

**MATERIAL OR EQUIPMENT WITHOUT INSTALLATION
GENERAL REQUIREMENTS****DEFINITIONS**

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1. DEFINITIONS

Wherever in the specifications and other contract documents the following terms, or pronouns in place of them, are used, the intent and meaning shall be interpreted as follows: **District** means the East Bay Municipal Utility District. **Bidder** means any individual, partnership, joint venture, or corporation submitting a proposal for performing the work and/or furnishing the material or equipment specified, acting directly or through a duly authorized representative. **Contractor** means the individual, partnership, joint venture, or corporation with whom the contract is made by the District. **Engineer** means the Chief Engineer of the District acting directly or through the Manager of the Purchasing Division, the Manager of the Design Division, the Manager of the Contraction Division, or other properly authorized agents, such agents acting within the scope of the particular duties entrusted to them.

On all questions concerning the acceptability of material or equipment and the execution of the work, the decision of the Engineer shall be final and bidding on both parties, except in the case of gross error.

2. PROPOSAL

(a) Forms. The proposal shall be made on the forms provided therefor. Blank spaces on the forms shall be properly filled, the phraseology shall not be changed, and no additions shall be

made to the items mentioned therein. Unauthorized conditions, limitations, or provisos attached to a proposal will render it informal and may cause its rejection. No telegraphic proposal nor telegraphic modification of a proposal will be considered.

(b) Name, address, and signature. The full name, business address, and business telephone number of the individual, partnership, joint venture or corporation submitting the proposal shall be typewritten or legibly printed on the proposal form. The bidder shall sign the proposal with his usual signature.

A partner shall sign for a partnership and the names and addresses of all partners shall be given.

Two officers shall sign for a corporation, the corporate name shall be attested by the corporate seal, and the names and titles of all officers of the corporation shall be given. A signature other than a corporate officer's will be accepted if an authenticated power of attorney is attached.

(c) Prices. The bidder shall state for each item on the bidding form, in clearly legible figures, the unit price and item total or lump sum, as the case may be, for which he proposes to perform the work and/or furnish material or equipment required by these specifications. Alteration of a price by erasure or interlineation must be explained or noted in the proposal over the signature of the bidder.

If the unit price for an item and the item total do not agree, the unit price shall prevail; however, if the unit price is ambiguous, unintelligible, or uncertain for any cause, or is omitted, or is the same amount as the entry for the item total, then the item total shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price.

Unit price extension controls. In the event of a discrepancy between the unit price extension and the total amount bid or summaries of totals, the unit price extension total shall prevail.

(d) Submission of proposal. The proposal with the complete specifications booklet intact shall be enclosed in a sealed envelope marked and addressed as required in the Instructions to Bidders. Proposals received after said time or at any place other than the place of bid opening as stated in the Notice of Contractors will not be considered. Prior to bid opening, a bidder may withdraw his proposal without prejudice to himself by submitting a written request for its withdrawal to the officer who holds it.

(e) Bid Openings. All proposals will be opened and declared publicly at the time and place stated in the Notice to Contractors. Bidders, their representatives, and others interested are invited to be present.

(f) Award of contract. The right is reserved to reject any or all proposals, to accept one part of a proposal and reject the other, unless the bidder stipulates to the contrary, and to waive technical defects, as the interest of the District may require. Award will be made or proposals rejected by the District as soon as possible after bids have been opened.

3. EXPERIENCE

Bidders, if required, shall present satisfactory evidence that they have been regularly engaged in furnishing such material and equipment and/or performing such work as they propose to furnish or perform and that they are fully prepared with necessary capital, equipment, and material to begin work promptly and to conduct it as required by these specifications.

4. PRICES AND PAYMENTS

Payment at the prices agreed upon will be in full for the completed work and will cover materials, supplies, labor, tools, equipment and all other expenditures incident to a satisfactory compliance with the contract, unless otherwise specifically provided.

