

# EAST BAY MUNICIPAL UTILITY DISTRICT

## REQUEST FOR QUOTATION (RFQ) No. 1606A for INDUCTIVELY COUPLED PLASMA MASS SPECTROMETRY INSTRUMENT

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!

Contact Person: Kelley Smith, Purchasing Contract Supervisor  
Phone Number: (510) 287-0355  
E-mail Address: [ksmith@ebmud.com](mailto:ksmith@ebmud.com)

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 20, 2016**  
at  
**EBMUD, Purchasing Division**  
**375 Eleventh St., First Floor**  
**Oakland, CA 94607**



375 Eleventh Street, Oakland, CA 94607  
Website: [ebmud.com](http://ebmud.com)

# **EAST BAY MUNICIPAL UTILITY DISTRICT**

**RFQ No. 1606A**

**for**

**INDUCTIVELY COUPLED PLASMA MASS SPECTROMETRY INSTRUMENT**

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## I. STATEMENT OF WORK

### A. SCOPE

It is the intent of these specifications, terms, and conditions to describe the inductively couple plasma mass spectrometry (ICP-MS) instrument required by the District.

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

### B. BIDDER QUALIFICATIONS

#### 1. Bidder Minimum Qualifications

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

### C. SPECIFIC REQUIREMENTS

All products shall be in new and unused condition and shall be of the most current up to date model.

#### 1. GENERAL – QUADROPOLE ICP-MS INSTRUMENT

The vendor shall furnish, install, test and validate one new bench top inductively coupled plasma mass spectrometry (ICP-MS) for trace metals analysis. The ICP-MS must satisfy the specifications outlined in the Criteria Table. The instrument will detect metals in source water, ground water, drinking water, wastewater, salt water, soil and industrial waste for analysis at concentrations ranging from 0.4 ppb to 100,000 ppb. The instrument acceptance process shall include calibration of analytes of interest in Tables 1 & 2 for EPA 200.8 & EPA 6020. The method verification will include running standards at the required method reporting limits for drinking water and wastewater compliance, demonstrating instrument check blanks below the current laboratory MDLs and provide an IDOC that meets all method quality control criteria.

The system must include an enclosed autosampler, a liquid sample introduction system, an RF argon plasma ion source, a quadrupole based cell to eliminate spectroscopic interferences with KED using collision gases, quadrupole mass filter, simultaneous dual stage discrete dynode detector and at least two-cone plasma interface, all under computer control.

## REPORT #1 – Instrument Performance Report

### Performance Report

#### Sample details

Acquired at : 10/15/2014 9:22:42 AM

Report name : EPA 200.8 Perf Rept [1/25/2013 10:26:56 AM]

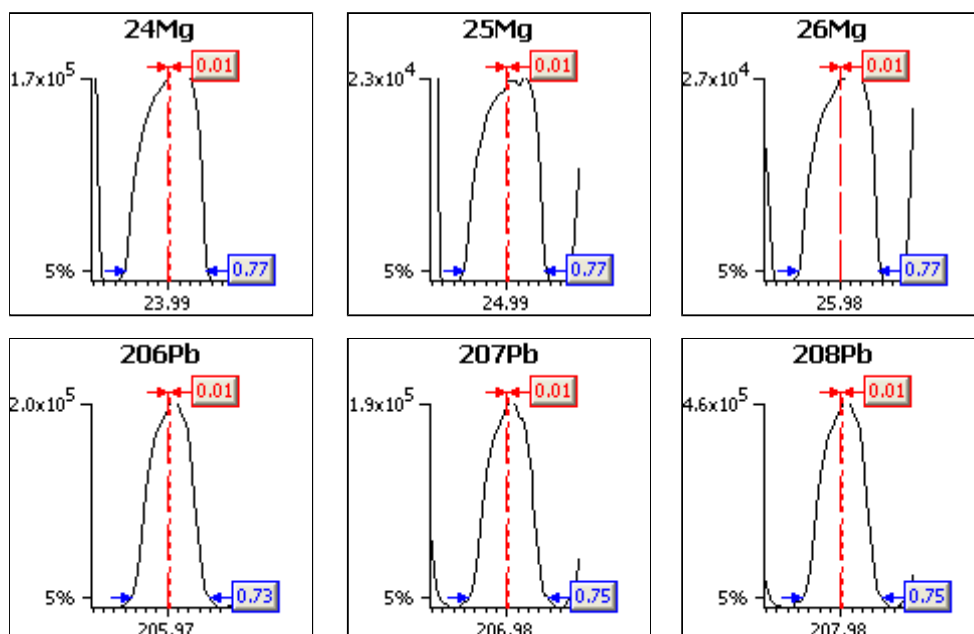
#### Mass Calibration verification

#### Acquisition parameters

Sweeps : 50 Dwell : 5.0 mSecs

Point spacing : 0.02 amu

Peak width measured at 5% of the peak maximum



Analyte	Limits			Results	
	Max. width	Min. width	Max. error	Peak width	Peak error
24Mg	0.85	0.65	0.10	0.77	0.01
25Mg	0.85	0.65	0.10	0.77	0.01
26Mg	0.85	0.65	0.10	0.77	0.01
206Pb	0.85	0.65	0.10	0.73	0.01
207Pb	0.85	0.65	0.10	0.75	0.01
208Pb	0.85	0.65	0.10	0.75	0.01

