollars per Occurrence with Two Million Dollars Aggregate***;***
- **Commercial Automobile Insurance:** One Million Dollars Combined Single Limit for Owned, Hired and Non-owned Vehicles;
- **Excess Insurance:** Five Million Dollars per Occurrence Aggregate; AND
- **NYS Statutory Workers Compensation, Employer's Liability and Disability Insurance:** Failure to secure compensation for the benefit of, and keep insured during the life of this agreement, employees required in compliance with the provisions of Workers' Compensation Law shall make this Agreement void and of no effect.

Insurance Basic Limits: Professional Services

- **Commercial General Liability** Including Completed Products and Operations and Personal Liability Insurance: One Million Dollars per Occurrence with Two Million Dollars Aggregate***;***
- **Commercial Automobile Insurance:** One Million Dollars Combined Single Limit for Owned, Hired and Non-owned Vehicles;
- **Excess Insurance:** Five Million Dollars per Occurrence Aggregate;
- **Professional Errors and Omissions:** One Million Dollars per Claim with Two Million Dollars Aggregate; AND
- **NYS Statutory Workers Compensation, Employer's Liability and Disability Insurance:** Failure to secure compensation for the benefit of, and keep insured during the life of this agreement, employees required in compliance with the provisions of Workers' Compensation Law shall make this Agreement void and of no effect.

Insurance

- It shall be an affirmative obligation of the Vendor and/or Service Provider to advise _____, within two (2) days of the cancellation or substantive change of any insurance policy set out herein, and failure to do so shall be construed to be a breach of this Agreement.
- The Vendor and/or Service Provider acknowledges that failure to obtain such insurance on behalf of the municipality constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to (your public entity).
- The Vendor and/or Service Provider is to provide (your public entity) with a Certificate of Insurance naming the City as ***Additional Insured on a primary and non-contributory basis*** **prior** to the commencement of any work or use (your public entity's) facilities.

Insurance: Subcontractor

- In the event the Vendor and/or Service Provider utilizes a Subcontractor for any portion of the services outlined within the scope of its activities, the Subcontractor shall provide insurance of the same type or types and to the same extent of coverage as that provided by the Vendor and/or Service Provider.
- All insurance required of the Subcontractor shall name (your public entity) as an ***Additional Insured on a primary and non-contributory*** basis for all those activities performed within its contracted activities for the contact as executed.

Remember: The Subcontractor must have the same type of credentials as the executing contractor.

Insurance Protection Clause

The failure to object to the contents of the Certificate of Insurance or the absence of same shall not be deemed a waiver of any and all rights held by the municipality.



Indemnification

- The Vendor and/or Service Provider, to the fullest extent provided by law, shall indemnify and save harmless (*your public entity)*, its Agents and Employees (hereinafter referred to as "(*your public entity*"), from and against all claims, damages, losses and expense (including, but not limited to, attorneys' fees), arising out of or resulting from the performance of the work or purchase of the services, sustained by any person or persons, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of property caused by the tortious act or negligent act or omission of Vendor and/or Service Provider or its employees or anyone for whom the Vendor and/or Service Provider is legally liable or Subcontractors.
- Without limiting the generality of the preceding paragraphs, the following shall be included in the indemnity hereunder: any and all such claims, etc., relating to personal injury, death, damage to property, or any actual or alleged violation of any applicable statute, ordinance, administrative order, executive order, rule or regulation, or decree of any court of competent jurisdiction in connection with, or arising directly or indirectly from, errors and/or negligent acts by the Vendor and/or Service Provider, as aforesaid.
- The Vendor and/or Service Provider's responsibility under this section shall not be limited to the required or available insurance.

American with Disabilities Act

- The Vendor and/or Service Provider agrees to comply with the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973 and not discriminate on the basis of disability in the admission or access to, or treatment of employment in its services, programs, or activities.
- The Vendor and/or Service Provider agrees to hold harmless and indemnify (*your public entity*) from costs, including but not limited to damages, attorney's fees and staff time, in any action or proceeding brought alleging a violation of ADA and/or Section 504 caused by the Vendor and/or Service Provider.
- Upon request accommodation will be provided to allow individuals with disabilities to participate in all services, programs and activities.

