

GENERAL TERMS AND CONDITIONS

**HVAC Replacement
Rialto Square Theatre
102 N Chicago Street
Joliet, IL 60432
for**

**Will County Metropolitan Exposition and Auditorium Authority
15 E Van Buren Street
Joliet, IL 60432**

PAYMENT

Payments and lien waivers: The Contractor shall submit an application for payment in an approved format (“Application for Payment”) to the Will County Metropolitan Exposition and Auditorium Authority for payments under this Agreement. The Will County Metropolitan Exposition and Auditorium Authority requires for each Application for Payment, a properly completed Contractor’s Affidavit setting out, under oath, the name, address and amount due or to become due, of each subcontractor, vendor, or party included in that payment. For every party listed, the Contractor shall also provide a full or partial waiver of lien, as appropriate, before a payment will be made to the Contractor. The Contractor’s partial or final waiver of lien must be included. Payment certificates shall not be issued by the Will County Metropolitan Exposition and Auditorium Authority or its designated representative without such mechanics’ lien waiver and Contractor’s sworn statements unless they are conditioned upon such waivers and statements. Upon satisfaction of the terms and conditions of the Contract and final payment, the Contractor agrees to provide the Will County Metropolitan Exposition and Auditorium Authority with a final release and waiver of all liens covering all Work performed under the Contract relative to the Project including all work performed by all subcontractors. Said final waiver of lien shall identify and state that all contractors and subcontractors have been paid in full and there are no contract balances outstanding and owed to any such contractors or subcontractors. The Will County Metropolitan Exposition and Auditorium Authority may withhold final payment until all services, reports and/or other deliverables specified herein have been completed in a form satisfactory to the Will County Metropolitan Exposition and Auditorium Authority. Final payment will be made by the Will County Metropolitan Exposition and Auditorium Authority only upon inspection of the Work, completion of any punch list items and after receipt of final release and waiver of liens from all Subcontractors and material suppliers for the Work.

Taxes: Contractor acknowledges the Will County Metropolitan Exposition and Auditorium Authority is a tax-exempt entity under the laws of the State of Illinois. Contractor shall warrant all material costs and scheduled values have been calculated so as to give the Will County Metropolitan Exposition and Auditorium Authority its full benefit of its tax-exempt status, and Contractor shall require that all subcontracts include a requirement that subcontractors purchase materials so as to give the Will County Metropolitan Exposition and Auditorium Authority the full benefit of its tax-exempt status.

Prompt Payment Act: All payments made under this Contract shall be made in conformance with the provisions of the Local Government Prompt Payment Act. 50 ILCS 505/1 et seq.

INSURANCE

Insurance: Contractor shall purchase and maintain insurance during the term of its work on the project acceptable to the Will County Metropolitan Exposition and Auditorium Authority and shall prove a Certificate of Insurance evidencing such coverage. Unless other such coverage amounts are agreed to by the Will County Metropolitan Exposition and Auditorium Authority. Contractor shall purchase and maintain not less than the following minimum insurance coverages during its work on the project:

1. Comprehensive general liability coverage, including coverage for premises and operations, broad form property damage, products completed operations, independent contractor's personal injury liability and contractual obligations, with coverage limits of not less than \$1,000,000 per occurrence / \$2,000,000 aggregate.
2. Umbrella liability coverage - \$5,000,000 for any one occurrence.
3. Non-owned, owned, and hired automobile insurance of not less than \$1,000,000.
4. Workers' Compensation coverage for its employees in full compliance with Illinois law, including Employers Liability of not less than \$1,000,000.
5. All coverages listed above must be from companies rated "A" or better from A.M. Best's rating system or otherwise acceptable to the Will County Metropolitan Exposition and Auditorium Authority.

By submitting a bid the Bidder hereby knowingly and intentionally waives the right to assert, under the case of *Kotecki v. Cyclops Welding Corp.*, 146 Ill. 2d 155 (1991) that Bidder liability may be limited to the amount of its statutory liability under the Workers' Compensation Act, and agrees that Bidder's liability to indemnify and defend not limited by the so called "Kotecki Cap". The Bidder shall include this provision in each of its Subcontract agreements and shall require its Subcontractors to be so bound.

Additional Insured: The Will County Metropolitan Exposition and Auditorium Authority; Rialto Square Theatre; JLK Architects; Calor Design Group Ltd; Carnow Conibear; Thornton Tomasetti; VenuWorks of Joliet LLC; and R Berti & Son Contractor Inc, together with each of their trustees, officers, employees, agents, attorneys and lenders, must be named as additional insureds on all insurance policies provided under this Contract and such policies cannot be cancelled without ninety (90) days advance notice to the Will County Metropolitan Exposition and Auditorium Authority and R Berti & Son Contractor Inc.

Contractor's Insurance – Primary: In the event any claim or suit is brought against the Will County Metropolitan Exposition and Auditorium Authority related to the performance of Contractor's duties under this Agreement, The Contractor's insurance will be primary and will defend and indemnify the Will County Metropolitan Exposition and Auditorium Authority from the claim, notwithstanding the availability of any insurance the Will County Metropolitan Exposition and Auditorium Authority may have for the claim. Any insurance or self-insurance maintained by the Will County Metropolitan Exposition and Auditorium Authority shall be in excess of Contractor's insurance and shall not contribute with it.

