

EAST BAY MUNICIPAL UTILITY DISTRICT

REQUEST FOR QUOTATION (RFQ) No. 1613 for LIQUID POLYALUMINUM CHLORIDE

For complete information regarding this project, see RFQ posted at <http://www.ebmud.com/business-opportunities> or contact the EBMUD representative listed below. Thank you for your interest!

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Please note that prospective bidders are responsible for reviewing <http://ebmud.com/business>, during the RFQ process, for any published addenda regarding this RFQ.

RESPONSE DUE
by
1:30 p.m.
on
January 13, 2016
at
EBMUD, Purchasing Division
375 Eleventh St., First Floor
Oakland, CA 94607



375 Eleventh Street, Oakland, CA 94607
Website: ebmud.com

EAST BAY MUNICIPAL UTILITY DISTRICT

RFQ No. 1613

for

LIQUID POLYALUMINUM CHLORIDE

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

It is the intent of these specifications, terms, and conditions to describe requirements to furnish and deliver liquid polyaluminum chloride on an as-needed basis to the District's various water treatment plants.

East Bay Municipal Utility District (District) intends to award a three (3) -year contract with two (2) options, exercised at the sole discretion of the District, to extend the contract for additional one (1)-year periods to the lowest cost bidder whose response 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 water treatment chemicals for at least five (5) years.
- b. Bidder shall possess all permits, licenses, and professional credentials necessary to supply product and perform services as specified under this RFQ.

C. SPECIFICATIONS**1. GENERAL**

All bidders must review and adhere to the following:

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
TITLE 22. SOCIAL SECURITY
DIVISION 4. ENVIRONMENTAL HEALTH
CHAPTER 16. CALIFORNIA WATERWORKS STANDARDS
ARTICLE 7. ADDITIVES

This database is current through 5/23/08, Register 2009, No. 21 § 64590. Direct Additives.

No chemical or product shall be added to drinking water by a water supplier unless the chemical or product is certified as meeting the specifications of NSF International/American National Standard Institute (NSF/ANSI) 60-2005 (Drinking Water Treatment Chemicals -Health Effects), which is hereby incorporated by

reference. Certification shall be from an ANSI accredited product certification organization whose certification system includes, as a minimum, the following criteria for ensuring the chemical or product meets NSF/ANSI Standard 60.

- (a) Annual product testing,
- (b) Annual facility inspections,
- (c) Annual quality assurance and quality control review,
- (d) Annual manufacturing practice reviews, and
- (e) Annual chemical stock inspections.

Note: Authority cited: Section 116350, 116375 and 131200, Health and Safety Code. Reference: Sections 116275, 116375, 116550 and 131051, Health and Safety Code.

ALL BIDDERS MUST ATTACH CURRENT EVIDENCE OF CERTIFICATION WITH THE BID AS PROOF THAT THEIR PRODUCTS MEET THE NSF60 REQUIREMENTS.

The PACl shall be consistent with the latest standard as approved by the Board of Directors of the American Water Works Association (ANSI/AWWA B408-latest issue), and shall comply with Title 22 California Code of Regulations Division 4 Environmental Health, Chapter 18 Drinking Water Additives, Article 1 Requirements, Section 64700 Direct Additives and/or Section 64710 Exception.

2. PHYSICAL REQUIREMENTS

The liquid PACl product shall be clear to slightly hazy solution, free of visible foreign matter or sediment. The specific gravity of the solution shall be in the range of 1.1 to 1.2. Specific gravity will vary inside this range with PACl content and byproduct salt content.

3. CHEMICAL REQUIREMENTS

The liquid PACl product shall contain from 4% to 6% by weight expressed as aluminum (7.75% to 11.5% by weight expressed as Al_2O_3). The percent basicity of the PACl shall be from 65% to 85%. The solution shall have turbidity less than 50 nephelometric turbidity units (NTU). The PACl shall not contain any organic polymer.

4. IMPURITIES

The liquid PACl product supplied shall contain no substances in quantities capable of producing any deleterious or injurious effects on the health of those consuming water that has been properly treated with the liquid PACl product.

5. PERFORMANCE SPECIFICATIONS

I. Finished Water Turbidity

The PACl shall produce a filtered water turbidity equal to 0.02 NTU to 0.05 NTU.

II. DBP Formation

PACl under any filter plant conditions shall not contribute to the formation of total trihalomethanes (THM), haloacetic acids 5 (HAA5), or N-Nitrosodimethylamine (NDMA) so as to cause the District to exceed levels indicated below:

<u>The Formation Of:</u>	<u>Maximum Concentration in Treated Water</u>	<u>Maximum PACl Contribution</u>
THMS	60 ug/L	5 ug/L
HAA5	45 ug/L	4 ug/L
NDMA	0.005 ug/L	0.002 ug/L

Furthermore, at no time shall the PACl contribute to the formation of greater than 5 ug/L of total DBP. If needed, the District will conduct laboratory tests simulating current chlorine and ammonia dosage, PACl dosage, pH, temperature, and contact time to determine the PACl's contribution to DBP formation.