### Sample details

Acquired at : 10/15/2014 9:22:42 AM  
 Report name : EPA 200.8 Perf Rept [1/25/2013 10:26:56 AM]

#### Tune conditions

Major		Minor		Global		Add. Gases	
Extraction	-129.4	Lens 3	-200.0	Standard resolution	120	CCT-He	0.00
Lens 1	-1200	Forward power	1404	High resolution	125	CCT-He	0.00
Lens 2	-82.4	Horizontal	40	Analogue Detector	1500		
Focus	11.2	Vertical	514	PC Detector	3050		
D1	-41.6	DA	-29.0				
D2	-133	Cool	13.5				
Pole Bias	-0.5	Auxiliary	0.90				
Hexapole Bias	-5.0	Sampling Depth	120				
Nebuliser	0.90						

#### Sensitivity and stability results

##### Acquisition parameters

Sweeps : 25

Run	Time	5Bkg	9Be	24Mg	25Mg	26Mg	59Co	138Ba++	115In	138Ba
<b>Dwell (mSecs)</b>		100.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0
<b>Limits</b>	<b>%RSD</b>		5.0%	5.0%	5.0%	5.0%	5.0%		5.0%	
	<b>Countrate</b>		>10000	>75000	>10000	>10000	>100000		>350000	
1	9:24:42 AM	0.000	22211.100	172024.33	22086.798	27256.800	198610.09	5065.411	548935.45	366064.73
2	9:24:53 AM	0.000	22331.394	168939.28	22856.697	25644.118	189633.43	4769.251	528847.61	360213.83
3	9:25:05 AM	0.000	21733.949	167753.62	22395.552	26646.996	196386.56	5153.460	548871.78	369836.89
4	9:25:16 AM	0.000	22255.208	171262.14	22584.017	26237.809	194233.02	5069.413	544173.58	367721.63
5	9:25:27 AM	1.200	22387.532	168825.18	22175.012	25571.915	194547.64	4965.356	532847.32	362989.01
x		0.240	22183.837	169760.91	22419.615	26271.528	194682.15	5004.578	540735.15	365365.22
σ		0.54	260.53	1799.76	311.95	706.40	3318.25	147.47	9338.14	3815.13
<b>%RSD</b>		223.607	1.174	1.060	1.391	2.689	1.704	2.947	1.727	1.044

Run	Time	140Ce	156Ce	206Pb	207Pb	208Pb	220Bkg
<b>Dwell (mSecs)</b>		10.0	10.0	10.0	10.0	10.0	100.0
<b>Limits</b>	<b>%RSD</b>			5.0%	5.0%	5.0%	
	<b>Countrate</b>			>180000	>150000	>350000	
1	9:24:42 AM	367138.76	58547.927	209019.60	183774.94	443958.04	0.400
2	9:24:53 AM	364270.78	60315.426	206613.52	181526.44	444747.25	0.000
3	9:25:05 AM	393220.19	47435.435	207828.76	182983.21	440680.19	0.400
4	9:25:16 AM	374785.50	62578.646	206347.58	180832.82	436023.52	0.400
5	9:25:27 AM	367958.94	57980.307	205873.00	185325.95	445259.43	0.000
x		373474.83	57371.548	207136.49	182888.67	442133.69	0.240
σ		11692.76	5836.55	1276.48	1790.04	3852.79	0.22
<b>%RSD</b>		3.131	10.173	0.616	0.979	0.871	91.287

#### Ratio results

Run	Time	138Ba++/138Ba	156Ce
<b>O/140Ce Ratio limits</b>			-
1	9:24:42 AM	0.014	0.159
2	9:24:53 AM	0.013	0.166
3	9:25:05 AM	0.014	0.121
4	9:25:16 AM	0.014	0.167
5	9:25:27 AM	0.014	0.158
x		0.0137	0.1540
σ		0.00	0.02

Result: The performance report passed.

## REPORT #2 – Instrument Parameters

## Instrument Parameters

Nebulizer Pressure	-	<u>1.9</u>	bar
RF Forward Power	-	<u>1404</u>	W
RF Reflected Power	-	<u>6</u>	W
Load Position	-	<u>73</u>	
Tune Position	-	<u>176</u>	
Expansion Chamber Pressure		<u><math>2.1 \times 10^0</math></u>	mbar
Analyzer Chamber Pressure		<u><math>6.7 \times 10^{-7}</math></u>	mbar
Turbo Pump Speed	-	<u>1000</u>	Hz
Turbo Pump Load Current	-	<u>1.80</u>	A
Nebulizer Spray Chamber Temp	-	<u>3</u>	C
Chiller Water Temp	-	<u>20</u>	C
Peristaltic Pump Speed	-	<u>15</u>	RPM
Argon Pressure	-	<u>90</u>	psi
Performance Check Standard	-	<u>M#1080</u>	
Internal Standard	-	<u>M#1108</u>	
Analyst	-	<u>JPM</u>	
Date	-	<u>10/15/2014</u>	

