

**IT IS THE VENDOR'S RESPONSIBILITY TO CHECK  
FOR ADDENDUMS PRIOR TO SUBMITTING PROPOSALS**

**REQUEST FOR PROPOSALS  
SPECIFICATION NO. 07-132**

The City of Lincoln, Nebraska intends to enter into a contract and invites you to submit a sealed proposal for:

**MEAL PREPARATION FOR  
LINCOLN AREA AGENCY ON AGING**

Sealed proposals will be received by the City of Lincoln, Nebraska on or before 12:00 noon Wednesday, April 18, 2007 in the office of the Purchasing Agent, Suite 200, K Street Complex, Southwest Wing, 440 South 8th Street, Lincoln, Nebraska 68508. Proposals will be publicly opened at the K Street Complex, reading only the names of the firms submitting proposals.

Bids may be downloaded from the City's website at [www.lincoln.ne.gov](http://www.lincoln.ne.gov) Keyword: Bid. Prospective submitters must monitor the bid listing for any addendums.

Proposers should take caution if U.S. mail or mail delivery services are used for the submission of proposals. Mailing should be made in sufficient time for proposals to arrive in the Purchasing Division, prior to the time and date specified above. Late bids will not be considered. **Fax or e-mail bids are not acceptable. Bid response must be in a sealed envelope.**

# PROPOSAL SPECIFICATION NO. 07- 132

**BID OPENING TIME: 12:00 NOON  
DATE: April 18, 2007**

The undersigned bidder, having full knowledge of the requirements of the City of Lincoln for the below listed items and the contract documents (which include Notice to Bidders, Instructions to Bidders, this Proposal, Specifications, Contract, and any and all addenda) and all other conditions of the Proposal, agrees to sell to the City the below listed items for the performance of this Specification, complete in every respect, in strict accordance with the contract documents at and for unit prices listed below.

**THE REQUIREMENTS FOR:  
MEAL PREP FOR LINCOLN AREA AGENCY ON AGING**

BIDDING SCHEDULE

<u>ITEM</u>	<u>ITEM DESCRIPTION</u>	<u>QTY</u>	<u>EACH</u>	<u>Total</u>
1.	Per Meal Price For Standard Meals	66,000	\$ _____	\$ _____
2.	Per Meal Price For Modified or Special Diets	7,500	\$ _____	\$ _____
3.	Box Lunches	9,500	\$ _____	\$ _____
4.	Cost for meal without milk	83,000	\$ _____	\$ _____
5.	Delivery Cost Per Meal - City of Lincoln	74,850	\$ _____	\$ _____
6.	Delivery Cost Per Meal - Waverly Senior Center	8,150	\$ _____	\$ _____

**BID SECURITY REQUIRED:**                      **Yes X Amount: 5% Bid Bond**

**Performance Bond - 50%**                      **Yes X Will be requested upon award of contract.**

AFFIRMATIVE ACTION PROGRAM: Successful bidder will be required to comply with the provisions of the City's Affirmative Action Policy (Contract Compliance, Sec. 1.16). The Equal Opportunity Officer will determine compliance or non-compliance with the City's policy upon a complete and substantial review of successful bidder's equal opportunity policies, procedures and practices.

The undersigned signatory for the bidder represents and warrants that he has full and complete authority to submit this proposal to the City, and to enter into a contract if this proposal is accepted.

RETURN 6 COMPLETE COPIES OF PROPOSAL AND SUPPORTING MATERIAL.  
MARK OUTSIDE OF BID ENVELOPE:

**SEALED BID FOR SPEC. 07-132**

\_\_\_\_\_  
COMPANY NAME

\_\_\_\_\_  
BY (Signature)

\_\_\_\_\_  
STREET ADDRESS or P.O. BOX

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
CITY, STATE      ZIP CODE

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
TELEPHONE No.      FAX No.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
ESTIMATED DELIVERY DAYS

\_\_\_\_\_  
E-MAIL ADDRESS

\_\_\_\_\_  
TERMS OF PAYMENT

ONLY THE NAMES OF THE PROPOSERS WHO RESPOND WILL BE READ AT THE PUBLIC BID OPENING. SUCCESSFUL PROPOSER'S OFFER WILL BE MADE PART OF THE FINAL CONTRACT INCLUDING ANY NEGOTIATED DETAILS.

**INSTRUCTIONS TO PROPOSERS**  
**CITY OF LINCOLN, NEBRASKA**  
**PURCHASING DIVISION**

**1. PROPOSAL PROCEDURE**

- 1.1 Each RFP must be legibly printed in ink or typed, include full name, business address, telephone number, fax number and email address of the Proposer; and be signed in ink by the Proposer.
- 1.2 Response by a firm/organization other than a corporation must include the name and address of each member.
- 1.3 A response by a corporation must be signed in the name of such corporation by a duly authorized official thereof.
- 1.4 Any person signing a response for a firm, corporation, or other organization must show evidence of his authority so to bind such firm, corporation, or organization.
- 1.5 Proposals received after the time and date established for receiving offers will be rejected.

**2. EQUAL OPPORTUNITY**

- 2.1 Each proposer agrees that it shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, national origin, age, or marital status. In the employment of persons, proposer shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to race, color, religion, sex, disability, national origin, age, or marital status.

**3. DATA PRIVACY**

- 3.1 Proposer agrees to abide by all applicable State and Federal laws and regulations concerning the handling and disclosure of private and confidential information concerning individuals and corporations as to inventions, copyrights, patents and patent rights.
- 3.2 The proposer agrees to hold the City harmless from any claims resulting from the proposer's unlawful disclosure or use of private or confidential information.

**4. PROPOSER'S REPRESENTATION**

- 4.1 Each proposer by signing and submitting an offer, represents that he/she has read and understands the specification documents, and the offer has been made in accordance therewith.
- 4.2 Each offer for services further represents that the proposer is familiar with the local conditions under which the work and has correlated the observations with the requirements of the RFP.

**5. SPECIFICATION CLARIFICATION**

- 5.1 Proposers shall promptly notify the Purchasing Agent of any ambiguity, inconsistency or error which they may discover upon examination of specification documents.

- 5.2 Proposers desiring clarification or interpretation of the specification documents shall make a written request which must reach the Purchasing Agent at least seven (7) calendar days prior to date and time for response receipt, unless otherwise noted in RFP.
- 5.3 Interpretations, corrections and changes made to the specification documents will be made by written addenda.
- 5.4 Oral interpretations/changes to Specification Documents made in any other manner, will not be binding on the City; proposers shall not rely upon oral interpretations.