III. Fish Toxicity

The PACl shall not be toxic to fish as specified in Appendix B.

IV. Toxic Byproducts

The PACl shall not produce any measurable levels in treated water of organic compounds considered toxic or hazardous by the U.S. Environmental Protection Agency or the California Environmental Protection Agency.

V. Filter Media Effects

The PACI shall not cause any adverse effects on the condition of the filter media which cause filter operation problems.

VI. Shelf-Life Criteria

The PACI shall be resistant to biological growths, and have a minimum shelf life of one year from date of delivery. Should biological growths occur in the PACI in storage at District filter plants at no fault of the District, the bidder shall remove and replace the PACI at no cost to the District. Continued problems due to biological growths in the PACI will be grounds for cancellation of the contract.

VII. Compatibility with Existing Chemical Feed Systems

The feeding of PACI shall be compatible with existing chemical feed systems at each filter plant. In addition, the corrosivity shall not be so excessive as to damage feed equipment. If the feed equipment cannot feed the proper amount of PACI or any damage is observed as the result of feeding the PACI, such PACI shall be considered not to specification and the contract will be subject to cancellation. The bidder shall inspect all feed systems and certify compatibility with the proposed PACI product.

6. VERIFICATION

PACI delivered to the destination shall be sampled and verified in conformance with ANSI Standard Section 5, DBP formation, and 96-hour static renewal acute toxicity testing protocol in Appendix B. The fish toxicity test will be performed by the District's bioassay laboratory.

7. REJECTION – NOTICE OF NONCONFORMANCE

If the liquid PACI product delivered to the District does not meet the AWWA standard, the District shall provide a notice of nonconformance to the supplier within 10 days after receipt of the shipment. The results of the District's test shall prevail, unless the supplier notifies the District within 5 working days after receipt of the notice of nonconformance that a retest is desired. Retest procedures shall follow the AWWA/ANSI standard. The District's failure to provide notice of non-conformance to the Contractor shall not relieve the Contractor of any of its obligations to meet the requirements of this Proposal.

8. CONSISTENCE OF PRODUCT DELIVERED

PRODUCT SPECIFICATION SHEET REPRESENTING THE PRODUCT BEING BID MUST BE SUBMITTED WITH BID.

9. **APPENDIX A** – DISTRICT FACILITIES AND CHEMICAL USES

The District owns and operates six water treatment plants. The three plants covered by this Proposal feature the direct filtration process. Table 1 indicates the chemical uses for each plant. Average and maximum production rates change annually based on distribution system demand:

TABLE 1. EBMUD FILTER PLANTS – CHEMICAL USE INFORMATION					
Plant	Plant capacity, mgd		Rapid Mix	Disinfection	pH adjustment
	Avg	Max			
Lafayette	15	25	PACI Cationic Polymer	NaOCl NH ₃	NaOH
Orinda	130	200	PACI Cationic Polymer	NaOCl NH ₃	NaOH
Walnut Creek	40	115	PACI Cationic Polymer	NaOCl NH ₃	NaOH

10. **APPENDIX B** – 96-HOUR STATIC RENEWAL ACUTE TOXICITY TESTING PROTOCOL FOR RAINBOW TROUT

TEST CONDITIONS: Per Table below:

Test type	Static-renewal
Test species	Rainbow Trout (<i>Oncorhynchus mykiss</i>)
Test duration	96 hours
Temperature	12 + 1 °C
Light quality	Ambient laboratory
Light intensity	10 - 20 uE/m ² /s (50 - 100 ft-c) (ambient laboratory levels)
Photoperiod	16 hours light; 8 hours dark
Test chamber size	10 L (2.5 gallon)
Test solution volume	8 L
Renewal of test solution	After 48 hours
Ages of test organisms	15-30 days
Number of fish/test chamber	10
Number of replicates	2 effluent; 2 control

Feeding	Feed well in holding tank before test; feed about 2 hours before renewal; remove uneaten food
Aeration	None, unless DO drops below 6.0 mg/L
Control water	Dechlorinated tap water
Test concentrations	100% effluent and control
Test acceptability	90% or greater survival in controls; Reference Toxicant exhibiting normal sensitivity

Toxicant: as specified by the District.

No. of concentrations: five plus a control (specify concentration range or specify minimum acceptable LC50)

Dilution factor: as specified by the District

I. BIOLOGICAL MEASUREMENTS

Daily: check each aquarium for dead organisms and record
and remove any that are found.

II. WATER QUALITY MEASUREMENTS

Temperature: measure continuously in one of the controls or water bath.
measure daily in all concentrations.

Dissolved oxygen: measure daily in all concentrations.

pH: measure daily in control and highest concentration.

Chlorine residual, total: measure daily in control and highest concentration.

Total suspended solids: measure daily in highest concentration.

Alkalinity, hardness,
and residual chlorine: measure daily in the control and the highest concentration.

III. DATA ANALYSIS

Endpoints: mortality.

Statistics – mortality: calculate LC50 using appropriate technique based on the response: linear interpolations, trimmed Spearman-Kärber, moving average angle, and probit analysis will be used as required. Fishers Exact Test

of CH_2 test for independent samples can be used on untransformed data to determine no effect levels.

IV. DIET

Composition: organisms will not be fed while on test.

Preparation: N/A

Feeding rates: N/A

V. GENERAL GUIDELINE USED FOR TEST PROTOCOL

**Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms
Fifth Edition
October 2002 EPA-821-R-02-012**

D. SPECIAL REQUIREMENTS

A. BID EVALUATION PROCEDURE

ALL BIDS MUST BE FIRM FOR FIVE (5) MONTHS

I. Submittals

Bidders must submit two (2) sealed responses. One response will contain the technical response and the other one will contain the price. The price bids would be opened ONLY for those bids that pass the technical evaluation.

Bidders may submit more than one (1) product for consideration to a maximum of two (2) products.

Bidder must submit no later than December 10, 2015, 2 liter of concentrated polyaluminum chloride solution contained in properly labeled container(s) for each product submitted to:

East Bay Municipal Utility District
Attn: Hubert Lai, MS 606
1010 Franklin Street
Oakland, CA 94607

The label shall indicate product name, date of preparation, and bidder's company name. **Accompanying the sample shall be an MSDS, product data sheet, and affidavit of compliance (located in EXHIBIT D at back of this RFQ).**

THOSE BIDDERS BIDDING ON MORE THAN ONE PRODUCT SHALL SUBMIT A SEPARATE BIDDING SHEET AND QUESTIONNAIRE FOR EACH PRODUCT ALONG WITH ITS RESPECTIVE AFFIDAVIT OF COMPLIANCE. THESE DOCUMENTS ARE REQUIRED TO BE SUBMITTED WITH THE BID.

II. Qualifying Bids

The District will use a product testing process to evaluate responsiveness of products for treating its water. The District will perform an extensive bench scale study on all submitted products to select a short list of the best performing products for further evaluation. **The District will award to the lowest responsible bidder meeting all evaluation criteria.**

Bench-Scale Filtration Test

Apparatus

1. Blender.
2. Square 2-liter acrylic jars with side outlet.
3. Filtering flasks and holders. 1-L glass flask with funnel setup.
4. Vacuum pump, capable of generating a vacuum of at least 15 inches.
5. Filter paper, pre-washed with 200 ml of DI water.
6. Turbidimeter.
7. pH meter.
8. Pipets.

Reagents

1. PACI solutions.
2. Cationic Polymer used at the District's water treatment plants.

Fresh stock PACI and polymer solutions shall be prepared for each day of testing.

Test Procedure

1. Fill all jars to the 2-liter mark with plant raw water.

2. Measure the appropriate amount of PACl and cationic polymer using pipets and add it to the appropriate jars.
3. Begin rapid mix with the blender for 2 seconds.
4. Stop the blender. Wait 5 minutes.
5. Pour out 100 ml from each jar into a clean sample container. Pour 300 ml into a funnel. The volume of water filtered may change at the discretion of the District based on the average filtration time. The volume filtered will be consistent among all bidders.
6. Turn the vacuum pump on and start timer.
7. When the entire sample has filtered through the 0.8 micron paper, stop the timer, turn off the vacuum pump, and record the filtration time.
8. Measure and record filtered water turbidity.
9. Measure and record the coagulated water pH and temperature.
10. Measure 1-liter of unfiltered, coagulated water and increase its pH to 9.0 by adding caustic soda. Record the amount of caustic soda (mg/L) that was added to achieve pH of 9.0.

Product Evaluation Criteria

Products will be evaluated in the bench scale filtration testing to determine the relative effectiveness of PACl's in combination with cationic polymer to treat water to meet the low turbidity water quality criteria at reasonably low filtration time. The PACl's will be evaluated by running test sets of PACl additions at various cationic polymer doses, thus covering many combinations of dosages. The lowest PACl dose and cationic polymer dose combination required to meet or exceed the low filtered water turbidity criteria will be determined, and used in calculation of total cost of treatment. The District's interpretation of test results shall be final. The significance of the criteria is defined below:

1. *Turbidity*: A low filtered water turbidity through 0.8 micron filter paper indicates low turbidity during full-scale filter operation. PACl products must produce filtered water turbidity of 0.05 NTU or lower to pass and be qualified for further evaluation.
2. *Filtration time*: A fast filtration time indicates low headloss accumulation rates, and high water production during plant-scale operation.
3. *Total cost of treatment using PACl per million-gallons (MG)*: A PACl product that produces the low cost water based on bench-scale test will produce low cost water during plant-scale treatment. $\text{Total cost/MG} = \text{Cost of PACl} + \text{Cost}$

of caustic soda (to raise pH to 9.0) + Cost of polymer + Cost of sludge handling.

- Cost of PACI \$/MG = mg/L used x MG treated/MG produced x 8.34 lb/gal x \$/lb bid price.
- Cost of caustic soda \$/MG = mg/L lime (caustic) x MG treated/MG produced x 8.34 lb/gal x \$/lb of lime (caustic)
- Cost of polymer \$/MG = mg/L polymer x MG treated/MG produced x 8.34 lb/gal x \$/lb of polymer.
- Cost of sludge handling \$/MG =
 - Sludge production lb/MG due to PACI addition = (product dosage mg/L x % aluminum x 2.9 x 8.34 x MG treated/MG produced)
 - Sludge production lb/MG due to coagulant aid = mg/L polymer dosage x 8.34 x 0.2 treated/MG produced
 - Sludge production lb/MG due to turbidity = NTU x 0.43 x 8.34
 - Total sludge production – sludge production due to PACI (6) + sludge from polymer (7) + sludge due to turbidity (7)
 - Cost of sludge hauling using PACI product - \$/MG = \$0.27 x lb. sludge processed MG (8)

B. DELIVERY

Deliveries shall be made to all filter plants between the hours of 7:00 a.m. and 3:00 p.m., Mondays through Fridays, except on District holidays OR UNLESS REQUIRED UPON ORDER.

- i. Orinda Filter Plant, 190 Camino Pablo, Orinda, CA
- ii. Walnut Creek Filter Plant, 2201 Larkey Lane, Walnut Creek, CA
- iii. Lafayette Filter Plant, 3848 Mt. Diablo Boulevard, Lafayette, CA

It is the Contractor's responsibility to maintain production and delivery facilities necessary to supply liquid polyaluminum chloride to meet the District's needs. In the event the Contractor fails to make deliveries on schedule, the District reserves the right to purchase material on the open market and charge the Contractor for any costs incurred above the contract price.

The bidder to whom a contract is awarded will be required to furnish and update, as necessary, a list of telephone numbers and names of the responsible parties to be called on a 24 hour, 7 days per week basis in the event of an emergency or unusual operational condition.

C. DELIVERY BY TANK TRUCK OR TRAILER

- I. The Contractor shall observe the entire filling operation at each delivery site and shall be responsible for minimizing and cleaning up any spillage due to such operation. Any spillage shall be reported immediately to the on-duty Shift Supervisor. If the District has to hire a Contractor to clean up the spill, all costs for clean-up will be the Contractor's responsibility. No leakage to atmosphere or environment will be permitted. No waste material shall be disposed of in District receptacles. No vehicle washing may be done on District property.
- II. For deliveries to Water Treatment Plants, the following applies:
 - (a) Chemical suppliers will provide identifications to each treatment plant containing a picture, name and driver's license number of each driver delivering to District treatment plants. This information will be given to security guards at each plant, where applicable. If there is a new driver the identification will be faxed to the plant prior to the chemical truck leaving the chemical plant.
 - (b) Chemical suppliers will call the treatment plant prior to the delivery truck leaving the chemical plant. The supplier will provide the treatment plant operator with the truck drivers name type of chemical to be delivered, license plate number of the trailer and time of delivery (four-hour window). This information will be logged in the plant log and given to the security guard at each plant where applicable.
 - (c) Prior to coming on plant grounds the drivers will be asked his name and that will be checked against his photo identification card and the information provided by the vendor.
 - (d) The trailer license plate will be checked against the information provided by the vendor.
 - (e) Prior to opening any treatment plant valves a grab sample will be taken from the lowest point available on the trailer and be analyzed for pH, specific gravity and appearance. This information will be checked against the certificate of analyses. If everything matches, the load can be accepted. A second sample will be taken approximately halfway through the delivery process and analyzed. If everything matches, Contractor will continue off-loading.
 - (f) The only exceptions to this, will be if the chemical the treatment plant is receiving are in carboys, 55-gallon drums or 44-pound containers

being delivered by independent freight haulers (Yellow, Viking, etc.). In such instances, the following procedure will be followed.

- Chemical vendor will seal all drums and or carboys with identifiable markings covering all caps and barrel rings.
- The chemical vendor will call the plant operator with the identifiable marking. This will be logged in the plant log.
- The chemical vendor will give a delivery date to the treatment plant when the chemical order is made. If a change in the delivery date is required the vendor will notify the treatment plant with the new date. The delivery date will be given to security guard, where applicable, on the morning of expected delivery.

The vendor will supply the treatment plant with the freight company's name prior to delivery date.

Upon delivery, the operator will verify all markings against those provided by the vendor and all paperwork provided by the delivery driver.

- (g) If any of the above procedures is not followed, the operator will call the vendor to try to identify the driver and/or definable marking. When this is done the delivery can be accepted. If identification cannot be confirmed, notify the plant supervisor or water treatment superintendent. The delivery will be rejected and sent back to the vendor upon management review.

E. FAILURE TO MEET SPECIFICATIONS

In the event any shipment or shipments of a Contractor's product do not meet the specification or delivery requirements, the District may reject the shipment or shipments and, at its option, may purchase this material from any supplier on the open market who can meet the District's specification requirements or the District may demand immediate replacement by Contractor of the non-conforming product. Any costs over and above the original contract price will be charged back to the Contractor. In addition, Contractor shall bear the costs of removal and disposition for any delivery which fails to conform to the specifications.

F. QUALITY CONTROL

The District will analyze samples from material shipped for quality consistency. In the event that any significant deviation in performance, or established feed rates occur, or if the analyses indicate a significant quality inconsistency, the District may require lab certification on further shipments and replacement of defective material. Continued quality deviations will be considered grounds for cancellation of the contract.

The Contractor shall provide training to District laboratory personnel on QA/AC laboratory procedures if the District so requests. The District reserves the right to use other procedures than those submitted by the Contractor in order to further assure quality control.

II. CALENDAR OF EVENTS

EVENT	DATE/LOCATION
RFQ Issued	November 18, 2015
2-liter Product Submittal Deadline Date	December 10, 2015
Response Due	January 13, 2016 by 1:30 p.m.
Anticipated Contract Start Date	February 1, 2016

Note: All dates are subject to change.

Bidders are responsible for reviewing <http://ebmud.com/business> 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 Contractors, 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 PO or contract that may be awarded as a result of this RFQ.
5. Award of contract. The right is reserved to reject any or all proposals, to accept one part of a proposal and reject the other, unless the bidder stipulates to the contrary, and to waive technical defects, as the interest of the District may require. Award will be made or proposals rejected by the District as soon as possible after bids have been opened.

B. 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.

C. PRICE ADJUSTMENTS

Prices shall be firm for the first year of the contract term. On or about the eighteenth calendar day of December 2016, and every twelve months thereafter ("Calibration Date") for the term of this Agreement and extension periods, the parties will establish new pricing for the liquid polyaluminum chloride provided under this proposal based on the percent change in the United States Bureau of Labor Statistics Producer Price Index for All Other Basic Inorganic Chemical Manufacturing which includes aluminum hydroxide (i.e., alumina trihydrate manufacturing), ID #pcu3251803251808, (Preliminary Data). For purposes of this price adjustment calculation, material costs are assumed to be 70% of price.

Price adjustments based on diesel fuel price fluctuations will occur on or about the eighteenth calendar day of December 2016, and every twelve months thereafter, for the term of this Agreement and extension periods. The index to determine the amount of price adjustment the District will allow will come from information gathered from the Energy Information Administration's Weekly On-Highway Diesel Prices Index. Their website is <http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp> and the information will be taken from the California data. The allowable percent change will be calculated by dividing the posted price from six months earlier index into the current (calibration)

diesel price. To calculate the amount of price adjustment, this proposal will assume the cost of fuel to be 5% of total price.

Because all other costs (except fuel) and profit remain fixed (Margin), the actual ratio of raw material costs to price in this calculation may change somewhat over the life of the agreement for the successful bidder. Nonetheless, the calculation described herein will not change for the life of the agreement to include all extension periods. The seller is expected to manage costs associated with labor, overhead, and GS&A for the life of the original agreement and all related option-year extension periods.

EXAMPLE: Price Adjustment Scenario for illustration only)

			Change 1			
	% of Price	Original Bid	Prior Index From Jan. '16	Calibration Index To Jan. '17	Percent Change	New Price
Raw Material Aluminum Hydroxide	70% of Init. Contract Price	\$0.1085	329.0	333.6	1.4%	\$0.1100
Fuel	(5% of Init. Contract Price)	\$0.0078	2.917	3.793	30.03%	\$0.0101
Fixed Margin	(25% of Init. Contract Price)	\$0.0387				\$0.0387
Price		\$0.1550				\$0.1588
			Change 2			
	% of Price	Current Price	Prior Index From Jan. '15	Calibration Index To July '15	Percent Change	New Price
Raw Material Iron/Steel Mills	(less fixed margin)	\$0.1100	333.6	344.3	3.21%	\$0.1135
Fuel	(5% of Init. Contract Price)	\$0.0101	3.793	4.191	10.49%	\$0.0112
Fixed Margin	(25% of Init. Contract Price)	\$0.0387				\$0.0387
Price		\$0.1588				\$0.1634

Note: All price adjustment calculations that fail to support a need to adjust price by at least 1.00% will not be implemented. When this happens, the subsequent price change will be calculated by comparing the current index value to the index value last used to calculate an allowable price change. This will allow for the accumulation of multiple “less than 1% price changes.”

D. PROTESTS

Protests must be in writing and must be received no later than seven (7) business days after either of the following: posting of the RFQ results on the District's website (www.ebmud.com), or notification of selection/non-selection, whichever is sooner. 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 protestor. If a firm is representing the protestor, they shall include their contact information in addition to that of the protesting firm.

Protests must be mailed or hand delivered to the Manager of Purchasing, 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 day 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 working days from the date of receipt of the requesting organization's determination on the protest.

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 upon approval of written itemized quotations received from the Contractor.
2. Individual order price quotations shall be provided upon request per project and shall include, but not be limited to, an identifying (quotation) number, date, requestor name and phone number, ship to location, itemization of products and/or services with complete description (including model numbers, fabric and finish grade, description, color, etc.) and price per item, and a summary of total cost for product, services, shipping, and tax.
3. POs and payments for products and/or services will be issued only in the name of Contractor.
4. Any and all change orders shall be in writing and agreed upon, in advance, by Contractor and the District.

F. TERM / TERMINATION / RENEWAL

1. The term of the contract, which may be awarded pursuant to this RFQ, will be three (3) years, with two (2) options, to be exercised at the sole discretion of the District, to extend the contract for additional one (1)-year periods.
2. This Agreement may be terminated for convenience by the District provided the Contractor is given written notice of not less than 30 calendar days. Upon such termination, the District shall pay the Contractor the amount owing for the products ordered and satisfactorily received by the District. This shall be the sole and exclusive remedy to which the Contractor 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 Contractor of impending action.

G. INVOICING

1. Payment will be made within thirty (30) days following receipt of a correct invoice and upon complete satisfactory receipt of product and/or performance of services.
2. Each delivery must be accompanied by shipping documents (certified weight slips) showing gross weight and tare weight of each load. Payment shall be based

on the total pounds of delivered liquid polyaluminum chloride per load and the unit price per pound. Invoices shall contain, at a minimum, District PO number, invoice number, remit to address, and itemized products and/or services description.

3. The District will pay Contractor 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: James Smith, Superintendent of Water Treatment
EBMUD-Water Treatment and Distribution Div./Water Operations Dept.

E-Mail: jfsmith@ebmud.com

PHONE: (510) 287-1967

CONTRACT EQUITY PROGRAM:

Attn: Contract Equity Office

PHONE: (510) 287-0114

AFTER AWARD:

Attn: James Smith, Superintendent of Water Treatment
EBMUD-Water Treatment and Distribution Div./Water Operations Dept.

E-Mail: jfsmith@ebmud.com

PHONE: (510) 287-1967

B. SUBMITTAL OF RFQ RESPONSE

1. Late and/or unsealed responses will not be accepted.
2. RFQ responses submitted via electronic transmissions will not be accepted. Electronic transmissions include faxed RFQ responses or those sent by electronic mail ("e-mail").
3. RFQ responses will be received only at the address shown below, must be SEALED, and must be received at the District Purchasing Division by 1:30 p.m. on the due date specified in the Calendar of Events. Any RFQ response received after

that time or date, or at a place other than the stated address cannot be considered and will be returned to the bidder unopened.

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

Mailed:

Andrew Akelman, Manager of Purchasing
East Bay Municipal Utility District
Liquid Polyaluminum Chloride
RFQ No. 1613
EBMUD–Purchasing Division
P.O. Box 24055
Oakland, CA 94623

Hand Delivered or delivered by courier or package delivery service:

Andrew Akelman, Manager of Purchasing
East Bay Municipal Utility District
Liquid Polyaluminum Chloride
RFQ No. 1613
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.

5. Bidders are to submit one (1) original hardcopy RFQ response (Exhibit A – RFQ Response Packet, including Contract Equity Program forms and all additional documentation stated in the “Required Documentation and Submittals” section of Exhibit A), all with original ink signatures.
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.