5. CONTRACT AND BOND

(a) The bidder to whom award is made shall execute a written contract with the District, and shall furnish a good and approved faithful performance bond when required, within fifteen days after receiving the forms for execution. If the bidder to whom award is made fails to enter into the contract as herein provided, and furnish the said bond when required, this shall be just cause for the annulment of the award and the forfeiture of the bidder's security, if any; and award may, at the discretion of the Board of Directors of the District, be made to the bidder whose bid is the next most acceptable in the opinion of the Board; and such bidder shall fulfill every stipulation embraced herein as if he were the party to whom the first award was made.

(b) The contract shall be on the form of the District. The notice to contractors, instructions to bidders, proposal, general requirements, specifications and drawings, contained in or by reference made part of these specifications will be deemed a part of the contract.

(c) The faithful performance bond shall be on the form of the District and shall be executed by a responsible surety company or companies in an amount not less than 100% of the estimated aggregate payments to be made under the contract, conditioned upon the faithful performance by the Contractor of all covenants and stipulations in the contract. The surety or sureties on all bonds furnished must be satisfactory to the District. The District will reject surety bonds obtained from any company not holding Certificate of Authority from the U.S. Secretary of the Treasury under the Act of Congress approved July 30, 1947, (6 U.S.C., Secs. 6-13) as acceptable sureties on Federal bonds. A bond in a multiple of \$1,000 only will be made; provided, however, that the amount of the bond shall otherwise be fixed at the lowest sum that will fulfill all conditions herein set forth.

If, during the continuance of the contract, any of the sureties, in the opinion of the District, are or become irresponsible, the District may require other or additional sureties, which the Contractor shall furnish to the satisfaction of the District within ten days after notice, and in default thereof the contract may be suspended and the materials purchased or the work completed as provided in Paragraph 7 hereof.

It is understood and agreed that modifications or alterations made in these specifications shall not operate to release any surety from liability on any bond or bonds required to be given herein.

(d) Authority to sign contract and bond. A corporation, or a company, or partnership operating under a fictitious name, to which an award is made, will be required, before the contract is finally executed, to furnish evidence of its corporate existence and evidence that the officer signing the contract and bond for the corporation is duly authorized to do so.

6. TRANSFER OF INTEREST

No interest in the contract shall be transferred to any other party without permission of the Board of Directors of the District.

7. SUSPENSION OF CONTRACT

If the Contractor fails to begin the delivery of the material or to commence work as provided in the contract, or fails to make delivery of material promptly as ordered, or to maintain the rate of delivery of material or progress as ordered, or to maintain the rate of delivery of material or progress of the work in such a manner as in the opinion of the Engineer will ensure a full compliance with the contract within the time limit, or if in the opinion of the Engineer the Contractor is not carrying out the provisions of the contract in their true intent and meaning, written notice will be served on him to provide within a specified time for a satisfactory compliance with the contract. If he neglects or refuses to comply with such notice, the District may suspend the operation of all or any part of the contract, or it may in its discretion after such notice perform any part of the work or purchase any, or all of the material included in the contract or required for the completion thereof at the expense of the Contractor, without suspending the contract.

Any cost to the District in excess of the contract price, arising from the suspension of the contract or from work performed or purchase made by the District, either before or after suspension, and required on account of failure of the Contractor to comply with his contract or the orders of the Engineer issued in pursuance thereof, will be charged to the Contractor and his sureties, who shall be liable therefor. If the net credits shall be in excess of the claims of the District against the Contractor, the balance will be paid to the Contractor or his legal representatives.

If, in the opinion of the Engineer, an emergency exists for the furnishing of certain material or the performance of certain work in order to ensure compliance with the terms of the contract and if the Contractor fails to furnish such material or to perform such work within a reasonable time fixed by written notice from the Engineer to the Contractor, then the Engineer shall have the power to furnish such material or to perform such work at the

expense of the Contractor and his sureties, who shall be liable therefor.

