

# **EAST BAY MUNICIPAL UTILITY DISTRICT**

**REQUEST FOR QUOTATION (RFQ) No. 2006  
for  
Backfill Material**

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

**RESPONSE DUE  
by  
1:30 p.m.  
on  
February 19, 2020  
at  
EBMUD, Purchasing Division  
375 Eleventh St., First Floor  
Oakland, CA 94607**

# **EAST BAY MUNICIPAL UTILITY DISTRICT**

**RFQ No. 2006  
for  
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## I. STATEMENT OF WORK

### A. INTENT/SCOPE

It is the intent of these specifications, terms, and conditions to describe the Class I backfill and Class II aggregate base material required by the East Bay Municipal Utility District (District). The scope of this project is to supply approximately 300,000 tons of Class I backfill and approximately 230,000 tons of Class II aggregate base material during the initial term of this contract. The material may be either picked up at the supplier's plant or delivered to District bins or jobsite locations.

East Bay Municipal Utility District (District) intends to award a three (3) year contract with two (2) options to renew for one-year period(s) to the lowest cost bidder(s) whose response conforms to the RFQ and meets the District's requirements.

Schedules II and IV of this proposal are for quarry bidders. Please review this proposal thoroughly and respond accordingly, to any and all appropriate schedules.

### 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 backfill materials in a quantity and manner similar to that described in this RFQ for at least five (5) years.
- b. Bidder shall possess all permits, licenses, and professional credentials necessary to supply product and perform services as specified under this RFQ.

### C. SPECIFIC REQUIREMENTS

#### 1. DESCRIPTION

- a. Furnish backfill materials as specified herein. It is required that backfill material be furnished f.o.b. Bidder's Supply Point and/or f.o.b. to various destinations in accordance with this RFQ.
- b. "Bidder's supply point" as used herein means the quarry from which the bidder proposes to supply backfill material. Each item on the Bidding Sheet requires a supply point.

2. MATERIALS

- a. Recycled material must be free of glass, clay pipe, asbestos, and other debris.
- b. Class I Backfill: This is the pipe bedding and cover material used in placing District water mains. The acceptance specifications for Class I backfill are as follows:
  - i. Shall be clean, sound, and durable natural or crushed sand, free from organic material and other deleterious substances.
  - ii. Shall not originate from salt water environments.
  - iii. Measured resistivity of material passing the No. 4 sieve, using a soil resistivity box in accordance with ASTM **G57\***, shall not be less than 5000 ohm-cm.
  - iv. Soil pH shall be measured in accordance with ASTM **G51\*** and shall not be less than 6.5
  - v. The sand equivalent value as determined by California Test **217\*** shall not be less than 30.
  - vi. Shall conform to the following grading when tested in accordance with ASTM C136:

| Sieve Size        | Percent Passing |
|-------------------|-----------------|
| 19.00mm (3/4")    | 100             |
| 4.75mm (No. 4)    | 70-100          |
| 2.36mm (No. 8)    | 30-100          |
| 0.075mm (No. 200) | 0-5             |

- c. Class II Aggregate Base:
  - i. Shall be 3/4" maximum, conforming to CSS Section 26.

3. TIME OF DELIVERY AND QUANTITIES

- a. Individual orders for jobsite delivery of material and their required time of arrival at the respective jobsites will be placed as the day to day job requirements become known. Whenever possible, the contractor will be

given one day's prior notice of delivery requirements and arrival times. Deliveries may often be required on the same day that notification is given. In this event, two (2) to four (4) hours' advance notification will be given to the Contractor, and the quantities ordered in this instance will not exceed the hauling capabilities of two trucks to any one jobsite or a total of four trucks to all jobsites.

- b. If the Contractor is unable to deliver the material as required under the 2 to 4 hour notification conditions, Contractor shall so notify the originator of the order within 15 minutes after the order is placed. District may then seek to place the order with another vendor. In the event Contractor makes 4 such declinations in any contiguous 4-week period, the District may suspend future orders to the affected sites for a period of one month. Continuing failure to deliver as requested may result in cancellation of the contract.
- c. Contractor must have the capability to deliver 600 tons of material on any given day for each region awarded to the contractor pursuant to this agreement. The contractor is not required to deliver more than 600 tons per day for each region awarded to the contractor pursuant to this agreement. If a contractor is awarded two regions, their daily minimum delivery expectation will be 1,200 tons (600 tons X 2) per day; 3 regions equal 1,800 tons, etc. Contractors are encouraged to bid on one or all regions. If a contractor is not able to meet the delivery requirements if successful in multiple regions the contractor shall designate the number of regions they can be expected to satisfy should they submit the lowest responsible bid for multiple areas. For example, bidder submits bids for all five regions but only has the capacity to supply 1,200 tons per day. The bidder shall instruct the District in their bid that they will not accept the award of more than two areas. The District will make the decisions as to which geographic regions are awarded based on the lowest overall cost to the District.
- d. Example of assignment and potential award of regions, see below:  
  
Low bid is examined. Assume one bidder (*Vendor A*) is low bid in three regions but has indicated that they can only accept the award of two regions. Award of region will be assigned based on the price difference among competing vendors against the lowest bid.

| Usage                    | East B<br>6650                 | North<br>640                  | South<br>1350                 |
|--------------------------|--------------------------------|-------------------------------|-------------------------------|
| Vendor A                 | \$25.00<br><b>\$166,250.00</b> | \$25.25<br><b>\$16,160.00</b> | \$25.50<br>\$34,425.00        |
| Vendor B                 | \$25.10<br>\$166,915.00        |                               |                               |
| Vendor C                 |                                | \$25.50<br>\$16,320.00        |                               |
| Vendor D                 |                                |                               | \$25.55<br><b>\$34,492.50</b> |
| Difference among vendors | \$665.00                       | \$160.00                      | \$67.50                       |

- e. Orders for delivery will be placed for full truckloads only to single jobsites. There may be occasions wherein a truck will be required to discharge a portion of its load at more than one location at the same jobsite. These locations normally will be within the same block but could be as much as a few blocks apart.
  - f. Deliveries will be required at any time from 7:00 a.m. to 3:30 p.m., Monday through Friday, excluding holidays. No deliveries will be required nor permitted on any holiday of the District.
4. AREA CENTERS OF USE:
- a. **North Area:** Intersection of Research Drive and Hilltop Road, Richmond
  - b. **South Area:** Intersection of E. Lewelling Blvd and Wickman , San Lorenzo Miller Road : is 22323 Redwood Road Castro Valley
  - c. **East Area "A":** Intersection of N. Main St and San Luis Rd, Walnut Creek Briones Watershed: Bear Creek Rd Orinda, Ca
  - d. **East Area "B":** Intersection of Greenbrook Drive and Greenbrook Court between Danville and San Ramon
  - e. **Central Area :** Union Street at Grand Avenue, Oakland
  - f. **Oakport Storage:** 5885 Oakport St. Oakland, Ca 94621

5. STANDBY

- a. Standby time billing requires prior District approval. Any standby time prior to unloading in excess of sixteen (16) minutes per load will be paid for at the prevailing Public Utilities Commission rate. If no such rate exists, standby time will be paid at the rate on the Bidding Summary Sheet.
- b. It will be the Contractor's responsibility to acquire access to District rock sites at Briones and Upper San Leandro. Standby time will not be paid while waiting for District personnel to open the gates.