INDEMNIFICATION

Indemnification: To the fullest extent permitted by law, Contractor shall indemnify, defend, save and hold the Will County Metropolitan Exposition and Auditorium Authority and all others required to be named as additional insureds, their trustees, officers, employees, agents, attorneys and lenders (collectively the "Indemnitees") harmless from and against all loss and expense (including, but not limited to, reasonable attorney's fees and other costs and expenses) by reason of the liability imposed by law upon the Indemnitees, or any of them, for damages because of bodily injury, occupational sickness or disease, including death resulting there from, sustained by any employees of Contractor or subcontractors, while performing the Work or while at the Site where Work under the Contract is being conducted or elsewhere, while engaged in the performance of Work under the Contract, or sustained by any person or persons other than employees of Contractor, however such injuries may be caused, whether attributable to a breach of statutory duty or administrative regulation or otherwise, and such injuries for which liability is imputed to the Indemnitees, or any of them, or claims for property damage because of injury to or destruction of tangible property, directly or indirectly arising or alleged to arise out of the performance of or the failure to perform the Work or the failure to protect the Work or the Site, or the condition of the Work, the Site, adjoining land or driveways, or streets or alleys used in connection with the performance of the Work. Without limiting the generality of the foregoing, the defense and indemnity set forth in this Section includes, subject only to the limitations contained in this Section, all liabilities, damages, losses, claims, demands and actions on account of bodily injury, death or property loss to an Indemnitee or to any other persons or entities, whether based upon, or claimed to be based upon, statutory, contractual, tort or other liability of any Indemnitee. In addition, such defense and indemnity shall include all liabilities, damages, losses, claims, demands and actions for defamation, false arrest, malicious prosecution or any other infringement or similar rights.

The provisions of the indemnity provided for herein shall not be construed to indemnify any Indemnitee for its own negligence, if any, to the extent not permitted by law or to eliminate or reduce any other indemnification, right or remedy which the Will County Metropolitan Exposition and Auditorium Authority is otherwise entitled to assert.

PREVAILING WAGES

Prevailing Wages: This Contract calls for the construction of a "public work" within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/0.01 et seq. ("the Act"). The Contractor and all subcontractors are required to pay wage rates in accordance with the Act to all laborers, workers and mechanics. The prevailing rate of wages are revised by the IDOL and are available on the IDOL website. The Contractor and all subcontractors are responsible for checking the IDOL's website for revisions to the prevailing wage rates. In the event that the IDOL should revise the prevailing rate of wages, then the revised rates shall apply to this Contract. In no case shall any revision in the rates of prevailing wages result in an increase in the total Contract Sum. All bonds provided by the Contractor under the terms of this Contract shall include such provisions as will guarantee the faithful performance of the Contractor's obligations under this clause and under the Prevailing Wage Act, 820 ILCS 130/1 et seq.

Records and Certified Payroll: The Contractor and each of its subcontractors participating on the Project shall make and keep those records required under Section 5 of the Prevailing Wage Act. On a weekly basis, the Contractor shall also submit a certified payroll report to IDOL at: <https://www2.illinois.gov/idol/Laws-Rules/CONMED/Pages/certifiedtranscriptofpayroll.aspx>.

A copy of the Certified Transcript of Payroll Form shall be sent to Michael Judy at mjudy@rberti.com for project records.

Such payroll shall record for each laborer, mechanic and other worker employed on the Project by the Contractor and any subcontractor the following information on each such worker: (i) name; (ii) address; (iii) telephone number when available; (iv) social security number; (v) classification or classifications; (vi) gross and net wages paid in each pay period; (vii) number of hours worked each day; (viii) starting and ending times of work each day; (ix) hourly wage rate; (x) hourly overtime wage rate; (xi) hourly fringe benefit rates; (xii) name and address of each fringe benefit fund; (xiii) the plan sponsor of each fringe benefit, if applicable; and (xiv) the plan administrator of each fringe benefit, if applicable. The certified payroll shall also include a statement signed by the Contractor or subcontractor which avers that: (i) he or she has examined the certified payroll records required to be submitted by the Prevailing Wage Act, 820 ILCS 130/1 et seq., and that such records are true and accurate; (ii) the hourly rate paid to each worker is not less than the general prevailing rate of hourly wages required by the Illinois Prevailing Wage Act; and (iii) the Contractor or subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class A misdemeanor.

CERTIFICATIONS

A. Certification to Enter into Public Contracts. Contractor certifies it is not barred from contracting with any unit of state or local government as a result of a violation of 720 ILCS 5/33E-11 of the Illinois Criminal Code or any similar offense of any State of the United States which contains the same elements as the Illinois offenses of bid-rigging or bid rotating. Contractor shall execute the attached Certification.

B. Certificate of Compliance with Illinois Drug-Free Workplace. Contractor certifies it has in place a written program which meets or exceeds the program requirements of Section 3 of the Illinois Drug-Free Workplace Act (30 ILCS 580/3). Contractor further certifies it is not ineligible for award of this contract by reason of debarment for a violation of the Illinois Drug-Free Workplace Act.

C. Sexual Harassment Certification. Contractor certifies it has in place a written sexual harassment policy in place in full compliance with 775 ILCS 5/2 105(A) (4).

D. Equal Employment Opportunity and Nondiscrimination in Employment Practices. Contractor certifies that its policy is to provide equal employment opportunity without regard to race, religion, color, national origin, handicap, age or sex through a program of positive action affecting all employees. In this program, our company carries out the requirements of Federal Executive orders 11246 and 11375, Civil Rights Act of 1964, Equal Employment Act of 1972, and all other applicable laws, and indicates its active support of the principle of equal opportunity in employment

E. Non-Collusion Affidavit. The bidder or agent, being duly sworn, on oath says that he/she has not, nor has any other member, representative, nor agent of the firm, company, corporation or partnership represented by him/her, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting, nor to prevent any person from bidding nor to induce anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding.