

A Guide to the

General Conditions

For Bidding on Construction Contracts with

Southern Illinois University Carbondale

Revised October 2013

GENERAL CONDITIONS

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**GENERAL CONDITIONS
FOR BIDDING ON CONTRACTS
WITH SOUTHERN ILLINOIS UNIVERSITY CARBONDALE**

ARTICLE 1. Bid Documents

All bidding, proposals, offers and procurement will be conducted in accordance with the Procurement Rules of the Chief Procurement Officer for Public Institutions of Higher Education, which have been adopted pursuant to the Illinois Procurement Code. All respondents will be strictly held to these statutes and rules and they are considered incorporated herein by reference as if attached hereto. The Respondent remains solely responsible for insuring that its Proposal is received at the time, date, place, and office specified.

AVAILABILITY OF DOCUMENTS

All State Universities in Illinois publish their competitive Bid/RFP and other procurement notices, as well as award information at: <http://www.procure.stateuniv.state.il.us>

Suppliers intending to respond to any posted requirement are encouraged to visit that site to insure that they have received a complete and current set of documents. Some notices may provide a downloadable copy of the pertinent procurement documents, as well as any amendments to those documents. Additionally, some notices may permit a supplier to submit a response to a posted requirement in an electronic format. Any supplier receiving a copy of procurement documents from a bid referral service and/or other third party is solely responsible for insuring that they received all necessary procurement documentation, including amendments. Interested suppliers should note that the State Universities in Illinois do not charge any fees (except any required surety documents) to obtain a copy of or respond to documents posted for competitive solicitation. The issuing University is not responsible for insuring that all or any procurement documentation is received by a supplier that is not appropriately registered with the issuing University.

Bid proposals shall be executed and submitted on the form/s provide by the Director of Procurement Services of Southern Illinois University Carbondale. Only the Request for Quotation and attachments (if any) are to be returned. The sealed bid (proposal) shall be delivered to Procurement Services, 113 Wakeland Hall, Room 103, Mailcode 6813 1215 Douglas Drive, Carbondale, IL 62901.

Bids shall be submitted on the bid form provided. The bidder shall not make changes in the bid form or bid bond provided by SIU. The bidder shall fill in all relevant blank spaces including alternate bids and unit prices (if applicable) in ink or typewriter, not in pencil.

By submitting a bid, the Contractor agrees to accept all of SIU's contract terms. Submittal of conditions or qualifying statement contrary to SIU's contract terms is not acceptable and unless rescinded, the bid shall be rejected. Qualifying statements that would modify the work should be avoided. Any modifications should have the necessary approvals obtained by SIU prior to bidding.

The Bidder guarantees the amount of the bid submitted to be firm for one-hundred-twenty (120) days. By mutual agreement by consent in writing from the contractor, the bid may be held open for an additional period of time.

Original signatures in on the bid form and bid security are required

Bids should be sealed and properly identified. Each bid should be sealed preferably in the envelope provided with the bid documents, or in an envelope, which indicates the name and address of the bidder in the upper left-hand corner and clearly identifies the bid number and bid opening date.

All Bid proposals shall be received in the Procurement Services, 113 Wakeland Hall, Room 103, Mailcode 6813 1215 Douglas Drive, Carbondale, IL 62901, of Southern Illinois University Carbondale no later than date and time as shown on the bid documents. Bids will be publicly opened and read aloud immediately after the closing time specified, at Procurement Services.

“No Bid” Requirement: If not submitting an offer, respond by returning this form, marking it “NO BID”, and explain the reason. Repeated failure to quote without sufficient justification shall be cause for removal of the vendor name from the mailing list. NOTE: to qualify as respondent, vendor must submit a “NO BID”, and it must be received no later than the stated opening date and hour.

By signing this Request for Quotation, bidder agrees that they and their subcontractors are in compliance with the Illinois Procurement Code, 30 ILCS 500/30-22, Apprenticeship and Training Program as defined in the Illinois Procurement Code. Successful bidder must be a member of an approved apprenticeship program prior to beginning work on this project.

An executed contract and all post award documentation must be received and approved prior to the start of any work.

For information or to inquire on how to participate in or set up a program, contractors may call: David Wyatt at the U.S. Department of Labor (312-596-5508) or check the USDOL website:

<http://www.dol.gov/>

Bidders may withdraw, change or modify proposals at any time prior to the time and date of official opening. No verbal changes (only written, telegraphic, or other electronic transmitted hard copy modifications) to the bid proposal will be considered. All such transmittals shall be confirmed in writing (signed by an authorized representative) and postmarked no later than the date of the bid opening.

Note: Erasures or corrections on Bid Document must be initialed by the person signing the Proposal. Bidder's request for changes in or reformation of the bid after the bid opening shall not be granted.

All bids will be publicly opened and read. The bid opening is open to the public and anyone may attend, but no bid information will be made available to the public during the period between the public bid opening and the award of the bid. All bids received after that time will be returned unopened to the bidder. Official time will be stamped or noted on the envelope by Procurement Services. The public bid opening and reading of bids are for informational purposes only and are not to be construed as acceptance or rejection of any of the bids submitted.

All applicable Federal and State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the Contract throughout and will be deemed to be included in the Contract the same as though herein written out in full. The successful bidder shall pay prevailing wages and shall utilize equal employment opportunity hiring practices in connection with this project.

No bids on this project will be considered if submitted by contractors of the 'broker' type who intend that their services shall be largely limited to supervision of their Subcontractors. Contractors will, therefore, be required to covenant to perform a minimum of twenty percent (20%) of the dollar value of the Contract with their own forces on-site and to describe on own letterhead and attached to the bid documents, which

categories of work will be performed by the contractor's own forces or laborers of which trades will be on the bidder's own payroll.

NOTE: This transaction subject to rules and regulations governing procurement and bidding at Southern Illinois University adopted pursuant to the Illinois Procurement Code.

Contractor/vendor certifies in accordance with the State of Illinois Public Works Preference Act (30 ILCS 560/) and Employment of Illinois Workers on Public Works Act (30ILCS 570/) that every person who is charged with the duty of constructing of building any public works project or improvement for the State of Illinois shall employ at least 90% Illinois laborers, unless such are not available, or are incapable of performing the particular type of work involved.

Southern Illinois University Carbondale shall have the right to reject any and all proposals and to waive any technicalities or informalities in the bidding, and to award in such a manner as is deemed to best serve the interests of the University.

ARTICLE 2. Conditions or Qualifying Statements

By submitting a bid, the contractor agrees to accept all contract terms. Submittals of conditions or qualifying statements contrary to contract terms are not acceptable and unless rescinded, the bid shall be rejected. Qualifying statements that would modify the work should be avoided by gaining approval by the Architect/Engineer (A/E) prior to bidding.

ARTICLE 3. Bid Security

Bids shall be accompanied by a bid security in the form of a bid bond, certified check, cashier's check or bank draft in the amount of 10% of the base bid. *See Request for Quotation for specific requirements.*

A bid bond form will be provided in the bid documents. Bid bonds shall contain the original signature in ink of the contractor, an officer of the surety including a notary statement authenticating signature and an appropriate power of attorney of the surety.

Retention of Bid Security applies to the first through third lowest responsible and responsive bidders. The Owner will retain all bid bonds. Certified / cashier checks and bank drafts will be retained for all responsible and responsive bidders until the awarded contractor has complied with all post award requirements.