6. PLANT CLOSURES

- a. In the event that a Contractor is unable to deliver material or its primary supply point is closed due to inclement weather or other reasons, Contractor shall use a backup quarry. The District requesting department must be notified if this occurs. Material shall be supplied at contract price, and must meet all contract specifications.

7. INVOICING AND WEIGHT TAGS

- a. All invoices shall clearly identify the weight and material tag number, name of person placing order, purchase order number, budget unit number, appropriate delivery location and the use area, and shall list the Contractor's supply point, type, quantity, and cost of individual items. Material cost and delivery cost shall be consolidated in accordance with the bid and shall appear as a single entry. Weight and material tags covering every item on the invoice and a copy of the invoice shall be sent to the specific budget unit placing the order (addresses to be provided), unless otherwise instructed by the District. The original invoice shall be sent to Accounts Payable. Tags not having job numbers will be returned to the Contractor for completion. Failure to comply with these requirements will cause a delay in payment.
- b. Each invoice shall have a unique number. A new invoice will not be processed if the District has processed an invoice with the same number in the past.

D. TESTING AND INSPECTION

1. Testing

- a. Bidders must submit with their bid analysis sheets or a written statement from the production plant certifying compliance of the material (both virgin and recycled) proposed to be delivered to the District.
- b. The District reserves the right, during the life of the contract, to require the successful Contractor(s), every 60 days if necessary, to submit samples to the District for testing. Failure to submit samples that achieve satisfactory laboratory test results may result in the cancellation of the contract. In addition, the District may perform testing of material at delivery locations to verify that delivered materials meet specification standards. Contractors who fail three District sample tests within a 12 month period may have their contract terminated for default.
- c. If, during the life of the contract, Contractor elects to utilize a quarry site(s) not originally identified on the bid sheet, Contractor must notify the District prior to use of the suggested quarry and the materials from that quarry will be subject to immediate analysis.

E. FAILURE TO MEET SPECIFICATIONS

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

II. CALENDAR OF EVENTS

| EVENT                           | DATE/LOCATION                  |
|---------------------------------|--------------------------------|
| RFQ Issued                      | January 31, 2020               |
| Response Due                    | February 19, 2020 by 1:30 p.m. |
| Anticipated Contract Start Date | March 10, 2020                 |

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

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

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

#### **A. RFQ ACCEPTANCE AND AWARD**

1. RFQ responses will be evaluated to determine that they are responsive, responsible, and that they meet the specifications as stated in this RFQ.
2. The District reserves the right to award to a single or to multiple Contractors, dependent upon what provides the lowest overall cost to the District.
3. The District has the right to decline to award this contract or any part of it for any reason.
4. Any specifications, terms or conditions, issued by the District, or those included in the bidder's submission, in relation to this RFQ, may be incorporated into any purchase order or contract that may be awarded as a result of this RFQ.
5. Award of contract. The District reserves the right to reject any or all proposals, to accept one part of a proposal and reject the other, unless the bidder stipulates to the contrary, and to waive minor technical defects and administrative errors, as the interest of the District may require. Award will be made or proposals rejected by the District as soon as possible after bids have been opened.

#### **B. COMPARISON OF BIDS**

1. The District has been divided into Central, North, South, and East Service Areas. East Area has been further subdivided into East "A" and East "B". Awards will be made for furnishing the material by Item. Bids will be compared on a total delivered cost basis per schedule.
2. In addition to awarding contracts to the lowest responsive/responsible bidder(s) for each item and schedule in each geographic region, the District will award secondary contracts to the next lowest responsive/responsible bidder for each item in each schedule. Orders against these secondary contracts will only be placed if/when the primary supplier for that particular item indicates they will not be able to meet the requested delivery requirements for the order in question.

3. For District Pickups at Bidder's Supply Point(s) (Schedules II and IV): In order to be considered in the vendor pool, bids will be compared and contract awards made by Schedule to the next lowest responsive, responsible bidders offering *pricing that is no higher than 20 percent (20%) of the lowest bid received.*
  - a. Schedules II and IV are intended for bid by quarries only.
4. Bidders may bid on any number of items.

C. 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.

D. 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.

E. PRICE ADJUSTMENTS

RAW MATERIAL PRICE ADJUSTMENTS

Prices shall be firm for the initial one-year term of the contract. Thereafter, prices may be adjusted to reflect changes in raw material costs only based on the percent change in the United States Bureau of Labor Statistics Producer Price Index (<https://data.bls.gov/PDQWeb/pc>) for *Sand/gravel/clay/refractory minerals mining*, ID #pcu21232-21232 (Preliminary Data). The seller is expected to manage costs associated with labor, overhead, and GS&A for the life of the original agreement and all related option-year extension periods.

On or about the first calendar day of April, 2021, and every six months thereafter (“Calibration Date”) for the term of this Agreement and extension periods, if any, the parties will establish new pricing for the backfill material provided under this proposal. **For purposes of this price adjustment calculation, material costs are assumed to be 65% of price.** Sixty-five percent is the factor that will be utilized to calculate baseline raw material cost relative to the low bid price, regardless of the actual material cost/price ratio for the vendor that submits the lowest responsible bid. Actual ratio of raw material costs to price in this calculation may change over the life of the agreement for the successful bidder, however, the calculation described herein will not change for the life of the agreement to include all extension periods.