**6. ADDENDA**

- 6.1 Addenda are written documents issued by the City prior to the date for receipt of offers which modify or interpret the specification document by addition, deletion, clarification or correction.
- 6.2 Addenda will be mailed or delivered to all who are known by the City to have received a complete set of specification documents.
- 6.3 Copies of addenda will be made available for inspection at the office of the Purchasing Agent.
- 6.4 No addendum will be issued later than forty-eight (48) hours prior to the date and time for receipt of offers, except an addendum withdrawing the RFP, or addendum including postponement.
- 6.5 Proposers shall ascertain prior to submitting their offer that they have received all addenda issued, and they shall acknowledge receipt of addenda in their proposal.

**7. ANTI-LOBBYING PROVISION**

- 7.1 During the period between the proposal advertisement date and the contract award, proposers, including their agents and representatives, shall not lobby or promote their proposal with any member of the City Council or City Staff.

**8. EVALUATION AND AWARD**

- 8.1 The signed proposal shall be considered an offer on the part of the proposer. Such offer shall be deemed accepted upon issuance by the City of purchase orders, contract award notifications, or other contract documents appropriate to the work.
- 8.2 No offer shall be withdrawn for a period of ninety (90) calendar days after the time and date established for receiving offers, and each proposer agrees in submitting an offer.
- 8.3 In case of a discrepancy between the unit prices and their extensions, the unit prices shall govern.
- 8.4 The RFP process is designed to be a competitive negotiation platform, where price is not required to be the sole determinative factor; also the City has the flexibility to negotiate with a select firm or selected firms to arrive at a mutually agreeable relationship.
- 8.5 A committee will be assigned the task of reviewing the proposals received.

8.5.1 The committee may request documentation from Proposer(s) of any information provided in their proposal response, or require the Proposer to clarify or expand qualification statements.

8.5.2 The committee may also require a site visit and/or verbal interview with a Proposer or select group of Proposers to clarify and expand upon the proposal response.

8.6 The offer will be awarded to the lowest responsive, responsible proposer whose proposal will be most advantageous to the City, and as the City deem will best serve their requirements.

8.7 The City reserves the right to accept or reject any or all offers, parts of offers; request new proposals, waive irregularities and technicalities in offers; or to award the RFP on a split-order basis, or lump-sum basis; such as shall best serve the requirements and interests of the City.

## **9. INDEMNIFICATION**

9.1 The proposer shall indemnify and save harmless the City of Lincoln, Nebraska from and against all losses, claims, damages, and expenses, including, attorney's fees arising out of or resulting from the performance of the contract that results in bodily injury, sickness, disease, death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom and is caused in whole or in part by the proposer, any subcontractor, any directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This section will not require the proposer to indemnify or hold harmless the City of Lincoln for any losses, claims damages, and expenses arising out of or resulting from the sole negligence of the City of Lincoln, Nebraska.

9.2 In any and all claims against the City or any of its members, officers or employees by an employee of the proposer, any subcontractor, anyone directly or indirectly employed by any of them or by anyone for whose acts made by any of them may be liable, the indemnification obligation under paragraph 9.1 shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the bidder or any subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

## **10. LAWS**

10.1 The Laws of the State of Nebraska shall govern the rights, obligations, and remedies of the Parties under this proposal and any agreement reached as a result of this process.

10.2 Proposer agrees to abide by all applicable State and Federal laws and regulations concerning the handling and disclosure of private and confidential information concerning individuals and corporations as to inventions, copyrights, patents and patent rights.

## **11. AWARD**

11.1 The RFP process is designed to be a competitive negotiation platform, where price is not required to be the sole determinative factor; also the City has the flexibility to negotiate with a selected firm or firms to arrive at a mutually agreeable relationship.

11.2 The City shall be the sole judge as to merits of the proposal, and the City's decision will be final.

11.3 A committee will be assigned by the Mayor with the task of reviewing the proposals received.

11.3.1 The committee may request documentation from

Proposer(s) of any information provided in their proposal response, or require the proposer to clarify or expand qualification statements.

11.3.2 A short list of firms from proposals submitted may be selected for a presentation to the committee and ranked by committee members.

11.4 Final approval to enter into contract negotiations with the top ranked firm will be by the Mayor of the City of Lincoln.

11.5 The City shall not be liable for any expense incurred in connection with preparation of a response to this RFP.

11.6 The contract document shall incorporate by reference all requirements, terms and conditions of the solicitation, proposal received and all negotiated details.

## **12. LIVING WAGE**

12.1 The bidders agree to pay all employees employed in the performance of this contract, a base wage of not less than the City Living Wage per Section 2.81 of the Lincoln Municipal Code. This wage is subject to change every July.

# INSURANCE REQUIREMENTS FOR ALL CITY CONTRACTS

## 1. GENERAL PROVISIONS

- A. **Indemnification.** The Contractor shall indemnify and save harmless the City of Lincoln, Nebraska from and against all losses, claims, damages, and expenses, including attorney's fees, arising out of or resulting from the performance of the contract that results in bodily injury, sickness, disease, death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom and is caused in whole or in part by the Contractor, any subcontractor, any directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This section will not require the Contractor to indemnify or hold harmless the City of Lincoln for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of the City of Lincoln, Nebraska.
- B. **Approved Coverage Prior to Commencing Work/Subcontractors Included.** Contractor shall purchase and maintain in place insurance to Protect Contractor and City against all liabilities and hazards as provided in this article throughout the duration of the Contract. Contractor shall not commence work under this contract until the Contractor has obtained all insurance required under this Section and such insurance has been approved by the City Attorney for the City of Lincoln, nor shall the Contractor allow any subcontractor to commence work on any subcontract until all similar insurance required of the subcontractor has been so obtained and approved.
- C. **Occurrence Basis Coverage.** All insurance shall be provided on an **occurrence basis** and not on a claims made basis, except for hazardous materials, errors and omissions, or other coverage not reasonably available on an occurrence basis; provided that all such claims made coverage is subject to the prior written approval of the City Attorney and must be clearly indicated as such in any certificate showing coverage.
- D. **Authorized and Rated Insurers Required.** All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than A:VII unless specific approval has been granted by the City Attorney.
- E. **Certificates Showing Coverage.** All certificates of insurance shall be filed with the City Attorney, and may utilize an appropriate standard ACORD Certificate of Insurance form showing the specific limits of insurance coverage required by this Article; provided that restrictions, qualifications or declarations inconsistent with the requirements of this Article shall not relieve the Contractor from providing insurance as required herein. Such certificates shall show the City of Lincoln as additional insured, including by specific endorsement where necessary, as indicated in the following requirements. Such certificate shall specifically state that the related insurance policies are to be endorsed to require the insurer to provide the City of Lincoln thirty days, notice of cancellation, non-renewal or any material reduction in the stated amounts or limits of insurance coverage.
- F. **Terminology.** The terms "insurance," "insurance policy," or "coverage" as used in this article are used interchangeably and shall have the same meaning as "insurance" unless the context clearly requires otherwise. References to "ISO®" forms are merely for convenience and ease of reference, and an equivalent or better form as determined acceptable by the City Attorney may be used. (Note: ISO® is a registered trademark of ISO Properties, Inc.)