When, for any reason a bidder withdraws its bid within ninety (90) calendar days or any other specified period after the bid opening, or fails to comply with all post award requirements, such defaulting bidder and its surety shall pay to the Owner all costs incurred by Owner for procuring the performance of the work including the difference between the dollar amount of the defaulting bidder's bid and the accepted bid if the accepted bid is higher. Such costs shall include, but not be limited to, the additional contract price paid for the work and additional costs for advertising and Architect/Engineer services. When such costs are less than the bid security, the defaulting bidder shall be entitled to the excess of its bid security. When the defaulting bidder is the sole bidder and, after an attempt to secure other bids by re-advertising none can be obtained, Owner shall be entitled to the full amount of the bid security as liquidated damages.

ARTICLE 4. Insurance

4.1 **Contractor's Liability Insurance.** The Contractor shall secure, pay for and maintain such insurance as will protect it and Southern Illinois University ("Owner") from claims under the Worker's Compensation Act, the Worker's Occupational Diseases Act, and from any other claims for damages to property or for bodily injury or death which may arise from operations under this contract, whether such operations are performed by the Contractor, its Subcontractors, and their sub-Subcontractors or by anyone directly or indirectly employed by them.

A. Coverages and Limits. The coverages and limits of liability shall not be less than those set forth as below. Evidence of an umbrella or excess liability policy may be provided to obtain the required limits.

<u>Coverage</u>	<u>Minimum Limits of Liability</u>
1. Worker's Compensation and Occupational Diseases	Statutory Limits
2. Employer's Liability	\$500,000 (Coverage B)
a. Worker's Compensation coverage shall be provided in accordance with the provisions of the Illinois Worker's Compensation and Occupational Diseases Acts, as amended. Notwithstanding the rating and financial size categories stated in Section 4.3.4 below, coverage may be provided by a group self-insurer authorized in Section 4(a) of the Illinois Workers' Compensation Act and approved pursuant to the rules of the Illinois Department of Insurance.	
b. The Contractor, its Subcontractors, and their sub-Subcontractors may use a self-insured plan for worker's compensation if the plan is approved by the State of Illinois by obtaining a certificate from the Illinois Workers' Compensation Commission.	
c. The worker's compensation insurance carrier or self-insurance service agency where applicable shall certify that to the best of its knowledge, the Contractor has properly reported wage and workforce data and made premium payments in compliance with Illinois rates and worker classifications.	
3. Commercial Auto Liability (Including coverage for owned, non-owned and hired vehicles)	
Combined Single Limit	\$1,000,000 per occurrence
OR	
Bodily Injury	\$1,000,000 per occurrence
Property Damage	\$1,000,000 per occurrence
4. Commercial General Liability (occurrence coverage) – for contracts below \$2,000,000:	
General Aggregate	\$1,000,000
Products/Completed Operations Aggregate	\$1,000,000
Occurrence Limit	\$1,000,000
Personal and Advertising Injury Limit	\$1,000,000
Fire Legal Liability Limit	\$ 100,000

Commercial General Liability (occurrence coverage) – for contracts between \$2,000,000 and \$4,999,999:

General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Occurrence Limit	\$2,000,000
Personal and Advertising Injury Limit	\$2,000,000
Fire Legal Liability Limit	\$ 100,000

Commercial General Liability (occurrence coverage) – for contracts exceeding \$5,000,000 – limits to be determined and identified in the supplementary conditions, but in no case less than the following:

General Aggregate	\$5,000,000
Products/Completed Operations Aggregate	\$5,000,000
Occurrence Limit	\$5,000,000
Personal and Advertising Injury Limit	\$5,000,000
Fire Legal Liability Limit	\$ 100,000

The general liability or any umbrella or excess insurance shall include, without limitation, the following coverages:

- a. The Owner shall be named as additional insured(s) on a primary and non-contributory basis on the commercial general liability and/or umbrella or excess insurance policies. In order to meet this requirement, the following wording should appear on any Certificate(s) of Insurance provided: “The Board of Trustees of Southern Illinois University is an additional insured as respects liability coverage for any liability incurred by the University arising from the activities of the Contractor, its Subcontractors, and their sub-Subcontractors, performing work on behalf of the Contractor.”
- b. Contractual liability coverage shall cover all contractual obligations which the Contractor has assumed, including the indemnity agreement in Article 5, for the liability limits set forth above. An Owner/Contractor's protective liability policy may be provided in lieu of a commercial general liability policy for the liability limits set forth above.
- c. Coverage for "XCU" (explosion, collapse and underground) hazards shall be included for the liability limits set forth above for any Contractor, its Subcontractor, and their sub-Subcontractor, performing work on behalf of the Contractor, who will be doing any excavation work.
- d. Coverage shall be endorsed to provide that the general aggregate limits apply separately to each of the insured Contractor's projects. The general liability aggregate limits may change if coverage is not endorsed to apply separate aggregate limits to each of the insured Contractor's projects.
- e. Coverage for completed operations shall remain in effect or renewed throughout the completed operations period, which is the statute of limitations or repose, whichever is greater.

- f. Any contractual exclusion relating to personal/advertising injury must be deleted or the coverage added back to the policy through endorsement. The Policy shall include coverage for broad form property damage.
 - g. Any contractual exclusion or limitation relating to work performed within fifty (50) feet of a railroad track should be deleted, if applicable.
5. Watercraft Protection and Indemnity Coverage shall be purchased and maintained, if applicable, at limits equal to the required Commercial General Liability limits specified in Section 4.1.A.4.
 6. Aircraft Liability shall be purchased and maintained, if applicable, at limits equal to the required Commercial General Liability limits specified in Section 4.1.A.4.
 7. Contractor's Pollution Liability (i.e. Asbestos, lead abatement, pollution) shall be purchased and maintained, if applicable, at limits equal to the required Commercial General Liability limits specified in Section 4.1.A.4; with no less than 5 years completed operations coverage. Coverage shall be written on an occurrence form.
 8. Property Damage Liability shall be purchased and maintained for any demolition, blasting, excavating, tunneling, shoring, or similar operations, at limits equal to the required Commercial General Liability limits specified in Section 4.1.A.4.
 9. Owner reserves the right to require additional specialty insurance coverages or to limit exclusions at any time during the Project.

4.2 **Builder's Risk Insurance.**

4.2.1 If required by the Owner, the Designated Contractor shall secure, pay for and maintain a builder's risk/installation floater insurance policy for the project. This policy shall be in the amount of the initial contract sum, plus the value of subsequent contract modifications, comprising total value for the entire work of the project at the site on a replacement cost basis. The policy shall be on an open perils basis insuring against the direct physical loss of or damage to covered property including but not limited to theft, vandalism, malicious mischief, earthquake, tornado/windstorm, lightning, explosion, breakage of glass, flood, collapse, water damage, and fire (with extended coverage) or collapse resulting from excluded perils. The policy shall include coverage for false-work, testing and startup and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. This policy will be available for review by all parties. Neither the Designated Contractor nor the Owner warrant the adequacy of coverage to protect all interests of the parties. Coverage includes the following items:

- .1 Materials and property used in the construction process, stored on or off-site, or while in transit, and the installed work of all Contractors, including all Subcontractors and sub-Subcontractors, until substantial completion of the project and acceptance by the Owner.
- .2 Construction forms and premises, scaffolding, and temporary buildings and storage structures.
- .3 A provision to pay the reasonable extra costs of expediting temporary and permanent repairs to, or permanent replacement of, damaged property.

- .4 A “soft cost endorsement” including, but not limited to, the reasonable extra costs of the Architect/Engineer and reasonable Contractor extension or acceleration costs.
- .5 Provisions for mechanical or electrical breakdown, or boiler system testing.
- .6 Coverage will be primary to all other applicable insurance.
- .7 Occupancy prior to substantial completion shall be specifically permitted and allowed by the Owner and coverage shall remain in effect until acceptance by the Owner and/or all punch list items are completed.
- .8 The policy shall be subject to the following deductible schedule unless a different deductible is approved by the Owner under separate cover.

<u>Policy Limit of Builder’s Risk*</u>	<u>Maximum Amount of Deductible*</u>
Under \$1,000,000	\$1,000
\$1,000,001 to \$5,000,000	\$2,500
\$5,000,001 to \$10,000,000	\$5,000
\$10,000,001 to \$25,000,000	\$10,000
over \$25,000,000	\$25,000

The limits of liability for the following two perils must be equal to the completed value or \$5,000,000, whichever is less. The deductible for the following two perils may be as high as one percent (1%) of the completed value or \$25,000, whichever is greater. Loss limitations or higher deductibles do not relieve the Contractor of responsibility for the uninsured portion of the loss.

PERILS:

- 1. Earth movement, including earthquake, landslide or mudslide.
 - 2. Flood, surface water sewer backup, and seepage.
- .9 Coverage issued in the name of the Designated Contractor with the Owner and all Contractors and subcontractors, and other parties designated by the Owner, named as an additional insured, as their interests may appear.
 - .10 A waiver of all rights between the Owner and the Designated Contractor for damages caused by fire or any other perils to the extent of actual recovery of any insurance proceeds under the policy.

4.2.2 Additional Risks of Loss Provisions. The Designated Contractor, the Contractor, their Subcontractors, and their sub-Subcontractors are responsible for and may carry whatever additional insurance they may deem necessary to protect themselves against hazards or perils not covered by the builder’s risk insurance and against loss of owned or rented equipment, tools, materials, supplies, and other property that will not become a permanent part of the structure. The Designated Contractor, Contractors, their Subcontractors, and their sub-Subcontractors, experiencing any loss claimed under the builder’s risk policy shall be responsible for that loss up to the amount of the deductible and for the entire amount of losses not insured under the builder’s risk policy. The prompt repair or reconstruction of the work resulting from an insured loss or damage is the Designated Contractor’s, Contractor’s, their Subcontractors’, or their sub-Subcontractors’ responsibility and shall be accomplished at no additional cost to the Owner. The Designated Contractor, Contractor, their Subcontractors, and their sub-Subcontractors will be responsible for

submitting and negotiating their claims, if any, under the builder's risk policy, and/or for any other coverage that they might procure on their own behalf. Losses under the builder's risk policy will be adjustable with and payable to the Designated Contractor who shall be responsible for apportioning the loss proceeds and/or deductibles to each and every entity involved in the loss to the extent of its interests.

4.3 **Insurance Policy Requirements**

4.3.1 **Evidence of Insurance.** The Contractor shall furnish Certificate(s) of Insurance evidencing the required coverage to be in force on the date of this Contract, and any renewal Certificate(s) of Insurance if coverage has an expiration or renewal date occurring during the term of this Contract to the Owner showing the type, amount, class of operations covered, effective dates and dates of expiration of policies. The Contractor shall deliver copies of newly issued or renewal insurance policies to the Owner within ten (10) days following the Owner's request for such copies. The Contractor shall maintain insurance in the required amounts, without interruption, from the date of execution of the Contract until substantial completion of the project.

The receipt of any certificate does not constitute by the Owner that insurance requirements have been met. Failure to request new or renewal certificate(s) shall not relieve the Contractor of its contractual obligation to provide the insurance coverages set forth in paragraphs 4.1 and 4.2 above and shall not be deemed a waiver by the Owner.

Failure to maintain the required insurance during the time specified may be regarded as a breach of contract and shall be cause for termination.

4.3.2 **Subcontractor Insurance.** Subcontractors and their sub-Subcontractors must comply with the same insurance coverage requirements as the Contractor. Subcontractors and their sub-Subcontractors shall submit the required Certificate(s) of Insurance to the Contractor.

4.3.3 **Modification or Cancellation.** Each policy and respective certificate of insurance shall expressly provide that no less than thirty (30) days prior written notice, delivered by certified or registered mail, be given to the Owner in the event of cancellation, non-renewal, expiration, or material alteration of the coverage contained in the policy or evidenced by the certificate of insurance.

4.3.4 **Carrier's Ratings.** The insurance shall be executed by insurance companies approved by the Owner and having a rating not lower than B+ and financial rating not lower than VI in the current edition of Best's Key Rating Guide for property/casualty insurance companies.

4.3.5 **Claims Made Insurance.** If any policies providing coverage as required under paragraphs 4.1 or 4.2 are written on a claims-made basis and that policy is replaced or renewed, any retroactive date must coincide with, or precede commencement of services by the Contractor, its Subcontractors, and their sub-Subcontractors on the Project. A claims-made policy that is replaced or not renewed must have an extended reporting period of not less than two (2) years.

4.3.6 **Notification of Insurance Carriers.** The Contractor shall be responsible for making the above stated liability provisions available to all of its liability insurance carriers and for procuring insurance coverage for this contract on a timely basis. The Contractor shall not commence work under this contract until it has obtained all the insurance required under this article and until certificates of such insurance have been approved by the Owner. The Contractor shall not allow any of its Subcontractors or their sub-Subcontractors to commence any work on this project until the insurance required of its Subcontractors or their sub-Subcontractors has been so obtained. In the

event of any incident, injury, death, or loss or damage (or claims thereof), the Contractor shall give immediate notice thereof to the Owner and their insurance carrier(s).

- 4.3.7 Contractor's Liability. The procuring of the insurance required under this contract shall be considered solely as securing Contractor's obligations or liabilities assumed under the contract documents, including, but not limited to, the obligation to indemnify the Owner assumed under Article 5 and shall not be considered as satisfaction of, or a substitution for, such obligations and liabilities. The Contractor shall remain liable and responsible for all such obligations whether or not the insurance provided by it is approved by the Owner and whether or not such insurance is sufficient in amount, quality or coverage to protect it against such liability. The Contractor shall pay and make good all such obligations to the full extent thereof and to the extent that such insurance does not cover them.
- 4.3.8 Enforcement of this Contract. In the event Owner retains legal counsel to secure performance by Contractor, its Subcontractors, and their sub-Subcontractors, of any of their obligations under this contract, or if Owner retains or utilizes such counsel to represent its interest with respect to any matter for which Contractor has an indemnity obligation to Owner under any provision of this contract or otherwise, the Contractor shall pay and reimburse Owner for the cost of such counsel and shall further pay and reimburse Owner for any and all other cost and expense incurred in preparing, negotiating, or prosecuting any claim against the Contractor, its Subcontractors, and their sub-Subcontractors including, but not limited to, any and all expert witness fees and expenses.
- 4.3.9 Waiver of Subrogation Clause. The Contractor's insurance policies shall include the following waiver of subrogation clause:

“It is agreed that in no event shall any insurance company of the Contractor have any right of recovery against the Owner for any and all damage or loss unless such damage or loss results from the sole gross negligence or willful misconduct of the Owner.”

4.4 Waivers of Subrogation

The Owner and Contractor waive all rights against each other for damages caused by fire or other perils to the extent of actual recovery of any insurance proceeds under any property insurance obtained pursuant to Article 4 or other insurance applicable to the work. The Contractor agrees that in no event shall they or their agents have any right of recovery against the Owner for any and all damage or loss unless such damage or loss results from the sole gross negligence or willful misconduct of the Owner.