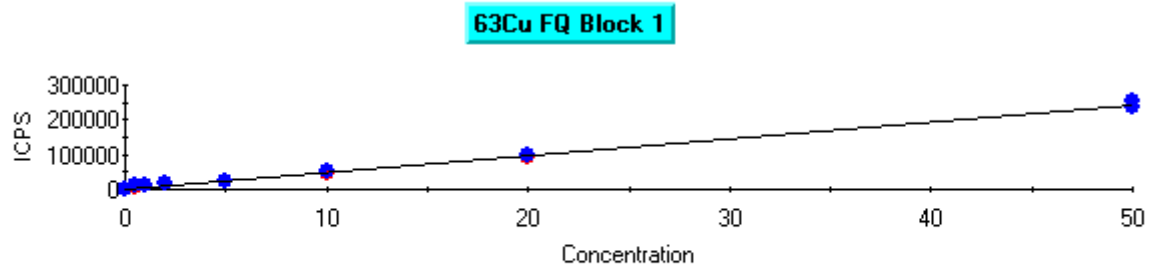
## REPORT #3 – Sample List

## Sample List

No	Label	Type	Weight	Rack	Row	Col	Height
1	Blank	Blank	1.000	0	1	1	144
2	Cal Std 1 M#1118	Fully Quant Standard	1.000	0	1	2	144
3	Cal Std 2 M#1119	Fully Quant Standard	1.000	0	1	3	144
4	Cal Std 3 M#1120	Fully Quant Standard	1.000	0	1	4	144
5	Cal Std 4 M#1109	Fully Quant Standard	1.000	0	1	5	144
6	Cal Std 5 M#1110	Fully Quant Standard	1.000	0	1	6	144
7	Cal Std 6 M#1102	Fully Quant Standard	1.000	0	1	7	144
8	Cal Std 7 M#1103	Fully Quant Standard	1.000	0	1	8	144
9	ICV M#1110 - 10 ppb	Unknown	1.000	0	1	6	144
10	ICV M#1102 - 20 ppb	Unknown	1.000	0	1	7	144
11	QCS M#1111 - 20 ppb	Unknown	1.000	0	1	9	144
12	LRB	Unknown	1.000	0	1	1	144
13	FB WQ14073008	Unknown	1.000	1	1	1	144
14	FB Dup	Unknown	1.000	1	1	2	144
15	FB LFM - 10 ppb	Unknown	1.000	1	1	3	144
16	BG WQ14073009	Unknown	1.000	1	1	4	144
17	Event WQ14073010	Unknown	1.000	1	1	5	144
18	BG Field Dup WQ14073011	Unknown	1.000	1	1	6	144
19	CCV M#1110 - 10 ppb	Unknown	1.000	0	1	6	144
20	CCV M#1102 - 20 ppb	Unknown	1.000	0	1	7	144
21	LRB	Unknown	1.000	0	1	1	144
22	FB WQ14080130	Unknown	1.000	1	1	7	144
23	BG WQ14080131	Unknown	1.000	1	1	8	144
24	Event WQ14080132	Unknown	1.000	1	1	9	144
25	FB WQ14080610	Unknown	1.000	1	1	10	144
26	WQ14080611	Unknown	1.000	1	1	11	144
27	Dup	Unknown	1.000	1	1	12	144
28	LFM - 10 ppb	Unknown	1.000	1	2	1	144
29	CCV M#1110 - 10 ppb	Unknown	1.000	0	1	6	144
30	CCV M#1102 - 20 ppb	Unknown	1.000	0	1	7	144
31	LRB	Unknown	1.000	0	1	1	144
32	FB WQ14080704	Unknown	1.000	1	2	2	144
33	WQ14080705	Unknown	1.000	1	2	3	144
34	FB WQ14081508	Unknown	1.000	1	2	4	144
35	BG WQ14081509	Unknown	1.000	1	2	5	144
36	WQ14081510	Unknown	1.000	1	2	6	144
37	CCV M#1110 - 10 ppb	Unknown	1.000	0	1	6	144
38	CCV M#1102 - 20 ppb	Unknown	1.000	0	1	7	144
39	LRB	Unknown	1.000	0	1	1	144
40	Blank	Blank	1.000	0	1	1	144
41	Cal Std 1 M#1118	Fully Quant Standard	1.000	0	1	2	144
42	Cal Std 2 M#1119	Fully Quant Standard	1.000	0	1	3	144
43	Cal Std 3 M#1120	Fully Quant Standard	1.000	0	1	4	144
44	Cal Std 4 M#1109	Fully Quant Standard	1.000	0	1	5	144
45	Cal Std 5 M#1110	Fully Quant Standard	1.000	0	1	6	144
46	Cal Std 6 M#1102	Fully Quant Standard	1.000	0	1	7	144
47	Cal Std 7 M#1103	Fully Quant Standard	1.000	0	1	8	144
48	ICV M#1110 - 10 ppb	Unknown	1.000	0	1	6	144
49	ICV M#1102 - 20 ppb	Unknown	1.000	0	1	7	144
50	QCS M#1111 - 20 ppb	Unknown	1.000	0	1	9	144
51	LRB	Unknown	1.000	0	1	1	144
52	WQ14082212	Unknown	1.000	1	2	7	144
53	Dup	Unknown	1.000	1	2	8	144
54	LFM - 10 ppb	Unknown	1.000	1	2	9	144
55	FB WQ14082211	Unknown	1.000	1	2	10	144
56	FB WQ14082806	Unknown	1.000	1	2	11	144
57	BG WQ14082807	Unknown	1.000	1	2	12	144
58	WQ14082808	Unknown	1.000	1	3	1	144
59	CCV M#1110 - 10 ppb	Unknown	1.000	0	1	6	144
60	CCV M#1102 - 20 ppb	Unknown	1.000	0	1	7	144
61	LRB	Unknown	1.000	0	1	1	144

## REPORT #4 – Calibration Report

## Fully Quant Calibration



Intercept CPS=1375.576076 Intercept Conc=0.282398  
Sensitivity=4871.049776 Correlation Coeff=0.999070

Label	Defined	Measured	Error	Mean CPS	% Error
Blank	0.000	0.012	0.012	1433.36	0.00
Cal Std 1 M#1118	0.500	1.366	0.866	8031.83	173.30
Cal Std 2 M#1119	1.000	1.780	0.780	10044.36	77.97
Cal Std 3 M#1120	2.000	2.723	0.723	14641.31	36.17
Cal Std 4 M#1109	5.000	4.639	0.361	23972.35	7.22
Cal Std 5 M#1110	10.000	9.637	0.363	48320.03	3.63
Cal Std 6 M#1102	20.000	18.290	1.710	90468.96	8.55
Cal Std 7 M#1103	50.000	48.378	1.622	237028.38	3.24
Blank	0.000	-0.000	0.000	1375.58	0.00
Cal Std 1 M#1118	0.500	1.504	1.004	8702.08	200.82
Cal Std 2 M#1119	1.000	1.970	0.970	10970.08	96.97
Cal Std 3 M#1120	2.000	2.964	0.964	15812.32	48.19
Cal Std 4 M#1109	5.000	5.041	0.041	25930.26	0.82
Cal Std 5 M#1110	10.000	10.169	0.169	50911.60	1.69
Cal Std 6 M#1102	20.000	20.001	0.001	98801.98	0.01
Cal Std 7 M#1103	50.000	51.515	1.515	252309.37	3.03

**REPORT #5 – QC Summary (for analytes of interest only)****Date** 7/9/2015

Work Group: WG200249

Method: EPA 200.8

Matrix: Wastewater

Sample	Site-Loc/QCtype	Parameter	Result	Units	MDL	Recovery %	PASS/FAIL
WG200177-1	BLANK METH	CD 111	0.0061	ug/L		NA	PASS
WG200177-1	BLANK METH	CU 65	0.071	ug/L		NA	PASS
WG200177-1	BLANK METH	SB 121	0.2	ug/L		NA	PASS
WG200177-1	BLANK METH	ZN 66	2	ug/L		NA	PASS
WG200177-4	SPIKE BLNK	CD 111	10	ug/L		66.7	FAIL
WG200177-4	SPIKE BLNK	CU 65	26	ug/L		65.0	FAIL
WG200177-4	SPIKE BLNK	ZN 66	74	ug/L		74.0	FAIL
WG200177-5	SPKBLK-DUP	CD 111	10	ug/L		66.7	FAIL
WG200177-5	SPKBLK-DUP	CU 65	26	ug/L		65.0	FAIL
WG200177-5	SPKBLK-DUP	ZN 66	74	ug/L		74.0	FAIL
WG200177-6	MS	CD 111	11	ug/L		73.3	FAIL
WG200177-6	MS	CU 65	28	ug/L		70.0	FAIL
WG200177-6	MS	ZN 66	100	ug/L		66.7	FAIL
WG200177-7	MSD	CD 111	11	ug/L		73.3	FAIL
WG200177-7	MSD	CU 65	29	ug/L		72.5	FAIL
WG200177-7	MSD	ZN 66	110	ug/L		73.3	FAIL

**TABLE 1**

Element	MDL (ug/L)	Element	MDL (ug/L)
Al 27	2.0	Pb 208	0.05
Sb 121	0.3	Mn 55	0.05
As 75	0.2	Mo 98	0.09
Ba 137	0.1	Ni 60	0.3
Be 9	0.03	Se 82	0.3
Cd 111	0.02	Ag 107	0.07
Cr 52	0.3	Tl 205	0.2
Co 59	0.05	V 51	1.0
Cu 65	0.4	Zn 66	1.0

TABLE 2

CAL I	Conc. µg/L	CAL II	Conc. µg/L	CAL III	Conc. µg/L	CAL IV	Conc. µg/L	CAL V	Conc. µg/L
Ag	0.2	Ag	10	Ag	20	Ag	50	Ag	100
Al	4	Al	10	Al	20	Al	50	Al	100
As	1.6	As	10	As	20	As	50	As	100
Ba	4	Ba	10	Ba	20	Ba	50	Ba	100
Be	0.4	Be	10	Be	20	Be	50	Be	100
Ca	10	Ca	100	Ca	1000	Ca	5000	Ca	10000
Cd	0.2	Cd	10	Cd	20	Cd	50	Cd	100
Co	4	Co	10	Co	20	Co	50	Co	100
Cr	0.4	Cr	10	Cr	20	Cr	50	Cr	100
Cu	0.4	Cu	10	Cu	20	Cu	50	Cu	100
Fe	10	Fe	100	Fe	1000	Fe	5000	Fe	10000
K	10	K	100	K	1000	K	5000	K	10000
Li	0.8	Li	10	Li	20	Li	50	Li	100
Mg	10	Mg	100	Mg	1000	Mg	5000	Mg	10000
Mn	4	Mn	10	Mn	20	Mn	50	Mn	100
Mo	4	Mo	10	Mo	20	Mo	50	Mo	100
Na	10	Na	100	Na	1000	Na	5000	Na	10000
Ni	0.8	Ni	10	Ni	20	Ni	50	Ni	100
Pb	0.4	Pb	10	Pb	20	Pb	50	Pb	100
Sb	0.4	Sb	10	Sb	20	Sb	50	Sb	100
Se	1.6	Se	10	Se	20	Se	50	Se	100
Tl	0.8	Tl	10	Tl	20	Tl	50	Tl	100
U	0.8	U	10	U	20	U	50	U	100
V	4	V	10	V	20	V	50	V	100
Zn	0.8	Zn	10	Zn	20	Zn	50	Zn	100

