

# EAST BAY MUNICIPAL UTILITY DISTRICT

## REQUEST FOR QUOTATION (RFQ) No. 2316 for ION CHROMATOGRAPHY TANDEM MASS SPECTROMETRY INSTRUMENT

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For complete information regarding this project, see RFQ posted at <https://www.ebmud.com/business-center/materials-and-supplies-bids/current-requests-quotation-rfqs/> or contact the EBMUD representative listed above. Please note that prospective bidders are responsible for reviewing this site during the RFQ process, for any published addenda regarding this RFQ.

**Bids Due**  
by  
**1:30 p.m.**  
on  
**August 23, 2023**

All bid submissions hand delivered or mailed (USPS, FedEx, UPS, etc.) to the address or PO Box noted below and must be received no later than 1:30 p.m. on the bid due date.

<b>RESPONSE DELIVERED IN-PERSON, BY COURIER, OR PACKAGE DELIVERY SERVICE (UPS, FedEx, DHL, etc.)</b>  <b>EBMUD–Purchasing Division 375 Eleventh Street, First Floor Oakland, CA 94607</b>	<b>RESPONSE DELIVERED BY MAIL (USPS) to:</b>  <b>EBMUD–Purchasing Division P.O. Box 24055 Oakland, CA 94623</b>
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# EAST BAY MUNICIPAL UTILITY DISTRICT

RFQ No. 2316

for

## ION CHROMATOGRAPHY TANDEM MASS SPECTROMETRY INSTRUMENT

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**I. STATEMENT OF WORK****A. SCOPE**

It is the intent of these specifications, terms, and conditions to describe the ion chromatography tandem mass spectrometry (IC/MS/MS) instrument required by the District.

East Bay Municipal Utility District (District) intends to purchase the lowest cost bidder(s) whose response conforms to the RFQ and meets the District's requirements.

**B. BIDDER QUALIFICATIONS****1. Bidder Minimum Qualifications**

- a. Bidder, bidder's principal, or bidder's staff shall have been regularly engaged in the business of providing ion chromatography tandem mass spectrometry instruments for at least ten (10) years.
- b. Bidder shall be a certified and/or authorized manufacturer, dealer, or provider of these instruments.
- c. Bidder shall possess all permits, licenses, and professional credentials necessary to supply product and perform services as specified under this RFQ.

**C. SPECIFIC REQUIREMENTS**

All products shall be in new and unused condition and shall be of up-to-date model.

**1. ION CHROMATOGRAPHY-TANDEM MASS SPECTROMETRY (IC/MS/MS) INSTRUMENT**

The vendor shall furnish, install, and test, one new bench-top ion chromatograph tandem mass spectrometer (IC/MS/MS) instrument for Haloacetic Acids (HAAs) analysis in drinking water by EPA 557 method. The IC/MS/MS instrument must satisfy the specifications outlined in sections 2-7. The instrument must separate and detect HAAs and bromate listed in Table 1 in raw source water, ground water, drinking water and water at any intermediate stage of treatment for analysis at concentrations ranging from 0.5 to 50 µg/L for each HAA except Tribromoacetic Acid (TBAA) which must meet at least 2.0 to 50 µg/L calibration range requirements. The method verification will include running standards at the required method Reporting Limits (RLs) listed in Table 1.

Prospective vendors must have experience in manufacturing, providing, servicing, and/or maintaining ion chromatography tandem mass spectrometry instruments for 9 HAAs and bromate. Bidders shall provide, with their bid, evidence substantiating

this experience along with contact information of former clients. Please provide this information in the “Bidder’s References” section of this proposal.

## 2. ION CHROMATOGRAPH (IC) REQUIREMENTS

An analytical system consisting of a refrigerated autosampler, pump module, guard column, anion separator column, an injection valve, sample loop, conductivity suppressor, conductivity detector, post-column divert valve, and a data acquisition and management system.

- a. Direct injection: An aliquot of the sample should be injected without cleanup or concentration.
- b. Refrigerated autosampler, capable of maintaining samples at a temperature of less than or equal to 10°C, are required.
- c. Refrigerated column compartment, capable of maintaining analytical column at 15°C.
- d. An analytical column, that provides on-line separation of common anions chloride, carbonate, sulfate, and nitrate, should have sufficient capacity to minimize retention time shifts in high ionic strength matrices containing 320 mg/L chloride, 250 mg/L sulfate, 150 mg/L bicarbonate and 20 mg/L nitrate and symmetrical peak shapes. The guard column is generally packed with the same resin as the analytical column. Peak tailing should be minimal with a properly configured ion chromatography system when using a new column. The column should perform at a controlled temperature and be capable of subambient operation.
- e. Eluent delivery capable of varying eluent concentration during analytical runs.
- f. Conductivity detector – A flow-through detector with an internal volume that does not introduce analyte band broadening. Conductivity data must be acquired and stored for the purpose of monitoring matrix components and establishing elution/divert windows.
- g. Post-column divert valve – All wetted parts must be of polyetheretherketone (PEEK) construction. Elution/divert windows can be properly set for high ionic strength matrices.

## 3. ELECTROSPRAY IONIZATION TANDEM MASS SPECTROMETRY SYSTEM (ESI-MS/MS)

- a. The instrument should monitor the low- mass, negatively charged ions within nominal  $m/z$  range of 35 to 251.

- b. AUXILIARY PUMP – Pump capable of precisely delivering at specified flow rates.
- c. STATIC MIXING TEE – High pressure, microbore mixing tee.
- d. ELECTROSPRAY IONIZATION – TANDEM MASS SPECTROMETER (ESI – MS/MS) – The mass spectrometer interface must be able to operate in the negative-ion electrospray ionization mode. The system must be capable of performing MS/MS to produce unique product ions for the method analytes within specified retention time windows.
- e. MS/MS DATA SYSTEM – An interfaced data system is required to acquire, store, and output MS data. The computer software must have the capability of processing stored data by recognizing a chromatographic peak within a given retention time window. The software must allow integration of the ion abundance of any specific ion between specified time or scan number limits. The software must be able to construct a linear regression and quadratic calibration curve and calculate analyte concentrations using the internal standard technique.
- f. MS/MS future upgradability – ESI-MS-MS model must have capability to be paired with a compatible and seamlessly integrated Liquid Chromatography unit at a future date so that the resulting tandem LC/MS/MS system could meet EPA 537.1 method requirements.

#### 4. NITROGEN GENERATOR

- a. operate with varying flow rates - up to 35 L/min of high purity nitrogen (up to 99.5% purity); outlet pressure can be adjusted down from 116psi, offering a flexible solution for a variety of applications.
- b. user-friendly interface for ease of operation
- c. electrical requirements: 120VAC; 60Hz.

#### 5. COMPUTER HARDWARE

- a. The minimum processing power shall be at least equivalent to 6 Cores, 8th Gen Intel i5-8600 CPU.
- b. System shall be operated on Microsoft Windows 10, 64-bit.
- c. Minimum 16 GB RAM (DDR4 Non-ECC SDRAM, 2 DIMMS, 2666 MHz or equivalent).
- d. The hard drive shall be at least 500 GB SSD.

- e. Minimum 5 USB 3.0 Ports and 4 USB 2.0 Ports.
- f. 8x DVD+/-RW 9.5mm Optical Disk Drive or equivalent.
- g. The computer shall provide interface to the IC/MS/MS instrument.
- h. The computer monitor shall be a minimum 19" widescreen LCD.
- i. USB keyboard and USB Optical 2-Button Mouse.

## 6. INSTRUMENT CONTROL AND DATA ANALYSIS SOFTWARE

- a. Software shall:
  - i. control all instrument operations including tuning, data acquisition, data analysis and reporting.
  - ii. operate under MS Windows 10 operating system.
  - iii. be capable of the storage and retrieval of instrument run parameters.
  - iv. must be able to directly generate export files as comma separated values (CSV) or tab separated or fixed format text files.
  - v. allow modification of methods and reprocessing of data (post analysis).
  - vi. allow single and multiple point calibrations which can be stored and recalled.
  - vii. have the capability to reprocess calibration data into additional methods while retaining the original calibration criteria.
  - viii. have the capability of easily processing sample and QC data by different methods and saving data files by each separate processing. User must have the ability to quantitate data using different methods from 1 run/sample vial.
  - ix. be capable of user definable quality control protocol.
  - x. have the ability to use and apply corrections for multiple internal standards.
  - xi. manage data files, data storage and have the capacity to recall raw data.
- b. Data analysis software provided by the manufacturer shall have user customizable interface and reporting. Third party software will not be acceptable.

- c. Report format shall provide, but not be limited to, sample name, method name, acquisition date and time, sample size, applied dilutions, multipliers, response, internal standard areas, concentration with percent recovery calculations, analyte retention time, and final concentration.
- d. Runlog report shall include the sequential run numbering, date and time of injection, sample identifier, file name and comment area.
- e. Software shall perform the necessary calculations, such as dilution and internal standard correction.

#### 7. INSTRUMENT PERFORMANCE FOR EPA 557 METHOD

Manufacturer must have a published application note detailing system performance including but not limited to:

- a. Calibration data for EPA Method 557 covering a range of 0.5 to 50 µg/L with haloacetic acids and bromate compounds passing EPA method criteria. Note: TBAA's calibration range 2.0 to 50 µg/L is acceptable.
- b. Published guide must include Instrument Detection Limit (IDL) and/or Method Detection Limit (MDL) showing system repeatability and calculated detection limits.
- c. Published guide should have full instrument settings required to achieve appropriate system performance for EPA Method 557.

#### 8. DELIVERY AND INSTALLATION

- a. The vendor shall deliver all instrument components within two (2) calendar months from issuance of the Purchase Order. District Laboratory is located at 2020 Wake Ave., Oakland, CA 94607.
- b. The District will notify the vendor when all instrument components are delivered. Within five (5) working days of such notification, the vendor shall begin installation and testing of the instrument. The District will be responsible only for providing utility connections at the instrument location and an adequate laboratory environment (for example: power, vent, water, bench space and room temperature control). The vendor shall supply all parts and accessories necessary to connect, mount, or otherwise put in operation the specified equipment.

#### 9. TRAINING AND SUPPORT

- a. The vendor shall provide at the time of installation a minimum of three (3) days of training for no fewer than two (2) District personnel covering the

operation of the system at the District's laboratory. At the end of the training, District personnel shall be capable of operating the instrument and performing data processing independent of the vendor.

- b. For ongoing support, vendor shall provide a customer service number and/or other live chat functionality which is operational during normal business hours (8 AM-4:30 PM PST) Monday through Friday.

## 10. ACCEPTANCE

After the system is installed, the vendor must demonstrate the ability of the system to meet the specifications in this proposal listed in Section 2-7.

Demonstration and documentation of acceptable MS/MS calibration and initial calibration for all analytes listed in Table 1.

- a. Tune the MS/MS to achieve the optimized MS parameters.
- b. Mass calibration monitoring and/or calibrating the spectrometer if needed, verifying mass assignment accuracy.
- c. Optimize the ESI-MS/MS at the analytical flow rate (column eluent plus post-column acetonitrile addition).
- d. IC instrument conditions setup
  - i. Adjustment of the elution gradient to accomplish separation of the method analytes from matrix components.
  - ii. Establish IC-ESI-MS/MS retention time windows. Verify the proper timing of divert windows.
- e. Calibration

Minimum five to six of calibration standards containing the method preservative with the lowest calibration standard at or below the RL listed in Table 1 must be used to create the calibration curve that spans from 0.5 to 50 µg/L using peak areas and the internal standard technique (TBAA's calibration range from 2.0 to 50 µg/L is acceptable). Fit the calibration points with either a linear regression (minimum five levels) or quadratic regression (minimum six levels) response vs. concentration. Weighting may be used. Forcing the calibration curve through the origin is not allowed. Calibration levels that are ≤ RL (Table 1) must calculate to be within ± 50% of their true value, and all other calibration levels must calculate to be within ± 30% of their true value.