**EXAMPLE: Price Adjustment Scenario (for illustration purposes only)**

|                     |                              | Change 1      |  |  |                   |                |
|---------------------|------------------------------|---------------|--|--|-------------------|----------------|
|                     | % of Price                   | Original Bid  | Prior Index<br>From April<br>2021      | Calibration<br>Index<br>To October<br>2021 | Percent<br>Change | New Price      |
| <b>Raw Material</b> | 65% of Init. Contract Price  | \$10.40       | 149.9                                  | 156.1                                      | 4.14%             | \$10.83        |
| <b>Fuel</b>         | 4% of Init. Contract Price   | \$0.64        | 3.412                                  | 3.833                                      | 12.34%            | \$0.72         |
| <b>Fixed Margin</b> | 31% of Init. Contract Price  | \$4.96        |  |  |                   | \$4.96         |
| <b>Price</b>        |                              | \$16.00       |  |  |                   | <b>\$16.51</b> |
|                     |                              |               |  |  |                   |                |
|                     |                              | Change 2      |  |  |                   |                |
|                     | % of Price                   | Current Price | Prior Index<br>From<br>October<br>2021 | Calibration<br>Index<br>To April<br>2022   | Percent<br>Change | New Price      |
| <b>Raw Material</b> | (less fixed margin & fuel)   | \$10.83       | 156.1                                  | 162  | 3.78%             | \$11.24        |
| <b>Fuel</b>         | (4% of Init. Contract Price) | \$0.72        | 3.833                                  | 4.120                                      | 7.49%             | \$1.16         |
| <b>Fixed Margin</b> | 31% of Init. Contract Price  | \$4.96        |  |  |                   | \$4.96         |
| <b>Price</b>        |                              | \$16.51       |  |  |                   | <b>\$17.36</b> |

**Note:** Price adjustment calculations that fail to support a need to adjust price by at least 1.00% will not be implemented. Subsequent price change will be calculated based on the current index value to the last index value used to calculate an allowable price change.

F. NOTICE OF INTENT TO AWARD

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

The District reserves the right to add qualified vendors to the award pool as needed within the term of the contract

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

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

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

Protests must be mailed, hand delivered, or emailed to the Manager of Purchasing, Mailstop 102, East Bay Municipal Utility District, 375 Eleventh Street, Oakland, CA 94607 or P.O. Box 24055, Oakland, California 94623. Facsimile and electronic mail protests must be followed by a mailed or hand delivered identical copy of the protest and must arrive within the seven work 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 work days from the date which the protest determination was transmitted by the District, to the protesting party. The appeal shall focus on the points raised in the original protest, and no new points shall be raised in the appeal.

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

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

G. 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.

H. TERM / TERMINATION / RENEWAL

1. The term of the contract, which may be awarded pursuant to this RFQ, will be 3 years.
2. At the sole discretion of the District, any contract which may be awarded pursuant to this RFQ, may be extended for two (2) additional one-year terms at agreed prices with all other terms and conditions remaining the same. In the event that a Contractor does not agree to an extension, the District shall be given a minimum of 90 days notice to locate a suitable replacement contractor.
3. 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.
4. This Agreement may be terminated for cause at any time, provided that the District notifies Contractor of impending action.

**I. INVOICING**

1. Following the Districts acceptance of product(s) meeting all specified requirements, and/or the complete and satisfactory performance of services, the District will render payment within thirty (30) days of receipt of a correct invoice.
2. The District shall notify Contractor of any invoice adjustments required.
3. Invoices shall contain all information described in Specifications, Section 8, Invoicing and Weight Tags, and at a minimum also include the District PO number, invoice number, remit to address, and itemized products and/or services description.

**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 to be contacted only for the purposes specified below.

**TECHNICAL SPECIFICATIONS:**

Attn: Jimmy Rangel

EBMUD Assistant Construction & Maintenance Superintendent, Pipeline Rebuild

E-Mail: Jimmy.Rangel@ebmud.com

PHONE: 510.287.7204

**CONTRACT EQUITY PROGRAM:**

Attn: Contract Equity Office

PHONE: 510.287.0114

**B. SUBMITTAL OF RFQ RESPONSE**

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

4. 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.

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

Mailed:

Kelley Smith, Manager of Purchasing  
East Bay Municipal Utility District  
Backfill Material  
RFQ No. 2006  
EBMUD–Purchasing Division  
P.O. Box 24055  
Oakland, CA 94623

Hand Delivered or delivered by courier or package delivery service:

Kelley Smith, Manager of Purchasing  
East Bay Municipal Utility District  
Backfill Material  
RFQ No. 2006  
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.**

- a. All costs required for the preparation and submission of an RFQ response shall be borne by the bidder.
- b. 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.

- c. 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.
- d. 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.
- e. It is understood that the District reserves the right to reject any or all RFQ responses.
- f. 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. 2006 – BACKFILL MATERIAL**

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

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

(Official Name of Bidder)

**RFQ RESPONSE PACKET GUIDELINES**

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



## **BIDDER INFORMATION AND ACCEPTANCE**

1. The undersigned declares that all RFQ documents, including, without limitation, the RFQ, Addenda, and Exhibits, have been read and that the terms, conditions, certifications, and requirements are agreed to.
2. The undersigned is authorized to offer, and agrees to furnish, the articles and services specified in accordance with the RFQ documents.
3. The undersigned acknowledges acceptance of all addenda related to this RFQ.
4. The undersigned hereby certifies to the District that all representations, certifications, and statements made by the bidder, as set forth in this RFQ Response Packet and attachments, are true and correct and are made under penalty of perjury pursuant to the laws of California.
5. The undersigned acknowledges that the bidder is, and will be, in good standing in the State of California, with all the necessary licenses, permits, certifications, approvals, and authorizations necessary to perform all obligations in connection with this RFQ and associated RFQ documents.
6. It is the responsibility of each bidder to be familiar with all of the specifications, terms, and conditions and, if applicable, the site condition. By the submission of an RFQ response, the bidder certifies that if awarded a contract it will make no claim against the District based upon ignorance of conditions or misunderstanding of the specifications.
7. Patent indemnity: 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 acknowledges that RFQ responses, in whole or in part, are NOT to be marked confidential or proprietary. The District may refuse to consider any RFQ response or part thereof so marked. RFQ responses submitted in response to this RFQ may be subject to public disclosure. The District shall not be liable in any way for disclosure of any such records.
10. The undersigned bidder hereby submits this RFQ response and binds itself on award to the District under this RFQ to execute in accordance with such award a contract and to furnish the bond or bonds and insurance required by the RFQ. The RFQ, subsequent Addenda, bidder's Response Packet, and any attachments, shall constitute the Contract, and all provisions thereof are hereby accepted.



11. The undersigned acknowledges **ONE** of the following (please check only one box)\*:

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

\*If no box is checked, it will be assumed that the bidder is ineligible for bid preference and none will be given. For additional information on SBE bid preference, please refer to the Contract Equity Program and Equal Employment Opportunity Guidelines at the above referenced hyperlink.

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

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

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

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

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

Type of Entity / Organizational Structure (check one):

- Corporation
- Limited Liability Partnership
- Limited Liability Corporation
- Other: \_\_\_\_\_
- Joint Venture
- Partnership
- Non-Profit / Church

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

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

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

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

Primary Contact Information:

{00040712;1}



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.***

**BIDDING SUMMARY SHEET  
(Reflect Bids from Schedule I-IV Worksheet)\***

|   | <u>ITEM NOS. BID</u>           | <u>TOTAL</u>           |
|---|--------------------------------|------------------------|
| <b>SCHEDULE I</b>                                   |                                |                        |
| Class I Backfill, Delivered                         | _____                          | \$ _____               |
| <b>SCHEDULE II</b>                                  |                                |                        |
| Class I Backfill, Bidder's Supply Point             | _____                          | \$ _____               |
| <b>SCHEDULE III</b>                                 |                                |                        |
| Class II 3/4" Aggregate Base, Delivered             | _____                          | \$ _____               |
| <b>SCHEDULE IV</b>                                  |                                |                        |
| Class II 3/4" Aggregate Base, Bidder's Supply Point | _____                          | \$ _____               |
|   | <b><u>TOTAL AMOUNT BID</u></b> | <b><u>\$ _____</u></b> |

\*In the event there is a discrepancy between the schedules and this summary, the values in this summary sheet shall prevail.



**QUESTIONNAIRE #1**

1. **DO YOU ACCEPT NONHAZARDOUS SPOILS DUMPED BY THE DISTRICT AT YOUR FACILITY? (THE DISTRICT ESTIMATES IT WILL DUMP APPROXIMATELY 150 YARDS OF SPOILS PER YEAR.) QUARRIES ONLY.**       YES                       NO

2. **WHAT, IF ANY, IS YOUR PRICING FOR THE DUMPING OF SUCH SPOILS? (QUARRIES ONLY)**

5 YARD DUMP                      \_\_\_\_\_  
10 YARD DUMP                     \_\_\_\_\_  
SEMI DUMP                        \_\_\_\_\_

3. **STANDBY TIME RATE:** \_\_\_\_\_ **(TRUCKING COMPANIES ONLY)**

4. **MAXIMUM NUMBER OF AREAS YOU CAN SERVE**

\_\_\_\_\_  
(Areas include East Area A, East Area B, Construction Maintenance Services (CMS), North Area, South Area)

Payment discounts will not be accepted.

Taxes. The prices quoted shall not include the California State Sales or Use Tax; said tax wherever applicable will be paid by the District to the Contractor if licensed to collect same or otherwise directly to the State.

Bidder's Federal E.I. Number \_\_\_\_\_  
(Employer's Identification)

Small Business Enterprise?\*       Yes       No  
\*As stated in the CEP/EEO Guidelines in this proposal.



**SCHEDULE I - DELIVERED BACKFILL MATERIAL BIDDING SHEET  
(Approx. 100,000 Tons, Class I Backfill)**

**NORTH AREA**

| ITEM | EST. ANNUAL QUANTITY | DESCRIPTION  | UNIT PRICE PER TON | TOTAL AMOUNT |
|------|----------------------|--|--------------------|--------------|
| 1.   | Approx. 3,000 tons   | Class I Backfill f.o.b. any destination in North Area (flat rate). Bidder's supply point at _____  | \$ _____           | \$ _____     |
| 2.   | Approx. 16000 tons   | Class I Backfill f.o.b. District Bins, 3999 Lakeside Dr., Richmond. Bidder's supply point at _____ | \$ _____           | \$ _____     |

**SOUTH AREA**

| ITEM | EST. ANNUAL QUANTITY | DESCRIPTION   | UNIT PRICE PER TON | TOTAL AMOUNT |
|------|----------------------|---|--------------------|--------------|
| 3.   | Approx. 7000 tons    | Class I Backfill f.o.b. any destination in South Area (flat rate). Bidder's supply point at _____         | \$ _____           | \$ _____     |
| 4.   | Approx. 1000 tons    | Class I Backfill f.o.b. District Bins, 589 E. Lewelling Blvd, San Lorenzo. Bidder's supply point at _____ | \$ _____           | \$ _____     |
| 5.   | Approx. 13000 tons   | Class I Backfill f.o.b. District Bins, on Miller Road, Castro Valley. Bidder's supply point at _____      | \$ _____           | \$ _____     |

**CONSTRUCTION MAINTENANCE SERVICES (CMS)**

| ITEM | EST. ANNUAL QUANTITY | DESCRIPTION   | UNIT PRICE PER TON | TOTAL AMOUNT |
|------|----------------------|---|--------------------|--------------|
| 6.   | Approx. 1000 tons    | Class I Backfill f.o.b. any destination in CMS Area (flat rate). Bidder's supply point at _____ | \$ _____           | \$ _____     |
| 7.   | Approx. 4000 tons    | Class I Backfill f.o.b. District Bins, 2144 Poplar St., Oakland. Bidder's supply point at _____ | \$ _____           | \$ _____     |



**SCHEDULE I – Continued**

**EAST AREA "A"**

| ITEM | EST. ANNUAL QUANTITY | DESCRIPTION   | UNIT PRICE PER TON | TOTAL AMOUNT |
|------|----------------------|---|--------------------|--------------|
| 8.   | Approx. 2000 tons    | Class I Backfill f.o.b. any destination in East Area "A" (flat rate). Bidder's supply point at _____  | \$ _____           | \$ _____     |
| 9.   | Approx. 2000 tons    | Class I Backfill f.o.b. District Bins, 2551 N. Main St., Walnut Creek. Bidder's supply point at _____ | \$ _____           | \$ _____     |

**BRIONES WATERSHED**

| ITEM | EST. ANNUAL QUANTITY | DESCRIPTION   | UNIT PRICE PER TON | TOTAL AMOUNT |
|------|----------------------|---|--------------------|--------------|
| 10.  | Approx. 20000 tons   | Class I Backfill f.o.b. District Bins, off Bear Creek Road, Orinda, Contra Costa County. Bidder's supply point at _____ | \$ _____           | \$ _____     |

**EAST AREA "B"**

| ITEM | EST. ANNUAL QUANTITY | DESCRIPTION  | UNIT PRICE PER TON | TOTAL AMOUNT |
|------|----------------------|--|--------------------|--------------|
| 11.  | Approx. 2000 tons    | Class I Backfill f.o.b. any destination in East Area "B" (flat rate). Bidder's supply point at _____ | \$ _____           | \$ _____     |

**OAKPORT STORAGE**

| ITEM | EST. ANNUAL QUANTITY | DESCRIPTION   | UNIT PRICE PER TON | TOTAL AMOUNT |
|------|----------------------|---|--------------------|--------------|
| 12.  | Approx. 20000 tons   | Class I Backfill f.o.b. Oaklport, Oakland District Bins. Bidder's supply point at _____ | \$ _____           | \$ _____     |

