

Terms and Conditions

Unless the proposer takes exception to any of these requirements in this proposal in writing when responding to the RFQ, the proposer's response to the RFQ shall be deemed acceptance of these terms, without alteration, if a contract should ultimately be awarded.

A. Indemnification

Notwithstanding any references to the contrary in the contract documents, the contractor will assume full liability for all of its acts in the performance of the Contract. The contractor will save and indemnify and keep harmless the Employees' Retirement System of the City of Milwaukee, the Annuity and Pension Board, their staffs, present and former employees, officers and directors against all liabilities, judgments, costs, and expenses which may be claimed against the ERS in consequence of the granting of the Contract to the contractor, or which may result from negligence and/or willful acts of the contractor, or the agents, employees or workmen of the CONTRACTOR in any respect whatever. If judgment is recovered, whether in suits of law or in equity, against the ERS by reason of the negligence and/or willful acts or by acts of commission of the contractor, such persons, firms or corporations carrying out the provisions of the Contract for the contractor, the contractor assumes full liability for such judgment not only as to the amount of damages, but also the cost, attorneys fees or other expenses resulting there from. The city shall tender the defense of any claim or action at law or in equity to the contractor or contractor's insurer, and upon such tender it shall be the duty of the contractor or the contractor's insurer to defend such claim or action without cost or expense to the City or its officers, agents, or employees.

B. Conflict of Interest

No officer, employee, or agent of the City of Milwaukee or the ERS who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which the contract awarded to the successful proposer pertains, shall have any personal interest, direct or indirect, in the contract. No member of the governing body of the City or ERS and no other public official the City who exercises any functions or responsibilities in the review or approval of the carrying out of the contract shall have any personal interest, direct or indirect, in the contract.

The PROPOSER covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services if a contract is awarded to proposer. The proposer further covenants that in the performance of the contract, no person having any conflicting interest shall be employed. An interest on the part of the proposer or its employee must be disclosed to the ERS.

C. Audit

At any time during normal business hours and as often as the ERS, or if federal or state grants or aids are involved, as the appropriate federal or state agency may deem necessary, there shall be made available to the ERS or such agency for examination all of its records with respect to all matters covered by the contract, and proposer shall permit the ERS to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by the contract, if the contract is awarded to proposer.

D. Public Records Law

Proposer understands that the ERS is bound by the Wisconsin Public Records Law, and as such, all of the terms of the RFP, proposal, and the contract awarded to the successful PROPOSER are subject to and conditioned on the provisions of Wis. Stats. sec. 19.21 *et. sec.* Proposer acknowledges that it is obligated to assist the ERS in retaining and producing records that are subject to the Wisconsin Public Records Law, (including, but not limited to any records produced or collected by proposer under this Agreement, pursuant to Wis. Stats. §19.36(3)), and that the failure to do so shall constitute a material breach of the contract, and that the proposer must defend and hold the ERS harmless from liability due to its fault under that law. Except as otherwise authorized, those records shall be maintained for a period of seven years.

E. Choice of Law/Venue

The contract awarded to the successful proposer, and all questions arising in connection with such contract shall be governed by and construed in accordance with the internal laws of the State of Wisconsin. Venue for any action arising out of or in any way related to the contract shall be exclusively in the City of Milwaukee for matters arising under state law and in federal district court in the eastern district of Wisconsin for matters arising under federal jurisdiction.

F. Prompt Payment Policy

It is the ERS's policy to pay all invoices within 30 days. If the ERS does not make payment within 45 days after receipt of properly completed documentation supporting payment, the ERS shall pay simple interest beginning with the 31st calendar day at the rate of one percent per month (unless the amount due is subject to a good-faith dispute, and, before the 45th day of receipt, notice of the dispute is sent to the contractor in accordance with the notice provisions in the contract). If there are subcontractors, consistent with s. 66.0135(3), Wis. Stats., the prime contractor must

pay the subcontractors for satisfactory work within seven days of the prime contractor's receipt of payment from the ERS, or seven days from receipt of a properly submitted and approved invoice from the subcontractor, whichever is later. If the prime contractor fails to make timely payment to a subcontractor, the contractor shall pay interest at the rate of 12 percent per year, compounded monthly, beginning with the 8th calendar day.

G. Insurance Requirements

a. General Requirements

The contractor will secure and maintain throughout the duration of the contract, insurance of such types and in such amounts as may be necessary to protect itself and the interests of the ERS against all hazards or risks of loss as hereafter specified.