- f. Quality control
- i. Demonstration of precision: Analyze a continuing calibration check (CCC) to verify the calibration from the second source. CCC also need to run at the beginning of each batch, every ten field samples and the end of the analysis to meet within  $\pm 30\%$  deviation. Seven (7) Laboratory Control Samples (LCS) and seven (7) laboratory synthetic sample matrix (a solution of common anions prepared at high concentrations relative to their typical occurrence in drinking water) fortified at calibration midrange meet mean recovery within  $\pm 30\%$  of the true value.
  - ii. Demonstration of low system background by analyzing reagent water containing the  $\text{NH}_4\text{Cl}$  preservative and the internal standard. The measurement of method analytes must be  $< 1/3$  the RL (Table 1).
  - iii. Demonstration of no cross contamination by analyzing a reagent water immediately following the highest calibration standard. The detected method analytes should be lower than  $1/3$  the RL (Table 1).
  - iv. Demonstration of precision: The percent Relative Standard Deviation (RSD) of the concentrations of the replicate analyses including seven (7) Laboratory Control Samples (LCS) and seven (7) laboratory synthetic sample matrix fortified at calibration midrange must be  $\leq 20\%$  for all method analytes.
  - v. Verify the method detection limits (MDLs) and minimum reporting level confirmation. Fortify and analyze seven Limit of Quantitation (LOQ) samples at RL level containing the method preservative over at least three days.
  - vi. Verify the consistency of internal standard peak areas in all injections of the analysis batch. There must not deviate by more than  $\pm 50\%$  from the average area measured during the initial calibration for the internal standards.
  - vii. All analytes of interest must be detected in the MDL verification samples (LOD, limit of detection, fortified at RL) and can be qualitatively identified from their relative ion abundance. If the instrument fails to verify specified detection limits, the vendor shall have thirty (30) days to repair or replace and to retest the instrument. Calculate the MDL based on EPA 557 method requirement.
  - viii. MRL confirmation: fortify and analyze seven Limit of Quantitation (LOQ) samples at RL level containing the method preservative. LOQ for TBAA fortified at  $2.0 \mu\text{g/L}$  is acceptable. Calculate the mean and standard

deviation for these 7 replicates. Determine the Half Range for the Prediction Interval of Results ( $HR_{PIR}$ ) using the equation:

$$HR_{PIR} = 3.963S \text{ (standard deviation of 7 replicates)}$$

Confirm that the Upper and Lower limits for the  $HR_{PIR}$  ( $PIR = \text{Mean} \pm HR_{PIR}$ ) meet the upper and lower recovery limits 50-150%.

- ix. Do not subtract blank values when performing calculations.
- x. The vendor must provide comma separated values (CSV) or tab separated or fixed format text files from an MDL study that can upload into the Laboratory Information Management System (LIMS).
- xi. If the instrument repeatedly fails to meet the detection limit criteria, accuracy and/or precision criteria or data upload criteria, the vendor shall remove the instrument at the vendor's expense. The District will then consider instrument from the next lowest responsive bid that meets RFQ requirements.

## 11. MAINTENANCE

- a. The vendor shall maintain its own service organization and/or have an organized service network, with personnel trained in the maintenance of equipment described in this proposal.
- b. The vendor shall supply a recommended maintenance schedule with a calendar that lists all part names and part numbers for ordering purposes.
- c. The vendor must have service personnel with the ability to respond on-site at the District location specified in this Proposal, within three (3) working days of a request for service.
- d. The vendor shall have maintenance and applications personnel available for telephone consultation with District staff to assist in solving operating and maintenance problems during normal business hours (8AM-4:30PM UTC-8) Monday through Friday.

## 12. SOFTWARE UPGRADES

The vendor shall provide free software upgrades, as they become available, while the instrument is under warranty or under a maintenance contract.

## 13. WARRANTY

- a. The vendor shall list all warranty exclusions, if any.

- b. In addition to the initial 1-year warranty, the vendor shall provide an extended one (1) year all-inclusive warranty on equipment, software, and components for a total coverage of two years from the date of acceptance by the District.
- c. At the end of the two-year warranty period, the vendor shall guarantee service and parts availability covering all instrument components and software for at least 10 years from the date of acceptance by the District.

**TABLE 1: RL and MDL requirement for EPA 557 List of Analytes**

Compound ID	Parameter	Acronym	CAS NO.	RL	MDL
				µg/L	µg/L
1	Bromochloroacetic Acid	BCAA	5589-96-8	1.0	≤ 0.33
2	Bromodichloroacetic Acid	BDCAA	71133-14-7	1.0	≤ 0.33
3	Chlorodibromoacetic Acid	CDBAA	5278-95-5	1.0	≤ 0.33
4	Dibromoacetic Acid	DBAA	631-64-1	1.0	≤ 0.33
5	Dichloroacetic Acid	DCAA	79-43-6	1.0	≤ 0.33
6	Monobromoacetic Acid	MBAA	79-08-3	1.0	≤ 0.33
7	Monochloroacetic Acid	MCAA	79-11-8	1.0	≤ 0.33
8	Tribromoacetic Acid	TBAA	75-96-7	2.0	≤ 0.66
9	Trichloroacetic Acid	TCAA	76-03-9	1.0	≤ 0.33
10	Bromate	N/A	15541-45-4	1.0	≤ 0.33

## II. CALENDAR OF EVENTS

EVENT	DATE/LOCATION
<b>RFQ Issued</b>	August 9, 2023
<b>Deadline For Submission of Questions</b>	August 12, 2023
<b>Response Due</b>	August 23, 2023 by 1:30 p.m. At this time all bids will be opened publicly in the EBMUD Board Room at 375 Eleventh St., Oakland, CA 94607
<b>Anticipated Contract Start Date</b>	September 2023

**\*Note:** All dates are subject to change by District.

Bidders are responsible for reviewing <https://www.ebmud.com/business-center/materials-and-supplies-bids/current-requests-quotation-rfqs> for any published addenda. Hard copies of addenda will not be mailed out.

### III. DISTRICT PROCEDURES, TERMS, AND CONDITIONS

#### A. RFQ ACCEPTANCE AND AWARD

1. RFQ responses will be evaluated to determine that they are responsive, responsible, and that they meet the specifications as stated in this RFQ.
2. The District reserves the right to award to a single or to multiple vendors, dependent upon what provides the lowest overall cost to the District.
3. The District has the right to decline to award this contract or any part of it for any reason.
4. Any specifications, terms, or conditions, issued by the District, or those included in the bidder's submission, in relation to this RFQ, may be incorporated into any purchase order or contract that may be awarded as a result of this RFQ.
5. Award of contract. The District reserves the right 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 minor technical defects and administrative errors, 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.

#### B. BRAND NAMES, DEVIATIONS, AND EXCEPTIONS

Any references to manufacturers, trade names, brand names, and/or catalog numbers are intended to be descriptive, but not restrictive, unless otherwise stated, and are intended to indicate the quality level desired.

The District reserves the right to be the sole judge of what shall be considered acceptable and may require the bidder to provide additional information. If the bidder does not specify otherwise, it is understood that the brand and/or product referenced in this RFQ will be supplied.

**Taking exception to the RFQ, or failure on the part of the bidder to comply with all requirements and conditions of this RFQ, may subject the RFQ response to rejection. If no deviations are shown, the bidder will be required to furnish the material/equipment exactly as specified. The burden of proof of compliance with the specifications will be the responsibility of the bidder.**

This RFQ is subject to acceptance only on the terms and conditions stated in this RFQ. Any additional or different terms and conditions proposed by the bidder are hereby rejected and shall be of no force or effect unless expressly assented to in writing by the District.

**C. PRICING**

1. All prices are to be F.O.B. destination. Any freight/delivery charges are to be included.
2. All prices quoted shall be in United States dollars.
3. Price quotes shall include any and all payment incentives available to the District.
4. Bidders are advised that in the evaluation of cost, if applicable, it will be assumed that the unit price quoted is correct in the case of a discrepancy between the unit price and extended price.

**D. NOTICE OF INTENT TO AWARD AND PROTESTS**

At the conclusion of the RFQ response evaluation process, all entities who submitted a bid package will be notified in writing by e-mail or USPS mail with the name of the Bidder being recommended for contract award. The document providing this notification is the Notice of Intent to Award.

Protests must be in writing and must be received no later than seven (7) workdays after the District issues the Notice of Intent to Award. The District will reject the protest as untimely if it is received after this specified time frame. Protests will be accepted from bidders or potential bidders only.

If the protest is mailed and not received by the District, the protesting party bears the burden of proof to submit evidence (e.g., certified mail receipt) that the protest was sent in a timely manner so that it would be received by the District within the RFQ protest period.

Bid protests must contain a detailed and complete written statement describing the reason(s) for protest. The protest must include the name and/or number of the bid, the name of the firm protesting, and include a name, telephone number, email address and physical address of the protester. If a firm is representing the protester, they shall include their contact information in addition to that of the protesting firm.

Protests must be mailed, hand delivered, or emailed to the Manager of Purchasing, Mailstop 102, East Bay Municipal Utility District, 375 Eleventh Street, Oakland, CA 94607 or P.O. Box 24055, Oakland, California 94623. Facsimile and electronic mail protests must be followed by a mailed or hand delivered identical copy of the protest and must arrive within the seven workday time limit. Any bid protest filed with any other District office shall be forwarded immediately to the Manager of Purchasing.

The bid protester can appeal the determination to the requesting organization's Department Director. The appeal must be submitted to the Department Director no

later than five workdays from the date which the protest determination was transmitted by the District, to the protesting party. The appeal shall focus on the points raised in the original protest, and no new points shall be raised in the appeal.

Such an appeal must be made in writing and must include all grounds for the appeal and copies of the original protest and the District's response. The bid protester must also send the Purchasing Division a copy of all materials sent to the Department Director. The Department Director will make a determination of the appeal and respond to the protester by certified mail in a timely manner. If the appeal is denied, the letter will include the date, time, and location of the Board of Directors meeting at which staff will make a recommendation for award and inform the protester it may request to address the Board of Directors at that meeting.

The District may transmit copies of the protest and any attached documentation to all other parties who may be affected by the outcome of the protest. The decision of the District as to the validity of any protest is final. This District's final decision will be transmitted to all affected parties in a timely manner.

E. METHOD OF ORDERING

1. Written POs may be issued as inventory as needed.
2. POs and payments for products and/or services will be issued only in the name of Vendor.
3. Any and all change orders shall be in writing and agreed upon, in advance, by Vendor and the District.

F. TERM / TERMINATION / RENEWAL

1. The term of the contract, which may be awarded pursuant to this RFQ, will be two (2) years.
2. This Agreement may be terminated for convenience by the District provided the vendors is given written notice of not less than 30 calendar days. Upon such termination, the District shall pay the vendor the amount owing for the products ordered and satisfactorily received by the District. This shall be the sole and exclusive remedy to which the vendor is properly entitled in the event of termination by the District.
3. This Agreement may be terminated for cause at any time, provided that the District notifies vendor of impending action.

**G. WARRANTY AND USABILITY GUARANTEE**

1. Bidder expressly warrants that all goods and services to be furnished pursuant to any contract awarded it arising from the Bid will conform to the descriptions and specifications contained herein and in supplier catalogs, product brochures and other representations, depictions or models, and will be free from defects, of merchantable quality, good material, and workmanship. Bidder expressly warrants that all goods and services to be furnished pursuant to such award will be fit and sufficient for the purpose(s) intended. This warranty shall survive any inspections, delivery, acceptance, payment, or contract termination for any reason, by the District.
2. Bidder warrants that all work and services furnished hereunder shall be guaranteed for a period of two (2) years from the date of acceptance by the District. The warranty shall cover all repair or replacement costs including the vendors cost for labor, travel, hardware and parts. Travel time shall be included in the warranty and shall not be billed to the District. The warranty shall be for the complete IC/MS/MS system including IC, MS/MS, computer, monitor, software, injector, autosampler, nitrogen generator and other components necessary for EPA 557 method.
3. The vendor shall guarantee availability of at least 10 years of instrument support, from the date of acceptance by the District (including parts, service and software upgrade availability), or will credit the residual value of the instrument, within that 10-year period, toward the purchase of a replacement instrument.

**H. INVOICING**

1. Following the Districts acceptance of product(s) meeting all specified requirements, and/or the complete and satisfactory performance of services, the District will render payment within thirty (30) days of receipt of a correct invoice.
2. The District shall notify vendor of any invoice adjustments required.
3. Invoices shall contain, at a minimum, District purchase order number, invoice number, remit to address, and itemized products and/or services description.
4. The District will pay vendor in an amount not to exceed the total amount quoted in the RFQ response.

#### IV. RFQ RESPONSE SUBMITTAL INSTRUCTIONS AND INFORMATION

##### A. DISTRICT CONTACTS

All contact during the competitive process is to be through the contact listed on the first page of this RFQ. The following persons are only to be contacted for the purposes specified below.

TECHNICAL SPECIFICATIONS:

Attn: Xin Xu, Research Chemist  
EBMUD-Laboratory Services Division  
E-Mail: [xin.xu@ebmud.com](mailto:xin.xu@ebmud.com)  
PHONE: (510) 287-1425

CONTRACT EQUITY PROGRAM:

Attn: Contract Equity Office  
PHONE: (510) 287-0114

AFTER AWARD:

Attn: Artem Dyachenko, Laboratory Supervisor  
EBMUD-Laboratory Services Division  
E-Mail: [artem.dyachenko@ebmud.com](mailto:artem.dyachenko@ebmud.com)  
PHONE: (510) 287-1796

##### B. SUBMITTAL OF RFQ RESPONSE

1. Responses must be submitted in accordance with Exhibit A – RFQ Response Packet, including all additional documentation stated in the “Required Documentation and Submittals” section of Exhibit A.
2. Late and/or unsealed responses will not be accepted.
3. RFQ responses submitted via electronic transmissions will not be accepted. Electronic transmissions include faxed RFQ responses or those sent by electronic mail (“e-mail”).