**TOTAL AMOUNT BID FOR SCHEDULE I** \$ \_\_\_\_\_ \*

\*ENTER TOTAL AMOUNT ON BIDDING SUMMARY SHEET



**SCHEDULE II – QUARRY BIDS FOR BACKFILL MATERIAL PICKED UP DIRECTLY BY  
THE DISTRICT  
(Approx. 25,000 Tons, Class I Backfill)**

EAST AREA "A"

| ITEM | EST.<br>ANNUAL<br>QUANTITY | DESCRIPTION  | UNIT PRICE<br>PER TON | TOTAL<br>AMOUNT |
|------|----------------------------|--|-----------------------|-----------------|
| 1.   | Approx.<br>25000<br>Tons   | Class I Backfill f.o.b. Bidder's supply point at<br>_____<br>_____ | \$ _____              | \$ _____        |

**TOTAL AMOUNT BID FOR SCHEDULE II**      \$ \_\_\_\_\_ \*

\* ENTER TOTAL AMOUNT ON BIDDING SUMMARY SHEET



**SCHEDULE III – DELIVERED AGGREGATE BIDDING SHEET  
(Approx. 233,130 Tons Class II 3/4" Aggregate Base, Delivered)**

**NORTH AREA**

| ITEM | EST. ANNUAL QUANTITY | DESCRIPTION   | UNIT PRICE PER TON | TOTAL AMOUNT |
|------|----------------------|---|--------------------|--------------|
| 1.   | Approx. 300 tons     | Recycled 3/4" Aggregate Base f.o.b. any destination in North Area (flat rate). Bidder's supply point at _____ | \$ _____           | \$ _____     |
| 2.   | Approx. 2100 tons    | Virgin 3/4" Aggregate Base f.o.b. any destination in North Area (flat rate). Bidder's supply point at _____   | \$ _____           | \$ _____     |
| 3.   | Approx. 18,000 tons  | Virgin 3/4" Aggregate Base f.o.b. District Bins, 3999 Lakeside Dr., Richmond. Bidder's supply point at _____  | \$ _____           | \$ _____     |

**SOUTH AREA**

| ITEM | EST. ANNUAL QUANTITY | DESCRIPTION   | UNIT PRICE PER TON | TOTAL AMOUNT |
|------|----------------------|---|--------------------|--------------|
| 4.   | Approx. 500 Tons     | Recycled 3/4" Aggregate Base f.o.b. any destination in South Area (flat rate). Bidder's supply point at _____                   | \$ _____           | \$ _____     |
| 5.   | Approx. 4600 Tons    | Virgin 3/4" Aggregate Base f.o.b. any destination in South Area (flat rate). Bidder's supply point at _____                     | \$ _____           | \$ _____     |
| 6.   | Approx. 700 Tons     | Recycled 3/4" Aggregate Base f.o.b. District Bins, 589 E. Lewelling Blvd., San Lorenzo. Bidder's supply point at _____          | \$ _____           | \$ _____     |
| 7.   | Approx. 6000 tons    | Virgin 3/4" Aggregate Base f.o.b. District Bins, 589 E. Lewelling Blvd., San Lorenzo. Bidder's supply point at _____            | \$ _____           | \$ _____     |
| 8.   | Approx. 400 tons     | Recycled 3/4" Aggregate Base f.o.b. District Bin, s/o Navy Flats on Miller Road, Alameda County. Bidder's supply point at _____ | \$ _____           | \$ _____     |
| 9.   | Approx. 25000 tons   | Virgin 3/4" Aggregate Base f.o.b. District Bin, s/o Navy Flats on Miller Road, Castro Valley. Bidder's supply point at _____    | \$ _____           | \$ _____     |

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### SCHEDULE III - Continued

#### CONSTRUCTION MAINTENANCE SERVICES (CMS)

| ITEM | EST. ANNUAL QUANTITY | DESCRIPTION   | UNIT PRICE PER TON | TOTAL AMOUNT |
|------|----------------------|---|--------------------|--------------|
| 10.  | Approx. 100 tons     | Recycled 3/4" Aggregate Base f.o.b. any destination in CMS Area (flat rate). Bidder's supply point at _____ | \$ _____           | \$ _____     |
| 11.  | Approx. 1000 tons    | Virgin 3/4" Aggregate Base f.o.b. any destination in CMS Area (flat rate). Bidder's supply point at _____   | \$ _____           | \$ _____     |
| 12.  | Approx. 800 tons     | Recycled 3/4" Aggregate Base f.o.b. District Bins, 2144 Poplar St., Oakland. Bidder's supply point at _____ | \$ _____           | \$ _____     |
| 13.  | Approx. 6700 tons    | Virgin 3/4" Aggregate Base f.o.b. District Bins, 2144 Poplar St., Oakland. Bidder's supply point at _____   | \$ _____           | \$ _____     |

#### EAST AREA "A"

| ITEM | EST. ANNUAL QUANTITY | DESCRIPTION   | UNIT PRICE PER TON | TOTAL AMOUNT |
|------|----------------------|---|--------------------|--------------|
| 14.  | Approx. 30 tons      | Recycled 3/4" Aggregate Base f.o.b. any destination in East Area "A" (flat rate). Bidder's supply point at _____  | \$ _____           | \$ _____     |
| 15.  | Approx. 300 tons     | Virgin 3/4" Aggregate Base f.o.b. any destination in East Area "A" (flat rate). Bidder's supply point at _____    | \$ _____           | \$ _____     |
| 16.  | Approx. 1000 tons    | Recycled 3/4" Aggregate Base f.o.b. District Bins, 2551 N. Main St., Walnut Creek. Bidder's supply point at _____ | \$ _____           | \$ _____     |
| 17.  | Approx. 8400 tons    | Virgin 3/4" Aggregate Base f.o.b. District Bins, 2551 N. Main St., Walnut Creek. Bidder's supply point at _____   | \$ _____           | \$ _____     |



**BRIONES**

|     |                          |  |          |          |
|-----|--------------------------|--|----------|----------|
| 18. | Approx.<br>2,100<br>tons | Recycled 3/4" Aggregate Base f.o.b. off Bear Creek Road, Orinda, Contra Costa County. Bidder's supply point at _____ | \$ _____ | \$ _____ |
| 19. | Approx.<br>18900<br>tons | Virgin 3/4" Aggregate Base f.o.b. off Bear Creek Road, Orinda, Contra Costa County. Bidder's supply point at _____   | \$ _____ | \$ _____ |