## II. CALENDAR OF EVENTS

EVENT	DATE/LOCATION
RFQ Issued	January 6, 2016
Response Due	January 20, 2016 by 1:30 p.m.

**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 has the right to decline to award this contract or any part of it for any reason.
3. 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.
4. 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. BRAND NAMES, APPROVED EQUIVALENTS, DEVIATIONS, AND EXCEPTIONS

Any references to manufacturers, trade names, brand names, and/or catalog numbers are intended to be descriptive, but not restrictive, unless otherwise stated, and are intended to indicate the quality level desired. Bidders may offer an equivalent product that meets or exceeds the specifications.

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

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

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

RFQ responses based on equivalent products must use Exhibit A "Exceptions, Clarification and Amendments" to:

- a. Clearly describe the alternate offered and indicate specifically how it differs from the product specified in this RFQ
- b. Include complete descriptive literature and/or specifications as proof that the proposed alternate will be equal to or better than the product named in this RFQ

C. PRICING

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

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#### 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](http://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

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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. POs and payments for products and/or services will be issued only in the name of Contractor.
3. 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 two (2) years.
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. WARRANTY

1. Bidder expressly warrants that all goods and services to be furnished pursuant to any contract awarded it arising from the Bid will conform to the descriptions and specifications contained herein and in supplier catalogs, product brochures and other representations, depictions or models, and will be free from defects, of merchantable quality, good material, and workmanship. Bidder expressly warrants that all goods and services to be furnished pursuant to such award will be fit and sufficient for the purpose(s) intended. This warranty shall survive any inspections, delivery, acceptance, payment, or contract termination for any reason, by the District. Bidder warrants that all work and services furnished hereunder shall be guaranteed for a period of two (2) years from the date of acceptance by the District.

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## H. 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 including laboratory staff validation.
2. The District shall notify Contractor of any invoice adjustments required.
3. Invoices shall contain, at a minimum, District PO number, invoice number, remit to address, and itemized products and/or services description.
4. 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: Peter Morrissey, Research Chemist

EBMUD – Laboratory Services Division

E-Mail: [pmorriss@ebmud.com](mailto:pmorriss@ebmud.com)

PHONE: 510-287-1431

Attn: Jason Mitchell, Laboratory Supervisor

EBMUD – Laboratory Services Division

E-Mail: [jmitchel@ebmud.com](mailto:jmitchel@ebmud.com)

PHONE: 510-287-1893

#### CONTRACT EQUITY PROGRAM:

Attn: Contract Equity Office

PHONE: (510) 287-0114

#### AFTER AWARD:

Attn: Jason Mitchell, Laboratory Supervisor

EBMUD – Laboratory Services Division

E-Mail: [jmitchel@ebmud.com](mailto:jmitchel@ebmud.com)

PHONE: 510-287-1893

**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  
INDUCTIVELY COUPLED PLASMA MASS SPECTROMETRY INSTRUMENT  
RFQ No. 1606A  
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  
INDUCTIVELY COUPLED PLASMA MASS SPECTROMETRY INSTRUMENT  
RFQ No. 1606A  
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 two (2) original hardcopy RFQ responses (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, 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. 1606A– INDUCTIVELY COUPLED PLASMA MASS SPECTROMETRY INSTRUMENT**

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 TWO (2) ORIGINAL HARDCOPY RFQ RESPONSES WITH ORIGINAL INK SIGNATURES 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”**
- **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. 1606A.
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):

- |  |  |
|--|--|
| <input type="checkbox"/> Corporation                   | <input type="checkbox"/> Joint Venture       |
| <input type="checkbox"/> Limited Liability Partnership | <input type="checkbox"/> Partnership         |
| <input type="checkbox"/> Limited Liability Corporation | <input type="checkbox"/> Non-Profit / Church |
| <input type="checkbox"/> 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\_\_\_\_\_



## BID FORM(S)

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.

Description	Unit of Measure	Estimated Quantity	Unit Cost	Extended Cost
Furnish and install one (1) ICP-MS instrument as described in the "Specific Requirements" section of this RFQ	Each	1	\$	\$
Extended warranty beyond initial one-year warranty, as described in section G, "Warranty and Usability Guarantee"	Year	2	\$	\$
<b>GRAND TOTAL</b>				\$

### Payment term discount

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Any discount must allow for payment after receipt of equipment of correct invoice, whichever is later. Payment terms less than 20 days will not be accepted.