In the determination of the question whether there has been such noncompliance with the contract as to warrant its suspension or the furnishing of material or the performance of work by the District, as herein provided, the decision of the Engineer shall be final and binding upon both parties. Suspension of the contract, or any part thereof, shall operate only to terminate the right of the Contractor to proceed with the work covered by the contract or the suspended portion thereof. The provisions of the contract permitting the District to make changes and to make proper adjustment of accounts to cover any increase or decrease of cost on account of such changes and all other stipulations of the contract except those giving the Contractor the right to proceed with work on the items covered by the suspension, shall be and remain in full force and effect after such suspension and until the contract shall have been completed and final payment or final adjustment of accounts made.

8. SUBCONTRACTORS

When requested, the Contractor shall furnish the name and address of each subcontractor contracting directly with him, together with a statement showing the character and location of work, time limit, if any, and if requested, the amount of money involved in each subcontract. Each subcontract shall contain a reference to the contract between the District and the principal Contractor, and the terms of the contract and all parts thereof shall be made part of such subcontract insofar as applicable to the work covered thereby. Each subcontract shall provide for its annulment at the order of the Engineer if in his opinion the subcontractor fails to comply with the requirements of the principal contract insofar as the same may be applicable to his work.

9. CHANGES

(a) General. The District reserves the right to make changes in the design of materials, equipment, or machinery, to make alterations or additions to or deviations or omissions from the specifications and drawings, to increase or decrease the quantity of any item or portion of work or to omit any item or portion of the work, as may be deemed by the Engineer to be necessary or advisable and to order such extra work as may be determined by the Engineer to be required for the proper execution and completion of the whole work contemplated. Any such changes will be ordered in writing by the Engineer.

The determination of the Engineer on all questions relating to changes, including extra work, shall be conclusive and binding against both parties to the contract except in the case of gross error.

(b) Extra work. New and unforeseen work will be classed as extra work when it is determined by the Engineer that such work is not covered by any of the bid items for which there is a bid price. Extra work also includes work specifically designated as extra work in the specifications or drawings. The Contractor shall furnish the required labor, materials, and equipment and shall perform such extra work upon receipt of a written change order therefor from the Engineer. Extra work performed in the absence of such written change order will not be paid for.

(c) Adjustments. If changes ordered by the Engineer result in an increase or decrease of cost to the Contractor, the Engineer will make such equitable adjustments as he may deem reasonable and proper. The written change order will specify the payment to be made or credit to be taken and adjustment of the contract time, if any. Payment in accordance with the terms and conditions set forth in such written change order shall constitute full compensation for all work included therein or required thereby.

Prior to issuing a change order, the Engineer may request the Contractor to submit a proposal covering the changes. Within 15 days after receiving such a request the Contractor shall submit his proposal to the Engineer, including in it any claim for compensation and extension of contract time. In his determination of equitable adjustment, the Engineer will use the Contractor's proposal or parts thereof as he deems reasonable and proper.

(d) Protest procedure. Should the Contractor disagree with any terms or conditions set forth in a change order, he shall proceed with the work and shall submit a written protest to the Engineer within 15 days after the receipt of the change order. The protest shall state the points of disagreement, contract references, quantities, and costs involved. The Engineer will consider and investigate such protest within a reasonable time and his decision thereon shall be conclusive and binding against both parties to the contract, except in the case of gross error. If a written protest is not submitted within the above-specified time, adjustment of contract payment and contract time will be made as set forth in the written change order.

When the protest relates to compensation, the Contractor shall keep full and complete records of the costs of such work and shall permit the Engineer to have such access thereto as may be necessary to assist in the determination of the compensation payable for such work. When the protest relates to the adjustment of contract time for the completion of the work, the time to be allowed therefor will be determined as provided in Paragraph 14, Delays.