**EAST AREA "B"**

| ITEM | EST. ANNUAL QUANTITY    | DESCRIPTION  | UNIT PRICE PER TON | TOTAL AMOUNT |
|------|-------------------------|--|--------------------|--------------|
| 20.  | Approx.<br>900<br>tons  | Recycled 3/4" Aggregate Base f.o.b. any destination in East Area "B" (flat rate). Bidder's supply point at _____ | \$ _____           | \$ _____     |
| 21.  | Approx.<br>8700<br>tons | Virgin 3/4" Aggregate Base f.o.b. any destination in East Area "B" (flat rate). Bidder's supply point at _____   | \$ _____           | \$ _____     |

**OAKPORT**

| ITEM | EST. ANNUAL QUANTITY      | DESCRIPTION  | UNIT PRICE PER TON | TOTAL AMOUNT |
|------|---------------------------|--|--------------------|--------------|
| 22.  | Approx.<br>1000<br>tons   | Recycled 3/4" Aggregate Base f.o.b. any destination in East Area "B" (flat rate). Bidder's supply point at _____ | \$ _____           | \$ _____     |
| 23.  | Approx.<br>50,000<br>tons | Virgin 3/4" Aggregate Base f.o.b. any destination in East Area "B" (flat rate). Bidder's supply point at _____   | \$ _____           | \$ _____     |

**TOTAL AMOUNT BID FOR SCHEDULE III** \$ \_\_\_\_\_ \*

\*ENTER TOTAL AMOUNT ON BIDDING SUMMARY SHEET



**Schedule IV – QUARRY BIDS FOR AGGREGATE MATERIAL PICKED UP DIRECTLY  
BY THE DISTRICT  
(Approx. 1,300 Tons, Class II 3/4" Aggregate Base)**

| ITEM | EST.<br>ANNUAL<br>QUANTITY | DESCRIPTION  | UNIT PRICE<br>PER TON | TOTAL<br>AMOUNT |
|------|----------------------------|--|-----------------------|-----------------|
| 1.   | Approx.<br>100<br>Tons     | Recycled 3/4" Aggregate Base f.o.b. "Bidder's<br>supply point" at _____<br>_____ | \$ _____              | \$ _____        |
| 2.   | Approx.<br>1200<br>tons    | Virgin 3/4" Aggregate Base f.o.b. "Bidder's<br>supply point" at _____<br>_____   | \$ _____              | \$ _____        |

**TOTAL AMOUNT BID FOR SCHEDULE IV**      \$ \_\_\_\_\_ \*

\* ENTER TOTAL AMOUNT ON BIDDING SUMMARY SHEET

BACKFILL MATERIAL QUESTIONNAIRE

I. Please indicate the name(s), title(s), and phone number(s) of the person or persons whom the District may contact for placing orders and/or verifying deliveries.

Name \_\_\_\_\_  
Title \_\_\_\_\_ Phone No. \_\_\_\_\_

Name \_\_\_\_\_  
Title \_\_\_\_\_ Phone No. \_\_\_\_\_

Name \_\_\_\_\_  
Title \_\_\_\_\_ Phone No. \_\_\_\_\_

II. For delivered materials, list the subcontractors you plan to use (i.e. quarry, truckers, etc.).

Name of Firm \_\_\_\_\_  
Contact \_\_\_\_\_ Phone No. \_\_\_\_\_

Name of Firm \_\_\_\_\_  
Contact \_\_\_\_\_ Phone No. \_\_\_\_\_

Name of Firm \_\_\_\_\_  
Contact \_\_\_\_\_ Phone No. \_\_\_\_\_



## 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 Services:** RFQ response shall include a description of the terms and conditions of services to be provided during the contract term including response times. The description shall contain a basis of estimate for services including the number of Bidder's and District personnel involved, and the number of hours scheduled for each person.
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". Any bidder needing assistance in completing these forms should contact the District's Contract Equity Office at (510) 287-0114 prior to submitting an RFQ response.



## REFERENCES

### RFQ No. 2006 – BACKFILL MATERIALS

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

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

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

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

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

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

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





## 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 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.

For any coverage that is provided on a claims-made coverage form (which type of form is permitted only where specified) the retroactive date must be shown and must be before the date of this Agreement, and before the beginning of any Services related to this Agreement.

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

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

### INSURANCE

#### A. 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.

#### B. 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.

Waiver of Subrogation. Workers' Compensation insurance must contain a waiver of subrogation endorsement providing that each insurer waives any rights of recovery by subrogation, or otherwise, against the DISTRICT, its directors, officers, officials, agents, volunteers, and employees. CONSULTANT shall defend and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier.

C. 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 *products and completed operations*.
8. The policy(ies) covers the use of *owned, non-owned* and hired automobiles.
9. 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.

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**1. DEFINITIONS**

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

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

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

## 2. BOND

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

returned to the Contractor.

- c. If, during the continuance of the Contract, any of the sureties, in the opinion of the District, are or become irresponsible, the District may require other or additional sureties, which the Contractor shall furnish to the satisfaction of the District within ten days after notice. If the Contractor fails to provide satisfactory sureties within the ten-day period, the Contract may be terminated for cause under Article 18.

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

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

### **4. SAMPLES OR SPECIMENS**

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

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

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

### **6. DEFECTIVE WORK**

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

### **7. WARRANTY**

Contractor expressly warrants that all goods furnished will conform strictly with the specifications and requirements contained herein and with all approved submittals, samples and/or models and information contained or referenced therein, all affirmations of fact or promises, and will be new, of merchantable quality, free from defects in materials and

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

**8. NOT USED**

**9. SAFETY AND ACCIDENT PREVENTION**

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

**10. CHARACTER OF WORKFORCE**

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

**11. PREVAILING WAGES & DIR REGISTRATION**

- a. Please see [www.dir.ca.gov](http://www.dir.ca.gov) for further information regarding the below.
- b. All Contractors and Subcontractors of any tier bidding on, or offering to perform work on a public works project shall first be registered with the State Department of Industrial Relations (DIR) pursuant to Section 1725.5 of the Labor Code. No bid will be accepted nor any contract entered into without proof of the Contractor and Subcontractors' current registration with the DIR (LC § 1771.1).
- c. All public works projects awarded after January 1, 2015, are subject to compliance monitoring and enforcement by the DIR (LC § 1771.4) and all Contractors are required

to post job site notices, "as prescribed by regulation" (LC § 1771.4).