## REQUIRED DOCUMENTATION AND SUBMITTALS

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

1. **Description of the Proposed Equipment and Services:** Submittal of a completed “EQUIPMENT & SERVICE CRITERIA TABLE” along with all colateral in support of the line items in this table is required for your bid to be considered complete. Please see this table in Exhibit A directly following this list of required submittals.
2. **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.
3. **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.**
4. **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.

## EQUIPMENT & SERVICE CRITERIA TABLE

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

- **Location in Proposal field-** please indicate where in the proposal the information is provided that indicates this criteria is met (a page # and paragraph or section).
- **For those items that are not shaded in the last two fields-** please also provide a reference to an attachment of raw data or other instrument documentation that indicates the item criteria is met and a customer reference that currently uses the instrument in this configuration. For example, Section 2b requires documentation and a reference to confirm MDLs have been met. Please provide a summary of tabulated MDL data from the instrument with a date and time stamp. Please use a minimum amount of documentation to confirm availability of these criteria, such as a single page.

Section	Item	Location in Proposal	Documentation	Reference
<b>2</b>	<b><u>ICP-MS GENERAL SYSTEM REQUIREMENTS</u></b>			
a	System must be fully compliant with US EPA methodology for Method 200.8 and Method SW 846-6020			
b	System must meet or exceed the MDLs in Table 1 in both standard and collision cell modes			
c	Fully automated system startup, shutdown and optimization and computer controlled instrument tuning for optimum performance			
d	Quadrupole must be able to scan a minimum of 3000 amu/sec to achieve maximum productivity from transient signals when jumping between light masses and high masses			
e	Quadrupole resolution settings are dynamically scanned as each element is analyzed			
f	Mass range must be at least 4 to 260 amu or greater			
g	Modem or TCPIP monitoring of system diagnostics for remote service trouble shooting and remote operation of system			
h	All sample introduction, analytical system, data acquisition, method validation and quality control operations using a single software program			
i	Full system must use single-phase power and remain in specification temperature range of 10 to 30°C at up to 2°C per hour			

j	System must be able to be sufficiently cooled by a heat exchanger in laboratory temperatures below 30°C			
<b>3</b>	<b><u>SAMPLE INTRODUCTION</u></b>			
a	Sample introduction system has concentric nebulizer, cyclonic or double pass spray chamber, quartz injector and no o-rings			
b	Sample introduction uses a computer controlled integral peristaltic pump. Must be integrated within the ICP-MS system			
c	System is configured for automated addition of internal standards to all samples and standards			
d	Entire torch and injector assembly can be removed and installed by hand in a tool-less fashion			
e	Cone and torch apparatus single orientation or one fit-type for ease of assembly			
f	Fully automated one touch X, Y, Z torch alignment			
g	Capable of introducing and routinely conducting analysis on undiluted high solids matrix samples up to 25% total dissolved solids, meet current MDLs and produce no carryover to subsequent samples, standards and blanks.			
h	Using the same sample volume introduction, measure elements like Na, K, Ca, Mg and Fe at >1000 ppm and Zn, Cu, Mn & Be at low part per trillion levels			
i	Sample introduction system is capable of providing an aerosol as well as liquid dilution to minimize the introduction of high salt matrices to the analytical system. This shall be accomplished by autosampler liquid dilution and spray chamber aerosol adjustment			
<b>4</b>	<b><u>ION SOURCE AND RF GENERATOR</u></b>			
a	Computer controlled RF generator allows for automatic control of torch ignition, shutdown, and system warm up			
b	Allows independent adjustment of the ion optic parameters and the plasma conditions			
<b>5</b>	<b><u>PLASMA INTERFACE</u></b>			
a	Design with rapid mounting and removal cone design, easily accessible from the front of the instrument			

b	Mechanism for complete separation of ions from photons and neutrals either with 90 degree bend of ion path or a chicane , making the cell and mass analyzing quadrupole completely maintenance free			
<b>6</b>	<b><u>COLLISION CELL</u></b>			
a	System must incorporate a collision cell with two modes of operation: Standard Mode and Collision Cell Mode with KED and the ability to utilize a wide variety of gases for the life of instrument with no degradation to the gas channels, turbo pump or cell			
b	In Standard Mode, the collision cell must be able to operate with no gas and no energy barrier for optimal signal-to-noise performance on elements with any interference			
c	In Collision Cell Mode, the collision cell must be able to operate as a passive ion guide with an energy barrier at the cell exit for KED. The flow and optimization of the gases shall be under full operator control			
d	Instrument provides transition into and out of collision cell mode and complete stability in <3 seconds			
<b>7</b>	<b><u>QUADRUPOLE MASS ANALYZER</u></b>			
a	Per EPA methods requirements, the quadrupole must be able to be tuned or mass calibrated on a minimum of 5 elements (Be, Co, In, Mg, Pb), providing a printed mass calibration report with all elements. The tune and mass calibration must be compliant with EPA 200.8 & EPA 6020 and pass relative response and peak shape criteria			
<b>8</b>	<b><u>ION DETECTOR</u></b>			
a	The ion detector must be a simultaneous dual-stage discrete dynode electron multiplier, providing element concentration calibration over 11 orders of magnitude (from 0.1 cps to > 1 e10 cps) dynamic range in a single scan using both analog and pulse ion counting mode, and offer protection against overload in both pulse counting and analog modes.			
b	The dual-stage detector assembly must come standard with the system			
<b>9</b>	<b><u>COMPUTER HARDWARE</u></b>			