All RFQ responses must be received, and time stamped at the stated address by the time designated. The Purchasing Division's timestamp shall be considered the official timepiece for the purpose of establishing the actual receipt of RFQ responses.

4. All RFQ responses must be SEALED and received by 1:30 p.m. on the due date specified in the Calendar of Events. Any RFQ response received after that time/date, or at a place other than the stated addresses, cannot be considered and will be returned to the bidder unopened. The EBMUD mailroom and

Purchasing Division timestamp shall be considered the official timepiece for the purpose of establishing the actual receipt of RFQ responses.

5. **RFQ responses are to be addressed/delivered as follows:**

Mailed (USPS):

East Bay Municipal Utility District  
ION CHROMATOGRAPHY TANDEM MASS SPECTROMETRY INSTRUMENT  
RFQ No. 2316  
EBMUD–Purchasing Division  
P.O. Box 24055  
Oakland, CA 94623

Hand Delivered or delivered by courier or package delivery service (UPS, FedEx, DHL, etc.):

East Bay Municipal Utility District  
ION CHROMATOGRAPHY TANDEM MASS SPECTROMETRY INSTRUMENT  
RFQ No.2316  
EBMUD–Purchasing Division  
375 Eleventh Street, First Floor  
Oakland, CA 94607

**Bidder's name, return address, and the RFQ number and title must also appear on the mailing package.**

6. All costs required for the preparation and submission of an RFQ response shall be borne by the bidder.
7. California Government Code Section 4552: In submitting an RFQ response to a public purchasing body, the bidder offers and agrees that if the RFQ response 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 RFQ response. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.
8. Bidder expressly acknowledges that it is aware that if a false claim is knowingly submitted (as the terms “claim” and “knowingly” are defined in the California False Claims Act, Cal. Gov. Code, §12650 et seq.), the District will be entitled to civil remedies set forth in the California False Claim Act.

9. The RFQ response shall remain open to acceptance and is irrevocable for a period of one hundred eighty (180) days, unless otherwise specified in the RFQ documents.
10. It is understood that the District reserves the right to reject any or all RFQ responses.
11. RFQ responses, in whole or in part, are NOT to be marked confidential or proprietary. The District may refuse to consider any RFQ response or part thereof so marked. RFQ responses submitted in response to this RFQ may be subject to public disclosure. The District shall not be liable in any way for disclosure of any such records.

C. RESPONSE FORMAT

1. **Bidders shall not modify any part of Exhibits A, B, or C, or qualify their RFQ responses. Bidders shall not submit to the District a re-typed or otherwise re-created version of these documents or any other District-provided document.**
2. In order for RFQ responses to be considered complete, the bidder **must** provide responses to all information requested. See Exhibit A – RFQ Response Packet for a complete listing of required documentation.

**RFQ responses, in whole or in part, are NOT to be marked confidential or proprietary. The District may refuse to consider any RFQ response or part thereof so marked. RFQ responses submitted in response to this RFQ may be subject to public disclosure. The District shall not be liable in any way for disclosure of any such records.**



## EXHIBIT A RFQ RESPONSE PACKET

### RFQ No. 2316 – ION CHROMATOGRAPHY TANDEM MASS SPECTROMETRY INSTRUMENT

To: The EAST BAY MUNICIPAL UTILITY District (“District”)

From: \_\_\_\_\_

(Official Name of Bidder)

#### RFQ RESPONSE PACKET GUIDELINES

- **BIDDERS ARE TO SUBMIT ONE (1) ORIGINAL HARDCOPY RFQ RESPONSE WITH ORIGINAL INK SIGNATURES, CONTAINING THE FOLLOWING IN THEIR ENTIRETY:**
  - **EXHIBIT A – RFQ RESPONSE PACKET**
    - **INCLUDING ALL REQUIRED DOCUMENTATION AS DESCRIBED IN “EXHIBIT A-REQUIRED DOCUMENTATION AND SUBMITTALS”**
- **ALL PRICES AND NOTATIONS MUST BE PRINTED IN INK OR TYPEWRITTEN; NO ERASURES ARE PERMITTED; ERRORS MAY BE CROSSED OUT AND CORRECTIONS PRINTED IN INK OR TYPEWRITTEN ADJACENT AND MUST BE INITIALED IN INK BY PERSON SIGNING THE RFQ RESPONSE.**
- **BIDDERS THAT DO NOT COMPLY WITH THE REQUIREMENTS, AND/OR SUBMIT AN INCOMPLETE RFQ RESPONSE MAY BE SUBJECT TO DISQUALIFICATION AND THEIR RFQ RESPONSE REJECTED IN TOTAL.**
- **IF BIDDERS ARE MAKING ANY CLARIFICATIONS AND/OR AMENDMENTS, OR TAKING EXCEPTION TO ANY PART OF THIS RFQ, THESE MUST BE SUBMITTED IN THE EXCEPTIONS, CLARIFICATIONS, AND AMENDMENTS SECTION OF THIS EXHIBIT A – RFQ RESPONSE PACKET. THE DISTRICT, AT ITS SOLE DISCRETION, MAY ACCEPT AMENDMENTS/EXCEPTIONS, OR MAY DEEM THEM TO BE UNACCEPTABLE, THEREBY RENDERING THE RFQ RESPONSE DISQUALIFIED.**
- **BIDDERS SHALL NOT MODIFY DISTRICT LANGUAGE IN ANY PART OF THIS RFQ OR ITS EXHIBITS, NOR SHALL THEY QUALIFY THEIR RFQ RESPONSE BY INSERTING THEIR OWN LANGUAGE OR FALSE CLAIMS IN THEIR RESPONSE. ANY EXCEPTIONS AND CLARIFICATIONS MUST BE PLACED IN THE “EXCEPTIONS/ CLARIFICATIONS” PAGE, NOT BURIED IN THE PROPOSAL ITSELF.”**



## BIDDER INFORMATION AND ACCEPTANCE

1. The undersigned declares that all RFQ documents, including, without limitation, the RFQ, Addenda, and Exhibits, have been read and that the terms, conditions, certifications, and requirements are agreed to.
2. The undersigned is authorized to offer, and agrees to furnish, the articles and services specified in accordance with the RFQ documents.
3. The undersigned acknowledges acceptance of all addenda related to this RFQ.
4. The undersigned hereby certifies to the District that all representations, certifications, and statements made by the bidder, as set forth in this RFQ Response Packet and attachments, are true and correct and are made under penalty of perjury pursuant to the laws of California.
5. The undersigned acknowledges that the bidder is, and will be, in good standing in the State of California, with all the necessary licenses, permits, certifications, approvals, and authorizations necessary to perform all obligations in connection with this RFQ and associated RFQ documents.
6. It is the responsibility of each bidder to be familiar with all of the specifications, terms, and conditions and, if applicable, the site condition. By the submission of an RFQ response, the bidder certifies that if awarded a contract it will make no claim against the District based upon ignorance of conditions or misunderstanding of the specifications.
7. Patent indemnity: vendors who do business with the District shall hold the District, its Directors, officers, agents, and employees, harmless from liability of any nature or kind, including cost and expenses, for infringement or use of any patent, copyright, or other proprietary right, secret process, patented or unpatented invention, article, or appliance furnished or used in connection with the contract or purchase order.
8. Insurance certificates are not required at the time of submission. However, by signing Exhibit A – RFQ Response Packet, the bidder agrees to meet the minimum insurance requirements stated in the RFQ. This documentation must be provided to the District prior to execution of an agreement by the District and shall include an insurance certificate which meets the minimum insurance requirements, as stated in the RFQ.
9. The undersigned acknowledges that RFQ responses, in whole or in part, are NOT to be marked confidential or proprietary. The District may refuse to consider any RFQ response or part thereof so marked. RFQ responses submitted in response to this RFQ may be subject to public disclosure. The District shall not be liable in any way for disclosure of any such records.
10. The undersigned bidder hereby submits this RFQ response and binds itself on award to the District under this RFQ to execute in accordance with such award a contract and to furnish the bond or bonds and insurance required by the RFQ. The RFQ, subsequent Addenda, bidder's Response Packet, and any attachments, shall constitute the Contract, and all provisions thereof are hereby accepted.
11. The undersigned acknowledges **ONE** of the following (please check only one box):

- ☐ Bidder is not an SBE and is ineligible for any bid preference; **OR**
- ☐ Bidder is an SBE or DVBE as described in the Contract Equity Program (CEP) and Equal Employment Opportunity (EEO) Guidelines, is requesting a 7% bid preference, and has completed the CEP and EEO forms at the hyperlink contained in the CEP and EEO section of this Exhibit A.

For additional information on SBE bid preference, please refer to the Contract Equity Program and Equal Employment Opportunity Guidelines at the above referenced hyperlink.

Official Name of Bidder (exactly as it appears on Bidder's corporate seal and invoice): \_\_\_\_\_

Street Address Line 1: \_\_\_\_\_

Street Address Line 2: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Webpage: \_\_\_\_\_

Type of Entity / Organizational Structure (check one):

☐ Corporation

☐ Joint Venture

☐ Limited Liability Partnership

☐ Partnership

☐ Limited Liability Corporation

☐ Non-Profit / Church

☐ Other: \_\_\_\_\_

Jurisdiction of Organization Structure: \_\_\_\_\_

Date of Organization Structure: \_\_\_\_\_

Federal Tax Identification Number: \_\_\_\_\_

Department of Industrial Relations (DIR) Registration Number: \_\_\_\_\_

Primary Contact Information:

Name / Title: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Street Address Line 1: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

Name and Title of Signer (printed): \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_



## BID FORMS

Cost shall be submitted on this Bid Form as is. The prices quoted shall not include Sales Tax or Use Tax; said tax, wherever applicable, will be paid by the District to the vendor, if licensed to collect, or otherwise directly to the State.

No alterations or changes of any kind to the Bid Form(s) are permitted. RFQ responses that do not comply may be subject to rejection in total. The cost quoted below shall be the cost the District will pay for the term of any contract that is a result of this RFQ process.

Quantities listed herein are annual estimates based on past usage and are not to be construed as a commitment. No minimum or maximum is guaranteed or implied.

Quantities listed herein are annual estimates based on past usage and are not to be construed as a commitment. No minimum or maximum is guaranteed or implied.

DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY (a)	UNIT COST (b)	TOTAL COST (c)=(a <b>x</b> b)
Furnish and install one (1) IC/MS/MS instrument as described in the "Specific Requirements" section of this RFQ with 1 year initial warranty included	Each	1	\$ _____	\$ _____
Extended warranty beyond initial one-year warranty, as described in section G, "Warranty and Usability Guarantee".	Year	1	\$ _____	\$ _____
GRAND TOTAL				\$ _____



## REQUIRED DOCUMENTATION AND SUBMITTALS

All of the specific documentation listed below is required to be submitted with the Exhibit A – RFQ Response Packet. Bidders shall submit all documentation, in the order listed below, and clearly label each section of the RFQ response with the appropriate title (i.e. Table of Contents, Letter of Transmittal, Key Personnel, etc.).

1. **Description of the Proposed Equipment:** RFQ response shall include a description of the proposed equipment/system, as it will be finally configured during the term of the contract. The description shall specify how the proposed equipment/system will meet or exceed the requirements of the District and shall explain any advantages that this proposed equipment/system would have over other possible equipment/systems. The description shall include any disadvantages or limitations that the District should be aware of in evaluating the RFQ response. Finally, the description shall describe all product warranties provided by bidder.
2. **Description of Installation Services:** The description shall identify spare or replacement parts that will be required in performing maintenance services, the anticipated location(s) of the spare parts, and how quickly the parts shall be available for repairs. Finally, the description must: (1) specify how the installation services in the RFQ response will meet or exceed the requirements of the District; (2) explain any special resources, procedures or approaches that make the services of the bidder particularly advantageous to the District; and (3) identify any limitations or restrictions of the bidder in providing the services that the District should be aware of in evaluating its RFQ response to this RFQ.
3. **References:**
  - (a) Bidders must use the templates in the “References” section of this Exhibit A – RFQ Response Packet to provide references.
  - (b) References must be satisfactory as deemed solely by the District. References should have similar scope, volume, and requirements to those outlined in these specifications, terms, and conditions.
    - Bidders must verify the contact information for all references provided is current and valid.
    - Bidders are strongly encouraged to notify all references that the District may be contacting them to obtain a reference.
  - (c) The District may contact some or all of the references provided in order to determine Bidder’s performance record on work similar to that described in this RFQ. The District reserves the right to contact references other than those provided in the RFQ response and to use the information gained from them in the evaluation process.