## 2. INSURANCE REQUIREMENTS

- A. **Scope of Required Coverage.** The Contractor shall take out and maintain during the life of Contract such insurance in the forms and minimum amounts as specified in this Article and as will protect Contractor and City from the following claims arising out of or resulting from or in connection

with the Contractor's operations, undertakings or omissions directly or indirectly related to the Contract, whether by the Contractor or any Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (1) Claims under workers' compensation, disability benefit, or other employee benefit acts;
- (2) Claims arising out of bodily injury, occupational sickness or disease, or death of an employee or any other person;
- (3) Claims customarily covered under personal injury liability coverage;
- (4) Claims other than to the work itself arising out of an injury to or destruction of tangible property, including the loss of use resulting therefrom;
- (5) Claims arising out of ownership, maintenance or use of any motor vehicle;
- (6) Railroad protective liability coverage in the event the contract involves work to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing.

**B. Worker's Compensation Insurance and Employer's Liability Insurance.** The Contractor shall provide applicable statutory Worker's Compensation Insurance with minimum limits as provided below covering all Contractor's employees, and in the case of any subcontracted work, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for Subcontractor's employees.

The Contractor shall provide Employer's Liability Insurance with minimum limits as provided below placed with an insurance company authorized to write such insurance in all states where the Contractor will have employees located in the performance of this contract, and the Contractor shall require each Subcontractor similarly to maintain Employer's Liability Insurance on the Subcontractor's employees.

Coverage	Listing	Min Amt	Notes
<b>Worker's Comp.</b>			
	State	Statutory	
	Applicable Federal	Statutory	
<b>Employer's Liability</b>			
	Bodily Injury by accident	\$500,000	each accident
	Bodily Injury by disease	\$500,000	each employee
	Bodily Injury	\$500,000	policy limit

**C. Commercial General Liability Insurance.**

- (1) The Contractor shall provide Commercial General Liability Insurance in a policy form providing no less comprehensive and no more restrictive coverage than provided under the ISO® form CG00010798 or newer with standard exclusions "a" through "o" and with minimum limits as provided below. Any other exclusions that operate to contradict or materially alter the standard exclusions shall be specifically listed on the certificate of insurance and shall be subject to the prior written approval of the City Attorney.

Coverage	Min Amt	Notes
General	\$2,000,000	Aggregate
Products and Completed Operations	\$2,000,000	Aggregate
Personal and Advertising Injury	\$1,000,000	
Each Occurrence	\$1,000,000	
Fire Damage Limit	\$ 100,000	any one fire
Medical Damage Limit	\$ 10,000	any one person

(2) The required Commercial General Liability Insurance shall also include the following:

- Coverage for all premises and operations
- Endorsement to provide the general aggregate per project endorsement
- Personal and advertising injury included
- Operations by independent contractors included
- Contractual liability coverage included
- X.C.U. Coverage including coverage for demolition of any building or structure, collapse, explosion, blasting, excavation and damage to property below the surface of ground.
- Any fellow employee exclusions shall be deleted
- Coverage shall not contain an absolute pollution exclusion, and applicable remaining coverage shall apply for pollution exposures arising from products and completed operations.
- Coverage for products and completed operations maintained for duration of work and shall be maintained for a minimum of three years after final acceptance under the Contract or the warranty period for the same whichever is longer, unless modified in any Special Provisions.
- Contractual Liability coverage shall include contractually assumed defense costs in addition to any policy limits.

(3) If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing, Railroad Contractual Liability Endorsement (ISO® form CG24170196 or newer).

(4) City may at its sole option, and in lieu of being additional insured on the Contractor's policy, by written requirement in the Special Provisions or by written change order, require Contractor to provide a separate Owner's Protective liability policy. The premium cost to obtain such insurance shall be as paid as provided in the Special Provision or change order, with any related cost savings as reasonably determined by the City being reimbursed or paid to the City.

**D. Vehicle liability insurance coverage.**

- The Contractor shall provide reasonable insurance coverage for all owned, non-owned, hired and leased vehicles with specific endorsements to include contractual liability coverage and delete any fellow employee exclusion.
- If specifically required in the Special Provisions, the required coverage shall also include an endorsement for auto cargo pollution (ISO® form CA 99 48).

**E. Railroad Protective Liability.** If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing or otherwise required by the Special Provisions or applicable requirements of an affected railroad, the Contractor shall provide Railroad Protective Liability Insurance naming the affected railroad/s as insured with

minimum limits for bodily injury and property damage of \$2,000,000 per occurrence, \$6,000,000 aggregate, or such other limits as required in the Special Provisions or by the affected railroad. The original of the policy shall be furnished to the railroad and a certified copy of the same furnished to the City Attorney's office prior to any related construction or entry upon railroad premises by the Contractor or for work related to the Contract.

- F. **Umbrella or Excess Insurance.** The Contractor shall provide Umbrella or Excess insurance coverage with minimum coverage limits of \$3,000,000 each occurrence and aggregate.
- G. **City included as Insured on Contractor's Policy – Endorsements required.**  
The Contractor shall provide adequate written documentation, including applicable ACORD certificates, declarations pages or other acceptable policy information demonstrating that the City is included as an additional insured along with the Contractor with respect to all of the coverages required in this "Section 2A Insurance Requirements," except for applicable Worker's Compensation coverage, to include all work performed for the City and specifically including, but not limited to, any liability caused or contributed to by the act, error, or omission of the Contractor, including any related subcontractors, third parties, agents, employees, officers or assigns of any of them. The documentation or endorsement shall specifically include the city as an additional insured for purposes of Products and Completed Operations. The inclusion of the City as additional insured shall be for coverage only on a primary basis for liability coverage, and no coverage shall contain a policy or other restriction or attempt to provide restricted coverage for the City, whether on an excess, contributory or other basis regardless of any other insurance coverage available to the City.

### 3. **CONTRACTOR'S INDEMNITY – CONTRACTUAL LIABILITY INSURANCE**

- A. To the same extent as specified for minimum coverage requirements in Section 2 above, the required insurance shall include contractual liability coverage to include indemnification and hold harmless agreements and provisions in the related Contract Documents, specifically including the following provision:
- (1) To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the City, its officers, agents, employees, volunteers and consultants from and against any and all claims, damages, losses, costs, and expenses, including but not limited to attorney's fees and costs arising out of or related to the Contract or the Contractor's activities, errors, or omissions related to the Contract including liabilities or penalties imposed by applicable, law, rule or regulation in connection therewith; provided that such claims, damages, losses, costs, and expenses, including but not limited to attorney's fees and costs:
    - is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use therefrom, and
    - is caused in whole or in part by any act or omission of the Contractor, any subcontractor, agent, officer, employee, or assigns of the same or by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in whole or in part by a party indemnified hereunder.
  - (2) Such indemnification shall not be construed to negate, abridge, limit or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section.
- B. In any and all claims by any employee (whether an employee of the Contractor or subcontractor, or their respective agents or assigns by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable as an employer) in whole or in part against the City, its officers, agents, employees, volunteers or consultants, the above indemnification shall not be limited in any way by the amount of damages, compensation, benefits or other contributions payable by or on behalf of a the employer under Worker's Compensation statutes, disability benefit acts, or any other employee benefit or payment acts as the case may be.