Each insured Contractor shall require similar waivers of subrogation from its Subcontractors and their sub-Subcontractors.

ARTICLE 5. Indemnification

- 5.1 Indemnification. The Contractor agrees to pay and reimburse and indemnify, keep and hold harmless Southern Illinois University (and the Architect/Engineer/Professional Services Consultant, if applicable), their trustees, officials, agents, employees and their respective heirs, executors, administrators, officers, directors, successors and assigns from and against any and all losses, demands, obligations, costs, damages, liabilities, suits, actions, judgments, claims (including, but not limited to, claims for the infringement of any patents, copyrights, licenses or other intellectual property rights) and expenses, including, but not limited to, attorneys', consultants', and experts' fees

and expenses, and including both litigation and pre-litigation expenses, arising out of or connected with: (a) any injury to or death of persons or damage to or loss or destruction of property caused by or attributable to negligent or willful acts or errors or omissions, in whole or part, of the Contractor, its Subcontractors, and their sub-Subcontractors and their respective officers, agents, representatives, or employees; (b) any act, error, or omission arising from the gross professional negligence of the Contractor, its Subcontractors, and their sub-Subcontractors and their respective officers, agents, representatives, or employees relating to the performance of services in connection with the Project; (c) any breach or failure of performance by the Contractor, its Subcontractors, and their sub-Subcontractors and their respective officers, agents, representatives, or employees under this Agreement. The provisions of this paragraph are applicable to the full extent allowed by the laws of the State of Illinois and not beyond any extent which would render them void or unenforceable. In the event of any such injury, death, or loss or damage (or claims thereof), the Contractor shall give immediate notice thereof to the Owner.

5.2 Insurance Certification. The Contractor agrees to maintain the insurance coverages required of them under Article 4 for the duration of the project or the term for which services will be rendered, and for as long as necessary thereafter to cover claims with respect to their performance under this Agreement. The Contractor agrees to require its Subcontractors and their sub-Subcontractors to maintain the insurance coverages required of them under Articles 4 and 5 for the duration of the project or the term for which services will be rendered, and for as long as necessary thereafter to cover claims with respect to its performance under this agreement.

ARTICLE 6. Visiting the Site

All bidders should visit the site of the proposed project so that they may fully understand the facilities, difficulties and restrictions attending the execution of the contract. No additional compensation or extension of time for completion will be allowed for failure to be so informed.

Bidders shall make a careful check of the drawings and a close comparison of all drawings and existing conditions to ascertain the full amount of work necessary to obtain the results indicated.

ARTICLE 7. Substitutions

It is the intention of Southern Illinois University Carbondale to purchase high quality material and/or services and evaluation of responses will be made on this basis. All bids shall be based on providing all products exactly as required by the bid documents

SIU reserves the right to sole source a supplier, manufacturer or subcontractor. This proprietary source will be clearly identified as the sole source in the project manual. Bidders shall include this item in their base or alternate bids. If the bidder identifies other items that are “de facto” proprietary by the nature of the specifications, the bidder is required to notify SIU immediately upon discovery.

It is preferred that requests for substitutions be submitted prior to the bids. Such requests should be received at least ten (10) calendar days prior to the bid opening and a complete description of the desired change including any technical data and references for SIU’s evaluation. SIU will include the modification by addendum if a request is approved.

SIU reserves the right to reject any proposed substitution.

After notice of award, substitutions may only be approved by written change order under one of the following conditions:

- a) Substitutions are required for compliance with final interpretations of code requirements or insurance regulations;
- b) Unavailability of specified products, through no fault of contractor;
- c) Subsequent information discloses inability of a specified product to perform properly or to fit in designated space;
- d) Manufacturer/fabricator refusal to certify or guarantee performance of a specified product as specified; or
- e) When a substitution would be substantially in owners best interests

Submittal Requirements: When requested by owner, the contractor shall submit complete data demonstrating compliance of the proposed substitution with contract documents:

- a) An itemized comparison of proposed substitution with product or method specified;
- b) Data relating to changes in construction schedule, coordination, and other affected contracts;
- c) Accurate cost data on proposed substitution in comparison with product or method specified; and
- d) Accepted substitutions will be so stated in the contract.

Representation: In making a request for substitution, contractor represents that:

- a) The proposed product is equal or superior to that specified;
- b) It will provide an equal or superior guarantee for the substitution as was specified;
- c) It will coordinate installation of accepted substitutions into work, making all changes for work to be complete; and
- d) It will pay all additional costs and expenses for SIU, A/E, and other contractors affected.

Restriction: Substitutions will not be considered by shop drawing, informal request or when acceptance will require substantial revision of contract documents.

Specifications: Any reference to brand names and numbers in the solicitation is descriptive, but not restrictive, unless otherwise specified. Offers on equivalent items meeting the standards of quality thereby indicated will be considered, unless, otherwise specified, providing the offer clearly describes the article offered and how it differs from the referenced brands. Unless the respondent specified otherwise, it is understood that the respondent is offering a referenced brand item as specified in the solicitation. The University will determine whether a substitute offer is equivalent to and meets the standards of quality indicated by the brand name referenced; and the University may require a respondent offering a substitute to supply additional descriptive material and a sample.

If items requested have quality guidelines of brand name or equal, the items offered must be equal to or better than the brands and model numbers specified as determined by Southern Illinois University Carbondale. The use of brand names in this solicitation are for the purpose of describing the standard of quality performance and characteristics desired and is not intended to limit or restrict competition. Substantially equivalent products to those designated may be considered for award. "Or Equal" submissions will not be rejected because of minor differences in design, construction, or features that do not affect the suitability of the product for its intended use.

Samples: If requested, samples of items must be furnished free of charge and if not destroyed will, upon request, be returned at the respondents' expense. Request for the return of samples must be made within ten (10) days following opening of Bid or RFP or submittal of samples, whichever is later. Each individual sample must be labeled with respondents' name, manufacturer's brand name and product number, Bid or RFP number, and item referenced. The University reserves the right to keep the samples of the low respondent. Failure to submit samples when requested will be considered grounds for rejection

of your offer. **DO NOT** submit samples unless you are specifically requested to do so. Samples should arrive within 7 working days from receipt of request.

ARTICLE 8. Acceptance or Rejection of Proposals

The Board of Trustees of Southern Illinois University, and its designees, reserves the right to reject any or all proposals or any part thereof, to waive any informality in the bidding, and to accept the proposal deemed most favorable to the interest of the University.

ARTICLE 9. Withdrawal of Proposals

- a) Any bidder may withdraw their proposal at any time prior to the scheduled closing time for the receipt of bids. A bidder may withdraw their proposal by letter or telegram, or with proper identification, by personally securing their bid proposal. Telephoned requests to withdraw a bid will not be considered.
- b) If a bidder requests a withdrawal of their bid, bidder must establish, clearly and convincingly, that the bid was founded on a credible error or omission. The owner shall review the evidence provided and make a determination. If the owner finds that the evidence of the mistake is not credible, the request will be denied and the bid will stand. The request may be granted if evidence of the mistake is credible. If the bidder requests have been excessive sanctions may be imposed, including default of the bid security. Other sanctions may include denial of bidding privileges, revocation of responsibility determination, or other appropriate actions.
- c) By the submission of a bid the bidder certifies and agrees that his/her bid will remain a firm offer for one-hundred twenty (120) days from the date of opening the bids, and only the owner executing an agreement with another bidder for this work will release the bidder from their (120) day firm commitment. This commitment is made in consideration of the University considering the bid submitted.

