

**Modifications specifically for R-163: Riverside Pumping Station Backup Power Generation Project are embedded in RED beginning with page 44 of General Specifications found at [http://www.mpw.net/services/bids\\_home](http://www.mpw.net/services/bids_home).**

## **CHAPTER 2.9.0 LEGAL RELATIONS**

### **2.9.1 Laws and Regulations**

The Contractor, the Contractor's agents, and employees, shall at all times observe and comply with all Federal laws, rules and regulations, statutes, codes, rules and regulations of the State of Wisconsin, and all applicable charter provisions, codes, regulations, and ordinances of the City of Milwaukee, all amendments thereto, and all the provisions of the contract documents, which in any manner affect the conduct of the work and all such orders or decrees as exist at the present and which may be enacted later of bodies or tribunals having jurisdiction or authority over the work. The Contractor shall protect and save harmless the City, its officers, and representatives, against any claim or liability arising from the violation of any such law, ordinance, code, rule, regulation, or order.

### **2.9.2 Assignment and Subletting**

Any subcontracting of this agreement is mutually recognized by all parties only to the extent of its approval and acceptance by the Commissioner at the time of the award of this contract. The Contractor shall not subsequently assign this contract or any interest therein, nor subcontract the work or any part thereof, without written consent of the Commissioner having first been obtained. If the Contractor submits subsequent written request to the Commissioner for substitution(s) of listed subcontractor(s), the Contractor shall give the Commissioner written assurance that the Contractor will save the City, **Consulting Engineer, and their officers, agents, servants, and employees** harmless from any damages which may arise from litigation between the original subcontractor(s) and the Contractor as a result of such substitution(s). The decision of the Commissioner shall be final in determining consent for said substitution(s). It is incumbent upon the Contractor to notify the Surety of such consent granted by the Commissioner for said substitution(s).

If the Contractor shall so assign or subcontract without such consent, the Commissioner shall have the right to rescind this contract and to declare the same null and void or to re-let the work to some other competent party, thereupon adjusting and determining the damages to the City arising thereby, and the Contractor shall be liable to the City for such damages as the

Commissioner shall so adjust and determine, which adjustment and determination thereof, shall be final and conclusive on the parties thereto.

The Contractor assumes full liability for all acts and omissions of any subcontractor or of anyone employed directly or indirectly by either said Contractor or any subcontractor, and this liability shall be in addition to any other legal liability of the Contractor. Neither the approval nor endorsement of the Commissioner nor anything contained in the contract documents shall be construed as creating any contractual relationship between any subcontractor and the City.

Consent to the assignment or subletting of this contract or of any part thereof or any alterations which may be made in the terms of this contract or in the work to be done under it or the granting of any extension of time for the performance of the contract or any other forbearance on the part of either the Commissioner or Contractor to the other shall not in any way release the Contractor or Surety or their heirs, executors, administrators, successors, or assigns from their liability hereunder.

The Contractor, to the extent practicable, shall maintain a list of all subcontractors and suppliers performing work or furnishing materials under each formal contract. This list must be submitted to the Commissioner upon request.

### 2.9.3 Patents and Trade Secrets

The Contractor shall hold and save the City, **Consulting Engineer, and** its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for or on account of any patented or unpatented invention process, article, or appliance manufactured or used in the performance of the contract, including its use by the City, unless otherwise specifically stipulated in the contract documents.

If the Contractor uses any design, device, or materials covered by letters, patent or copyright, the Contractor shall provide for such use by suitable agreement with the owner of such patented or copyrighted design, device, or material. It is mutually agreed and understood, that without exception, the contract prices shall include all royalties or costs arising from the use of such design, device, or materials, in any way involved in the work. The Contractor and/or Contractor's Sureties shall indemnify and save harmless the City from any and all claims for infringement by reasons of the use of such patented or copyrighted design, device, or materials or any trademark or copyright in connection with work agreed to be performed under this contract and shall indemnify the City for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after the completion of the work.

License and/or Royalty Fees for the use of a process which is authorized by the City must be reasonable and paid by the Contractor to the holder of the patent or authorized licensee.

#### 2.9.4 Liens and Taxes

Any and all taxes and license or permit fees imposed by the Federal, State, and local municipalities are the sole responsibility of the Contractor. Any and all liens or claims of damages which may be chargeable to the Contractor are the sole responsibility of the Contractor. Commissioner reserves the right to withhold a sufficient amount from the contract payment to indemnify the City against such liens or claims of damages.

No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that the Contractor has good title to all materials and supplies used in the work, free from all liens, claims, or encumbrances.

#### 2.9.5 Sales Tax

The City is exempt from Wisconsin Use, Sales Tax, and the .5% County Tax. Bidders, therefore, shall not add sales tax to their proposals when bidding to the City but shall include in their lump sum bids only the sales tax they will be required to pay directly as a consumer when obtaining materials, etc., to fulfill the contract requirements should they be the successful bidder.

#### 2.9.6 Protection Against Liability

Contractor covenants and agrees that Contractor shall save and indemnify and keep harmless the City, **Consulting Engineer, and their officers, agents, servants, and employees harmless** against all liability, judgments, costs, and expenses, which may in any way come against the City in consequence of the granting of the contract, or which in anyway results from the carelessness or neglect of the Contractor or the agents, employees, or workers of the Contractor or Subcontractors in any respect whatever, and in every such case where judgment is recovered against the City by reason of the carelessness or negligence of the Contractor or the Contractor's agents, employees or workers, or Subcontractors, such judgments shall be conclusive against the Contractor, not only as to the amount of damages, but as to Contractor's liability to the City.