C. RESPONSE FORMAT

1. **Bidders shall not modify any part of Exhibits A, B, C, D, or E, 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. 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. 1613 – LIQUID POLYALUMINUM CHLORIDE

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

From: _____
(Official Name of Bidder)

RFQ RESPONSE PACKET GUIDELINES

- **AS DESCRIBED IN SECTION IV- RFQ RESPONSE SUBMITTAL INSTRUCTIONS AND INFORMATION, BIDDERS ARE TO SUBMIT ONE (1) ORIGINAL HARDCOPY RFQ RESPONSE WITH ORIGINAL INK SIGNATURES, AND ONE COPY CONTAINING THE FOLLOWING, IN THEIR ENTIRETY:**
 - **EXHIBIT A – RFQ RESPONSE PACKET, INCLUDING CONTRACT EQUITY PROGRAM FORMS AND ALL ADDITIONAL REQUIRED DOCUMENTATION AS DESCRIBED IN EXHIBIT A - “REQUIRED DOCUMENTATION AND SUBMITTALS”**
 - **EXHIBIT D – AFFIDAVIT OF COMPLIANCE**
 - **EXHIBIT E– QUESTIONNAIRE**
- **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.**



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 of RFQ No. 1613.
3. The undersigned acknowledges acceptance of all addenda related to this RFQ. List Addenda for this RFQ on the lines below:

Addendum #	Date

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: Contractors 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 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.
10. 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 5% bid preference, and has completed the Contract Equity Program and Equal Employment Opportunity forms at the hyperlink contained in the Contract Equity Program and Equal Opportunity section of this Exhibit A.

*If no box is checked, it will be assumed that the bidder is ineligible for bid preference and none will be given. 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: _____

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_____



BIDDING SHEET

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 contractor, 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.

All bidders must submit a separate bidding sheet and questionnaire (Exhibit E) for each product along with its respective affidavit of compliance (Exhibit D)

Item	Estimated Annual Quantity	Description	Unit Price per Pound	Total
1	1,500,000 lbs. annually	PACI in bulk delivered f.o.b. destination to water treatment plants, as specified in RFQ 1613.	\$_____	\$_____
TOTAL COST				\$_____



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. References:

- (a) Bidders must use the templates in the “References” section of this Exhibit A – RFQ Response Packet to provide references.
- (b) 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.

2. 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.**

3. 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, "Contractor 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.



REFERENCES

RFQ No. 1613 – LIQUID POLYALUMINUM CHLORIDE

Bidder Name: _____

Bidder must provide a minimum of three (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. 1613 – LIQUID POLYALUMINUM CHLORIDE

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 contractors regardless of their race, gender or ethnicity.

All Contractors and their subcontractors 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.

Contractor and its subcontractors 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 contractors and subcontractors 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 Contractors 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 be found at the following direct link:

[Contract Equity Program Guidelines and 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

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 award.

The following are the minimum insurance limits, required by the District, to be held by the Contractor performing on this RFQ:

INDEMNIFICATION AND INSURANCE

A. Indemnification

CONTRACTOR expressly agrees to defend, indemnify, and hold harmless the 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', subcontractors', or other agents' negligent acts, errors or omissions, or willful misconduct, in the operation and/or performance under this Agreement.

B. Insurance Requirements

CONTRACTOR shall take out and maintain during the life of the Agreement all the insurance required in this section, and if requested shall submit certificates for review and approval by the District. The Notice to Proceed shall not be issued, and CONTRACTOR shall not commence work until such insurance has been approved by the District. The certificates shall be on forms approved by the District. Acceptance of the certificates shall not relieve CONTRACTOR of any of the insurance requirements, nor decrease the liability of CONTRACTOR. The District reserves the right to require CONTRACTOR to provide insurance policies for review by the District.

C. Workers Compensation Insurance

CONTRACTOR shall take out and maintain during the life of the Agreement Workers Compensation Insurance for all of its employees on the project. In lieu of evidence of Workers Compensation Insurance, the District will accept a Self-Insured Certificate from the State of California. CONTRACTOR shall require any subcontractor to provide it with evidence of Workers Compensation Insurance.

D. Commercial General Liability Insurance

CONTRACTOR shall take out and maintain during the life of the Agreement Automobile and General Liability Insurance that provides protection from claims which may arise from

operations or performance under this Agreement. If CONTRACTOR elects to self-insure (self-fund) any liability exposure during the contract period above \$50,000, CONTRACTOR is required to notify the District immediately. Any request to self-insure must first be approved by the District before the changed terms are accepted. CONTRACTOR shall require any subcontractor to provide evidence of liability insurance coverages.

The amounts of insurance shall be not less than the following:

\$2,000,000/Occurrence, Bodily Injury, Property Damage -- Automobile.

\$2,000,000/Occurrence, Bodily Injury, Property Damage -- General Liability.