Cancellation for Cause: Any purchase agreement or contract arising from this solicitation will be subject to cancellation by Southern Illinois University Carbondale upon written notice and without penalty to Southern Illinois University Carbondale if, in the opinion of Southern Illinois University Carbondale, the quality, delivery schedule, specifications, terms or conditions, and other service requirements are not maintained as originally stated and accepted by the vendor.

Multiple Year Contracts: If the initial term of the contract spans multiple fiscal years (July 1 through June 30) the following funding clause is applicable. Any purchase agreement or contract arising from this solicitation is subject to termination and cancellation in any year for which the General Assembly fails to make an appropriation to make payments under the terms of the purchase agreement contract.

ARTICLE 10. Taxes

Sales to the University, unless otherwise stated, are exempt from Illinois R.O.T. and Federal Taxes. Southern Illinois University Carbondale's tax exempt number is E9990-8433-06.

The University is an instrumentality of the State of Illinois, and as such it is exempt from Federal Income Tax under Sections 115 and 501(c)(3) of the Internal Revenue Code and is exempt from State of Illinois Income Tax in accordance with the Illinois Income Tax Act (35 ILCS 5/205). However, the University is subject to Federal and State of Illinois Income Tax only if, and to the extent, it has unrelated business taxable income. In addition, the University is exempt from payment of state and local Retailers'

Occupation Tax, state and local Service Occupation Tax, state Use Tax, and state Service Use Tax, as provided by Illinois law. Certificates of exemption will be provided upon written request.

Contractors may utilize Tax Exemption Letter for Southern Illinois University Carbondale, <http://www.procurement.SIU.edu/taxexempt.html>

ARTICLE 11. Labor

In the performance of all contracts with the University, contractors and subcontractors must conform to requirements regarding labor, including, but not necessarily limited to, the following:

PROJECT LABOR AGREEMENT

Provides for a signed agreement between all project contractor(s) and the Egyptian Building and Construction Trades Council for and on behalf of its affiliates for the duration of the specified project.

FINANCE

(30 ILCS 570/) Employment of Illinois Workers on Public Works Act.

Provides in part, that whenever there is a period of excessive unemployment in Illinois, Illinois laborers shall constitute a minimum of 90% of the work-force on any public works project.

VETERANS

(330 ILCS 55/) Veterans Preference Act.

Gives preference to veterans of the United States Military and Naval Service (who are residents in the district) in appointments and employment upon public works projects. Preference is only required for veterans who are found to possess the business capacity necessary for the proper discharge of the duties of such employment.

EMPLOYMENT

(820 ILCS 130/) Prevailing Wage Act.

Provides in part, that contractors, subcontractors etc., shall pay to all laborers, workers, and mechanics engaged in the construction of public works, under this contract, not less than the prevailing rate of wages for work of a similar character in the locality of the project.

HUMAN RIGHTS

(775 ILCS 5/) Illinois Human Rights Act and (775 ILCS 10/) Public Works Employment Discrimination Act.

Prohibits discrimination and intimidation because of race, creed, color, sex, religion, age, national origin, physical or mental handicap unrelated to ability in employment under contracts for public buildings or public works.

All contractors (and subs) will further be required to comply with all Illinois and Federal executive orders as applicable, including but not limited to those orders requiring non-discrimination in employment, and the owner's Affirmative Action Program.

ARTICLE 12. Rates of Wages for Workers

The minimum wages to be paid laborers, mechanics, and others on this project are those prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the locality as certified by the Director of Labor, State of Illinois.

The rates are minimum rates only, and the owner will not consider any claims for additional compensation made by the contractor because of payment by the contractor of any wage rate in excess of the applicable wage rates contained in the contract. If, after the award of the contract, it becomes necessary to employ any person in a trade or occupation not classified in the above-mentioned certified list, such person shall be paid not less than such rate as shall be determined by the owner and approved by the Director of Labor, State of Illinois; and such approved minimum rate shall be retroactive to the time of the initial employment of such person in such trade or occupation. The contractor shall notify the owner of his intention to employ persons in trades or occupations not classified in sufficient time for the owner to obtain approved rates for such trades or occupations.

The prospective bidders should investigate existing labor conditions and any negotiated labor agreements, which may exist, or are contemplated at this time. The bidders should verify that the wages are correct, as they will be held to pay the wage rates existing at the time of execution of the contract.

An increase in the prevailing wage rates, which may be negotiated and approved after the contract has been signed, shall be absorbed by the contractor, and no additional compensation will be allowed to the contractor for any such increase in wage rates, which may be approved.

The minimum wage rates for apprentices will apply only to persons working with the tools of the trade they are learning under the direct supervision of journeymen mechanics. Except as otherwise required by law, the number of apprentices, in each trade or occupation, not exceed the maximum number permitted by the applicable standards of the United States Department of Labor, or, in the absence of such standards, the number permitted under the usual practice prevailing between the unions and the employer's association of the respective trades or occupations.

ARTICLE 13. Nondiscrimination of Employment and Equal Employment Opportunity Clause

In the event of the contractor's non-compliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act or the Applicable Rules and Regulations of the Illinois Department of Human Rights ("Department"), the contractor may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be cancelled or voided in whole or part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation.

During the performance of this contract, the contractor agrees as follows:

- a) That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, sexual orientation, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
- b) That, if it hires additional employees in order to perform this contract or any portion hereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
- c) That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race,

color religion, sex, marital status, sexual orientation, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.

- d) That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the contractor's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the contractor in its efforts to comply with such Act and Rules and Regulations, the contractor will promptly so notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
- e) That it will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations
- f) That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.
- g) That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portions of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this contract, the contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, the contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.
(Re: Public Contracts; most recent version)
- h) The Executive Director of Finance ("office") is the duly authorized agent of the owner to monitor the equal employment opportunity provisions of the contract. When requested by this office the contractor will supply all information necessary for that office to determine the contractor's compliance or noncompliance with the Owner's Statement and Policy of Equal Employment Opportunity. Compliance with the appropriate federal, state and University equal employment opportunity provisions shall be determined by that office after they have compared the contractor's employment posture and policies with:
 1. The minority and female population of the Carbondale area.
 2. The size of minority and female unemployment force in the Carbondale area.
 3. The percentage of minority and female work forces as compared with the total work force in the Carbondale area.
 4. The general availability of minorities and females having requisite and potential requisite skills in the Carbondale area.
 5. The anticipated expansion, contraction, and turnover of and in the work force.
 6. The existence of training institutions capable of training minorities and females in the requisite skills.

The information, derived from the Illinois State Employment Service and the University Affirmative Action / Equal Opportunity Office, shall provide the basis for criteria to assist the

University Affirmative Action / Equal Opportunity Office in determining compliance or noncompliance with the University affirmative equal opportunity commitments.

- i) The contractor will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order for over \$10,000 unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended. Sec. 503 of the Rehabilitation Act of 1973, and Sec. 402 of the Vietnam Era Veterans Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with a means of enforcing such provisions, including sanctions for noncompliance provided however, that in the event the contractor or vendor is sued as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

ARTICLE 14. Illinois Human Rights Act

All contractors shall comply with the Illinois Human Rights Act (775 ILCS 5/101, et.seq.) and the Rules and Regulations of the Department of Human Rights applicable to Public Contractors and Sub-Contractors.

No person shall be eligible to be awarded a Contract subject to the competitive bidding requirements of the Illinois Procurement Code unless such person, prior to bid opening, has filed with the Illinois Department of Human Rights, 100 West Randolph, Room 10-100, Chicago, Illinois 60601, a properly completed and sworn Employer Report Form (Form PC-1) which is currently valid.

