

**SECTION A-2:
BIDDER INSTRUCTIONS**

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**REQUEST FOR PROPOSALS
DESIGN-BUILD PROJECT**

ARTICLE 1 – DEFINITIONS; RFP DOCUMENTS

1.01 *Definitions*

- A. Terms used in this Request for Proposals (RFP) have the meanings indicated in the General Conditions. Additional terms have the meanings indicated below:
 - 1. RFP Documents: This Request for Proposals; and any forms, Project information, technical information, site information, budget information, proposed Contract Documents, or other documents issued with or incorporated by the RFP.
 - 2. Proposer: An entity that submits a Proposal to Owner.
- B. In addition to terms specifically defined, terms with initial capital letters in the RFP include references to identified articles and paragraphs, and the titles of other documents or forms.

1.02 *RFP Document Use*

- A. Proposers must use complete sets of RFP Documents in preparing the Proposal. Neither Owner nor Owner's Consultant (if any) assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of RFP Documents.
- B. Copies of RFP Documents available are only for the purpose of obtaining Proposals and do not confer a license or grant to Proposers for any other use.

ARTICLE 2 – PRE-BID MEETING

2.01 *Date, Location, and Terms of Pre-Proposal Conference*

- A. A pre-Proposal conference will be held per the Bid Advertisement. Representatives of Owner and Owner's Engineer will be present to discuss the Project. Proposers are encouraged to attend and participate in the conference. Owner will transmit to all prospective Proposers of record such Addenda as Owner considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

ARTICLE 3 – PROPOSER'S REPRESENTATIONS

3.01 *Representations: It is the responsibility of each Proposer before submitting a Proposal to:*

- A. Examine and carefully study the RFP Documents, and any data and reference items identified in the RFP Documents.
- B. Visit the Site, conduct a thorough, alert visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Become familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Carefully study all reports of explorations and tests of subsurface conditions at or adjacent to the Site, and all drawings of physical conditions relating to existing surface or subsurface structures at the Site, if any, that Owner has identified or made available to Proposer, especially with respect to Technical Data in such reports and drawings.
- E. Consider the information known to Proposer itself, and to members of Proposer's design-build team; information commonly known to design professionals, design-builders, and contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the RFP Documents; and the Site-related reports and drawings (if any) identified in

the RFP Documents or otherwise made available to Proposer, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the project design; (3) the means, methods, techniques, sequences, and procedures of construction to be employed by Proposer; and (4) Proposer's safety precautions and programs.

- F. Agree, based on the information and observations referred to in the preceding paragraph, that at the time of submitting its Proposal no further examinations, investigations, explorations, tests, studies, or data are necessary for the preparation of its Proposal for performance of the Work at the prices stated and within the times required, and in accordance with the other terms and conditions of the RFP Documents.
- G. Become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the RFP Documents.
- H. Promptly give Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Proposer discovers in the RFP Documents, and confirm that the written response from Owner is acceptable to Proposer.
- I. Determine that the RFP Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- J. Agree that the submission of a Proposal will constitute an incontrovertible representation by Proposer that Proposer has complied with every requirement of this Article, that without exception the Proposal and all prices in the Proposal are premised upon performing and furnishing the Work required by the RFP Documents.

ARTICLE 4 – EXAMINATION OF SITE AND SITE-RELATED DOCUMENTS; OWNER'S SAFETY PROGRAM; OTHER WORK AT THE SITE

4.01 *Site and Other Areas*

- A. The Site is identified in the RFP Documents. By definition, the Site includes rights-of-way, easements, and other lands furnished by Owner for the use of the Design-Builder. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by Design-Builder.

4.02 *Existing Site Conditions*

- A. ***Geotechnical Report:*** The RFP Documents contain a Geotechnical Report (GR). The GR describes certain select subsurface conditions that are anticipated to be encountered by Design-Builder during construction. The GR is a Contract Document.

The GR is intended to reduce uncertainty and the degree of contingency in submitted Proposals. Proposals should be based on a comprehensive approach that includes an independent review and analysis of the GR, all other Contract Documents, Technical Data, other available information, and observable surface conditions.

Nothing in the GR is intended to relieve Proposers of the responsibility to make their own determinations regarding construction costs, Proposal strategies, and Proposal prices, nor of the responsibility to select and be responsible for the means, methods, techniques, sequences, and procedures of construction, and for safety precautions and programs incident thereto.

- B. ***Underground Facilities:*** Information and data shown or indicated in the RFP Documents with respect to existing Underground Facilities at or contiguous to the Site are set forth in the Contract Documents and are based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or others.

- C. *Adequacy of Data*: Provisions concerning responsibilities for the adequacy of data furnished to prospective Proposers with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the RFP Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 5.03, 5.04, and 5.05 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Proposers with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 5.06 of the General Conditions.