a	The minimum processing power shall be at least equivalent to Intel Core i5, 3.2 Ghz			
b	System shall be operated on Microsoft Windows 7, 64-bit			
c	SDRAM shall be a minimum of 8 GB (DDR3 – 1600 nECC RAM or equivalent)			
d	The hard drive shall be a minimum of 500 GB			
e	Minimum 6 USB ports			
f	16X DVDRW optical drive			
g	Connection to the District network through Integrated LAN connection required			
h	The computer shall provide interface to the ICP-MS through a LAN or second NIC card			
i	The computer monitor shall be a minimum 20 inch liquid crystal display			
<b>10</b>	<b><u>SOFTWARE</u></b>			
a	Must operate under MS Windows 7, 64-bit, network environment			
b	Must generate csv or other data file types that allow for import into LIMS			
c	Has routine maintenance alerts. Operator can schedule user defined alerts for continued operations			
d	Has method development wizards and pre-set methods for EPA 200.8 and EPA 6020 that calibrate and report elements of interest			
e	Has correction factors pre-programmed to account for common m/z interferences			
f	Capable of adjusting number of scans and replicates per sample			
g	Has the ability to use and apply corrections for multiple internal standards			
h	Has real time graphics with ability to display transient and continuous signal profiles			
i	Software has QC protocol limits on measured values, allowing the analyst to define when and how actions are taken, and to specify a second QC action for automatic operation in the event that the first action fails			
j	The system software shall support the following calibration curve fit modes for quantitative analysis, individually selectable per element:			
	- Linear least squares			
	- Method of standard additions (Matrix Matched calibration)			

	- Linear forced-through-zero least squares			
k	Software controls automatic selection of collision cell gas when mixed mode is specified within a single method			
l	Computer controlled automated optimization of collision cell gas flow			
m	Software allows for adding samples to sequence during analysis			
n	Software must be capable of supporting a syringe-pump based auto dilution system			
o	Software must support auto dilutions for samples out of range			
p	Per EPA methods requirements, the time and date must be printed on each sheet of data generated by the system printer			
q	Software must allow for reprocessing of stored data without re-running samples for changes of calibration points, internal standard points or curve fit mode. All raw data (including mass calibration, tuning, detector settings, sample schedules, data acquisition, data processing and reporting) must be retrievable.			
r	All analytical raw data must be retained and stored on hard disk, encrypted to prevent tampering per US EPA requirement to support a complete data audit trail			
s	Be capable of storage and retrieval of instrument run parameters, raw data and reports			
t	Individual raw data sample reports on a single page			
u	Software capable of generating Reports 1-5 that can be recalled and printed on demand after the conclusion of analysis			
<b>11</b>	<b><u>AUTOSAMPLER / SAMPLE INTRODUCTION</u></b>			
a	The system must include a random access auto sampler with either a "Fast" type sample loop introduction system, like the ESI "SC-4 DX FAST" autosampler system or the Agilent ISIS 3			
b	Autosampler must have 10 locations for standards in 50 ml vessels (30mm X 115mm)			
c	Autosampler must have at least 80 locations for samples in 50 ml vessels (30mm X 115mm)			
d	Instrument software must allow for changing autosampler probe depth for both standards and samples. Probe depth settings for standards and samples must be independent			

	and definable in the software			
e	Autosampler must include a full enclosure to prevent contamination. Enclosure must allow for active venting to a fume extraction snorkel			
f	Autosampler must include an automated liquid dilution system that will dilute and reanalyze samples based on analyte concentrations specified by the user			
<b>12</b>	<b><u>CALIBRATION AND DETECTION</u></b>			
a	The vendor shall demonstrate that the instrument can meet or exceed the MDLs in Table 1 in standard and collision cell modes.			
b	The vendor shall demonstrate that the instrument can be calibrated at the concentrations in Table 2 in standard and collision cell modes.			
<b>13</b>	<b><u>DELIVERY AND INSTALLATION</u></b>			
a	The vendor will deliver all instrument components within two (2) calendar months of being notified of the award of contract.			
b	The District will notify the vendor when all instrument components are delivered. Within ten (10) working days of such notification, the vendor will begin installation and testing of the instrument. The District will be responsible only for providing utility connections at the instrument location and an adequate laboratory environment (for example: power, vent, water, room temperature control and gases). Before arriving at the laboratory for installation, the vendor will notify the EBMUD contact of the exact needs. The vendor will supply all parts and accessories necessary to connect, mount and put in operation the specified equipment.			
c	The vendor will provide either a cart or wheeled table to support both the instrument and the autosampler/enclosure system.			
d	Upon installation, the vendor shall demonstrate that the instrument can achieve all EPA method requirements for EPA 200.8 and EPA 6020. The vendor shall demonstrate that the instrument can meet or exceed the MDLs in standard and collision cell modes in			