## 2.9.7 Liability and Insurance

The Contractor shall be responsible for and shall save the City, **Consulting Engineer, and their officers, agents, servants, and employees** harmless from, and defend the City against all liability for damages occasioned by the digging up, use or occupancy of the street, alley, highway, public grounds, and private grounds, or which may result therefrom or which may result in any way from the negligence or carelessness of the Contractor, the Contractor's agents, employees, workers, by reason of the elements, unforeseen or unusual difficulties, obstructions, or obstacles encountered in the prosecution of the work, and they shall indemnify the City for and save it harmless from all claims and liabilities, actions, causes of action, and liens for materials furnished or labor performed in the construction or execution of the work and from all costs, charges, and expenses incurred in defending such suits or actions and from and against all claims and liabilities for injury or damage to persons or property emanating from defective or careless work methods, or from and against all claims or liabilities for royalties, license fees, actions, suits, charges, and expenses or damage from infringement for reason of the use of any invention or improvement in tools, equipment or plant or any process, device or combination of devices used in the construction of the work.

Each Prime Contractor must furnish to the City of Milwaukee, prior to the start of work, certificates of insurance which confirm that the Prime Contractor has the types and amounts of insurance referenced in Sections (a) through (d). The Prime Contractor shall require all of its subcontractors to carry the same types and amounts of coverage as required of the Prime or may instead provide the coverage for any or all subcontractors. The Prime Contractor is fully responsible for assuring subcontractor compliance with all the insurance requirements specified herein.

### a) WORKER'S COMPENSATION AND EMPLOYEES LIABILITY

#### Coverage Amounts

Worker's Compensation		Statutory
Employer's Liability		
Bodily Injury by Accident	each accident	\$100,000
Bodily Injury by Disease	each employee	\$100,000
Bodily Injury by Disease	policy limit	\$500,000

#### To Include

Other state's coverage  
United States Longshoremen and Harbor  
    Worker's Endorsement (Required only when the  
    contract Involves work on navigable bodies of water)

b) COMMERCIAL GENERAL LIABILITY

Limits of Liability

Bodily Injury/Property Damage	each occurrence	\$1,000,000
	general aggregate	\$1,000,000
	products/completed Operations aggregate	\$1,000,000
Personal Injury	aggregate	\$1,000,000

To Include

Occurrence form  
Premises/operations coverage  
Products/completed operations coverage including extension of cover-  
age for two (2) years after acceptance of work by the City of Milwaukee  
Independent contractors (Owners/Contractors Protective) coverage  
Contractual liability for risks assumed in this agreement  
No exclusion for explosion, collapse, or underground occurrences

c) AUTOMOBILE LIABILITY

Limits of Liability

Bodily Injury/Property Damage	each accident	\$1,000,000
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To Include

Coverage on all owned, non-owned, and hired vehicles

d) UMBRELLA LIABILITY

Limits of Liability

Personal Injury/Property Damage	each occurrence	\$2,000,000
	aggregate	\$2,000,000

To Include

Occurrence form  
First dollar defense coverage  
Insuring agreement which will provide excess protection to the  
primary coverages

For coverages referred to in section 2.9.7.(b), (c), and (d), the City of Milwaukee shall be named as an additional insured.

The worker's compensation and employers liability certificate should confirm that thirty (30) days notice of cancellation must be provided. For all other insurance coverages referenced above, sixty (60) days notice of cancellation must be provided.

A separate certificate need not be filed if the Prime Contractor has a current certificate on file with the City of Milwaukee. It is the responsibility of the Prime Contractor to make this determination and to provide evidence of coverage if a previous certification has been filed. No Prime Contractor or Subcontractor shall perform any work under the contract after a certificate has expired or been canceled unless a new or renewal certificate is provided prior to the expiration or cancellation date of the previous certificate. The Prime Contractor shall have the responsibility of ensuring that valid certificates are on file for itself and all Subcontractors it plans to use.

#### 2.9.8 Performance Bond and Payment Bond

For all Public Works contracts over \$25,000, the contractor is to submit to the Commissioner, prior to or at the time of execution of the contract, a performance bond and a payment bond in an amount equal to 100% of the Contract price. For contracts of \$10,000 or more, but not over \$25,000, the contractor may be requested, in lieu of 100% bonds, to provide an irrevocable letter of credit or a performance bond and a payment bond in an amount equal to 50% of the contract price. The bonds required on any contract will be based on the estimated contract amount and will be specified in the bid specifications. All bonds must be executed by a surety company authorized to do business in the State of Wisconsin and must be accompanied by a Power-of-Attorney for the Attorney-in-Fact. The performance bond and the payment bond must be submitted as separate instruments. The performance bond shall also cover all work required under the guarantee provisions of the contract.

#### 2.9.9 Unforeseen Delay

If the City is prohibited or enjoined from proceeding with the work or from authorizing its prosecution, either before or after its commencement, by reason of any litigation or otherwise, the Contractor shall not be entitled to any damages by reasons of the delays thereby caused, except for the actual cost of protection of such work as the Contractor may have underway for the cost of removal and replacement of such tools, plant, and materials, as the Contractor may have delivered upon the work site, and such cost is to be determined by

the Commissioner. The time of completion may be extended for such time, as in the judgement of the Commissioner, shall be equal to the aggregate delay.