UAI 5152.236-9011

UAI 5152.236-9011 Design-Build Construction Contracts (MAR 2019)

(a) Design-Build Contract Order of Precedence. The contract includes the standard contract clauses and schedules current at the time of contract award. It entails (1) the Solicitation in its entirety, including all drawings, cuts, and illustrations, and any amendments, and (2) the successful offeror's accepted proposal. The contract constitutes and defines the entire agreement between the Contractor and the Government. No documentation shall be omitted which in any way bears upon the terms of that agreement.

(1) In the event of conflict or inconsistency between any portion of this contract, precedence shall be given in the following order:

i. Betterments: Any portions of the accepted proposal which both conform to and exceed the requirements of the Solicitation.

ii. The requirements of the Solicitation. (See also FAR 52.236-21, Specifications and Drawings for Construction)

iii. All other elements of the accepted proposal.

iv. Any design products including, but not limited to, plans, specifications, engineering studies and analyses, shop drawings, equipment installation drawings, etc. These are "deliverables" under the contract and are not part of the contract itself. Design products must conform to all provisions of the contract, in the order of precedence herein.

(b) Personnel, subcontractors, and outside associates or consultants. In connection with this contract, any in-house personnel, subcontractors, and outside associates or consultants will be limited to individuals or firms that were specifically identified in the Contractor's accepted proposal. The Contractor shall obtain the Contracting Officer's written consent before making any substitution for these designated in-house personnel, subcontractors, associates, or consultants. If the Contractor proposes a substitution, it shall submit the same type of information that was submitted in the accepted proposal to the Contracting Officer for evaluation and approval. The level of qualifications and experience submitted in the accepted proposal or that required by the Solicitation, whichever is greater, is the minimum standard for any substitution.

(c) Responsibility of the Contractor for Design. The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other non-construction services furnished by the Contractor under this contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiency in its designs, drawings, specifications, and other non-construction services and perform any necessary rework or modifications, including any damage to real or personal property, resulting from the design error or omission.

(1) The standard of care for all design services performed under this agreement shall be the care and skill ordinarily used by members of the architectural or engineering professions practicing under similar conditions at the same time and locality. Notwithstanding the above, in the event that the contract specifies that portions of the Work be performed in accordance with a performance standard, the design services shall be performed so as to achieve such standards.

(2) Neither the Government's review, approval or acceptance of, nor payment for, the services required under this contract, shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract. The Contractor shall be and remain liable to the Government in accordance with applicable law for all damages to the Government caused by the Contractor's negligent performance of any of these services furnished under this contract.

(3) The rights and remedies of the Government provided for under this contract are in addition to any other rights and remedies provided by law.

(4) If the Contractor is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.

(d) Contractor's Role during the Design Process. The Contractor's construction management key personnel shall be actively involved during the design process to effectively integrate the design and construction requirements of this contract. In addition to the typical required construction activities, the Contractor's involvement includes, but is not limited to actions such as: integrating the design schedule into the Master Schedule to maximize the effectiveness of fast-tracking design and construction (within the limits allowed in the contract), ensuring constructability and economy of the design, integrating the shop drawing and installation drawing process into the design, executing the material and equipment acquisition programs to meet critical schedules, effectively interfacing the design and construction quality control (QC) management programs with the design QC program, and maintaining and providing the design team with accurate, up-to-date redline and as-built documentation for eventual submission as Record Drawings. The Contractor shall require and manage the active involvement of key trade subcontractors in the above activities.

(e) Deviating from the Accepted Design. The Contractor must obtain the approval of the Designer of Record and the Government's concurrence, in the form of supplemental agreement to the contract, for any Contractor-proposed revision to the professionally stamped-and-sealed and Government-reviewed final design that has been released for Construction before proceeding with the revision. The Government reserves the right to disapprove such a revision.

(1) The Government reserves the right to non-concur with any revision to the final design that has been released for construction, including those which may impact furniture, furnishings, equipment selections or operations decisions that were made, based on the reviewed design.

(2) Any Contractor-proposed revision to the design which deviates from the contract requirements (i.e., the Request for Proposal (RFP) and the accepted proposal), will require a bilateral modification (e.g. supplemental agreement) to the contract before any work commences.

(3) Unless the Government initiates a change to the contract requirements, or the Government determines that the Government furnished design criteria are incorrect and must be revised, any Contractor initiated proposed change to the contract requirements, which results in additional cost, shall strictly be at the Contractor's expense.

(4) The Contractor shall track all approved revisions to the reviewed and accepted design and shall incorporate them into the as-built design documentation, in accordance with agreed procedures. The Designer of Record shall document its professional concurrence on the as-builts for any revisions in the stamped and sealed drawings and specifications.

(f) Value Engineering after Award. In reference to Federal Acquisition Regulation (FAR) 52.248-3, Value Engineering - Construction, the Government may refuse to entertain a "Value Engineering Change Proposal" (VECP) for those "performance oriented" aspects of the Solicitation documents which were addressed in the Contractor's accepted contract proposal and which were evaluated in competition with other offerors for award of this contract.

(1) The Government may consider a VECP for those "prescriptive" aspects of the Solicitation documents, not addressed in the Contractor's accepted contract proposal or addressed but evaluated only for minimum conformance with the Solicitation requirements.

(2) For purposes of this clause, the term "performance oriented" refers to those aspects of the design criteria or other contract requirements, which allow the offeror or Contractor certain latitude, choice of and flexibility to propose in its accepted proposal a choice of design, technical approach, design solution, construction approach or other approach to fulfill the contract requirements. Such requirements generally tend to be expressed in terms of functions to be performed, performance required or essential physical characteristics, without dictating a specific process or specific design solution for achieving the desired result.

(3) In contrast, for purposes of this clause, the term "prescriptive" refers to those aspects of the design criteria or other Solicitation requirements wherein the Government expressed the design solution or other requirements in terms of specific material, approaches, systems, and/or processes to be used. Prescriptive aspects typically allow the offerors little or no freedom in the choice of design approach, materials, fabrication techniques, methods of installation, or any other approach to fulfill the contract requirements.

(g) Warranty of Design. The Contractor warrants that the design shall be performed in accordance with the contract requirements. Design and design related construction not conforming to the Contract requirements shall be corrected at no additional cost to the Government. The standard of care for design is defined in paragraph c of this clause, Responsibility of the Contractor for Design.

(1) The period of this warranty shall commence upon final completion and the Government's acceptance of the work, or in the case of the Government's beneficial occupancy of all or part of the work for its convenience, prior to final completion and acceptance, at the time of such occupancy.

(2) This design warranty shall be effective from the above event through the Statute of Limitations and Statute of Repose or host nation law, as applicable to the place of construction performance.

(3) The rights and remedies of the Government provided for under this clause are in addition to any other rights and remedies provided in this contract or by law.

(h) Government Re-Use of Design. In conjunction with the Defense Federal Acquisition Regulation Supplement (DFARS) 252.227-7022, Government Rights (Unlimited), the Government will not ask for additional originals or copies of the design works after the Contractor provides all required design documentation and record drawing documentation under the instant contract. Further, if the Government uses the design for other projects without additional compensation to the Contractor for re-use, the Government releases the Contractor from liability in the design on the other projects, due to defects in the design that are not the result of fraud, gross mistake as amounts to fraud, gross negligence or intentional misrepresentation.

(End of clause)