- d. To the extent applicable, pursuant to Section 1773 of the Labor Code, the District has obtained from the Director of Industrial Relations of the State of California, the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime work in the locality in which the Work is to be performed, for each craft, classification, or type of worker needed to execute the contract. Pursuant to Section 1773.2 of the Labor Code, a copy of the prevailing wage rates is on file with the District and available for inspection by any interested party at [www.dir.ca.gov](http://www.dir.ca.gov).
- e. The holidays upon which such rates shall be paid shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification, or type of worker employed on the Work.
- f. The Contractor shall post a copy of the general prevailing rate of per diem wages at the jobsite pursuant to Section 1773.2 of the Labor Code.
- g. Pursuant to Section 1774 of the Labor Code, the Contractor and any of its Subcontractors shall not pay less than the specified prevailing rate of wages to all workers employed in the execution of the contract.
- h. As set forth with more specificity in Section 1773.1 of the Labor Code, "per diem" wages include employer payments for health and welfare, pension, vacation, travel, subsistence and, in certain instances, apprenticeship or other training programs, and shall be paid at the rate and in the amount spelled out in the pertinent prevailing wage determinations issued by the Director of Industrial Relations.
- i. The Contractor shall, as a penalty to the State or the District, forfeit not more than the maximum set forth in Section 1775 of the Labor Code for each calendar day, or portion thereof, for each worker paid less than the prevailing rates for the work or craft in which the worker is employed under the contract by the Contractor or by any Subcontractor under him. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which such worker was paid less than the stipulated prevailing wage rate shall be paid to such worker by the Contractor.
- j. The specified wage rates are minimum rates only and the District will not consider and shall not be liable for any claims for additional compensation made by the Contractor because of its payment of any wage rate in excess of the general prevailing rates. All disputes in regard to the payment of wages in excess of those specified herein shall be adjusted by the Contractor at its own expense.
- k. General prevailing wage determinations have expiration dates with either a single asterisk or a double asterisk. Pursuant to California Code of Regulations, Title 8, Section 16204, the single asterisk means that the general prevailing wage determination shall be in effect for the specified contract duration. The double asterisk means that the predetermined wage modification shall be paid after the expiration date. No adjustment in the Contract Sum will be made for the Contractor's payment of these predetermined wage modifications.

## 12. PAYROLL RECORDS & ELECTRONIC SUBMISSION

- 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 Project Manager. The Contractor shall be responsible for submission of copies of payroll records of all Subcontractors.
- c. The Contractor or Subcontractor shall certify the payroll records as shown on the DIR form. In addition, the records shall be accompanied by a statement signed by the Contractor or Subcontractor certifying that the classifications truly reflect the Work performed and that the wage rates are not less than those required to be paid.
- d. For public works projects awarded on or after April 1, 2015, or that are still ongoing after April 1, 2016, no matter when awarded, each Contractor and Subcontractor shall furnish the certified payroll related records as more specifically described above and in Labor Code section 1776 directly to the Labor Commissioner (see LC § 1771.4). These records shall be provided to the Labor Commissioner at least monthly or more frequently if required by the terms of the Contract. For exception on projects covered by collective bargaining agreements like a PLA, please see Labor Code section 1771.4.
- e. In the event of noncompliance with the requirements of Section 1776 of the Labor Code, the Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with said Section. Should noncompliance still be evident after such 10-day period, the Contractor shall, as a penalty to the State or the District, forfeit the amount set forth in Section 1776 of the Labor Code for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.
- f. The Contractor and every Subcontractor shall post at the workplace and comply with all required wage related workplace postings. Copies of the required postings may be downloaded or ordered electronically from the Department of Industrial Relations website at <http://www.dir.ca.gov/wpnodb.html>.

## 13. HOURS OF LABOR

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

- a. Eight hours of labor constitutes a legal day's Work under the contract.

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

**14. EMPLOYMENT OF APPRENTICES**

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

**15. CHANGES**

- a. Changes in the Work can only be made in writing signed by an authorized employee of the District. If the change causes an increase or decrease in the contract sum, or a change in the time for performance under the Contract, an adjustment may be made as determined by the Project Manager.
- b. The District reserves the right to make changes in the design of materials, equipment, or machinery, to make alterations or additions to or deviations or subtractions from the Contract and any specifications and drawings, to increase or decrease the required quantity of any item or portion of the Work or to omit any item or portion of the Work, as may be deemed by the Project Manager to be necessary or advisable and to order such extra work as may be determined by the Project Manager to be required for the proper execution and completion of the whole Work contemplated. Any such changes will be ordered in writing by the Project Manager. The determination of the Project Manager on all questions relating to changes, including extra work, shall be conclusive and binding.

- c. Prior to issuing an amendment or change to the Contract, the Project Manager may request that the Contractor submit a proposal covering the changes. Within 10 business days of receiving the request, the Contractor shall submit its proposal to the Project Manager of all costs associated with the proposed amendment or change and any request for an extension of Contract time. Contractor's proposal shall include detailed estimates with cost breakdowns, including labor, material, equipment, overhead, and profit. Labor shall be broken down into hours and rate per hour. If applicable, the proposal shall include a breakdown for off-site labor (including factory labor, engineering, etc.). The Contractor's proposal shall include an analysis of schedule impact when the Contractor is requesting an adjustment in contract time. The Contractor shall be responsible for any delay associated with its failure to submit its change proposal within the time specified. If the Project Manager decides not to issue an amendment or change after requesting a proposal from the Contractor, the Contractor will be notified in writing. The Contractor is not entitled to reimbursement for Change Order preparation costs if the Contractor's proposal is not accepted by the Project Manager.
- d. If the Contractor agrees with the terms and conditions of the approved Change Order, the Contractor shall indicate its acceptance by signing the original copy and returning it to the Project Manager within 10 Work Days after receipt or with reasonable promptness and in such sequence as to not delay the Work or activities of the District or of separate contractors, whichever is sooner. If notice of any change is required to be given to a surety by the provisions of any bond, the Contractor shall provide notice and the amount of each applicable bond shall be adjusted separately. Payment in accordance with the terms and conditions set forth in the executed Change Order shall constitute full compensation for all Work included in the Change Order and the District will be released from any and all claims for direct, indirect, and impact expenses and additional time impact resulting from the Work. If the Contractor disagrees with the terms and conditions of the approved Change Order, the Contractor shall indicate specific areas of disagreement and return the approved Change Order to the Project Manager with a detailed written dispute. No payment will be made on the disputed work until the approved Change Order is returned to the Project Manager. However, whether or not the Contractor agrees with the terms and conditions of an approved Change Order, the Contractor shall immediately revise its sequence of operations as required to facilitate timely completion of the changed work and shall proceed with the revised work sequence.
- e. The Project Manager may, after having received a written cost quotation from the Contractor, order the Contractor, in writing, to proceed with the work prior to issuance of an approved Change Order through a change directive. The change directive will authorize the Contractor to proceed with the work subject to the cost quotation submitted by the Contractor. Within five days following receipt of the change directive, the Contractor shall submit a detailed change proposal documenting the amount of compensation. The Project Manager will review the change proposal and, at its option, will either issue an approved Change Order for the work or direct the Contractor to perform the work through Force Account. Until the method of compensation is determined and the approved Change Order is received, the Contractor shall keep full and complete time and material records of the cost of the ordered work and shall permit the Project Manager to have access to such records. An approved Change Order shall supersede any previously issued written change directive covering the same Work.