4. **Exceptions, Clarifications, Amendments:**

- (a) The RFQ response shall include a separate section calling out all clarifications, exceptions, and amendments, if any, to the RFQ and associated RFQ documents, which shall be submitted with Bidder's RFQ response using the template in the "Exceptions, Clarifications, Amendments" section of this Exhibit A – RFQ Response Packet.
- (b) **THE DISTRICT IS UNDER NO OBLIGATION TO ACCEPT ANY EXCEPTIONS, AND SUCH EXCEPTIONS MAY BE A BASIS FOR RFQ RESPONSE DISQUALIFICATION.**

5. **Contract Equity Program:**

- (a) Every bidder must fill out, sign, and submit the appropriate sections of the Contract Equity Program and Equal Employment Opportunity documents located at the hyperlink contained in the last page of this Exhibit A. **Special attention should be given to completing Form P-25, " vendor Employment Data and Certification"; and Form P-46, "Designation of Subcontractors."** Any bidder needing assistance in completing these forms should contact the District's Contract Equity Office at (510) 287-0114 prior to submitting an RFQ response.



## EQUIPMENT & SERVICE CRITERIA TABLE

### RFQ No. 2316 – ION CHROMATOGRAPHY TANDEM MASS SPECTROMETRY INSTRUMENT

The table below is divided into sections of instrument criteria which must be completed in their entirety in order for your bid to be considered complete. Please complete this table by doing the following:

- **Location in Proposal field** - please indicate where in the proposal the information is provided that indicates these criteria are met (a page # and paragraph or section).
- **For those items that are not shaded in the last two fields** - please also provide a reference to an attachment of raw data or other instrument documentation that indicates the item criteria is met and a customer reference that currently uses the instrument in this configuration. For example, Section 10e requires calibration summary and raw data reports for target analytes, chromatograms showing sufficient instrument sensitivity for all target analytes at or below RL, and customer reference. Please use a minimum amount of documentation to confirm availability of these criteria, such as a single page.

Section	Item	Location in Proposal	Documentation	Reference
C	IC/MS/MS specific requirements			
1	System must be fully compliant with US EPA methodology for Method 557			
2	ION CHROMATOGRAPH (IC) REQUIREMENTS			
a	Direct injection			
b	Refrigerated autosampler $\leq 10^{\circ}\text{C}$			
c	Column compartment capable of maintaining analytical column at $15^{\circ}\text{C}$			
d	Analytical and guard column should perform at a controlled temperature and have sufficient capacity to minimize retention time shifts in high ionic strength matrices containing 320 mg/L chloride, 250 mg/L sulfate, 150 mg/L bicarbonate and 20 mg/L nitrate and symmetrical peak shapes.			
e	Eluent delivery capable of varying eluent concentration during analytical runs			

f	Conductivity detector should not introduce analyte band broadening. Data should be acquired and stored			
g	Post-column divert valve is made of PEEK for all wetted parts and could properly set divert window for high ionic strength matrices			
3	ELECTROSPRAY IONIZATION TANDEM MASS SPECTROMETRY SYSTEM (ESI-MS/MS)			
a	Low-mass (m/z 35 to 251), negatively charged ions should be monitored			
b	AUXILIARY PUMP delivering at specific flow rates			
c	STATIC MIXING TEE--High pressure, microbore mixing tee			
d	ELECTROSPRAY IONIZATION operate in the negative-ion electrospray ionization mode and produce unique product ion within specified RT windows			
e	MS/MS DATA SYSTEM should acquire, store, and output MS data. Software should process stored data, integrate ion abundance, construct linear and quadratic calibration and calculate concentration using internal standard technique.			
f	The Tandem ESI-MS-MS must have capability to be paired with a compatible LC unit			
4	Nitrogen Generator			
a	Operate with varying flow rates (up to 35L/min of high purity nitrogen), purity (up to 99.5%) and outlet pressure can be adjusted down from 116psi, offering a flexible solution for a variety of applications.			
b	User-friendly interface for ease of operation			
c	Electrical Requirements: 120VAC; 60Hz			
5	PC hardware			
a	The minimum processing power shall be at least equivalent to 6 Cores, 8th Gen Intel i5-8600 CPU			

b	Microsoft Windows 10, 64-bit			
c	16 GB RAM (DDR4 Non-ECC SDRAM, 2 DIMMS, 2666 MHz) or equivalent			
d	The hard drive shall be a minimum of 500 GB SSD			
e	5 USB 3.0 Ports, 4 USB 2.0 Ports			
f	8x DVD+/-RW 9.5mm Optical Disk Drive or equivalent			
g	The computer shall provide interface to the IC/MS/MS			
h	The computer monitor shall be a minimum 19" Fullscreen LCD			
i	USB keyboard and USB Optical 2-Button Mouse			
6	INSTRUMENT CONTROL AND DATA ANALYSIS SOFTWARE			
a	<p>Software shall:</p> <ul style="list-style-type: none"> <li>• control all instrument operations including tuning, data acquisition, data analysis and reporting</li> <li>• operate under MS Windows 10</li> <li>• be capable of the storage and retrieval of instrument run parameters</li> <li>• be able to directly generate export files as comma separated values (CSV) or tab separated or fixed format text files</li> <li>• allow modification of methods and reprocessing of data (post analysis)</li> <li>• allow single and multiple point calibrations which can be stored and recalled</li> <li>• have the capability to reprocess calibration data into additional methods while retaining the original calibration criteria</li> <li>• have the capability of easily processing sample and QC data by different methods and saving data files by each separate processing</li> </ul>			

	<ul style="list-style-type: none"> <li>• have the ability to quantitate data using different methods from 1 run/sample vial</li> <li>• be capable of user definable quality control protocol</li> <li>• have the ability to use and apply corrections for multiple internal standards</li> <li>• manage data files, data storage and have the capacity to recall raw data.</li> </ul>			
b	Software shall have user customizable interface and reporting			
c	Report format shall provide, but not be limited to, sample name, method name, acquisition date and time, sample size, applied dilutions, multipliers, response, internal standard areas, concentration with percent recovery calculations, analyte retention time, and final concentration.			
d	Runlog report shall include the sequential run numbering, date and time of injection, sample identifier, file name and comment area.			
e	Software shall perform the necessary calculations, such as dilution and internal standard correction.			
7	<b>INSTRUMENT PERFORMANCE</b>			
a	Calibration range 0.5 to 50 µg/L with haloacetic acids and bromate compounds, for TBAA's calibration range 2.0 to 50 µg/L is acceptable.			
b	Published guide must include Instrument Detection Limit (IDL) and/or Method Detection Limit (MDL) showing system repeatability and calculated detection limits			
c	Published guide with full instrument settings required for EPA 557 method			
8	<b>DELIVERY AND INSTALLATION</b>			
a	The vendor shall deliver all instrument components within two (2) calendar			

	months from issuance of the Purchase Order			
b	The District will notify the vendor when all instrument components are delivered. Within five (5) working days of such notification, the vendor shall begin installation and testing of the instrument.			
9	TRAINING AND SUPPORT			
a	The vendor shall provide at the time of installation a minimum of three (3) days of training for no fewer than two (2) District personnel covering the operation of the system at the District's laboratory. At the end of the training, District personnel shall be capable of operating the instrument and performing data processing independent of the vendor.			
b	For ongoing support, vendor shall provide a customer service number and/or other live chat functionality which is operational during normal business hours (8 AM-4:30 PM PST) Monday through Friday.			
10	ACCEPTANCE			
a	Tune the MS/MS to achieve the optimized MS parameters			
b	Mass calibration monitoring, calibrating, and verifying mass assignment accuracy.			
c	Optimize the ESI-MS/MS at the analytical flow rate (column eluent plus post-column acetonitrile addition)			
d	IC instrument conditions setup: Adjustment of the elution gradient; Establish retention time windows.			
e	Calibration <ul style="list-style-type: none"> <li>• <math>\geq 5</math> calibration standards with preservative, 0.5 to 50 <math>\mu\text{g/L}</math> for HAA and bromate, 2.0 to 50 <math>\mu\text{g/L}</math> for TBAA</li> <li>• Calibration levels that are <math>\leq \text{RL}</math> must calculate to be within <math>\pm</math></li> </ul>			

	50% of their true value, and all other calibration levels must calculate to be within $\pm 30\%$ of their true value			
f	Quality control			
	<ul style="list-style-type: none"> <li>• second source CCC recovery <math>\leq 70\text{--}130\%</math></li> <li>• Seven LCS and seven laboratory synthetic sample matrix meet mean recovery within <math>\pm 30\%</math> of the true value</li> <li>• Demonstration of low system background <math>&lt; 1/3</math> the RL</li> <li>• Demonstration of no cross contamination by analyzing a reagent water immediately following the highest calibration standard <math>&lt; 1/3</math> the RL</li> <li>• Demonstration of precision: 7 LCS and 7 laboratory synthetic sample matrix fortified at calibration midrange must have <math>RSD \leq 20\%</math> for all method analytes</li> <li>• Over minimum three days, verify method detection limits and minimum reporting level confirmation</li> <li>• Verify the consistency of internal standard peak areas in all injections of the analysis batch within <math>\pm 50\%</math></li> <li>• If MDL verification based on EPA 557 method requirement could not meet, the vendor shall have 30 days to repair, replace, and retest</li> <li>• MRL confirmation to meet EPA 557 method 50-150%. Requirement.</li> <li>• No blank subtraction is allowed</li> <li>• provide comma separated values (CSV) or tab separated or fixed format text files to be upload to LIMS</li> <li>• If the instrument repeatedly fails to meet the detection limit criteria, accuracy and precision criteria or</li> </ul>			

	data upload criteria, the vendor shall remove the instrument at the vendor's expense. The District will then consider instrument from the next lowest responsive bid that meets RFQ requirements.			
11	MAINTENANCE			
a	The Vendor must maintain its own service organization and/or have an organized service network			
b	supply a recommended maintenance schedule with a calendar that lists all part names and part numbers for ordering purposes			
c	have service personnel with the ability to respond on-site at the District location specified in this Proposal, within three (3) working days of a request for service.			
d	have maintenance and applications personnel available for telephone consultation with District staff to assist in solving operating and maintenance problems during normal business hours (8AM-4:30PM UTC-8) Monday through Friday.			
12	SOFTWARE UPGRADES free software upgrades, as they become available, while the instrument is under warranty or under a maintenance contract.			
13	WARRANTY			
a	The vendor shall list all warranty exclusions, if any			
b	In addition to the initial 1-year warranty, the vendor shall provide an extended all-inclusive warranty on equipment, software, and components for a total coverage of two years from the date of acceptance by the District.			
c	have service and parts availability covering all instrument components and software for at least 10 years from the date of acceptance by the District.			



## REFERENCES

### RFQ No. 2316 – ION CHROMATOGRAPHY TANDEM MASS SPECTROMETRY INSTRUMENT

**Bidder Name:** \_\_\_\_\_

**Bidder must provide a minimum of 3 references.**

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	



## EXCEPTIONS, CLARIFICATIONS, AMENDMENTS

### RFQ No. 2316 – ION CHROMATOGRAPHY TANDEM MASS SPECTROMETRY INSTRUMENT

Bidder Name: \_\_\_\_\_

List below requests for clarifications, exceptions, and amendments, if any, to the RFQ and associated RFQ Documents, and submit with bidder's RFQ response. **The District is under no obligation to accept any exceptions and such exceptions may be a basis for RFQ response disqualification.**

Reference to:			Description
Page No.	Section	Item No.	
p. 23	D	1.c.	<i>Bidder takes exception to...</i>

\*Print additional pages as necessary



## CONTRACT EQUITY PROGRAM & EQUAL EMPLOYMENT OPPORTUNITY

The District's Board of Directors adopted the Contract Equity Program (CEP) to enhance equal opportunities for business owners of all races, ethnicities, and genders who are interested in doing business with the District. The program has contracting objectives, serving as the minimum level of expected contract participation for the three availability groups: white-men owned businesses, white-women owned businesses, and ethnic minority owned businesses. The contracting objectives apply to all contracts that are determined to have subcontracting opportunities, and to all vendors regardless of their race, gender, or ethnicity.

All vendors performing work for the District must be Equal Employment Opportunity (EEO) employers and shall be bound by all laws prohibiting discrimination in employment. There shall be no discrimination against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, gender including gender identity or expression, age, marital or domestic partnership status, mental disability, physical disability (including HIV and AIDS), medical condition (including genetic characteristics or cancer), genetic information, or sexual orientation.