Safety

- (Y*our public entity*) specifically reserves the right to suspend or terminate all work under this Agreement whenever Vendor and/or Service Provider, and/or Vendor and/or Service Provider's employees or subcontractors, are proceeding in a manner that threatens the life, health or safety of any of Vendor and/or Service Provider's employees, subcontractor's employees, (*your public entity*) employees or member(s) of the general public on (*your public entity*) property. This reservation of rights by (*your public entity*) in no way obligates (*your public entity*) to inspect the safety practices of the Vendor and/or Service Provider.
- If (*your public entity*) exercises its rights pursuant to this part, the Vendor and/or Service Provider shall be given three (3) days to cure the defect, unless (*your public entity*) , in its sole and absolute discretion, determines that the service cannot be suspended for three days due to the (*your public entity*)'s legal obligation to continuously provide Vendor and/or Service Provider's service to the public or (*your public entity*) immediate need for completion of the Vendor and/or Service Provider's work.
- In such case, Vendor and/or Service Provider shall immediately cure the defect. If the Vendor and/or Service Provider fails to cure the identified defect(s), (*your public entity*) shall have the right to immediately terminate this Agreement.
- In the event that (*your public entity*) terminates this Agreement, any payments for work completed by the Vendor and/or Service Provider shall be reduced by the costs incurred by (*your public entity*) in re-bidding the work and/or by the increase in cost that results from using a different Vendor and/or Service Provider.

Code of Conduct: Ethics

The (*your public entity*) is committed to conduct business in a lawful and ethical manner and expects the same standards from Vendor and/or Service Providers/suppliers that (*your public entity*) conducts business with. (*Your public entity*) requires that all Vendor and/or Service Providers/suppliers abide by this Code of Conduct. Failure to comply with this Code may be sufficient cause for (*your public entity*) to exercise its rights to terminate its' business relationship with Vendor and/or Service Providers/suppliers. Vendor and/or Service Providers/suppliers agree to provide all information requested which is necessary to demonstrate compliance with this Code.

At a minimum, (*your public entity*) requires that all Vendor and/or Service Providers/suppliers meet the following standards:

- Legal: Vendor and/or Service Providers/suppliers and their sub-contractors agree to comply with all applicable local, state and federal laws, regulations and statutes.
- Discrimination: No person shall be subject to any discrimination in employment, including hiring, salary, benefits, advancement, discipline, termination or retirement on the basis of gender, race, religion, age, disability, sexual orientation, nationality, political opinion, party affiliation or social ethnic origin.
- Right to organize: Employees of the Vendor and/or Service Provider/supplier should have the right to decide whether they want collective bargaining.
- Sub-contractors: Vendor and/or Service Providers/suppliers shall ensure that sub-contractors shall operate in a manner consistent with this Code.
- Protection of the Environment: Vendor and/or Service Providers/suppliers shall comply with all applicable environmental laws and regulations. Where practicable, Vendor and/or Service Providers/suppliers are to utilize technologies that do not adversely affect the environment and when such impact is unavoidable, to ensure that it is minimized.

The undersigned Vendor and/or Service Provider/supplier hereby acknowledges that it has received (*your public entity*) Vendor and/or Service Provider/Supplier Code of Conduct and agrees that any and all of its facilities and sub-contractors doing business with (*your public entity*) will receive the Code and will abide by each and every term therein. Vendor and/or Service Provider/supplier acknowledges that its failure to comply with any condition, requirement, policy or procedure may result in the termination of the business relationship. Vendor and/or Service Provider/supplier reserves the right to terminate its agreement to abide by the Code of Conduct at any time for any reason upon ninety (90) days prior written notice to (*your public entity*) .

Governing Law

This Agreement shall be governed and construed under the laws of the State of _____, the location where this Agreement was accepted to by Vendor and/or Service Provider. The Vendor and/or Service Provider agrees to comply with all applicable local, state and federal laws, rules and regulations in the performance of the duties of this Agreement.

Professional Licensure for Professional Services

Any and all professional services performed under this Agreement shall be completed by an individual licensed by (your state's) Office of Professions - Education Department as applicable to the service provided including, but not limited to:

- Accounting,
- Actuarial,
- Architecture,
- Engineering,
- Landscape Architecture,
- Nursing and other healthcare professionals,
- Physicians, and
- Educators.

The Contractor should represent that it has all necessary governmental licenses to perform the services described herein.

Non-Collusive Bidding Certification

Where applicable, upon the submission of a bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

- The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

Venue

(*Your public entity*) and the Vendor and/or Service Provider hereby agree that any litigated matters shall be venued in the federal and state courts of the State of _____in the County of _____.



Assignment

- The Vendor and/or Service Provider is prohibited from assigning, conveying, subletting or otherwise disposing of the Vendor and/or Service Provider's right, title, or interest therein, or the Vendor and/or Service Provider's power to execute this agreement to any other person or corporation without the previous written consent of (*your public entity*) .
- If the Vendor and/or Service Provider assigns, conveys, sublets or otherwise disposes of the Vendor and/or Service Provider's right, title, or interest without prior written consent, (*your public entity*) shall revoke and annul this agreement, and (*your public entity*) shall be relieved and discharged from any and all liability growing out of this Agreement, and any person or corporation to whom the interest was assigned, transferred, conveyed, sublet or otherwise disposed of shall forfeit and lose all moneys theretofore earned under such contract, except so much as may be required to pay his or her employees.

Termination

- The Vendor and/or Service Provider and (your public entity) may mutually agree, in writing, to terminate this Agreement at any time. (Your public entity) may also terminate this Agreement at any time and or any reason by mailing written notice to the Vendor and/or Service Provider at least ten (10) business days prior to such termination date.
- (Your public entity) reserves the right to cancel this Agreement at any time in event of default or violation by the Vendor and/or Service Provider of any provision of this Agreement.
- (Your public entity) may take whatever action at law or in equity that may appear necessary or desirable to collect damages arising from a default or violation or to enforce performance of this Agreement.

Default

- Vendor and/or Service Provider's failure to perform its obligations and comply with its representations under this Agreement shall constitute a default under this Agreement.
- Upon Vendor and/or Service Provider's default, (your public entity) may cancel this Agreement and immediately stop payment of any fees to Vendor and/or Service Provider hereunder.
- (Your public entity) shall also have any all additional rights and remedies under (your state's) Law as a result of Vendor and/or Service Provider's default.

Force Majeure

Neither party shall be held liable for failure to perform its part of this Agreement when such failure is due to fire, flood, or similar disaster; strikes or similar labor disturbances; industrial disturbances, war, riot, insurrection, and/or other causes beyond the control of the parties.

Entire Agreement

- This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter contained herein except as to those matters or agreements expressly incorporated herein by reference.
- No covenant, representation or condition not expressed herein shall be effective to interpret, change or restrict the express provisions of this Agreement.
- This Agreement supersedes any and all prior agreements, whether written or oral, relating to the subject matter contained herein.
- This Agreement shall not be amended, changed or otherwise modified except in writing, signed by both parties.

Severability

In the event that any portion of this Agreement may be adjudged invalid or unenforceable for any reason, adjudication shall in no manner affect the other portions of this Agreement which will remain in full force and effect as of the portions adjudged invalid or unenforceable were not originally a part thereof.

Modification

This Agreement may be modified only by a writing signed by both parties. Modifications include:

- Addendum;
- Change orders; or
- Amendments

Execution

- This Agreement may be executed in separate counterparts, which together shall constitute the Agreement of the parties, provided that all of the parties to this Agreement have executed their respective copy of this Agreement.
- **(Your public entity's) Certification:** In addition to the acceptance of this Agreement, I certify that original copies of this signature page will be attached to all other exact copies of this Agreement.
- **Vendor and/or Service Provider Certification:** In addition to the acceptance of this Agreement, I certify that all information provided to (your public entity) with respect to (your public entity's) State Finance Law Section ____ is complete, true and accurate.

Review and Approval Process

Contracting Department

Creates contract using your public entity's contract template and includes:

- Request for Proposal or Request for Quotation;
- The Response Proposal;
- Bid Bond as required;
- Insurance; and
- Certification of funds

Purchasing

Reviews contractual agreements for compliance with your public entity's Purchasing Policy



City Attorney

- Reviews contract for legal terms and conditions per your public entity's charter and state and federal laws
- Negotiates changes in terms and conditions
- Distributes final contract for review and approval



Risk Management

- Reviews project to determine its totality of risk as it relates to your entity
- Reviews insurance and indemnification
- Discusses contract's for legal terms and conditions with City Attorney per your public entity's charter and state and federal laws

Questions



Contact Info

Marilyn L. Rivers, CPCU ARM AIC

Director Risk and Safety

City Saratoga Springs, NY

518-587-3550 ext 2612

Marilyn.Rivers@Saratoga-Springs.org