	Table 1.			
<b>14</b>	<b><u>TRAINING</u></b>			
a	Vendor will provide at the time of installation a minimum of three (3) days of training for two analysts. Training shall include instrument operation, optimization, tuning, troubleshooting and method development as well as use of the system software. At the end of training, District personnel shall be capable of operating the instrument and performing data processing independent of the vendor.			
b	Training will be completed within one week of successful installation			
<b>15</b>	<b><u>ACCEPTANCE</u></b>			
	After the system is installed, the vendor must demonstrate the ability of the system to meet the specifications in this proposal and verify the method detection limits (MDLs) list in Table 1. The MDL verification procedure consists of analysis of a reagent blank fortified at 1-4 times the MDL listed in Table 1. All analytes of interest must be detected in the MDL verification samples at S/N > 3 and can be qualitatively identified from their relative ion abundance. An Initial Demonstration of Capability must provide instrument check blanks below the MDLs in Table 1, low level standard at the Cal 1 level to confirm low calibration standard + 50% of expected value and four spike blank quality control samples that are within +10% of expected value. If the instrument fails to verify specified detection limits or an IDOC, the vendor shall have thirty (30) days to retest the instrument. After each adjustment, the vendor shall demonstrate the instrument's ability to verify the detection limits, instrument check blanks and IDOC for all of the analytes in Table 1. The vendor must provide comma separated values (CSV) or tab separated of fixed format text files from an MDL study and IDOC that is capable of uploading into the Laboratory Information Management System (LIMS). If the instrument			

	again fails the detection limit, IDOC or data upload criteria, the vendor shall remove the instrument at the vendor's expense. The District will then consider an instrument from the next lowest responsive bid.			
<b>16</b>	<b><u>PAYMENT</u></b>			
a	Payment for the instrument will be made after and is contingent upon successful installation by the vendor and training of and validation by EBMUD laboratory staff			
<b>17</b>	<b><u>MAINTENANCE AND SERVICE CONTRACT</u></b>			
a	The vendor shall supply a recommended maintenance schedule with a calendar that lists all part names and part numbers for ordering purposes			
b	The instrument shall be warrantied or covered under a service contract for the initial three (3) years following installation and validation. The warranty shall include two (2) preventative maintenance visits per year and cover all parts, labor and travel associated with maintenance and repair.			
c	Upon receiving a service request, the vendor will provide a technician on site within two (2) business days to conduct the necessary service.			
d	The vendor will have maintenance and applications personnel available for telephone consultation with District staff to assist in solving operating and maintenance problems during normal business hours (8AM-5PM UTC-8) Monday through Friday.			
e	The vendor shall provide any maintenance or service and not subcontract to a third party.			
f	The vendor shall provide free software upgrades, as they become available, while the instrument is under warranty or under a maintenance contract.			
<b>18</b>	<b><u>SPARE PARTS AND TOOLS</u></b>			
a	The vendor shall supply all tools needed to conduct routine maintenance on the instrument and autosampler.			
b	The vendor shall supply the following replacement parts to cover the warranty period based on a vendor recommended maintenance schedule:			
	i. Sampling and skimmer cones			
	ii. Peristaltic tubing			

	iii. Analytical tubing			
	iv. Argon Plasma Torch			
	v. Tesla Coil			



## REFERENCES

### RFQ No. 1606A - INDUCTIVELY COUPLED PLASMA MASS SPECTROMETRY INSTRUMENT

**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:	





## 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
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7. WARRANTY OF TITLE
8. WARRANTY OF FITNESS
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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](http://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](http://www.dir.ca.gov).
- e. The holidays upon which such rates shall be paid shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification, or type

of worker employed on the Work.

- f. The Contractor shall post a copy of the general prevailing rate of per diem wages at the jobsite pursuant to Section 1773.2 of the Labor Code.
- g. Pursuant to Section 1774 of the Labor Code, the Contractor and any of its Subcontractors shall not pay less than the specified prevailing rate of wages to all workers employed in the execution of the contract.
- h. As set forth with more specificity in Section 1773.1 of the Labor Code, "per diem" wages include employer payments for health and welfare, pension, vacation, travel, subsistence and, in certain instances, apprenticeship or other training programs, and shall be paid at the rate and in the amount spelled out in the pertinent prevailing wage determinations issued by the Director of Industrial Relations.
- i. The Contractor shall, as a penalty to the State or the District, forfeit not more than the maximum set forth in Section 1775 of the Labor Code for each calendar day, or portion thereof, for each worker paid less than the prevailing rates for the work or craft in which the worker is employed under the contract by the Contractor or by any Subcontractor under him. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which such worker was paid less than the stipulated prevailing wage rate shall be paid to such worker by the Contractor.
- j. The specified wage rates are minimum rates only and the District will not consider and shall not be liable for any claims for additional compensation made by the Contractor because of its payment of any wage rate in excess of the general prevailing rates. All disputes in regard to the payment of wages in excess of those specified herein shall be adjusted by the Contractor at its own expense.
- k. General prevailing wage determinations have expiration dates with either a single asterisk or a double asterisk. Pursuant to California Code of Regulations, Title 8, Section 16204, the single asterisk means that the general prevailing wage determination shall be in effect for the specified contract duration. The double asterisk means that the predetermined wage modification shall be paid after the expiration date. No adjustment in the Contract Sum will be made for the Contractor's payment of these predetermined wage modifications.

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

- 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) the Project Manager will grant the Contractor an extension of the time to perform under the Contract, and may grant compensation in an amount that represents the Contractor's actual direct costs incurred as a direct result of the excusable delay.
- 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 . 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.