1. The form and limits of such insurance, together with the underwriter thereof in each case, will be required to be acceptable to the ERS; but regardless of any ERS review, it will be the responsibility of the Contractor to maintain adequate insurance coverage at all times.
2. Failure of the contractor to maintain adequate coverage will not relieve it of any contract responsibility or obligation.
3. All policies are to contain notice requirements that ensure that 60 days advance written notice will be provided to the ERS prior to cancellation/renewal or alteration of terms and conditions of the policies.
4. Insurers which provide the insurance coverage referenced in this section are to have an A.M. Best rating of no less than A/VIII. The successful bidder will provide immediate written notice to the ERS if there is any change in the A.M. Best rating of any insurer.
5. Certificates of Insurance for all of the coverage limits referenced herein must be provided prior to the effective date of the contract and for each year that the contract is in effect.
6. It will be the responsibility of the prime contractor to ensure that all subcontractors comply with all insurance and bonding requirements.
7. All policies other than Workers' Compensation/Employers Liability, Professional Liability, Crime and Cyber Risk/Network Security are to include the Employees' Retirement System of the City of Milwaukee, the Annuity and Pension Board, their staffs, present and former employees, officers, directors,

agents and representatives as additional insureds. The additional insured status should be shown on the Certificates of Insurance.

8. No payments or disbursements under the contract shall be made until satisfactory evidence that compliance with the insurance requirements described in this section has been provided.

b. Commercial Automobile Liability

This insurance will be written in commercial form and will protect the contractor and the ERS against all claims for injuries to members of the public and damage to property of others arising from the contractor's use of motor vehicles and will cover operation on or off the site of all motor vehicles licensed for highway use whether they are owned, non-owned or hired. The liability limits will not be less than the following:

Bodily Injury/Property Damage per occurrence: \$1,000,000

Uninsured Motorists/Underinsured Motorists protection per occurrence: \$1,000,000

c. Commercial General Liability

This insurance will be written on a commercial general liability form which will protect the contractor and the ERS for those sums the contractor becomes legally obligated to pay as damages because of bodily injury, personal injury or property damage.

The insurance will include:

1. Commercial General Liability Insurance Agreement that provides occurrence coverage.
2. Contractual Liability Coverage as provided under a Commercial General Liability policy.
3. Contractor will certify that the policy be reviewed each year of the Contract.

The limits applicable to the commercial general liability policy will not be less than the following:

BODILY INJURY AND PROPERTY DAMAGE – COMBINED SINGLE LIMIT	
Each Occurrence	\$1,000,000
General Aggregate – Other than Products/Completed Operations	\$1,000,000

Products/Completed Operations Aggregate	\$1,000,000
Personal Injury	\$1,000,000

d. Professional Liability (Errors and Omissions)

The limits applicable to the professional liability policy will not be less than the following:

WRONGFUL ACT	
Each incident	\$5,000,000
Aggregate	\$5,000,000

If coverage is provided in a claims-made form, the contractor will ensure that the retroactive date will not change during the duration of the contract or at any renewal date. Contractor must warrant evidence of professional liability coverage for three years after termination of the agreement. This would be either in the form of an ongoing policy or, as an alternative, an extended reporting period/tail. Contractor must contribute to provide evidence of this coverage annually in the form of a Certificate of Insurance for three years after termination of the contract.

Coverage is to be provided on a “per project” basis or, if not available for reasonable cost, a higher policy aggregate limit may be required by the ERS. Any request for modification to this requirement should be submitted in writing to the ERS and the ERS’ risk management consultant for consideration.

Contractor will certify that the policy will be renewed each year of the contact.

e. Crime Coverage

CRIME COVERAGE	
Computer Fraud	\$1,000,000
Employee Theft – Blanket (must apply to theft of ERS assets by employees of the contractor)	\$1,000,000
Forgery or Alteration	\$1,000,000
Funds Transfer Fraud	\$1,000,000
Outside the Premises	\$100,000
Inside the Premises Theft of Money and Securities	\$100,000

f. Workers’ Compensation Insurance

The contractor, and all contractors, if any, shall provide to the ERS an affidavit or other satisfactory proof, such as a Certificate of Insurance, which the ERS may require evidencing that the contractor and all subcontractors have obtained Workers’ Compensation Insurance for all persons performing any work or services under this contract.

WORKERS' COMPENSATION AND EMPLOYER LIABILITY

Workers' Compensation		Statutory
Employer Liability		
Bodily Injury by Accident	Each Accident	\$100,000
Bodily Injury by Disease	Each Employee	\$100,000
	Policy Limit	\$500,000

g. Self Insurance

Any request for self-insurance must be submitted in writing to the ERS and the ERS' risk management consultant for consideration.

h. Cyber Risk/Network Security Insurance

Coverage must include third party loss due to identity theft or unlawful disclosure of confidential information.

CYBER RISK/NETWORK SECURITY INSURANCE	
Per loss	\$1,000,000

i. Umbrella/Excess Liability

Coverage must be in excess of Commercial General Liability, Automobile Liability and Employers Liability.

UMBRELLA/EXCESS LIABILITY	\$5,000,000
---------------------------	-------------