- C. The obligations of indemnification herein shall not include or extend to:
- (1) Any outside engineer's or architect's professional errors and omissions involving the approval or furnishing of maps, drawings, opinions, reports, surveys, change orders, designs or specifications within the scope of professional services provided to the City and related to the Contract; and
  - (2) Any claims arising out of the negligence of the City to the extent the same is the sole and proximate cause of the injury or damage so claimed.
- D. In the event of any litigation of any such claims shall be commenced against the City, Contractor shall defend the same at Contractor's sole expense upon notice thereof from the City. Contractor shall notify the insuring company that the City reserves and does not waive any statutory or governmental immunity and neither Contractor, nor Contractor's counsel whether employed by Contractor or by an insurer on behalf of the Contractor shall waive such defenses or enter into any settlement or other disposition requiring waiver of any defenses or immunity of the City without the express written consent of the City.

**4. CONTRACTOR'S INSURANCE FOR OTHER LOSSES.**

- A. Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools owned, rented or used in connection with the Contract including any tools, machinery, equipment, storage devices, containers, sheds, temporary structures, staging structures, scaffolding, fences, forms, braces, jigs, screens, brackets, vehicles and the like owned or rented by Contractor, or Contractor's agents, subcontractors, suppliers, or employees.
- B. In connection with the above, Contractor shall cause or require any applicable insurance related to physical damage of the same to provide a waiver of a right of subrogation against the City.

**5. NOTIFICATION IN EVENT OF LIABILITY OR DAMAGE.**

- A. The Contractor shall promptly notify the City in writing and provide a copy of all claims and information presented to any of Contractor's insurance carrier/s upon any loss or claim or upon any occurrence giving rise to any liability or potential liability related to the Contract or related work. The notice to the City shall include pertinent details of the claim or liability and an estimate of damages, names of witnesses, and other pertinent information including the amount of the claim, if any.
- B. In the event the City receives a claim or otherwise has actual knowledge of an any loss or claim arising out of the Contract or related work and not otherwise known to or made against the Contractor, the City shall promptly notify the Contractor of the same in writing, including pertinent details of the claim or liability; Provided, however the City shall have no duty to inspect the project to obtain such knowledge, and provided further that the City's obligations, if any, shall not relieve the Contractor of any liability or obligation hereunder.

**6. PROPERTY INSURANCE/ BUILDER'S RISK.**

- A. The Contractor shall provide property insurance (a/k/a Builder's Risk or installation Floater) on all Projects involving construction or installation of buildings or structures and other projects where provided in the Special Provisions. Such insurance shall be provided in the minimum amount of the total contract sum and in addition applicable modifications thereto for the entire work on a replacement cost basis. Such insurance shall be maintained until the City completes final acceptance of the work as provided in the Contract. Such insurance shall be written and endorsed, where applicable, to include the interests of the City, Contractor, Subcontractors, Sub-subcontractors in the related work. The maximum deductible for such insurance shall be \$5,000 for each occurrence, which deductible shall be the responsibility of the Contractor. Such insurance shall contain a "permission to occupy" endorsement.

- B. All related Property Insurance shall be provided on a "Special Perils" or similar policy form and shall at a minimum insure against perils of fire including extended coverage and physical loss or damage including without limitation or duplication of coverage: flood, earthquake, theft, vandalism, malicious mischief, collapse, and debris removal, including demolition whether occasioned by the loss or by enforcement of applicable legal or safety requirements including compensation or costs for City's related costs and expenses (as owner) including labor required as a result of such loss.
- C. All related Property Insurance shall include coverage for falsework, temporary buildings, work stored off-site or in-transit to the site, whether in whole or in part. Coverage for work off-site or in-transit shall be a minimum of 10% of the amount of the policy.
- D. The Contractor's Property Insurance shall be primary coverage for any insured loss related to or arising out of the Contract and shall not be reduced by or coordinated with separate property insurance maintained by the City.

# **SPECIFICATIONS AND REQUIREMENTS**

## **MEAL PREPARATION**

### **LINCOLN AREA AGENCY ON AGING**

#### **1. PURPOSE**

- 1.1 The purpose of this proposal is to locate a suitable contractor to prepare and deliver meals to congregate and satellite meal programs in Lincoln, NE and surrounding areas from a Central Kitchen location.
  - 1.1.1 If the vendor believes it would be a cost savings to the City, the vendor may bid meal production and management using the Downtown Senior Center location and equipment.
    - 1.1.1.1 Vendor must indicate their intent to use these facilities and how they propose the implementation of such program.
- 1.2 The Lincoln Area Agency on Aging (LAAA) provides meals to individuals 60 years of age and older meeting the 1/3rd RDA/AI/DRI guidelines set by USDA/Older Americans Act. .
  - 1.2.1 Meals are provided to six (6) ActivAge Centers and two (2) housing complexes in Lincoln and one (1) location in surrounding communities. All delivery sites will be referred to hereinafter as Locations.

#### **2. TERM OF THE CONTRACT**

- 2.1 The contract shall be for a one (1) year period.
  - 2.1.1 The contract shall commence on the date the contract is ratified by the signing of both parties and shall continue for twelve (12) consecutive months with the option to renew for up to three consecutive one year periods.
- 2.2 Vendor may submit an alternate price for a three (3) year contract period with all other specifications remaining the same.

#### **3. INFORMATION OR INQUIRIES**

- 3.1 All inquiries regarding these specifications shall be directed via email or faxed written request to Bob Walla, Assistant Purchasing Agent ([rwalla@lincoln.ne.gov](mailto:rwalla@lincoln.ne.gov)) or fax to: (402) 441-6513.
  - 3.1.1 These inquiries and/or responses shall be distributed to proposers as an addenda.
  - 3.1.2 The City shall only reply to written inquiries received within seven (7) calendar days of bid opening.

#### **4. RELATIONSHIP BETWEEN THE PROVIDER AND THE CITY**

- 4.1 It is agreed that the contractor shall not be considered an employee of the City for any purpose, but shall be an independent contractor for all purposes and in all situations.
- 4.2 As an independent contractor, the contractor shall be responsible for all required reporting of income and payments of taxes required by the Federal, State, or Local statutes including, but not limited to: payments required under the Federal Insurance Contributions Act, income tax withholding and periodic payment of estimated taxes, and payments required under the Federal Unemployment Tax Act, and any applicable State and Local sales, use or income taxes.
- 4.3 Each party shall be responsible for its own negligence and the negligence of its employees.