10. CHANGES AT THE CONTRACTOR'S REQUEST

If the Contractor, on account of conditions developing during the progress of the work, finds it impracticable to comply strictly with these specifications and applies in writing for a modification of requirements or of methods of work, such change may be authorized by the Engineer, if not detrimental to the work and if without additional cost to the District.

11. INSPECTION

All materials furnished and work done under this contract will be subject to rigid inspection. The Contractor shall furnish without cost to the District complete facilities, including the necessary labor, for the inspection of all material and workmanship. The Engineer, or his authorized agent or agents, at all times shall have access to all parts of the shop and the works where such material under his inspection is being manufactured or the work performed. Work or material that does not conform to the specifications, although accepted through oversight, may be rejected at any stage of the work. Whenever the Contractor is permitted to do night work, or work on Saturday, Sunday or a holiday, or to vary the period during which work is carried on each day, he shall give the Engineer due notice, so that inspection may be provided. Such work shall be done under regulations to be furnished in writing by the Engineer.

12. DATA TO BE FURNISHED BY THE CONTRACTOR

The Contractor shall furnish the Engineer reasonable facilities for obtaining such information as he may desire respecting the character of the materials and the progress and manner of the work. The Contractor shall furnish such data, drawings, and/or certifications required by the special provisions or specifications.

13. SPECIFICATIONS AND DRAWINGS

The Contractor shall keep on the work a copy of all specifications, drawings, and change orders pertaining to the work and shall at all times give the Engineer access thereto.

Anything mentioned in the specifications and not shown on the drawings or shown on the drawings and not mentioned in the specifications shall be of like effect as though shown or mentioned in both. In case of different between drawings and specifications, the specifications shall govern. The Engineer will furnish from time-to-time such detail drawings and information as he may consider necessary for the Contractor's guidance, unless otherwise provided in the proposal, contract, or special requirements.

14. DELAYS

If any delay is caused the Contractor by specific orders of the Engineer to stop work, or by the performance of extra work ordered by the Engineer, or by failure of the District to provide material, or necessary instructions for carrying on the work, or by strikes having a direct effect on the work, or act of God, such delay will entitle the Contractor to an equivalent extension of time; provided that the Contractor has taken reasonable precautions to prevent delays due to such causes and provided that the Contractor shall notify the Engineer in writing of the causes of delay within 15 days from the beginning of any such delay. The Engineer will investigate the facts and ascertain the extent of the delay, and his findings thereon shall be final and conclusive, except in the case of gross error.

An extension of time must be approved by the Engineer to be effective, but an extension of time, whether with or without consent of the sureties, shall not release the sureties from their obligations, which shall remain in full force until the discharge of the contract. In no event shall the Contractor be entitled to compensation or damages resulting directly or indirectly from any of the causes of delay hereinabove specified or from delays or hindrances to the work from any cause or causes whatever.

15. INFRINGEMENT OF PATENTS

The Contractor shall hold and save the District, its officers, agents, servants, and employees harmless from and against all and every demand or demands, of any nature or kind, for or on account of the use of any patented invention, process, equipment, article, or appliance employed in the execution of the work or included in the material or supplies agreed to be furnished under the contract, and should the Contractor, his agents, servants or employees, or any of them, be enjoined from furnishing or using any invention, process, equipment, article, material, supplies, or appliance supplied or required to be supplied or used under this contract, the Contractor shall promptly substitute other inventions, processes, equipment, articles, materials,

supplies, or appliances in lieu thereof, of equal efficiency, quality, finish, suitability, and market value, and satisfactory in all respects to the Engineer. Or in the event that the Engineer elects, in lieu of such substitution, to have supplied, and to retain and use, any such invention, process, equipment, article, material, supplies, or appliances, as made by this contract be required to be supplied and used, in that event the Contractor shall at his expense pay such royalties and secure such valid licenses as may be requisite and necessary to enable the District, its officers, agents, servants and employees, or any of them, to use such invention, process, equipment, article, material, supplies, or appliances without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof. Should the Contractor neglect or refuse promptly to make the substitution hereinabove required, or to pay such royalties and secure such licenses as may be necessary and requisite for the purpose aforesaid, then in that event the Engineer shall have the right to make such substitution, or the District may pay such royalties and secure such licenses and charge the cost thereof against any money due the Contractor from the District, or recover the amount thereof from him and his surety, notwithstanding final payment under this contract may have been made.