4.03 *Site Visit and Testing by Proposers*

- A. Proposer shall conduct the Site visit during normal working hours and shall not disturb any ongoing operations at the Site.
- B. Proposer is not required to conduct any subsurface testing, or exhaustive investigations of Site conditions.
- C. On request, and to the extent Owner has control over the Site, and schedule permitting, the Owner will provide Proposer access to the Site to conduct such additional examinations, investigations, explorations, tests, and studies as Proposer deems necessary for preparing and submitting a successful Proposal. Owner will not have any obligation to grant such access if doing so is not practical because of existing operations, security or safety concerns, or restraints on Owner's authority regarding the Site.
- D. Proposer shall comply with all applicable Laws and Regulations regarding excavation and location of utilities, obtain all permits, and comply with all terms and conditions established by Owner or by property owners or other entities controlling the Site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs.
- E. Proposer shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

4.04 *Owner's Safety Program*

- A. The Owner safety program follows the American Public Power Associations (APPA) safety manual.

ARTICLE 5 – INTERPRETATIONS AND ADDENDA

- 5.01 All questions about the meaning or intent of the Proposal Documents are to be directed as indicated in the Bid Advertisement. Interpretations or clarifications considered necessary by Owner in response to such questions will be issued by Addenda delivered to all parties recorded by Owner as having received the Proposal Documents. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 5.02 Addenda may be issued to clarify, correct, or change the Proposal Documents as deemed advisable by Owner.

ARTICLE 6 – TECHNICAL PROPOSAL

6.01 *Technical Proposal Criteria*

- A. Proposer shall submit a Technical Proposal that meets the drawing and specification criteria.

6.02 *Ownership Rights*

- A. An unsuccessful Proposer shall retain an ownership and property interest in the Technical Proposal. Such documents are not intended or represented to be suitable for use or reuse by Owner or others on the Project or on any other project. Any such use or reuse will be at Owner's sole risk and without liability or legal exposure to unsuccessful Proposer, and Owner shall indemnify and hold harmless unsuccessful Proposer from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from any such use or reuse.

6.03 *Deviations from Conceptual Documents*

- A. Technical Proposals may include deviations from the Conceptual Documents provided that such deviations are called to the Owner's attention in a clear, express manner.

6.04 *Evaluation of Technical Proposals*

- A. Owner and Engineer will evaluate proposals based on technical approach, cost and schedule.

ARTICLE 7 – PRICE PROPOSAL

7.01 *Stipulated Price*

- A. Proposers shall submit a Price Proposal on a stipulated price (lump sum) basis as set forth in the Price Proposal Form.

ARTICLE 8 – SUPPLEMENTAL SECURITY

8.01 Each Proposal must be accompanied by Proposal security made payable to Owner in an amount of five (5) percent of Proposer's maximum Proposal price and in the form of a certified or cashier's check or a Surety Bond (on form attached) issued by a surety meeting the requirements of Paragraphs 6.01 of the General Conditions.

8.02 The Proposal security of Successful Proposer will be retained until such Proposer has executed the Agreement, furnished any required contract security and met the other conditions of the Notice of Award, whereupon the Proposal security will be returned. If the Successful Proposer fails to execute and deliver the Agreement and furnish the required contract security within 15 days after the Notice of Award, Owner may annul the Notice of Award and the Proposal security of that Proposer will be forfeited. The Proposal security of other Proposers that Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the Effective Date of the Agreement or 61 days after opening of Proposals, whereupon Proposal security furnished by such Proposers will be returned.

8.03 Proposal security of other Proposers that Owner believes do not have a reasonable chance of receiving the award will be returned within seven days after the Proposal opening.

ARTICLE 9 – CONTRACT TIMES

9.01 *Completion of the Work*

- A. Proposer shall set forth in the Proposal the time by which Proposer shall achieve Substantial Completion, subject to the restrictions established in Paragraph 7.03 of this RFP. The Owner will take Proposer's time commitment regarding Substantial Completion into consideration during the evaluation of Proposals, and it will be necessary for the apparent Successful Proposer to satisfy Owner that it will be able to achieve Substantial Completion within the time such Proposer has designated in the Proposal. The Successful Proposer's time commitments will be entered into the Agreement (or incorporated in the Agreement by reference to the specific terms of the Proposal).

ARTICLE 10 – LIQUIDATED DAMAGES

10.01 *Late Completion*

- A. Provisions for liquidated damages, if any, for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment, are set forth in the Agreement.

ARTICLE 11 – FORMAL REQUIREMENTS

11.01 *Proposal Execution Requirements*

- A. A Proposal by a corporation shall be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation shall be shown.
- B. A Proposal by a limited liability company shall be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.
- C. A Proposal by an individual shall show the Proposer's name and official address.
- D. A Proposal by a joint venture shall be executed by an authorized representative of each joint venturer in the manner indicated on the Proposal Form. The official address of the joint venture shall be shown.
- E. All names shall be printed in ink below the signatures.
- F. The Proposal shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Proposal Form.
- G. Postal and e-mail addresses and telephone number for communications regarding the Proposal shall be shown.