In the event of the contractor's noncompliance with any provision of this Equal Employment Opportunity Clause, the Illinois Department of Human Rights Rules and Regulations for Public Contracts, the contractor may be declared non-responsive and therefore ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the Contract may be cancelled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation.

ARTICLE 15. Foreign Corporations

Foreign Corporations are responsible for obtaining A CERTIFICATE OF AUTHORITY to transact business in the State of Illinois. A Foreign Corporation is a corporation organized under the laws of the state or country other than Illinois. Contact: Secretary of State Office, 217-782-6961.

ARTICLE 16. Royalties and Patents

- a) The contractor shall save and hold harmless the owner and his officers, agents, servants and employees 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 owner, unless otherwise specifically stipulated in the contract documents.
- b) If the contractor uses any design, device or material covered by letters of patent or copyright, he/she shall provide for such use by suitable agreement with the owner of such patented or copyrighted process, 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 process, design, device, or material, if any are involved in the work. The contractor or his/her sureties or both shall indemnify and save harmless the owner of the project from any and all claims or infringement by reason of the use of such patented or copyrights process, design, device, or material, or any trademark in connection with work agreed to be performed under this

contract and shall indemnify the owner for any and all costs, expenses, or damages, including reasonable attorneys' fees, which he/she may incur or be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work. This clause shall survive completion of the contract.

ARTICLE 17. Permits and Regulations

Each contractor shall obtain and pay for all permits, licenses, and inspections necessary for his work, and shall give all notices, pay all fees, and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the work. In general, work shall be done in accordance with applicable provisions of the National Electric Code, State of Illinois Plumbing Code and the ICC Code, latest editions.

ARTICLE 18. Time of Commencement and Time of Completion

- a) The contractors shall commence the work under his/her contract within ten (10) consecutive calendar days after the issuance date of written Notice to Proceed and shall fully complete all work thereunder within the time frame stipulated in the contract documents.
- b) All other contractors or subcontractors performing work under their contracts at the same time that the coordinating/assigned contractor is doing work are obligated to commence, carry on, coordinate, and complete their work in the various stages so that the entire job will be accomplished on a schedule that will enable the coordinating/assigned contractor to complete his/her work within the required time frame set forth in the contract documents.
- c) Copies of a written Notice to Proceed or Purchase Order shall also be forwarded at the same time to all contractors for projects awarded.
- d) The coordinating/assigned contractor shall prepare a construction schedule with input and concurrence of all other contractors and shall submit to the University for review and acceptance within 30 consecutive calendar days after the issuance date of written Notice to Proceed. Contractors must provide to the University, if so requested, a manpower utilization summary to support the contractor's scheduled work timelines. These summaries shall indicate number of work crews, the size of each work crew and the craft title of each work crewmember.
- e) The project schedule shall be the contractor's working schedule and used to execute the work, record and report actual progress.
- f) The schedule shall be updated monthly and include actual dates of completed tasks.

ARTICLE 19. List of Subcontractors

Any contract or purchase order, with an annual total of \$50,000 or more, arising from this solicitation shall not be assigned or sublet in whole or in part without the written consent of Southern Illinois University Carbondale. Each prime contractor is requested in this solicitation to submit a list of subcontractors who are being retained by them to perform work under their contract and shall itemize their work for labor and material. This list should contain the names of all (tier 1) subcontractors and major suppliers proposed for the principal parts of their work and for such others as the Engineer and/or Owner may direct and shall not employ any that are not acceptable as provided below. Following award, the prime contractor must supply a copy of the subcontractor contract, the subcontractor completed contract certification form, and financial disclosure form.

The bidder is specifically advised that any person, firm, or the party to whom it is proposed to award a subcontract under this contract must be acceptable to the Owner, and must also submit from each proposed subcontractor a certificate of insurance and Project Labor Agreement, if applicable.

The term "Subcontract" means any agreement, arrangement or understanding, written or otherwise, between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee) for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, which, in whole or in part, is utilized in the performance of any one or more contracts.

The term "Tier 1" means any subcontractor the prime holds a direct contract with including suppliers.

ARTICLE 20. Intent of Documents

- a) Contract documents including all addenda are complementary, and what is called for by one trade shall be as binding as if called for by all trades. The intent of the documents is to include all labor, materials, equipment, and whatever else is reasonably necessary for the proper execution of the work. It is not intended, however, that materials or work not covered by, or properly inferable from a heading, section, division, branch, class, or trade of the specifications shall be supplied, unless distinctly so noted on the drawings or required elsewhere in the contract documents. Materials or work described in words, which so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.
- b) In the event that the drawings call for some work not covered by the specifications, the work called for in the drawings shall be included in the work under the contract.
- c) In the event that the specifications call for some work not covered by the drawings, the work called for in the specifications shall be included in the contract.
- d) In the case of inconsistency between drawings and specifications or within either document itself, the cost of the better quality or greater quantity of work shall be included in the proposal, and the matter drawn to the attention of the Director of Procurement Services for decision and/or adjustment.
- e) The organization of the specifications into divisions, sections, and articles and the arrangement of drawings shall not control the contractor in dividing the work among subcontractors or in establishing the extent of work to be performed by any trade.
- f) Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein. Nothing stated in or omitted from the contract documents shall be construed as relieving the contractor from his/her obligations to comply with all state and federal laws, rules and regulations.
- g) All applicable Federal and State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the project throughout, and they will be deemed to be included in the bid documents and contract the same as though herein written out in full.

ARTICLE 21. Shop Drawings

No part of the work requiring a shop drawing or sample shall be started until the submission has been approved by Southern Illinois University Carbondale Physical Plant Engineering. Contractor's responsibility for errors, omissions or deviation from contract documents in submittals is not relieved by the University's review of submittals. Then all work shall be in accordance with these approved shop drawings. Any impact to the construction schedule due to shop drawings requiring resubmittal, whether being deemed as non-acceptable or requiring additional information, shall be the sole responsibility of the contractor, to make up any deviations or slippages.

ARTICLE 22. Materials, Appliances, Employees

- a) It is understood that, except as otherwise specifically stated in the contract documents, the contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportations, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete, and deliver the work within the specified time. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of the best quality. Contractor shall, if required by the owner, furnish satisfactory evidence as to the kind and quality of materials.
- b) The contractor shall provide and erect all necessary scaffolding, hoists, derricks, guard- rails, safety devices, special tools, or machinery necessary for the completion of the projects, and shall properly maintain same during the construction period.
- c) All material, equipment, appliances, devices, and the manner in which they are used or installed shall comply with the requirements of OSHA. This includes not only the items used in the course of construction but also all items, which are part of the contract and become a permanent part of the project.
- d) The contractor shall enforce strict discipline and good order among his/her employees and shall discharge from the project to which these conditions apply, upon receipt of written notice, any person found by the owner to be unfit and unskilled.

ARTICLE 23. Protection of Work and Property

- a) Precaution shall be exercised at all times for the protection of persons (including students and employees) and property.
- b) Each contractor shall continuously maintain adequate protection for all his work from damage of any type whatsoever, and shall protect the owner's property from injury arising in connection with the work under this contract. He shall make good any damage or injury, except such as may be directly due to errors in the contract documents. He shall adequately protect adjacent property and shall procure and maintain insurance for this purpose.
- c) Walks, curbs, roadways, utilities, etc., damaged during the progress of the work shall have damaged work removed and replaced with new similar materials by the contractor causing such damage, leaving all walks, curbs, roadways, utilities, etc., in good condition as approved by the agency having jurisdiction over the damaged route.
- d) The prime contractors shall be responsible for removal of all excavated material, debris, rock, sand, gravel, and the like spilled on these walks, streets, or roads, and for the maintenance of these walks, streets, and roads in a clean and good condition.
- e) The contractor shall protect all work and unused materials of his/her contract from freezing or inclement weather, and shall be solely responsible for the condition of such work and materials.