The following coverages or endorsements must be included in the policy(ies):

1. The District, its Directors, officers, and employees are Additional Insureds in the policy(ies) as to the work being performed under the contract.
2. The coverage is *Primary and non-contributory* to any other applicable insurance carried by the District.
3. The policy(ies) covers *contractual liability*.
4. The policy(ies) is written on an *occurrence* basis.
5. The policy(ies) covers the District's Property in Consultant's care, custody, and control.
6. The policy(ies) covers *personal injury* (libel, slander, and wrongful entry and eviction) liability.
7. The policy(ies) covers explosion, collapse, and underground hazards.
8. The policy(ies) covers *products and completed operations*.
9. The policy(ies) covers the use of *owned, non-owned* and hired automobiles.
10. The policy(ies) and/or a separate pollution liability policy(ies) shall cover pollution liability for claims related to the release or the threatened release of pollutants into the environment arising out of or resulting from Consultant's performance under this agreement.
11. The policy(ies) will not be canceled nor the above coverages/endorsements reduced without 30 days written notice to East Bay Municipal Utility District at the address above.

GENERAL REQUIREMENTS

CONTENTS

1. DEFINITIONS
2. BOND
3. CONTRACTOR'S FINANCIAL OBLIGATION
4. SAMPLES OR SPECIMENS
5. MATERIAL AND WORKMANSHIP
6. DEFECTIVE WORK
7. WARRANTY OF TITLE
8. WARRANTY OF FITNESS
9. SAFETY AND ACCIDENT PREVENTION
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11. PREVAILING WAGES
12. PAYROLL RECORDS
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27. RIGHTS AND REMEDIES OF THE DISTRICT
28. WAIVER OF RIGHTS
29. CONFIDENTIALITY

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 OF TITLE

Contractor shall warrant to the District, its successors and assigns, that the title to the materials, supplies or equipment covered by the Contract, when delivered to the District or to its successors or assigns, is free from all liens and encumbrances.

8. WARRANTY OF FITNESS

Contractor hereby warrants that all materials furnished shall meet the requirements and conditions of the Contract Documents; shall be fit for the purposes intended and fulfill its design functions; be free of all patent and latent defects in design, materials and workmanship; and perform satisfactorily. It is understood and agreed that by acceptance of this warranty and the acceptance of the materials or supplies to be manufactured or assembled pursuant to these specifications, the District does not waive any warranty either expressed or implied in Sections 2312 to 2317, inclusive, of the Commercial Code of the State of California or any products liability of the Contractor as determined by any applicable decision of a court of the State of California or of the United States.

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 for further information regarding the below.
- b. All Contractors and Subcontractors of any tier bidding on, or offering to performing 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 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.
- 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

- a. The 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 Engineer. 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).
- 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.
 - 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/RESPONSIBILITY

- a. Contractor shall indemnify, keep and save harmless the District and each of its directors, officers, agents and employees against any and all suits, claims or actions arising out of any of the following:
 - i. Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance or implementation of this Contract; or
 - ii. Any allegation that materials or services developed, provided or used for this Contract infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.
- b. Contractor further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered, or settlement reached, against the District or any of the other agencies or individuals enumerated above in any such action, Contractor shall, at its expense, satisfy and discharge the same.

c. This indemnification shall survive termination or expiration of the Contract.

22. PROHIBITION OF ASSIGNMENT

The Contractor shall not assign, transfer, or otherwise dispose of any of its rights, duties or obligations under this Contract.

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. TRANSFER OF INTEREST

Contractor shall not assign, transfer or otherwise substitute its interest in the Contract or any of the contract obligations without prior written consent from the District.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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

LIQUID POLYALUMINUM CHLORIDE

AFFIDAVIT OF COMPLIANCE

Submit a separate sheet for each product submitted. This/these page(s) must be submitted with the bid.

This is to certify that the following merchandise is properly described, analyzed, and reported in accordance with the specifications:

(1)	Date of manufacture	
(2)	Specific gravity	
(3)	PACl as percent aluminum (Al) by weight	
(4)	PACl as percent aluminum oxide (AL ₂ O ₃) by weight	
(5)	PACl basicity – as a percent	
(6)	% of active organic polymer by weight	
(7)	Product turbidity as NTV	
(8)	Chloride – as a percent	
(9)	Compatibility with chemical feed equipment at all plants	

Authorized signature as stated on the Request for Bid:

Date: _____

Product Name: _____

Lot Number: _____

EXHIBIT E

LIQUID POLYALUMINUM CHLORIDE

QUESTIONNAIRE

Submit a separate sheet for each product submitted. This/these page(s) must be submitted with the bid.

1. Manufacturer and name or numbers identifying PACI bid _____

2. Location of shipping point _____

3. Maximum concentration approved by NSF or UL for use in potable water _____
4. Additional information required for each product submitted:
 - a. Copy of a letter from NSF or UL certifying its compliance with ANSI/NSF Standard No. 60.
 - b. Ten copies of the Material Safety Data Sheet (MSDS).
 - c. A list of potable water customers who have used this product to treat a minimum of 2,000 million gallons. List contact person and telephone numbers.

 - d. Affidavit of Compliance and person(s) authorized to certify the Affidavit of Compliance.