16. CONTRACTOR'S FINANCIAL OBLIGATION

The Contractor shall promptly make payments to all persons supplying labor and materials used in the execution of the contract.

17. METHODS AND APPLIANCES

The methods and appliances adopted by the Contractor shall be such as will, in the opinion of the Engineer, secure satisfactory quality of work and will enable the Contractor to complete the work in the time agreed upon. If any time the methods and appliances appear inadequate, the Engineer may order the Contractor to improve their character or efficiency, and the Contractor shall conform to such order; but failure of the Engineer to order such improvement of methods or efficiency will not relieve the Contractor from his obligation to perform satisfactory work and to finish it in the time agreed upon.

18. SAMPLES OR SPECIMENS

The Contractor shall submit samples or prepare test specimens of such materials to be furnished or used in the work as the Engineer may require.

19. MATERIAL AND WORKMANSHIP

All materials must be of the specified quality and equal to approved sample, if samples have been required. All work shall be done and completed in a thorough, workmanlike manner, notwithstanding any omission from these specifications or the drawings, and it shall be the duty of the Contractor to call attention to apparent errors or omissions and request instructions before proceeding with the work. The Engineer may, by appropriate instructions, correct errors and supply omissions, which instructions shall be binding upon the Contractor as though contained in the original specifications or drawings.

All materials furnished and all work done must be satisfactory to the Engineer. Work, material, or machinery not in accordance with these specifications, in the opinion of the Engineer, shall be made to conform thereto. Unsatisfactory material will be rejected.

20. DEFECTIVE WORK

The Contractor shall replace at his own expense any part of the work that has been improperly executed. If he refuses or neglects to replace such defective work, it may be replaced by the District at the expense of the Contractor, and his sureties shall be liable therefor.

21. DAMAGES

All loss or damage to material or equipment to be furnished under the contract occurring prior to receipt and final acceptance of the work shall be sustained by the Contractor. The Contractor shall sustain all losses arising from unforeseen obstructions or difficulties, either natural or artificial, encountered in the prosecution of the work, or from any action of the elements prior to final acceptance of the work, or from an act or omission on the part of the Contractor not authorized by the specifications.

22. CHARACTER OF WORKMEN

None but skilled foremen and workmen shall be employed on work requiring special qualifications.

23. HOURS OF LABOR

Eight (8) hours' labor constitutes a legal day's work under the contract. The time of service of any workman employed upon the work shall be limited and restricted to eight (8) hours during any one calendar day, and forty (40) hours during any one calendar week. The Contractor shall, as a penalty to the State or the District, forfeit twenty-five dollars (\$25.00) for each workman employed in the execution of the

contract by the Contractor or by any subcontractor for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week in violation of the provisions of Article 3, Chapter 1, Part 7, Division 2 (Secs. 1810 and following) of the Labor Code of the State of California and any amendments thereof; provided however, that in accordance with the provisions of Section 1815 of the Labor Code, work performed by employees of the Contractor in excess of eight (8) hours per day and forty (40) hours during one calendar week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay. The Contractor and every subcontractor shall keep an accurate record showing the name and the actual hours worked each calendar day and each calendar week by each workman employed by him in connection with the work; the record shall be kept open at all reasonable hours to the inspection of the District and to the Division of Labor Law Enforcement of the State of California.

24. ASSIGNMENT BY BIDDER TO PURCHASING BODY OF RIGHTS UNDER FEDERAL LAW ARISING FROM PURCHASES PURSUANT TO BID

In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act [(Chapter 2 commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code], arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.