ARTICLE 24. Working Regulations

- a) Contractors engaged in construction, reconstruction, repair or demolition work within the grounds or areas governed by Southern Illinois University Carbondale should conform to the rules and regulations in force at the University.
- b) Contractors shall enforce the owner's instructions regarding signs, advertisements, fires, and smoking. No alcoholic beverage shall be consumed, possessed or allowed on University property.
- c) Before commencing work contractors shall confer with the owner and ascertain full knowledge of all local rules and regulations affecting his working conditions.

- d) Working rules and regulations in force within the grounds at Southern Illinois University Carbondale shall take precedence within the area over all other rules and regulations, which may exist outside of this jurisdiction.

ARTICLE 25. Use of Site

- a) The contractor shall confine its operations at site to areas permitted by law, permits, contract and University's permission. The contractor and its employees shall keep all unattended vehicles and equipment locked at all times and parked only in approved areas. Violators will be ticketed and responsible for paying all assessed fines.
- b) The contractor shall assume responsibility for protection and safekeeping of its materials, equipment, tools, etc. stored on the premises. Contractor shall obtain and pay for use of any additional storage or work area needed for its operations. Contractor shall move all stored material, equipment, tools, etc., which interfere with the work. University shall not be responsible for any theft or damage to the contractors' material, equipment, tools, etc.
- c) The contractor shall provide and maintain appropriate fences, barricades and/or security locks to limit resident access to excavations, construction areas, construction field offices and storage structures.
- d) Contractor shall not burn debris and waste on site. Open flame heaters shall not be used without the written approval of the University, and then only when maintained under constant supervision.

ARTICLE 26. Protection of Trees, Shrubs, and Planting

The trees and shrubs to be left standing shall be completely protected from damage incident to construction operations by the erection of solid timber barriers or other means as approved. Such protection shall be erected at the start of work, shall be maintained undisturbed except for augmentation or repair until completion of work, and then shall be removed as directed. If any tree or shrub, which is to be left standing, is damaged in the performance of construction activities, it shall be repaired or replaced as directed. If any such tree or shrub is destroyed by such activities, it shall be replaced. Replacement of any tree or shrub shall be with one of like size and variety in satisfactory growth. The foregoing specifically shall include damage to trees or shrubs by soil compaction or from other cause brought on by storage of materials on the ground over the root system. Grass and other planting areas to remain, which are disturbed by operations under this contract shall be restored to their original condition or as directed.

ARTICLE 27. Cleaning up

Each contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by his/her operations. Remove debris and rubbish from pipe chases, plenums, attics, crawlspaces and other closed spaces, prior to closing the space. Each contractor shall provide covered containers for deposit of waste and rubbish and shall arrange for regular disposal of construction waste. At the completion of the work he/she shall remove all his/her waste materials and rubbish from and about the project as well as all his/her tools, construction equipment, machinery, and surplus materials, and shall clean all glass surfaces and leave the work "broom clean" or its equivalent, except as otherwise specified.

Contractor shall be responsible for maintaining compliance with applicable local, state and/or federal guidelines (e.g., OSHA, EPA, etc.) during any sandblasting activity and during clean up and removal of all resulting debris to an approved off-campus location.

ARTICLE 28. Damages

Should any contractor, their agents, their workers, or any of their subcontractors or materials cause damage to the owner, their property, or other persons, the damage shall be the sole responsibility of such contractor and he/she shall procure and maintain insurance for this purpose. Repairs and replacement of this work under the contract shall be under the direction of the owner or their representatives, and cost of this work shall be the sole responsibility of the contractor causing the damage.

ARTICLE 29. Mutual Responsibility of Contractors

The contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate his/her work with theirs.

ARTICLE 30. Coordination and Cooperation

- a) Each contractor shall coordinate his/her work with every other contractor on the project. All work shall be installed in proper sequence with other trades, without any unnecessary delay in the completion of any other part or parts of the work.
- b) Drawings for mechanical and electrical work are generally diagrammatic and indicate the general arrangement of the equipment, the runs of piping and ducts, and the manner of connection. Each contractor shall carefully examine the drawings and shall be responsible for the proper fitting of equipment, fixtures, and piping as indicated, without major alterations. Contractors shall be solely responsible for the proper arrangement of their piping, ducts, and equipment.
- c) Each contractor shall confer with all contractors engaged in the construction of the project whose work may in any way affect his/her installation. Whenever interferences might occur, before any work is done at the places in question, each contractor shall consult with other contractors and shall come to an agreement with them as to the exact location and level of his piping, ducts, or other works, to eliminate interference.
- d) All overhead ducts, piping, conduit, etc., shall be installed at the maximum possible height.
- e) Each contractor shall provide openings for its own work unless stated otherwise. The contractor shall coordinate openings in walls, floors, ceilings, foundations, and slabs on grade or roofs with the other contractors.

ARTICLE 31. Inspection of Work

- a) The owner and his/her representatives shall at all times have access to the work whenever it is in preparation or progress, and the contractor shall provide proper facilities for such access and for inspection.
- b) If any such work should be covered up without approval or consent of the owner, or his/her representatives, it must, if required by the owner, be uncovered for examination at the contractor's expense.

ARTICLE 32. Foreman Supervision

Each contractor shall keep on his/her work, during its progress, a competent foreman and any necessary assistants, all of who are satisfactory to the owner. The foreman shall represent the contractor in his/her absence, and all directions given to him shall be as binding as if given to the contractor personally. Upon written request, such directions shall be repeated in writing to the contractor.

ARTICLE 33. Change in the Work

The owner, without invalidating the contract, may make changes by altering, adding to, or deducting from the work, the contract sum being adjusted accordingly. Such work shall be executed under the conditions of the original contract, except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such changes.

ARTICLE 34. Deductions for Uncorrected Work

If the contractor fails to make corrections or repairs to work performed incorrectly or in the alternative, fails to complete the work in accordance with the contract, the difference in value together with a fair allowance for damage shall be deducted from the contract amount due. The owner shall determine the value of such deduction.

ARTICLE 35. Owner's Right to do Work

If the contractor neglects to perform or complete the work properly or fails to abide by any provisions of the contract, then upon providing seven (7) calendar days written notice to the contractor, Owner may, without prejudice to any other remedy in equity or law, take any and all necessary action to correct such deficiencies and deduct the cost incurred by Owner for such corrections from all or a portion of payment(s) due to the contractor.

ARTICLE 36. Assignments

Contractor shall not assign the whole or any part of the contract or any monies due or to become due hereunder without written consent of the owner. If the contractor assigns all or any part of any monies due or to become due under this contract, the instrument of assignment shall "state" that the rights of the assignee in and to any monies due or to become due to the contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the work called for in the contract.

ARTICLE 37. Labor and Wage Record

- a) The contractor shall keep an accurate record showing the names, addresses, classifications, per diem wages, hours worked, and amounts paid to each laborer, mechanic, and workman employed on the project or on work directly relating to the project.
- b) The contractor shall have such a record kept by each of his/her subcontractors for their employees.
- c) These records are to be made available on request, at all reasonable hours, to the inspection of the owner or his/her representatives and to the Director of Labor, State of Illinois, and their deputies and agents.