#### **5. LIABILITY INSURANCE**

- 5.1 Contractor shall comply with all insurance requirements as listed in the attached document, Insurance Clause For All City Contracts.

## **6. CONTRACT PROCEDURES AND PROVISIONS**

- 6.1 The enclosed contract, proposal and addenda provided to the City by the Contractor shall comprise the entire contract of the parties.
  - 6.1.1 No change in, addition to, or waiver of any provision of this contract shall be binding unless it is in writing, signed by both parties, and added to this contract as an amendment.
- 6.2 All other expenses incurred in the implementation and operation of meal preparation for LAAA not mentioned herein will be borne by the contractor.
- 6.3 Any and all contractual agreement(s) generated as an outcome of this process shall not be assignable by the Successful Contractor without written permission of the City of Lincoln.
- 6.4 Successful Contractor must provide a performance bond in the amount of 50% of the bid based on the estimated number of meals for the upcoming year.
  - 6.4.1 Performance bond shall be in effect for term of contract and any additional renewal terms.

## **7. TERMINATION**

- 7.1 Any agreement generated as a result of this process may be terminated at any time by either party in consideration of 90 days written notice.
  - 7.1.1 Such notice shall be forwarded to the most current address of the recipient and shall be sent by registered mail.
  - 7.1.2 It is further agreed that prior to the sending of a "Notice of Intent to Terminate", the party desirous of such termination will discuss the reasons for such action with the other party and will strive, in good faith and without prejudice, to resolve the circumstances necessitating the action to terminate the contract.

## **8. PROGRAM BACKGROUND**

- 8.1 For the last 16 years, the LAAA has prepared meals in their downtown Central Kitchen for the Senior Citizens of Lincoln and surrounding areas. These meals provide nutritious and delicious meals that meet the USDA/Older Americans Act guidelines for Senior Meal programs. Faced with rising costs associated with the production of meals, the LAAA is requesting proposals for the preparation and delivery of meals to locations in Lincoln and surrounding areas.
- 8.2 The estimated number of meals to be served at Locations in the 2008 Fiscal Year is 83,000.
  - 8.2.1 This City of Lincoln does not guarantee any number of meals ordered from vendor through term of contract.

## **9. MENU REQUIREMENTS**

- 9.1 Menus must be followed and planned to ensure that each meal offers at least 1/3rd of the RDA/AI's.
- 9.2 These menus must be evaluated to meet these standards by a computer-generated analysis.
- 9.3 Contractor must provide this analysis to LAAA's RD or her designee in adequate time prior to implementation of menus to allow for revision if needed.
- 9.4 Key nutrients to be evaluated are: calories, protein, fat, fiber, calcium, magnesium, iron, zinc, copper, folate, sodium, vitamin A, vitamin D, vitamin E, Vitamin B6, Vitamin B12 and vitamin C.
- 9.5 The following pattern is the guideline that may be helpful when planning menus.
  - 9.5.1 Three (3) ounces of cooked edible meat or alternate.
  - 9.5.2 Two (2) ½ cup servings of vegetables and/or fruit.
  - 9.5.3 One (1) serving of enriched or whole-grain bread or roll.
  - 9.5.4 One (1) teaspoon fortified margarine.
  - 9.5.5 One-half (½) cup or one (1) serving of dessert.
  - 9.5.6 One-half (½) pint of milk.

- 9.6 Fruit must be served for dessert 3 times per week and should be fresh fruit (when in season) at a minimum, 2 times per month's menu.
  - 9.6.1 All canned fruit will be measured by drained weight only--juice from canned fruit not to be part of the 1/2 cup serving.
- 9.7 Casseroles to be served no more than twice per week.
  - 9.7.1 Pasta can be used in a casserole no more than 2 times per monthly menu cycle.
  - 9.7.2 Pasta shall be sent out cooked with sauce mixed in.
- 9.8 A special menu (i.e. holiday or ethnic meal) to be served once each month as requested by LAAA RD or designee.
- 9.9. **Menus must be strictly adhered to.**
  - 9.9.1 **There may be no deviation from portions specified.**
  - 9.9.2 **Menu substitutions must be approved 24 hours in advance of service times by the LAAA RD or her designee.**
  - 9.9.3 **Non-notification may result in no reimbursement for part or all of the meal.**
- 9.10 A monthly menu cycle, changed quarterly that reflects the different seasons, is to be used.
  - 9.10.1 The cycle menu for congregate and cold box lunches, along with nutrient analysis and modified menus, **must** be submitted to LAAA RD or her designee by the following dates (menus to be approved 3-months at a time):
    - \*Summer Cycle (June, July, August) by **March 15**
    - \*Fall Cycle (September, October, November) by **June 15**
    - \*Winter Cycle (December, January, February) by **September 15**
    - \*Spring Cycle (March, April, May) by **December 15**
- 9.11 An alternate selection called "Box Lunch" to be offered Monday through Saturday to give center participants a choice of meal for the congregate meal program or for an evening meal.
  - 9.11.1 This alternate meal to replace the 3 oz. meat and two 1/2 cup servings of fruit and/or vegetables on the regularly planned menu.
  - 9.11.2 The "Box Lunch" menu items will be individually packaged.
    - 9.11.2.1 Packaging needs to be approved prior to use.
- 9.12 A "diet" dessert will be prepared by caterer as an alternate choice on the congregate menu whenever the planned dessert is a high sugar and/or high fat product.
  - 9.12.1 Caterer and LAAA's RD will monitor products to ensure proper recipes and products are used.
- 9.13 All menus must reflect the principles of good menu planning.
- 9.14 Menus served during the course of the contracted period should be similar to menus shown in **Appendix "A"**.

## **10. REGISTERED DIETICIAN**

- 10.1 The Contractor must have a registered dietitian (RD) available for the number of hours required to write, analyze, update and change menus.
- 10.2 A copy of the menu computer analysis will be submitted for each new menu cycle.
- 10.3 The caterer's RD must visit each ActivAge center on a regular basis, at least once each month, or more often if problems arise.
- 10.4 The RD will submit written reports to LAAA RD or her designee.
  - 10.4.1 These reports to outline ActivAge Centers that are visited, along with a summary of food service conditions and practices of the senior centers.
- 10.5 RD shall be required to attend a quarterly menu review meeting.