**Vendors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin in the performance of this contract. Moreover, these regulations require that covered prime vendors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

All vendors shall include the nondiscrimination provisions above in all subcontracts.

Please include the required completed forms with your bid.

Non-compliance with the Guidelines may deem a bid non-responsive, and therefore, ineligible for contract award. Your firm is responsible for:

- 1) Reading and understanding the CEP guidelines.
- 2) Filling out and submitting with your bid the appropriate forms.

The CEP guidelines and forms can also be downloaded from the District website at the following link:  
<http://ebmud.com/business-center/contract-equity-program/>

If you have questions regarding the Contract Equity Program, please call (510) 287-0114.



## EXHIBIT B

# INSURANCE REQUIREMENTS

BIDDER shall take out and maintain during the life of the Agreement all insurance required and BIDDER shall not commence work until such insurance has been approved by DISTRICT. The proof of insurance shall be on forms provided by DISTRICT directly following these Insurance Requirements.

BIDDERS are not required to submit completed insurance verification documents with their bid but will be required to submit them upon notification of award. By signing Exhibit A – RFP Response Packet, the BIDDER agrees to meet the minimum insurance requirements stated in the RFP.

The following provisions are applicable to all required insurance:

- A. Prior to the beginning of and throughout the duration of Services, and for any additional period of time as specified below, vendor shall, at its sole cost and expense, maintain insurance in conformance with the requirements set forth below.
- B. Vendor shall provide Verification of Insurance as required by this Agreement by providing the completed Verification of Insurance as requested below signing and submitting this Exhibit B to the DISTRICT. The Exhibit B may be signed by an officer of the vendor or by the Insurance Broker for the vendor. Vendors shall update Exhibit B throughout the specified term of the insurance required by this Agreement by resubmitting the completed Exhibit B prior to the expiration date of any of the required insurance. The updated Exhibit B shall become a part of the Agreement but shall not require a vendor order to the Agreement. The Notice to Proceed shall not be issued, and Vendors shall not commence Services until such insurance has been accepted by the DISTRICT.
- C. Vendors shall carry and maintain the minimum insurance requirements as defined in this Agreement. Vendor shall require any subcontractor to carry and maintain the minimum insurance required in this Agreement to the extent they apply to the scope of the services to be performed by subcontractor.
- D. Acceptance of verification of Insurance by the DISTRICT shall not relieve vendor of any of the insurance requirements, nor decrease liability of vendors.
- E. The insurance required hereunder may be obtained by a combination of primary, excess and/or umbrella insurance, and all coverage shall be at least as broad as the requirements listed in this Agreement.
- F. Any deductibles, self-insurance, or self-insured retentions (SIRs) applicable to the required insurance coverage must be declared to and accepted by the DISTRICT.
- G. At the option and request of the DISTRICT, vendors shall provide documentation of its financial ability to pay the deductible, self-insurance, or SIR.
- H. Any policies with a SIR shall provide that any SIR may be satisfied, in whole or in part, by the DISTRICT or the additional insured at its sole and absolute discretion.

- I. Unless otherwise accepted by the DISTRICT, all required insurance must be placed with insurers with a current A.M. Best's rating of no less than A- VII.
- J. Vendors shall defend the DISTRICT and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier.
- K. For any coverage that is provided on a claims-made coverage form (which type of form is permitted only where specified) the retroactive date must be shown and must be before the date of this Agreement, and before the beginning of any Services related to this Agreement.
- L. Insurance must be maintained, and updated Verification of Insurance be provided to the DISTRICT before the expiration of insurance by having vender's insurance broker or agent update, sign and return Exhibit B to the DISTRICT's manager. For all claims-made policies the updated Verification of Insurance must be provided to the DISTRICT for at least three (3) years after expiration of this Agreement.
- M. If claims-made coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of this Agreement or the start of any Services related to this Agreement, VENDOR must purchase an extended reporting period for a minimum of three (3) years after expiration of the Agreement.
- N. If requested by the DISTRICT, a copy of the policies' claims reporting requirement must be submitted to the DISTRICT for review.
- O. Where additional insured coverage is required, the additional insured coverage shall be "primary and non-contributory," and will not seek contribution from the DISTRICT's insurance or self-insurance.
- P. Vendor agrees to provide immediate Notice to the DISTRICT of any loss or claim against VENDOR arising out of, pertaining to, or in any way relating to this Agreement, or Services performed under this Agreement. The DISTRICT assumes no obligation or liability by such Notice but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the DISTRICT.
- Q. Vendor agrees, upon request by the DISTRICT, to provide complete, certified copies of any policies and endorsements within 10 days of such request (copies of policies may be redacted to eliminate premium details.)
- R. It is vendor's responsibility to ensure its compliance with the insurance requirements. Any actual or alleged failure on the part of the DISTRICT to obtain proof of insurance required under this Agreement shall not in any way be construed to be a waiver of any right or remedy of the DISTRICT, in this or any regard.
- S. Notice of Cancellation/Non-Renewal/Material Reduction The insurance requirements hereunder are mandatory, and the DISTRICT may, at its sole and absolute discretion, terminate the services provided by Vender, should VENDOR breach its obligations to maintain the required coverage and limits set forth in this Agreement. No coverage required hereunder shall be cancelled, non-renewed or materially reduced in coverage or limits without the DISTRICT being provided at least thirty (30) days prior written notice, other than cancellation for the non-payment of premiums, in which event the DISTRICT shall be provided ten (10) days prior written notice. Replacement of coverage with another policy or insurer, without any lapse in coverage or any reduction of the stated requirements does not require notice beyond submission to the

DISTRICT of an updated Verification of Insurance which shall be met by having the VENDOR's insurance broker or agent update, sign and return this EXHIBIT B.

**I. Workers' Compensation and Employer's Liability Insurance Coverage**

- A. Workers' Compensation insurance including Employer's Liability insurance with minimum limits as follows:
- Coverage A. Statutory Benefits Limits
  - Coverage B. Employer's Liability of not less than:
    - Bodily Injury by accident: \$1,000,000 each accident
    - Bodily Injury by disease: \$1,000,000 each employee
    - Bodily Injury by disease: \$1,000,000 policy limit
- B. VENDOR's insurance shall be primary, and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.
- C. If there is an onsite exposure of injury to Vendor, subcontractor, and/or subcontractor's employees under the U.S. Longshore and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations or statutes applicable to maritime employees, coverage is required for such injuries or claims.
- D. If VENDOR is self-employed, a sole proprietorship or a partnership, with no employees, and is exempt from carrying Workers' Compensation Insurance, VENDOR must return the completed Verification of Insurance confirming that VENDOR has no employees and is exempt from the State of California Workers' Compensation requirements.
- E. If VENDOR is self-insured with respect to Workers' Compensation coverage, VENDOR shall provide to the DISTRICT a Certificate of Consent to Self-Insure from the California Department of Industrial Relations. Such self-insurance shall meet the minimum limit requirements and shall waive subrogation rights in favor of the DISTRICT as stated below in section "F."
- F. Waiver of Subrogation. Workers' Compensation policies, including any applicable excess and umbrella insurance, must contain a waiver of subrogation endorsement providing that VENDOR and each insurer waive any and all rights of recovery by subrogation, or otherwise, against the DISTRICT, its directors, board, and committee members, officers, officials, employees, agents, and volunteers. VENDOR shall defend and pay any and all damages, fees, and costs, of any kind arising out of, pertaining to, or in any way relating to VENDOR's failure to provide waiver of subrogation from the insurance carrier.

## INSURANCE VERIFICATION DOCUMENTS

### Verification of Workers' Compensation and Employer's Liability Insurance Coverage

☐ By checking the box and signing below, I hereby verify that the VENDOR is exempt from the State of California's requirement to carry workers' compensation insurance.

As the VENDOR's insurance broker/agent, I hereby verify that I have reviewed and confirmed that the VENDOR carries workers' compensation insurance as required by this Agreement, including the relevant provisions applicable to all required insurance.

Self-Insured Retention Amount: \$ \_\_\_\_\_

Policy Limit: \$ \_\_\_\_\_

Policy Number: \_\_\_\_\_

Policy Period: from: \_\_\_\_\_ to: \_\_\_\_\_

Insurance Carrier Name: \_\_\_\_\_

Insurance Broker or Agent: Print Name: \_\_\_\_\_

Insurance Broker or Agent's Signature: \_\_\_\_\_

## **II. Commercial General Liability Insurance (“CGL”) Coverage**

- A. VENDOR’s insurance shall be primary, and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.
- B. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policies or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the VENDOR.
- C. Minimum Requirements. CGL insurance with minimum per occurrence and aggregate limits as follows:
- |                                    |  |
|------------------------------------|--|
| Bodily Injury and Property Damage  | \$2,000,000 per occurrence & aggregate |
| Personal Injury/Advertising Injury | \$2,000,000 per occurrence & aggregate |
| Products/Completed Operations      | \$2,000,000 per occurrence & aggregate |
- D. Coverage must be on an occurrence basis.
- E. Coverage for Products, and Completed Operations, and Ongoing Operations must be included in the insurance policies and shall not contain any “prior work” coverage limitation or exclusion applicable to any Services performed by VENDOR and/or subcontractor under this Agreement.
- F. Insurance policies and Additional Insured Endorsement(s) Coverage shall be included for all premises and operations in any way related to this Agreement.
- G. There will be no exclusion for explosions, collapse, or underground liability (XCU).
- H. Insurance policies and Additional Insured Endorsement(s) shall not exclude liability and damages to work arising out of, pertaining to, or in any way relating to services performed by Subcontractor on VENDOR’s behalf.
- I. Contractual liability coverage shall be included and shall not limit, by any modification or endorsement, coverage for liabilities assumed by VENDOR under this Agreement as an “insured contract.”
- J. Waiver of Subrogation. The policy shall be endorsed to include a Waiver of Subrogation ensuring that the VENDOR and its insurer(s) waive any rights of recovery by subrogation, or otherwise, against the DISTRICT, its directors, board, and committee members, officers, officials, agents, volunteers, and employees. VENDOR shall defend and pay any and all damages, fees, and costs, of any kind, arising out of, pertaining to, or in any way resulting from VENDOR’s failure to provide the

waiver of subrogation from its insurance carrier(s).

- K. "Independent VENDOR's Liability" shall not limit coverage for liability and/or damages arising out of, pertaining to, or in any way resulting from Services provided under this Agreement.

To the fullest extent permitted by law, the DISTRICT, its directors, board, and committee members, officers, officials, employees, agents, and volunteers must be covered as Additional Insureds on a primary and noncontributory basis on all underlying, excess and umbrella policies that shall be evidenced in each case by an endorsement. The Additional Insureds must be covered for liability arising in whole, or in part, from any premises, Products, Ongoing Operations, and Completed Operations by or on behalf of VENDOR, in any way related to Services performed under this Agreement.

- L. A severability of interest provision must apply for all the Additional Insureds, ensuring that VENDOR's insurance shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the policies' limit(s).

**Verification of Commercial General Liability (CGL) Insurance Coverage**

**As the VENDOR'S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the VENDOR carries Commercial General Liability insurance, as required by this Agreement, including the relevant provisions applicable to all required insurance:**

**Self-Insured: Amount: \$** \_\_\_\_\_

**Policy Limit: Per Occurrence: \$** \_\_\_\_\_ **Aggregate: \$** \_\_\_\_\_

**Policy Number:** \_\_\_\_\_

**Policy Period: from:** \_\_\_\_\_ **to:** \_\_\_\_\_

**Insurance Carrier Name:** \_\_\_\_\_

**Insurance Broker or Agent: Print Name:** \_\_\_\_\_

**Insurance Broker or Agent's Signature:** \_\_\_\_\_

### **III. Business Auto Liability Insurance Coverage**

VENDOR's insurance shall be primary, and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.

A. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policies or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the VENDOR.

B. Minimum Requirements. Auto insurance with minimum coverage and limits as follows:  
Each Occurrence Limit (per accident) and in the Aggregate: \$2,000,000  
Bodily Injury and Property Damage: \$2,000,000

C. Coverage must include either "owned, non-owned, and hired" autos or "any" automobile

This provision ensures the policy covers losses arising out of use of company-owned vehicles ("owned autos"), employee's personal autos ("non-owned autos" meaning not owned by company/insured) or autos that are rented or leased ("hired autos").

D. If VENDOR is transporting hazardous materials or contaminants, evidence of the Motor Carrier Act Endorsement-hazardous materials clean-up (MCS-90, or its equivalent) must be provided.