ARTICLE 38. Application for Payments and Payment to Contractors

- a) The contractor shall furnish for approval of the owner, on forms to be supplied by the owner:
 1. A detailed summary giving a complete breakdown of the contract price including labor, material and names of subcontractors and suppliers, scheduled to prepare the work.
 2. Periodic itemized summaries of work done for the purpose of making partial payments thereon.

The costs employed in making up any of these schedules will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the contract price.

- b) The contractor may submit to the owner monthly applications for partial payment. Such applications shall be presented in five (5) copies, each copy accompanied by one or more of the following documents, if required:
1. Affidavit to Accompany Application for Certificate of Payment
 2. Materials Inventory for Application for Payment
 3. State of Account or Waivers of Lien

Retainage

When periodic payments are made, the University shall retain a fixed percentage of 10% to insure faithful completion of the contract. No amount of funds, in addition to those provided for in a contract for repairs, maintenance, remodeling, renovation, or construction, may be obligated or expended unless the additional work to be performed or materials to be furnished are germane to the original contract. Even if germane to the original contract, no additional expenditures or obligations may, in their total combined amount, be in excess of the percentages of the original contract amount as provided in Section 30-35 (b) of the Code unless they have received the prior written approval of an official pre-designated by the University with the appropriate level of authority to make such determination. Notices of additional expenditures or obligations in excess of the small purchase limit of Section 20-20 of the Code shall be published in the next available Higher Education Bulletin. The University will consider a reduction in the retainage held upon request by the contractor after successful completion of a minimum of 50% of the project.

ARTICLE 39. Liens

- a) Lien waivers are not required with first payment application if less than 50% of the contract amount. Each subsequent payment shall include the contractor's partial waiver and partial waivers from all subcontractors and suppliers who were included in the immediately preceding payment application and in the amount as reflected on said application.
- b) Neither the final payment nor any part of the retained percentages shall become due until the contractor, as required, delivers to the owner a complete release of all liens or rights of lien arising out of this contract or receipts in full in lieu thereof and, if required in either case, an affidavit that to the best of his knowledge or information the releases and receipts include all the labor and material for which a lien could be filed. The contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the owner to indemnify him against any such possible lien, including all costs and a reasonable attorney's fee.

ARTICLE 40. Compliance with "Kick-back Statute" and Regulations

Each contractor and each of his subcontractors shall comply with the following statutes (and with regulations issued pursuant thereto, which are incorporated herein by reference):

- a) 18 U.S.C.A. § 874 Kickbacks from public works employees: Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined under this title or imprisoned not more than five years, or both;

- b) 40 U.S.C.A. § 3145 formerly cited as 40 USCA § 276cSection 3145. Regulations governing contractors and subcontractors: (a) In general. --The Secretary of Labor shall prescribe reasonable regulations for contractors and subcontractors engaged in constructing, carrying out, completing, or repairing public buildings, public works, or buildings or works that at least partly are financed by a loan or grant from the Federal Government. The regulations shall include a provision that each contractor and subcontractor each week must furnish a statement on the wages paid each employee during the prior week. (b) Application. -- Section 1001 of title 18 applies to the statements.

ARTICLE 41. Guarantees

Prior to final acceptance of work and payment, the contractor shall guarantee and affirm in writing that all material and workmanship is free from defects. He/she shall further agree to repair and replace, at his/her sole cost and expense, any and all defective material and workmanship furnished under this contract that becomes evident within one (1) year from the date of final acceptance by the owner as evidenced by the issuance of final certificate for payment, unless otherwise specified. Repairs and replacements shall include, but not be limited to, all adjacent work not necessarily provided by the contractor but damaged as a result of such defects or non-conforming work or as a result of remedying them.

ARTICLE 42. Liquidated Damages

If the vendor fails to perform, provides non-conforming or damaged merchandise, or the order is cancelled for cause, the University may be entitled to compensation by reimbursement or by other legal remedy liquidated damages including, but not limited to, the following:

- a. The additional cost of services or goods bought elsewhere,
- b. Cost of repeating the bid or proposal procedure,
- c. Any expense incurred because of delay in service or delivery,
- d. Any other damages caused by or antecedent to a breach of contract by the vendor.

ARTICLE 43. Starting of Systems

Each contractor shall conduct a thorough and systematic performance test of each element and total system in the presence of the University. Contractor must demonstrate that all systems comply with the requirements of the contract documents and test all control, alarm and specialty systems including boilers, chillers, motor controls, building automation, power distribution, lighting, compressors, standby power and special mechanical systems. Contractor must correct or adjust all deficiencies in operation and retest as directed by the University.

ARTICLE 44. Training

Each contractor shall provide formal training to all staff, employees and subcontractors in the operation and maintenance of all building systems. Contractor must provide preliminary operation and maintenance manuals to serve as the basis for University training. Upon completion of training, the contractor shall submit in writing to the University records of the type of training, dates when training was presented, duration of each training session, material covered and the names of University personnel in attendance.

ARTICLE 45. Record Documents

Contractor must:

- a) Maintain and keep current the contract documents including the drawings, specifications, addenda, approved shop drawings, field test records, schedules, correspondence and other modifications to the contract on file at the site.
- b) Record actual construction installations including foundation depths, locations of underground utilities, location of internal utilities concealed in construction, field changes of dimension and detail and changes made by change order or field order.
- c) Upon completion of project, the contractor shall turn over to the University a complete set of record documents, including as-built drawings. Submittals shall have a transmittal letter indicating the name and number of each record document.

ARTICLE 46. Steel Products Procurement Act

To conform to the Steel Products Procurement Act, 30 ILCS 565, and as amended, it is mandatory wherein "Steel Products" are utilized for the construction, reconstruction, alterations, repair, improvement, or maintenance of public works made by a public agency contain a provision that steel products used or supplied in the performance of the Contract or any subcontract thereto shall be manufactured or produced in the United States.

The provisions of this Act shall not apply:

1. Where the Contract involves an expenditure of less than \$500.
2. Where the executive head of the public agency certifies in writing that:
 - a) The specified products are not manufactured or produced in the United States in sufficient quantities to meet the agency's requirements or cannot be manufactured or produced in the United States within the necessary time in sufficient quantities to meet the agency's requirements, or
 - b) Obtaining the specified products, manufactured or produced in the United States would increase the cost of the Contract by more than 10%.
3. When its application is not in the public interest.

No public agency may authorize, provide for, or make any payment to any vendor or Contractor upon any Contract in violation of Section 4 of the Steel Products Procurement Act (30 ILCS 565/4 as amended). It shall be a business offense for any vendor or contractor to knowingly enter into any Contract in violation of Section 4 or to knowingly violate Contract provisions required by Section 4. Each such violation shall subject the violator to a fine of the greatest of \$5,000 or the payment price received by him as a result of such violation. The Attorney General is authorized to file and prosecute a complaint in the circuit court of any county in which the Contract was or in whole or in part executed or performed.

ARTICLE 47. Termination of Contract

In the event that any of the provisions of any contract are violated by the contractor or by any of its Subcontractors, the University may serve written notice upon the contractor of its intention to terminate the Contract, and, unless within ten (10) calendar days after the serving of such notice upon the contractor such violation of delay shall cease and satisfactory arrangement or correction be made, the Contract shall, upon the expiration of said ten (10) calendar days, cease and terminate. In the event of any such termination, the University shall immediately serve notice thereof upon the contractor and shall have the right to take over the work and prosecute the same to completion by Contract or by force account, for the account and at the expense of the contractor and the contractor shall be liable to the University for any

excess cost occasioned the University thereby; and in such event the University may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary thereafter.