ARTICLE 12 – SUBCONTRACTORS, DESIGN PROFESSIONALS, SUPPLIERS, AND OTHERS

12.01 *Supplementing the Statement of Qualifications*

- A. Proposer shall supplement its Statement of Qualifications by furnishing the names and relevant information regarding proposed additions or changes to the design-build team.

ARTICLE 13 – SUBMITTAL OF PROPOSALS

13.01 Proposals, including all their component parts, shall be submitted per the Bid Advertisement.

13.02 A Proposal shall be enclosed in a plainly marked package stating the Project title, and the name and address of Proposer. The Price Proposal shall be included in the package, and shall itself be enclosed in a separate sealed envelope marked "Price Proposal." The Proposal be accompanied by the Proposal security and other required documents. If a Proposal is sent by mail or other delivery system, the sealed envelope containing the Proposal shall be enclosed in a separate mailing or delivery package plainly marked on the outside per the Bid Advertisement.

13.03 Proposals received after the date and time prescribed for the opening of Proposals, or not submitted at the correct location or in the designated manner, will not be accepted and will be returned to the Proposer unopened.

ARTICLE 14 – MODIFICATION AND WITHDRAWAL OF PROPOSAL

14.01 A Proposal may be withdrawn by an appropriate document duly executed in the same manner that a Proposal must be executed and delivered to the place where Proposals are to be submitted

prior to the date and time for the opening of Proposals. Upon receipt of such notice, the unopened Proposal will be returned to the Proposer.

- 14.02 If a Proposer wishes to modify its Proposal prior to Proposal opening, Proposer must withdraw its initial Proposal in the manner specified in Paragraph 16.01 and submit a new Proposal prior to the date and time for the opening of Proposals.
- 14.03 If within 24 hours after Proposals are opened any Proposer files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Proposal, that Proposer may withdraw its Proposal, and the Proposal security will be returned. Thereafter, if the Work is rebid, that Proposer will be disqualified from further bidding on the Work.

ARTICLE 15 – OPENING OF PROPOSALS

- 15.01 Proposals will be opened as indicated in the Bid Advertisement.

ARTICLE 16 – PROPOSALS TO REMAIN SUBJECT TO ACCEPTANCE

- 16.01 All Proposals will remain subject to acceptance for the period of time stated in the Proposal Form, but Owner may, in its sole discretion, release any Proposal and return the Proposal security prior to the end of that period.

ARTICLE 17 – EVALUATION OF PROPOSALS

- 17.01 *Technical Proposals:* The procedures applicable to evaluating and scoring the Technical Proposal are set forth in Article 6 of this RFP.
- 17.02 In evaluating a Proposal, Owner may consider whether the Proposal complies with the RFP and includes any prescribed documents and other data requested in the RFP.
- 17.03 Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Proposal and to establish the responsibility, qualifications, and financial ability of Proposers and proposed engineers, Project Design Professionals, Construction Subcontractors, Suppliers, and other individuals and entities to perform and furnish the Work in accordance with the Contract Documents.

ARTICLE 18 – REJECTION OF ALL PROPOSALS; DISCREPANCIES

- 18.01 Owner reserves the right to reject any or all Proposals, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Proposals. Owner will reject the Proposal of any Proposer that Owner finds, after reasonable inquiry and evaluation, to not be responsible. If Proposer purports to add terms or conditions to its Proposal, takes exception to any provision of the RFP Documents, or attempts to alter the contents of the Contract Documents for purposes of the Proposal, then the Owner will reject the Proposal as nonresponsive; provided that Owner also reserves the right to waive all minor informalities not involving price, time, or changes in the Work.

ARTICLE 19 – AWARD OF CONTRACT

- 19.01 If the Contract is awarded, Owner will award the Contract to the Proposer whose Proposal is in the best interests of the Project, and pursuant to the procedures set forth in this RFP.
- 19.02 If the contract is awarded, Owner will give Successful Proposer a Notice of Award within 60 days after the day of the Proposal opening.

ARTICLE 20 – BONDS AND INSURANCE

20.01 Article 6 of the General Conditions, sets forth Design-Builder’s requirements as to performance and payment bonds and insurance. When the Successful Proposer delivers the executed Agreement to Owner, it must be accompanied by the required Bonds.

ARTICLE 21 – SIGNING OF AGREEMENT

21.01 When Owner issues a Notice of Award to the Successful Proposer, it shall be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within 15 days thereafter, Successful Proposer shall execute and deliver the required number of counterparts of the Agreement (and any bonds and insurance documentation required to be delivered by the Contract Documents) to Owner. Within ten days thereafter, Owner shall deliver one fully executed counterpart of the Agreement to Successful Proposer, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.

ARTICLE 22 – SALES AND USE TAXES

22.01 Owner is exempt from Nebraska State Sales and Use Taxes on materials and equipment to be incorporated in the Work. Said taxes shall not be included in the Proposal.