E. If VENDOR's Scope of Services under this Agreement exposes a potential pollution liability risk related to transport of potential pollutants, seepage, release, escape or discharge of any nature (threatened or actual) of pollutants into the environment arising out of, pertaining to, or in any way related to VENDOR's and/or Subcontractor's performance under this Agreement, then Auto Liability Insurance policies must be endorsed to include Transportation Pollution Liability insurance. Alternatively, coverage may be provided under the VENDOR's Pollution Liability Policies if such policy has no exclusions that would restrict coverage under this Agreement. Coverage shall also include leakage of fuel or other "pollutants" needed for the normal functioning of covered autos.

F. To the fullest extent permitted by law, the DISTRICT, its directors, board, and committee members, officers, officials, employees, agents, and volunteers must be covered as Additional Insureds on a primary and noncontributory basis on all underlying and excess and umbrella policies. The Additional Insureds must be covered for liability arising in whole, or in part, from any premises, Products, Ongoing Operations, and Completed Operations by or on behalf of VENDOR, in any way related to Services performed under this Agreement.

- G. A severability of interest provision must apply for all the Additional Insureds, ensuring that VENDOR's insurance shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the insurer's limits of liability.

**Verification of Business Auto Liability Insurance Coverage**

As the VENDOR'S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the VENDOR carries Business Automobile Liability insurance, as required by this Agreement, including the relevant provisions applicable to all required insurance:

Self-Insured: Amount: \$ \_\_\_\_\_

Policy Limit: Per Accident/Occurrence \$ \_\_\_\_\_ Aggregate: \$ \_\_\_\_\_

Policy Number: \_\_\_\_\_

Policy Period: from: \_\_\_\_\_ to: \_\_\_\_\_

Insurance Carrier Name: \_\_\_\_\_

Insurance Broker or Agent: Print Name: \_\_\_\_\_

Insurance Broker or Agent's Signature: \_\_\_\_\_

#### **IV. Professional Liability (also known as Errors and Omissions) Insurance Coverage**

- A. VENDOR's insurance shall be primary, and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.
- B. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policies or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the VENDOR.
- C. Minimum Requirements: Professional Liability Insurance with minimum limits as follows:
  - Each Claim or Occurrence Limit: \$2,000,000
  - Aggregate Limit: \$2,000,000
- D. If Coverage is written on a claims-made form, the following shall apply:
  - 1. The retroactive date must be shown and must be before the date of the Agreement or the beginning of the Services.
  - 2. Insurance must be maintained, and evidence of insurance must be provided for a minimum of three (3) years after completion of the Services.
  - 3. If claims-made coverage is canceled or non-renewed, and not replaced with another claims-made policies form with a retroactive date prior to the effective date of the Agreement, VENDOR must purchase an extended period of coverage for a minimum of three (3) years after completion of the Services.
- E. Insurance shall include prior acts coverage sufficient to cover the services under this Agreement.
- F. Coverage shall be included for all premises and operations in any way related to this Agreement.

**Verification of Professional Liability (Errors and Omissions) Insurance Coverage**

**As the VENDOR'S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the VENDOR carries Professional Liability insurance as required by this Agreement, including the relevant provisions applicable to all required insurance.**

**Self-Insured: Amount: \$** \_\_\_\_\_

**Policy Limit: Per Claim \$** \_\_\_\_\_ **Aggregate: \$** \_\_\_\_\_

**Policy Number:** \_\_\_\_\_

**Policy Period: from:** \_\_\_\_\_ **to:** \_\_\_\_\_

**Insurance Carrier Name:** \_\_\_\_\_

**Insurance Broker or Agent: Print Name:** \_\_\_\_\_

**Insurance Broker or Agent's Signature:** \_\_\_\_\_

## **V. Cyber Liability Insurance Coverage**

- A. VENDOR's insurance shall be primary, and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.
- B. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policies or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the VENDOR.
- C. Minimum Requirements: Cyber Liability Insurance with minimum limits as follows:
  - Each Claim or Occurrence Limit: \$2,000,000
  - Aggregate Limit: \$2,000,000
- D. If Coverage is written on a claims-made form, the following shall apply:
  - 1. The retroactive date must be shown and must be before the date of the Agreement or the beginning of the Services.
  - 2. Insurance must be maintained, and evidence of insurance must be provided for a minimum of three (3) years after completion of the Services.
  - 3. If claims-made coverage is canceled or non-renewed, and not replaced with another claims-made policies form with a retroactive date prior to the effective date of the Agreement, VENDOR must purchase an extended period of coverage for a minimum of three (3) years after completion of the Services.
- E. Coverage shall include, but not be limited to the following:
  - 1. Liability arising from the theft, dissemination and/or use of confidential information, including but not limited to, personally identifiable information (PII), protected health information (PHI), security codes, access codes, passwords, or personal identification numbers (PINS).
  - 2. Notification costs, credit monitoring and other expert services, regulatory fines and penalties, and defense costs.
  - 3. Network security liability arising from the unauthorized use of, access to, or tampering with computer systems.
  - 4. Liability arising from the introduction of a computer virus into, or otherwise causing damage to vendor (first party) or customer's (third party) computer, computer system, network or similarly related property and the data, software and programs thereon.

**Verification of Cyber Liability Insurance Coverage**

As the VENDOR'S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the VENDOR carries Cyber Liability insurance as required by this Agreement, including the relevant provisions applicable to all required insurance.

Self-Insured: Amount: \$ \_\_\_\_\_

Policy Limit: Per Claim \$ \_\_\_\_\_ Aggregate: \$ \_\_\_\_\_

Policy Number: \_\_\_\_\_

Policy Period: from: \_\_\_\_\_ to: \_\_\_\_\_

Insurance Carrier Name: \_\_\_\_\_

Insurance Broker or Agent: Print Name: \_\_\_\_\_

Insurance Broker or Agent's Signature: \_\_\_\_\_

## **VI. Technology Errors and Omissions Liability Insurance Coverage**

- A. VENDOR's insurance shall be primary, and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.
- B. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policies or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the VENDOR.
- C. Minimum Requirements: Technology Errors and Omissions Liability Insurance with minimum limits as follows:
  - Each Claim or Occurrence Limit: \$2,000,000
  - Aggregate Limit: \$2,000,000
- D. If Coverage is written on a claims-made form, the following shall apply:
  - 1. The retroactive date must be shown and must be before the date of the Agreement or the beginning of the Services.
  - 2. Insurance must be maintained, and evidence of insurance must be provided for a minimum of three (3) years after completion of the Services.
  - 3. If claims-made coverage is canceled or non-renewed, and not replaced with another claims-made policies form with a retroactive date prior to the effective date of the Agreement, VENDOR must purchase an extended period of coverage for a minimum of three (3) years after completion of the Services
- E. Coverage shall include, but not be limited to the following:
  - 1. Theft, dissemination and/or use of confidential or personally identifiable information (PII), including breach response costs, credit monitoring and regulatory fines and penalties from such theft, dissemination or use of the confidential information;
  - 2. Network security liability arising from the unauthorized use of access to, or tampering with computer systems;
  - 3. Liability arising from the failure of technology products (software) required under the contract for Vendor to properly perform the services intended;
  - 4. Electronic Media Liability arising from personal injury, plagiarism or misappropriation of ideas, domain name infringement or improper deep-linking or framing, and infringement or violation of intellectual property rights;
  - 5. Liability arising from the failure to render professional services.

**Verification of Technology Errors & Omissions Liability Insurance Coverage**

As the VENDOR'S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the VENDOR carries Technology Errors & Omissions Liability insurance as required by this Agreement, including the relevant provisions applicable to all required insurance.

Self-Insured: Amount: \$ \_\_\_\_\_

Policy Limit: Per Claim \$ \_\_\_\_\_ Aggregate: \$ \_\_\_\_\_

Policy Number: \_\_\_\_\_

Policy Period: from: \_\_\_\_\_ to: \_\_\_\_\_

Insurance Carrier Name: \_\_\_\_\_

Insurance Broker or Agent: Print Name: \_\_\_\_\_

Insurance Broker or Agent's Signature: \_\_\_\_\_

## **VII. Excess and/or Umbrella Liability Insurance Coverage**

- A. VENDOR's insurance shall be primary, and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.
- B. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policies or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the VENDOR.
- C. Minimum Requirements: It is expressly understood by the parties that VENDOR's Excess and/or Umbrella Liability policies shall, at minimum, comply with all insurance requirements set forth within this Agreement.
  - 1. Coverage for Products, Completed Operations, and Ongoing Operations must be included in the insurance policies and shall not contain any "prior work" coverage limitation or exclusion applicable to any Services performed under this Agreement and, if it is a claims-made policy, it must be maintained for a minimum of three (3) years following final completion of the Services.
  - 2. Coverage shall be included for all premises and operations in any way related to this Agreement.
  - 3. There will be no exclusion for explosions, collapse, or underground damage (XCU).
  - 4. Insurance policies and Additional Insured Endorsements shall not exclude coverage for liability and damages from services performed by Subcontractor on VENDOR's behalf.
  - 5. Contractual liability coverage shall be included and shall not limit, by any modification or endorsement, coverage for liabilities assumed by VENDOR under this Agreement as an "insured contract."
  - 6. "Independent VENDOR's Liability" shall not limit coverage for liability and/or damage arising out of, pertaining to, or in any way related to Services provided under this Agreement.
  - 7. To the fullest extent permitted by law, the DISTRICT, its directors, officers, officials, agents, volunteers, and employees must be covered as Additional Insureds on a primary and noncontributory basis on all excess and umbrella policies. The Additional Insureds must be covered for liability arising in whole or in part from any premises, Products, Ongoing Operations, and Completed Operations by or on behalf of VENDOR, in any way related to Services performed under this Agreement.

8. A severability of interest provision must apply for all the Additional Insureds, ensuring that the VENDOR's insurance shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the policy's limits.
  9. VENDOR and its excess and/or umbrella Liability insurance coverage must waive any rights of subrogation against the DISTRICT, its directors, officers, officials, employees, agents, and volunteers, and VENDOR shall defend and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier(s).
- D. VENDOR shall defend and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier(s).

**Verification of Excess and/or Umbrella Liability Insurance Coverage**

**As the VENDOR'S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the VENDOR carries Excess and/or Umbrella Liability insurance, as required by this Agreement, including the relevant provisions applicable to all required insurance.**

**Self-Insured: Amount: \$** \_\_\_\_\_

**Policy Limit: \$** \_\_\_\_\_

**Policy Number:** \_\_\_\_\_

**Policy Period: from:** \_\_\_\_\_ **to:** \_\_\_\_\_

**Insurance Carrier Name:** \_\_\_\_\_

**Underlying Policy(ies) listed above to which Excess/Umbrella applies:**

\_\_\_\_\_

**Insurance Broker or Agent: Print Name:** \_\_\_\_\_

**Insurance Broker or Agent's Signature:** \_\_\_\_\_

# EXHIBIT C

## GENERAL REQUIREMENTS

Effective: June 9, 2021  
Supersedes: September 1, 2021

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#### 1. DEFINITIONS

The following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.

- a. **"Change Order"** A Change Order is a written instrument used for modifying the contract with regards to the scope of Work, contract sum, and/or Contract Time. An approved

Change Order is a Change Order signed by the District. An executed Change Order is a Change Order signed by both the District and the Contractor.

- b. **“Contract”** means the agreement between the District and Contractor as memorialized in the Contract Documents.
- c. **“Business Entity”** means any individual, business, partnership, joint venture, corporation, sole proprietorship, or other private legal entity recognized by statute.
- d. **“Buyer”** means the District’s authorized contracting official.
- e. **“Contract Documents”** comprise the entire agreement between the District and the Contractor and can include the District’s contract form if used, any purchase order, RFP, RFQ or Contractor response packet, and any addenda, appendices and District approved changes or amendments. The Contract Documents are intended to be complementary and include all items necessary for the Contractor’s proper execution and completion of the Work. Any part of the Work not shown or mentioned in the Contract Documents that is reasonably implied, or is necessary or usual for proper performance of the Work, shall be provided by the Contractor at its expense.
- f. **“Contractor”** means the Business Entity with whom the District enters into a contractual agreement. Contractor shall be synonymous with “supplier”, “vendor”, “consultant” or other similar term.
- g. **“Day”** unless otherwise specified, days are calendar days, measured from midnight to the next midnight.
- h. **“District”** means the East Bay Municipal Utility District, its employees acting within the scope of their authority, and its authorized representatives.
- i. **“Goods”** means off the shelf software and all types of tangible personal property, including but not limited to materials, supplies, and equipment.
- j. **“Project Manager”** shall be the District designated individual responsible for administering and interpreting the terms and conditions of the Contract Documents, for matters relating to the Contractor’s performance under the Contract with the District, and for liaison and coordination between the District and Contractor.
- k. **“Work”** means all labor, tasks, materials, supplies, and equipment required to properly fulfill the Contractor’s obligations as required in the Contract Documents.
- l. **“Work Day”** Unless otherwise specified, work day includes all days of the year except Saturdays, Sundays and District holidays.