## 11. MODIFIED DIET MENUS

- 11.1 Contractor's RD, in conjunction with LAAA's RD, will prepare modified diet menus and ensure proper recipes are being used for such diets.
- 11.2 These menus must be submitted with 3-month cycle menus at the times as designated.
- 11.3 The Contractor shall make available the following menus:
  - 11.3.1 **Low Sugar:** Based on approximately 500-650 calories per meal omitting concentrated sugar or high carbohydrate foods. Carbohydrate content of meal should be evaluated when starchy vegetables or desserts are served.
    - 11.3.1.1 Breaded meat items may not be appropriate for this diet.
  - 11.3.2 **Low Salt:** Based on 1,000 mg sodium or less per meal.
    - 11.3.2.1 Breaded meat items may not be appropriate for this diet.
  - 11.3.3 **Bland/Low Fat:** Based on approximately 25 grams of fat or less per meal. Also based on the liberal bland diet, excluding foods that are gastric irritants and some gas forming vegetables.
  - 11.3.4 **Grounds:** This diet provides soft foods and ground meats.
  - 11.3.5 **Any combinations of the above diets.**

## 12. FOOD AND FOOD PRODUCT REQUIREMENTS

- 12.1 Frozen vegetables - U.S. Grade A or better
- 12.2 Canned vegetables - U.S. Grade B or better
- 12.3 Fresh fruit - U.S. #1 or better
- 12.4 Canned fruit - U.S. Grade B or better juice packed only
- 12.5 Fresh vegetables - U.S. #1 or better
- 12.6 Eggs - Government inspected Grade A
- 12.7 Ground meat to contain no more than 20% fat
- 12.8 All cereal products to be enriched
- 12.9 Only full-strength fruit or vegetable juices
- 12.10 Reduced sodium Ham to be used for all Ham menu items
- 12.11 Only USDA Select or better meat to be used
- 12.12 Only Grade A poultry to be used
- 12.13 When fresh chicken pieces are served, each center to receive no more than 50% dark meat.
- 12.14 All fish to be boneless.
- 12.15 Ice cream and/or sherbet to be individually packaged
- 12.16 A patty-shaped (pre-cooked) product to be used no more than twice a week for a maximum of five times in the monthly menu cycle
- 12.17 Meat products containing any soy additive or protein extender may be used only when pre-approved by a taste-test panel of LAAA staff/participants.
  - 12.17.1 Approval must be done prior to product being served on the menu.**
- 12.18 Gravy mix, cheese sauce mix, cream soups, and sauce mix to be a reduced sodium and reduced fat product that has been pre-approved by taste-test panel of LAAA staff.
  - 12.18.1 Portion must be equal to 2oz/serving.
- 12.19 Salad dressing to be individually portioned and a minimum of 1 oz. per serving.
- 12.20 Milk to be pasteurized, homogenized, Low-Fat (1%) or Fat-Free(Skim) milk.
  - 12.20.1 All milk will be served in individual containers.
  - 12.20.2 Please include cost of individual milk containers separate from meal on Proposal.
- 12.21 Cakes, muffins, and cornbread servings to be no smaller than 2-1/2 inches square.
- 12.22 Pie to be cut in 8 servings per pie.
- 12.23 Whole grain breads shall be used whenever possible.
  - 12.23.1 Serve a variety such as Sourdough, Marble Rye, 100% Whole Grain, 7-Grain etc.
- 12.24 Some food products may be requested to be upgraded such as, Roast Beef, Roast Turkey, Roast Pork or Ham. Any additional cost will be negotiated between LAAA and the caterer.

- 12.25 The Contractor may be asked to prepare meals for additional meals,(ie, brunch,evening dinners, dances, etc.).  
12.25.1 Additional cost for these meals will be negotiated prior to service being provided.

### **13. CONTRACTOR REQUIREMENTS**

- 13.1 The Contractor must employ a Food Service Manager who will provide supervision to staff in the preparation and delivery areas.  
13.1.1 Food Service Manager may be required to attend the Menu Review meetings.
- 13.2 Food Service Manager shall be primary contact for LAAA when ordering meals and reporting delivery or quality problems.
- 13.3 Food Service Manager shall have the authority to correct any problems involving delivery or quality control problems without delay.
- 13.4 Contractor shall communicate with LAAA Dietician to ensure that kitchen facility and serving locations have comparable serving utensils.

### **14. DELIVERY REQUIREMENTS**

- 14.1 The Contractor shall provide all delivery vehicles, all food transporting equipment, and food delivery equipment.
- 14.2 The Contractor shall deliver the meals in bulk or pre-plated to the designated location/s in ready-to-eat form, prepared fresh daily.
- 14.2.1 Delivery locations and days of service in City of Lincoln include:  
Downtown Center - 1005 O Street - Monday - Saturday  
Northeast Center - 6310 Platte Street - Monday - Friday  
Lake Center - 2400 S. 11<sup>th</sup> Street - Monday - Friday  
Burke Plaza Housing Complex - 6721 L Street - Monday - Saturday  
Mahoney Manor Housing Complex - 4241 N. 61<sup>st</sup> Street - Monday - Saturday  
JoAnn Maxey Center - 2032 U Street - Monday, Wednesday, Friday  
Belmont Center - 1234 Judson - Monday - Friday  
Calvert Center - 4500 Stockwell - Monday - Friday
- 14.2.2 Delivery locations outside of City of Lincoln include:  
Waverly Senior Center - 14410 Folkstone St., Waverly, NE - Monday - Friday
- 14.3 The "Box Lunch" will be prepared fresh daily and delivered in a individually portioned, ready to eat form.
- 14.4 All potentially hazardous foods to be delivered and maintained at **45 degrees F or below or 140 degrees F or above** until serving time.
- 14.5 Locations are furnished with thermometers to ensure temperature requirements are satisfied.
- 14.5.1 The Location will record the temperatures of all hot and cold food everyday to verify temperatures are within the stated guidelines.
- 14.6 Containers used in the delivery of the food shall maintain temperatures, prevent food from contamination, and be maintained in a clean and sanitary manner as set forth by the Lancaster County Health Department.
- 14.6.1 Contractor shall pick up delivery equipment on following delivery day.
- 14.6.2 Contractor is responsible for its own equipment and food containers.
- 14.7 All food to be delivered in standard steam table pans **with foil and lids; foil only or lid only is not acceptable as the only cover.**
- 14.8 All meals in the quantity ordered, to be delivered to the selected location/s, no sooner than 1 hour before serving and no later than 1/2 hour before serving time.

## **15. ORDER PROCEDURES**

- 15.1 Contractor must be flexible regarding the number of meals to be provided on a day-to-day basis.
- 15.2 LAAA to place meal order for the following day by 2:00 p.m.
- 15.3 A preliminary count for meals to be given by 2:00 p.m. of the preceding day.
- 15.4 A final count to be given at 9:00 a.m. on the day of meal service.
  - 15.4.1 This count may fluctuate down no more than 5% and meals may be added with no limit.

## **16. FOOD QUALITY AND SAFETY**

- 16.1 If notified by the Location Staff or LAAA RD or designee of food shortages and/or poorly prepared food items, the necessary replacements must be made prior to scheduled serving time.
- 16.2 If replacements cannot be made by Contractor, the Location Staff will purchase necessary food item(s).
  - 16.2.1 Contractor to be billed for such items, plus an administrative fee of 25% for replacement item.
- 16.3 Food handling practices must be such as to maintain quality and safety of foods.
  - 16.3.1 One full serving of all food items sent to the senior centers and/or HD meals must be kept at Contractor's facility for a 3-day period.
  - 16.3.2 These food samples must be labeled, dated and kept under refrigeration.
- 16.4 The facility where food is to be prepared must meet local and state health regulations.
- 16.5 All personnel employed by the Contractor must meet health requirements outlined by Food Service Sanitation Manual from the Nebraska Department of Health, Division of Licensure and Standards.
- 16.6 The Contractor awarded contract must have a documented current appraisal by the local governing Health Department or the State Health Department with a rating of good or better.

## **17. RECORDS MANAGEMENT**

- 17.1 The Contractor to keep full and accurate sales, procurement, and production records related to sales covered by the contract.
- 17.2 All such records to be kept on file for a minimum of 3 years after the close of the federal fiscal year to which they pertain.
- 17.3 Contractor shall agree that authorized auditors and officials, upon request of LAAA, shall have access to all such records for audit and review.
- 17.4 Authorized LAAA officials shall have the right to conduct on-site reviews of the food service, transportation, storage and handling operations, invoices, stocks, and purveyors.
- 17.5 Invoices to be submitted weekly to the LAAA for reimbursement.
- 17.6 LAAA shall not be obligated to receive or pay for any meal if the Contractor is notified by the LAAA RD or her designee before 6:30 a.m. of any day that such meals are not to be delivered.
- 17.7 If senior centers close because of weather and the Contractor is not notified before 6:30 a.m., LAAA shall be given full credit for all orders that day.

## **18. COMPENSATION FOR SERVICES**

- 18.1 Payments to Contractor shall be made according to City of Lincoln Instructions To Proposers, section 15.
- 18.2 LAAA shall have the authority to withhold all or part of the payments for meals, where determination has been made based upon good sufficient reason that Contractor is not in compliance with contract specifications or the submitted menu.

- 18.3 In the event that Contractor fails to deliver meals or food items to Locations prior to the agreed upon time of meal service, the LAAA RD or program designee may procure meals elsewhere and charge the Contractor the cost of such replacement meals plus a 25% administrative fee.
- 18.4 Poorly prepared menu items or shortages not replaced will not be paid for and credit for such items given on weekly billing statement.

**19. PROPOSAL REQUIREMENTS**

- 19.1 The City of Lincoln shall consider price and vendor qualifications in determining the award of bid.
- 19.2 Vendor shall include the following on a separate sheet using company letterhead in addition to completing the Proposal Sheet attached:
  - 19.2.1 Description of the kitchen site including the existing equipment and the age and condition of each piece of equipment.
  - 19.2.2 Description of vendor's delivery and food transportation equipment as to type, number and physical description for delivery to Locations.
  - 19.2.3 Description of any special party ideas, menu alternatives which the caterer will provide in addition to the outlined bid specifications.
  - 19.2.4 List of current government programs similar to those described in this proposal or other customers served, including name of contact person, number of meals prepared daily, address, and phone number. (Must list at least 3) (If not currently serving them, list of previously served customers to total 4)
  - 19.2.5 Description of vendor's qualifications and/or experience in operating meal prep services.
  - 19.2.6 A description of current food service and management staff or a description of proposed staff to be procured for purpose of caterer becoming operational by July 1, 2007.
  - 19.2.7 Organizational chart indicating structure of vendor's business, person responsible for the administration of the business, and the relationship of that person to the director or administrative head.
  - 19.2.8 A documented current appraisal of the facility by the local governing Health Department or the State of Nebraska Department of Health.

CONTRACT DOCUMENTS

CITY OF LINCOLN  
NEBRASKA

Name of Project

SPECIFICATION No. 07-132

Contractor:

Name

Address

**CITY OF LINCOLN, NEBRASKA  
CONTRACT AGREEMENT**

THIS CONTRACT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2007, by and between \_\_\_\_\_ **Company Name & Address** \_\_\_\_\_ hereinafter called contractor, and the City of Lincoln, Nebraska, a municipal corporation, hereinafter called the City.

WITNESS, that:

WHEREAS, the City has caused to be prepared, in accordance with law, Specifications, Plans, and other Contract Documents for the Work herein described, and has approved and adopted said documents and has caused to be published an advertisement for and in connection with said Work, to-wit:

(Meal Prep for Lincoln Area Agency on Aging Specification No. 07-132)  
\_\_\_\_\_

\_\_\_\_\_ and,

WHEREAS, the Contractor, in response to such advertisement, has submitted to the City, in the manner and at the time specified, a sealed Proposal in accordance with the terms of said advertisement; and,

WHEREAS, the City, in the manner prescribed by law has publicly opened, read aloud, examined, and canvassed the Proposals submitted in response to such advertisement, and as a result of such canvass has determined and declared the Contractor to be the lowest responsible bidder for the said Work for the sum or sums named in the Contractor's Proposal, a copy thereof being attached to and made a part of this Contract;

**EQUAL EMPLOYMENT OPPORTUNITY:** In connection with the carrying out of this project, the contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, age or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, disability, age or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship.

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor and the agreements herein contained, the Contractor and the City have agreed and hereby agree as follows:

The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, transportation, and other construction accessories, services, and facilities; (b) furnish all materials, supplies, and equipment specified to be incorporated into and form a permanent part of the complete work; (c) provide and perform all necessary labor in a substantial and workmanlike manner and in accordance with the provisions of the Contract Documents; and (d) execute construct, and compete all Work included in and covered by the City's award of this Contract to the Contractor, such award being based on the acceptance by the City of the Contractor's Proposal, or part thereof, as follows:

The City agrees to pay to the Contractor for the performance of the Work embraced in this Contract, the Contractor agrees to accept as full compensation therefor, the following sums and prices for all Work covered by and included in the Contract award and designated above, payment thereof to be made in the manner provided by the City:

Amount

## CONTRACT AGREEMENT

The Work included in this Contract shall begin as soon as possible from date of executed contract.  
The completion shall be \_\_\_\_\_.

LIQUIDATED DAMAGES: (If applicable)

RETAINER: (If applicable)

GUARANTEE:

A performance bond in the full amount of the contract shall be required for this contract. This bond shall remain in effect during the guarantee period as stated in the specifications..

The Contract Documents comprise the Contract, and consist of the following:

1. The Instructions to Proposers
2. The Accepted Proposal
3. The Contract Agreements
4. The Specifications
7. The Bonds
8. The Special Provisions

CONTRACT AGREEMENT

These Contract Agreements, together with the other Contract Documents herein above mentioned, form this Contract, and the are as fully a part of the Contract as if hereto attached or herein repeated.

The Contractor and the City hereby agree that all the terms and conditions of this Contract shall by these presents be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Contractor and the City do hereby execute this contract.

**EXECUTION BY THE CITY OF LINCOLN, NEBRASKA**

ATTEST:

CITY OF LINCOLN, NEBRASKA

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

Approved by Executive or No. \_\_\_\_\_  
dated \_\_\_\_\_

**EXECUTION BY CONTRACTOR**

**IF A CORPORATION:**

ATTEST:

\_\_\_\_\_  
Name of Corporation

\_\_\_\_\_  
Secretary (SEAL)

\_\_\_\_\_  
(Address)

By: \_\_\_\_\_  
Duly Authorized Official

\_\_\_\_\_  
Legal Title of Official

**IF OTHER TYPE OF ORGANIZATION:**

\_\_\_\_\_  
Name of Organization

\_\_\_\_\_  
Type of Organization

\_\_\_\_\_  
(Address)

By: \_\_\_\_\_  
Member

By: \_\_\_\_\_  
Member

**IF AN INDIVIDUAL:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature

## COMMENTARY TO ACCOMPANY CONSTRUCTION BONDS

### A. GENERAL INFORMATION

There are two types of construction bonds that are required by statutes for public work in many jurisdictions and are widely used for other projects as well.

Construction Performance Bond  
Construction Payment Bond

The Construction Performance Bond is an instrument that is used to assure the availability of funds to complete the construction.

The Construction Payment Bond is an instrument that is used to assure the availability of sufficient funds to pay for labor, materials and equipment used in the construction. For public work the Construction Payment Bond provides rights of recovery for workers and suppliers similar to their rights under the mechanics lien laws applying to private work.

The objective underlying the re-writing of construction bond forms was to make them more understandable to provide guidance to users. The intention was to define the rights and responsibilities of the parties, without changing the traditional rights and responsibilities that have been decided by the courts. The new bond forms provide helpful guidance regarding time periods for various notices and actions and clarify the extent of available remedies.

The concept of pre-default meeting has been incorporated into the Construction Performance Bond. All of the participants favored early and informal resolution of the problems that may precipitate a default, but some Surety companies were reluctant to participate in pre-default settings absent specific authorization in the bond form.

The responsibilities of the Owner and the options available to the Surety when a default occurs are set forth in the Construction Performance Bond. Procedures for making a claim under the Construction Payment Bond are set forth in the form.

EJCDC recommends the use of two separate bonds rather than a combined form. Normally the amount of each bond is 100 percent of the contract amount. The bonds have different purposes and are separate and distinct obligations of the Surety. The Surety Association reports that the usual practice is to charge a single premium for both bonds and there is no reduction in premium for using a combined form or for issuing one bond without the other.

### B. COMPLETING THE FORMS

Bonds have important legal consequences; consultation with an attorney and a bond specialist is encouraged with respect to federal, state and local laws applicable to bonds and with respect to completing or modifying the bond forms.

Both bond forms have a similar format and the information to be filled in is ordinarily the same on both bonds. If modification is necessary, the modifications may be different.

The bond forms are prepared for execution by the Contractor and the Surety. Evidence of authority to bind the Surety is usually provided in the form of a power of attorney designating the agent who is authorized to sign on behalf of the Surety. The power of attorney should be filed with the signed bonds.

Each bond must be executed separately since they cover separate and distinct obligations.

Preferably the bond date should be the same date as the contract, but in no case should the bond date precede the date of the contract.

CONSTRUCTION PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Principal  
Place of Business):

Owner (Name and Address):

City of Lincoln  
555 South 10th St.  
Lincoln, NE 68508

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Construction Contract Date):

Amount:

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

SURETY

Company: (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

Signature: \_\_\_\_\_

Name and Title:

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

SURETY

Company: (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

Signature: \_\_\_\_\_

Name and Title:

EJCDC NO. 1910-28a (1984 Edition)

Prepared through the joint efforts of The Surety Assoc. of America. Engineers' Joint Contract Documents Committee. The Associated General Contractors of America, and the American Institute of Architects.

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.
3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:
  - 3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default and
  - 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and
  - 3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.
4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
  - 4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract, or
  - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or
  - 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default, or
  - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
    1. After investigation, determine the amount for which it may be liable to the Owner and as soon as practicable after the amount is determined tender payment therefor to the Owner; or
    2. Deny liability in whole or in part and notify the Owner citing reasons therefor.
5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4 and the Owner refuses payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction

Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

- 6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
  - 6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and
  - 6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.
  8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related sub-contracts, purchase orders and other obligations.
  9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
  10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.
  11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
  12. Definitions.
    - 12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
    - 12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
    - 12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.
    - 12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

CONSTRUCTION PAYMENT BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

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CONTRACTOR (Name and Address):

SURETY (Name and Principal Place Of Business):

Owner (Name and Address):

City of Lincoln  
555 South 10th St.  
Lincoln, NE 68508

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Construction Contract Date):

Amount:

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

SURETY

Company: (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

Signature: \_\_\_\_\_

Name and Title:

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

SURETY

Company: (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

Signature: \_\_\_\_\_

Name and Title:

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
  2. With respect to the Owner, this obligation shall be null and void if the Contractor:
    - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
    - 2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
  3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
  4. The Surety shall have no obligation to Claimants under this Bond until:
    - 4.1 Claimants who do not have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof to the Owner, stating that a claim is being made under this Bond and with substantial accuracy the amount of the claim.
    - 4.2 Claimants who do not have a direct contract with the Contractor:
      1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed, and
      2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
      3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
  5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
  6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
    - 6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
    - 6.2 Pay or arrange for payment of any undisputed amounts.
  7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
  8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond.
- By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to the funds for the completion of the work.
9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
  10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
  11. No suite or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.1 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
  12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
  13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.
  14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
  15. DEFINITIONS
    - 15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials, or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
    - 15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
    - 15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

**Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323**

§ 77-1323 Every person, partnership, limited liability company, association, or corporation furnishing labor or material in the repair, alteration, improvement, erection, or construction of any public improvement shall furnish a certified statement to be attached to the contract that all equipment to be used on the project, except that acquired since the assessment date, has been assessed for taxation for the current year, giving the county where assessed.

Pursuant to Neb. Rev. Stat. § 77-1323, I, \_\_\_\_\_, do hereby certify that all equipment to be used on City Project/Specification No. \_\_\_\_\_, except that equipment acquired since the assessment date, has been assessed for taxation for the current year, in \_\_\_\_\_ County, Nebraska.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2006.

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NEBRASKA )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2007, before me, the undersigned Notary Public duly commissioned for and qualified in said County, personally came \_\_\_\_\_, to me known to be the identical person, whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

\_\_\_\_\_  
Notary Public  
(SEAL)