## 2. BOND

- a. When required in the District's bid or proposal solicitation documents, the Contractor to whom award is made shall furnish a good and approved faithful performance bond and/or payment bond within ten business days after receiving the forms for execution.
- b. The bonds shall be executed by a sufficient, admitted surety insurer (i.e.: as listed on website [http://interactive.web.insurance.ca.gov/webuser/idb\\_co\\_list\\$.startup](http://interactive.web.insurance.ca.gov/webuser/idb_co_list$.startup)) admitted to transact such business in California by the California Department of Insurance. After acceptance of the bond(s) by the District, a copy of the bond(s) will be returned to the Contractor.
- c. 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. If the Contractor fails to provide satisfactory sureties within the ten-day period, the Contract may be terminated for cause under Article 18.

### **3. CONTRACTOR'S FINANCIAL OBLIGATION**

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

### **4. 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 Project Manager may require.

### **5. MATERIAL AND WORKMANSHIP**

- a. All goods and materials must be new and of the specified quality and equal to approved sample, if samples have been required. In the event any goods or materials furnished or services provided by the Contractor in the performance of the Contract fail to conform to the requirements, or to the sample submitted by the Contractor, the District may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the District, and immediately replace all such rejected items with others conforming to the Contract. 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 Project Manager may, by appropriate instructions, correct errors and supply omissions, which instructions shall be binding upon the Contractor as though contained in the original Contract Documents.
- b. All materials furnished and all Work must be satisfactory to the Project Manager. Work, material, or machinery not in accordance with the Contract Documents, in the opinion of the Project Manager, shall be made to conform.

**6. DEFECTIVE WORK**

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

**7. WARRANTY**

Contractor expressly warrants that all goods furnished will conform strictly with the specifications and requirements contained herein and with all approved submittals, samples and/or models and information contained or referenced therein, all affirmations of fact or promises, and will be new, of merchantable quality, free from defects in materials and workmanship, including but not limited to leaks, breaks, penetrations, imperfections, corrosion, deterioration, or other kinds of product deficiencies. Contractor expressly warrants that all goods to be furnished will be fit and sufficient for the purpose(s) intended. Contractor expressly warrants that all goods shall be delivered free from any security interest, lien or encumbrance of any kind, and free from any claim of infringement, copyright or other intellectual property violation, or other violation of laws, statutes, regulations, ordinances, rules, treaties, import restrictions, embargoes or other legal requirements. Contractor guarantees all products and services against faulty or inadequate design, manufacture, negligent or improper transport, handling, assembly, installation or testing, and further guaranties that there shall be strict compliance with all manufacturer guidelines, recommendations, and requirements, and that Contractor guaranties that it will conform to all requirements necessary to keep all manufacturer warranties and guarantees in full force and effect. These warranties and guarantees are inclusive of all parts, labor and equipment necessary to achieve strict conformance, and shall take precedence over any conflicting warranty or guarantee. These warranties and guaranties shall not be affected, limited, discharged or waived by any examination, inspection, delivery, acceptance, payment, course of dealing, course of performance, usage of trade, or termination for any reason and to any extent. In the absence of any conflicting language as to duration, which conflicting language will take precedence as being more specific, Contractor's aforesaid warranties and guarantees shall be in full force and effect for a period of one year from the date of acceptance by the District, but shall continue in full force and effect following notice from District of any warranty or guarantee issue, until such issue has been fully resolved to the satisfaction of District.

**8. NOT USED**

**9. SAFETY AND ACCIDENT PREVENTION**

In performing work under the Contract on District premises, Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. Contractor shall take any additional precautions as the District may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract or Contractor's right to precede in accordance with the default provisions of the Contract Documents.

**10. CHARACTER OF WORKFORCE**

The Contractor shall employ none but skilled competent qualified personnel to perform the Work, and shall maintain discipline and order in the conduct of the Work at all times.

## **11. PREVAILING WAGES & DIR REGISTRATION**

- a. Please see [www.dir.ca.gov](http://www.dir.ca.gov) for further information regarding the below.
- b. All Contractors and Subcontractors of any tier bidding on, or offering to perform work on a public works project shall first be registered with the State Department of Industrial Relations (DIR) pursuant to Section 1725.5 of the Labor Code. No bid will be accepted nor any contract entered into without proof of the Contractor and Subcontractors' current registration with the DIR (LC § 1771.1).
- c. All public works projects awarded after January 1, 2015, are subject to compliance monitoring and enforcement by the DIR (LC § 1771.4) and all Contractors are required to post job site notices, "as prescribed by regulation" (LC § 1771.4).
- d. To the extent applicable, pursuant to Section 1773 of the Labor Code, the District has obtained from the Director of Industrial Relations of the State of California, the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime work in the locality in which the Work is to be performed, for each craft, classification, or type of worker needed to execute the contract. Pursuant to Section 1773.2 of the Labor Code, a copy of the prevailing wage rates is on file with the District and available for inspection by any interested party at [www.dir.ca.gov](http://www.dir.ca.gov).
- e. The holidays upon which such rates shall be paid shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification, or type of worker employed on the Work.
- f. The Contractor shall post a copy of the general prevailing rate of per diem wages at the jobsite pursuant to Section 1773.2 of the Labor Code.
- g. Pursuant to Section 1774 of the Labor Code, the Contractor and any of its Subcontractors shall not pay less than the specified prevailing rate of wages to all workers employed in the execution of the contract.
- h. As set forth with more specificity in Section 1773.1 of the Labor Code, "per diem" wages include employer payments for health and welfare, pension, vacation, travel, subsistence and, in certain instances, apprenticeship or other training programs, and shall be paid at the rate and in the amount spelled out in the pertinent prevailing wage determinations issued by the Director of Industrial Relations.
- i. The Contractor shall, as a penalty to the State or the District, forfeit not more than the maximum set forth in Section 1775 of the Labor Code for each calendar day, or portion thereof, for each worker paid less than the prevailing rates for the work or craft in which the worker is employed under the contract by the Contractor or by any Subcontractor under him. The difference between the prevailing wage rates and the amount paid to

each worker for each calendar day or portion thereof for which such worker was paid less than the stipulated prevailing wage rate shall be paid to such worker by the Contractor.

- j. The specified wage rates are minimum rates only and the District will not consider and shall not be liable for any claims for additional compensation made by the Contractor because of its payment of any wage rate in excess of the general prevailing rates. All disputes in regard to the payment of wages in excess of those specified herein shall be adjusted by the Contractor at its own expense.
- k. General prevailing wage determinations have expiration dates with either a single asterisk or a double asterisk. Pursuant to California Code of Regulations, Title 8, Section 16204, the single asterisk means that the general prevailing wage determination shall be in effect for the specified contract duration. The double asterisk means that the predetermined wage modification shall be paid after the expiration date. No adjustment in the Contract Sum will be made for the Contractor's payment of these predetermined wage modifications.

## **12. PAYROLL RECORDS & ELECTRONIC SUBMISSION**

If prevailing wages apply, Contractor and each Subcontractor, as appropriate, shall comply with the following:

- a. Contractor and each Subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the Work. The payroll records shall be certified and shall be available for inspection in accordance with the provisions of Section 1776 of the Labor Code. Certified payroll records shall be on the forms provided by the DIR or contain the same information required on the Department's form.
- b. The Contractor shall submit for each week in which any contract Work is performed a copy of all payroll records to the Project Manager. The Contractor shall be responsible for submission of copies of payroll records of all Subcontractors.
- c. The Contractor or Subcontractor shall certify the payroll records as shown on the DIR form. In addition, the records shall be accompanied by a statement signed by the Contractor or Subcontractor certifying that the classifications truly reflect the Work performed and that the wage rates are not less than those required to be paid.
- d. For public works projects awarded on or after April 1, 2015, or that are still ongoing after April 1, 2016, no matter when awarded, each Contractor and Subcontractor shall furnish the certified payroll related records as more specifically described above and in Labor Code section 1776 directly to the Labor Commissioner (see LC § 1771.4). These records shall be provided to the Labor Commissioner at least monthly or more frequently if required by the terms of the Contract. For exception on projects covered by collective bargaining agreements like a PLA, please see Labor Code section 1771.4.

- e. In the event of noncompliance with the requirements of Section 1776 of the Labor Code, the Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with said Section. Should noncompliance still be evident after such 10-day period, the Contractor shall, as a penalty to the State or the District, forfeit the amount set forth in Section 1776 of the Labor Code for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.
- f. The Contractor and every Subcontractor shall post at the workplace and comply with all required wage related workplace postings. Copies of the required postings may be downloaded or ordered electronically from the Department of Industrial Relations website at <http://www.dir.ca.gov/wpnodb.html>.

### **13. HOURS OF LABOR**

Pursuant to the provisions of Sections 1810, et seq. of the Labor Code and any amendments thereof:

- a. Eight hours of labor constitutes a legal day's Work under the contract.
- b. The time of service of any worker employed upon the work shall be limited and restricted to eight hours during any one calendar day, and forty hours during any one calendar week except as provided in Article 13.iv below.
- c. The Contractor shall, as a penalty to the State or the District, forfeit the amount set forth in Section 1813 of the Labor Code for each worker employed in the execution of the contract by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any calendar day and forty hours in any one calendar week in violation of this Article and the provisions of Labor Code, Sections 1810, et seq.
- d. Work performed by employees of the Contractor in excess of eight hours per day, and forty hours during any one calendar week, shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay.
- e. The Contractor and every Subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker 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 Standards Enforcement of the State of California.

### **14. EMPLOYMENT OF APPRENTICES**

- a. In the performance of the contract, the Contractor and any Subcontractor shall comply with the provisions concerning the employment of apprentices in Section 1777.5 of the Labor Code and any amendments thereof.
- b. In the event the Contractor or any Subcontractor willfully fails to comply with the aforesaid section, such Contractor or Subcontractor shall be subject to the penalties for noncompliance in Labor Code, Section 1777.7.

## **15. CHANGES**

- a. Changes in the Work can only be made in writing signed by an authorized employee of the District. If the change causes an increase or decrease in the contract sum, or a change in the time for performance under the Contract, an adjustment may be made as determined by the Project Manager.
- b. 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 subtractions from the Contract and any specifications and drawings, to increase or decrease the required quantity of any item or portion of the Work or to omit any item or portion of the Work, as may be deemed by the Project Manager to be necessary or advisable and to order such extra work as may be determined by the Project Manager to be required for the proper execution and completion of the whole Work contemplated. Any such changes will be ordered in writing by the Project Manager. The determination of the Project Manager on all questions relating to changes, including extra work, shall be conclusive and binding.
- c. Prior to issuing an amendment or change to the Contract, the Project Manager may request that the Contractor submit a proposal covering the changes. Within 10 business days of receiving the request, the Contractor shall submit its proposal to the Project Manager of all costs associated with the proposed amendment or change and any request for an extension of Contract time. Contractor's proposal shall include detailed estimates with cost breakdowns, including labor, material, equipment, overhead, and profit. Labor shall be broken down into hours and rate per hour. If applicable, the proposal shall include a breakdown for off-site labor (including factory labor, engineering, etc.). The Contractor's proposal shall include an analysis of schedule impact when the Contractor is requesting an adjustment in contract time. The Contractor shall be responsible for any delay associated with its failure to submit its change proposal within the time specified. If the Project Manager decides not to issue an amendment or change after requesting a proposal from the Contractor, the Contractor will be notified in writing. The Contractor is not entitled to reimbursement for Change Order preparation costs if the Contractor's proposal is not accepted by the Project Manager.
- d. If the Contractor agrees with the terms and conditions of the approved Change Order, the Contractor shall indicate its acceptance by signing the original copy and returning it to the Project Manager within 10 Work Days after receipt or with reasonable promptness and in such sequence as to not delay the Work or activities of the District or of separate contractors, whichever is sooner. If notice of any change is required to be given to a surety by the provisions of any bond, the Contractor shall provide notice and the amount of each applicable bond shall be adjusted separately. Payment in

accordance with the terms and conditions set forth in the executed Change Order shall constitute full compensation for all Work included in the Change Order and the District will be released from any and all claims for direct, indirect, and impact expenses and additional time impact resulting from the Work. If the Contractor disagrees with the terms and conditions of the approved Change Order, the Contractor shall indicate specific areas of disagreement and return the approved Change Order to the Project Manager with a detailed written dispute. No payment will be made on the disputed work until the approved Change Order is returned to the Project Manager. However, whether or not the Contractor agrees with the terms and conditions of an approved Change Order, the Contractor shall immediately revise its sequence of operations as required to facilitate timely completion of the changed work and shall proceed with the revised work sequence.

- e. The Project Manager may, after having received a written cost quotation from the Contractor, order the Contractor, in writing, to proceed with the work prior to issuance of an approved Change Order through a change directive. The change directive will authorize the Contractor to proceed with the work subject to the cost quotation submitted by the Contractor. Within five days following receipt of the change directive, the Contractor shall submit a detailed change proposal documenting the amount of compensation. The Project Manager will review the change proposal and, at its option, will either issue an approved Change Order for the work or direct the Contractor to perform the work through Force Account. Until the method of compensation is determined and the approved Change Order is received, the Contractor shall keep full and complete time and material records of the cost of the ordered work and shall permit the Project Manager to have access to such records. An approved Change Order shall supersede any previously issued written change directive covering the same Work.

## **16. EFFECT OF EXTENSIONS OF TIME**

The granting, or acceptance, of extensions of time to complete the Work or furnish the labor, supplies, materials or equipment, or any one of the aforementioned, will not operate as a release of Contractor or the surety on Contractor's faithful performance bond.

## **17. DELAYS**

- a. The Contractor shall take reasonable precautions to foresee and prevent delays to the Work. When the Contractor foresees a delay event, and upon the occurrence of a delay event, the Contractor shall immediately notify the Project Manager of the probability or the actual occurrence of a delay, and its cause. With respect to all delays (compensable, excusable or inexcusable), the Contractor shall reschedule the Work and revise its operations, to the extent possible, to mitigate the effects of the delay. Within 15 days from the beginning of a delay the Contractor shall provide the Project Manager with a detailed written description of the delay, its cause, its impact and the Contractor's mitigation plans. Failure to provide the notification required above waives the Contractor's right to any additional time or compensation resulting from the delay for whatever cause. The Project Manager will investigate the facts and ascertain the extent of the delay, and the Project Manager's findings thereon shall be final and conclusive, except in the case of gross error. An extension of time must be approved by the Project Manager 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.

- b. For inexcusable delays (delays caused by circumstances within the Contractor's control, the control of its subcontractors or supplies of any tier, or within the scope of the Contractor's contract responsibilities) the Contractor shall not be entitled to an extension of time or additional compensation for any loss, cost, damage, expense or liability resulting directly or indirectly from the inexcusable delay.
- c. For excusable delays (delays to completion of the Work within the time limits set forth in the Contract Documents directly caused by events beyond the control of both the Contractor and the District, which delay is not concurrent with an inexcusable delay and which could not have been avoided by the Contractor through reasonable mitigation measures the Project Manager will grant the Contractor an extension of time in an amount equal to the period of Excusable Delay based on the analysis of schedule impact and delay analysis diagram, which shall be the Contractor's sole and exclusive remedy for such delay. Excusable Delays shall include labor strikes, adverse weather as defined in Article 8.5, and Acts of God.
- d. For compensable delays (delays to completion of the Work within the time limits set forth in the Contract Documents that could not be avoided by Contractor mitigation, caused directly and solely by the District or by causes within the exclusive control of the District, and which were not concurrent with any other type of delay) the Project Manager will grant the Contractor an extension of the time to perform under the Contract and compensation in an amount that represents the Contractor's actual direct costs incurred as a direct result of the compensable delay. The Contractor may recover its direct costs only and may not recover (and waives) all other types of indirect, consequential, special and incidental damages.
- e. For concurrent delays (two or more independent causes of delay directly preventing the Contractor from completing the Work within the time limits set forth in the Contract Documents where the delays occur at the same time during all or a portion of the delay period being considered, and where each of the delays would have caused delay to the

Contractor even in the absence of any of the other delays, and none of the delays could have been avoided by Contractor mitigations) the following rules apply:

- i. One or more of the concurrent delays are excusable or compensable, then the period of concurrent delay will be treated as an excusable delay; and
- ii. All of the concurrent delays are inexcusable, then the period of concurrent delay will be inexcusable.

## **18. TERMINATION**

### **a. Termination by the District for Cause:**

- i. District may terminate the Contractor's right to proceed under the Contract, in whole or in part, for cause at any time after the occurrence of any of the following events, each of which constitutes a default:
  1. The Contractor becomes insolvent or files for relief under the bankruptcy laws of the United States.
  2. The Contractor makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.
  3. A receiver is appointed to take charge of the Contractor's property.
  4. The Contractor fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the Work in accordance with the Contract Documents.
  5. The Contractor fails to make progress so as to endanger performance of the Work within the contractually required time.
  6. The Contractor disregards legal requirements of agencies having jurisdiction over the Work, the Contractor, or the District.
  7. The Contractor fails to provide the District with a written plan to cure a District identified default within five business days after the District's request for a plan to cure; the District does not accept the Contractor's plan for curing its default; or the Contractor does not fully carry out an accepted plan to cure.

8. The Contractor abandons the Work. Abandonment is conclusively presumed when the District requests a written plan to cure a default and the Contractor does not submit the plan within five business days of the District's request.

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9. The Contractor materially fails to meet its obligations in accordance with the Contract Documents.
10. The Contractor is in default of any other material obligation under the Contract Documents.

- ii. If any of the above events occur, the District may, in its discretion, require that the Contractor submit a written plan to cure its default, which plan must be provided to the District within 5 business days of the request and must include a realistic, executable plan for curing the noted defaults.
- iii. Upon any of the occurrences referred to in Article 18.a.i. above, the District may, at its election and by notice to the Contractor, terminate the Contract in whole or in part; accept the assignment of any or all of the subcontracts; and then complete the Work by any method the District may deem expedient. If requested by the District, the Contractor shall remove any part or all of the Contractor's materials, supplies, equipment, tools, and machinery from the site of the Work within seven days of such request; and, if the Contractor fails to do so, the District may remove or store, and after 90 days sell, any of the same at the Contractor's expense.
- iv. No termination or action taken by the District after termination shall prejudice any other rights or remedies of the District provided by law or by the Contract Documents.
- v. Conversion: If, after termination for other than convenience, it is determined that the Contractor was not in default or material breach, or that the default or material breach was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for convenience pursuant to Article 18.b. below.

b. Termination by the District for Convenience:

- i. The District may, at its option, and for its convenience, terminate the Contract at any time by giving written notice to the Contractor specifying the effective date of termination. Upon such termination, the Contractor agrees to comply with the notice and further agrees to waive any claims

for damages, including loss of anticipated profits, on account of the termination; and, as the sole right and remedy of the Contractor, the District shall pay the Contractor as set forth below.

ii. Upon receipt of a notice of termination for convenience, the Contractor shall, unless the notice directs otherwise, do the following:

1. Immediately discontinue its performance of the Contract to the extent specified in the notice.
2. Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of a portion of the Work that is not discontinued or that is necessary for an orderly cessation of the Work.
3. Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent they relate to the performance of the discontinued portion of the Work.
4. Thereafter, do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment in transit to or on the site of performance.

iii. Upon such termination for convenience, the District will pay to the Contractor the sum of the following:

1. The amount of the contract sum allocable to the portion of the Work properly performed by the Contractor as of the effective date of termination, less sums previously paid to the Contractor.
2. Previously unpaid costs of any items delivered to the project site that were already fabricated for subsequent incorporation into the Work.
3. Any proven losses with respect to materials and equipment directly resulting from the termination.
4. Reasonable demobilization costs.

iv. The above reimbursement is the sole and exclusive remedy to which the Contractor is entitled in the event the contract is terminated for convenience; and the Contractor expressly waives any other claims, damages, demands, compensation or recovery related to this contract or

project. The Contractor agrees to sign a general release incorporating this waiver.

- c. Effect of Termination: Upon termination, the obligations of the Contract shall continue as to portions of the Work already performed and, subject to the Contractor's obligations under Article 18.b.ii, as to bona fide obligations assumed by the Contractor prior to the date of termination.
- d. Force Majeure: If the contract is suspended or terminated by the District because Contractor's performance is prevented or delayed by an event including an irresistible, superhuman cause, or by the act of public enemies of the State of California or of the United States ("Force Majeure"), the Contractor will be paid for Work performed prior to the Force Majeure event at either (i) the unit prices named in the Contract; or (ii) in the event no unit prices are named, a sum equal to the percentage of the total contract amount that matches the percentage of the total contract Work performed prior to the Force Majeure event.

## **19. DAMAGES**

All losses or damages to material or equipment to be furnished pursuant to the Contract

Documents 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 Contract Documents.

## **20. ORDER OF PRECEDENCE**

- a. In the case of conflicts, errors, or discrepancies in any of the Contract Documents, the order of precedence is as follows. Within the same order of precedence, specific requirements shall take precedence over general requirements.
  - i. Approved Change Orders.
  - ii. Addenda.
  - iii. RFQ or RFP.
  - iv. Referenced Standard Specifications and Drawings.
  - v. Contractor's Response Packet.
- b. With reference to drawings:
  - i. Numerical dimensions govern over scaled dimensions.
  - ii. Detailed drawings govern over general drawings.
  - iii. Addenda/Change Order drawings govern over contract drawings.
  - iv. Contract drawings govern over standard drawings.

- v. Notes apply only to the drawing where the notes appear, unless classified as “typical” or intended to apply elsewhere in which case they apply to all drawings where the conditions or circumstance noted occurs.
- vi. Typical details apply to all drawings unless a specific different detail is shown.

## **21. INDEMNIFICATION**

Contractor expressly agrees to defend, indemnify, and hold harmless DISTRICT and its Directors, officers, agents and employees from and against any and all loss, liability, expense, claims, suits, and damages, including attorneys’ fees, arising out of or resulting from Contractor's, its associates’, employees’, subconsultants’, or other agents’ negligent acts, errors or omissions, or willful misconduct, in the operation and/or performance under this Agreement.

## **22. PROHIBITION OF ASSIGNMENT**

The Contractor shall not assign, transfer, or otherwise dispose of any of its rights, duties or obligations under this Contract. This prohibition does not apply to the District. The District retains the right to assign this Contract in whole or in part at any time upon reasonable terms.

## **23. NEWS RELEASES**

The Contractor, its employees, subcontractors, and agents shall not refer to the District, or use any logos, images, or photographs of the District for any commercial purpose, including, but not limited to, advertising, promotion, or public relations, without the District's prior written consent. Such written consent shall not be required for the inclusion of the District's name on a customer list.

## **24. SEVERABILITY**

Should any part of the Contract be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of the Contract, which shall continue in full force and effect, provided that the remainder of the Contract can be interpreted to give effect to the intentions of the parties.

## **25. COVENANT AGAINST GRATUITIES**

The Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the District with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the District shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the District in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the District provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

**26. RIGHTS AND REMEDIES OF THE DISTRICT**

The rights and remedies of the District provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

**27. WAIVER OF RIGHTS**

Any action or inaction by the District or the failure of the District on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the District of its rights and shall not prevent the District from enforcing such provision or right on any future occasion. Rights and remedies are cumulative and are in addition to any other rights or remedies that the District may have at law or in equity.

**28. CONFIDENTIALITY**

Contractor agrees to maintain in confidence and not disclose to any person or entity, without the District's prior written consent, any trade secret or confidential information, knowledge or data relating to the products, process, or operation of the District. Contractor further agrees to maintain in confidence and not to disclose to any person or entity, any data, information, technology, or material developed or obtained by Contractor during the term of the Contract. The covenants contained in this paragraph shall survive the termination of this Contract for whatever cause.



## EXHIBIT D

# IRAN CONTRACTING ACT CERTIFICATION

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Pursuant to Public Contract Code (PCC) § 2204, an Iran Contracting Act Certification is required for solicitations of goods or services of \$1,000,000 or more.

To submit a bid or proposal to East Bay Municipal Utility District (District), you must complete **ONLY ONE** of the following two paragraphs. To complete paragraph 1, check the corresponding box **and** complete the certification for paragraph 1. To complete paragraph 2, check the corresponding box and attach a copy of the written permission from the District.

- ☐ 1. We are not on the current list of persons engaged in investment activities in Iran created by the California Department of General Services ("DGS") pursuant to PCC § 2203(b), and we are not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

### CERTIFICATION FOR PARAGRAPH 1:

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the BIDDER/bidder to the clause in paragraph 1. This certification is made under the laws of the State of California.

Firm: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature of Bidder)

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

Signed at: \_\_\_\_\_ County, State of: \_\_\_\_\_

**OR**

- ☐ 2. We have received written permission from the District to submit a bid or proposal pursuant to PCC § 2203(c) or (d). *A copy of the written permission from the District is included with our bid or proposal.*