## 16. EFFECT OF EXTENSIONS OF TIME

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

## 17. DELAYS

- a. The Contractor shall take reasonable precautions to foresee and prevent delays to the Work. When the Contractor foresees a delay event, and upon the occurrence of a delay event, the Contractor shall immediately notify the Project Manager of the probability or the actual occurrence of a delay, and its cause. With respect to all delays (compensable, excusable or inexcusable), the Contractor shall reschedule the Work and revise its operations, to the extent possible, to mitigate the effects of the delay. Within 15 days from the beginning of a delay the Contractor shall provide the Project Manager with a detailed written description of the delay, its cause, its impact and the Contractor's mitigation plans. Failure to provide the notification required above waives the Contractor's right to any additional time or compensation resulting from the delay for whatever cause. The Project Manager will investigate the facts and ascertain the extent of the delay, and the Project Manager's findings thereon shall be final and conclusive, except in the case of gross error. An extension of time must be approved by the Project Manager to be effective, but an extension of time, whether with or without consent of the sureties, shall not release the sureties from their obligations, which shall remain in full force until the discharge of the contract.
- b. For inexcusable delays (delays caused by circumstances within the Contractor's control, the control of its subcontractors or supplies of any tier, or within the scope of the Contractor's contract responsibilities) the Contractor shall not be entitled to an extension of time or additional compensation for any loss, cost, damage, expense or liability resulting directly or indirectly from the inexcusable delay.
- c. For excusable delays (delays to completion of the Work within the time limits set forth in the Contract Documents directly caused by events beyond the control of both the Contractor and the District, which delay is not concurrent with an inexcusable delay and which could not have been avoided by the Contractor through reasonable mitigation measures).
- d. For compensable delays (delays to completion of the Work within the time limits set forth in the Contract Documents that could not be avoided by Contractor mitigation, caused directly and solely by the District or by causes within the exclusive control of the District, and which were not concurrent with any other type of delay) the Project Manager will grant the Contractor an extension of the time to perform under the Contract and compensation in an amount that represents the Contractor's actual direct costs incurred as a direct result of the compensable delay. The Contractor may recover its direct costs only and may not recover (and waives) all other types of indirect, consequential, special and incidental damages.
- e. For concurrent delays (two or more independent causes of delay directly preventing the Contractor from completing the Work within the time limits set forth in the Contract Documents where the delays occur at the same time during all or a portion of the delay period being considered, and where each of the delays would have caused delay to the

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

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

## **18. TERMINATION**

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

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

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

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

b. Termination by the District for Convenience:

- i. The District may, at its option, and for its convenience, terminate the Contract at any time by giving written notice to the Contractor specifying the effective date of termination. Upon such termination, the Contractor agrees to comply with the notice and further agrees to waive any claims for damages, including loss of anticipated profits, on account of the termination; and, as the sole right and remedy of the Contractor, the District shall pay the Contractor as set forth below.
- ii. Upon receipt of a notice of termination for convenience, the Contractor shall, unless the notice directs otherwise, do the following:

1. Immediately discontinue its performance of the Contract to the extent specified in the notice.
  2. Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of a portion of the Work that is not discontinued or that is necessary for an orderly cessation of the Work.
  3. Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent they relate to the performance of the discontinued portion of the Work.
  4. Thereafter, do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment in transit to or on the site of performance.
- iii. Upon such termination for convenience, the District will pay to the Contractor the sum of the following:
1. The amount of the contract sum allocable to the portion of the Work properly performed by the Contractor as of the effective date of termination, less sums previously paid to the Contractor.
  2. Previously unpaid costs of any items delivered to the project site that were already fabricated for subsequent incorporation into the Work.
  3. Any proven losses with respect to materials and equipment directly resulting from the termination.
  4. Reasonable demobilization costs.
- iv. The above reimbursement is the sole and exclusive remedy to which the Contractor is entitled in the event the contract is terminated for convenience; and the Contractor expressly waives any other claims, damages, demands, compensation or recovery related to this contract or project. The Contractor agrees to sign a general release incorporating this waiver.
- c. Effect of Termination: Upon termination, the obligations of the Contract shall continue as to portions of the Work already performed and, subject to the Contractor's obligations under Article 18.b.ii, as to bona fide obligations assumed by the Contractor prior to the date of termination.
- d. Force Majeure: If the contract is suspended or terminated by the District because Contractor's performance is prevented or delayed by an event including an irresistible, superhuman cause, or by the act of public enemies of the State of

California or of the United States (“Force Majeure”) , the Contractor will be paid for Work performed prior to the Force Majeure event at either (i) the unit prices named in the Contract; or (ii) in the event no unit prices are named, a sum equal to the percentage of the total contract amount that matches the percentage of the total contract Work performed prior to the Force Majeure event.

## **19. DAMAGES**

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

## **20. ORDER OF PRECEDENCE**

- a. In the case of conflicts, errors, or discrepancies in any of the Contract Documents, the order of precedence is as follows. Within the same order of precedence, specific requirements shall take precedence over general requirements.
  - i. Approved Change Orders.
  - ii. Addenda.
  - iii. RFQ or RFP.
  - iv. Referenced Standard Specifications and Drawings.
  - v. Contractor’s Response Packet.
- b. With reference to drawings:
  - i. Numerical dimensions govern over scaled dimensions.
  - ii. Detailed drawings govern over general drawings.
  - iii. Addenda/Change Order drawings govern over contract drawings.
  - iv. Contract drawings govern over standard drawings.
  - v. Notes apply only to the drawing where the notes appear, unless classified as “typical” or intended to apply elsewhere in which case they apply to all drawings where the conditions or circumstance noted occurs.
  - vi. Typical details apply to all drawings unless a specific different detail is shown.

## **21. INDEMNIFICATION/RESPONSIBILITY**

- a. Contractor shall indemnify, keep and save harmless the District and each of its directors, officers, agents and employees against any and all suits, claims or actions arising out of

any of the following:

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

## **22. PROHIBITION OF ASSIGNMENT**

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

## **23. NEWS RELEASES**

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

## **24. SEVERABILITY**

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

## **25. COVENANT AGAINST GRATUITIES**

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

equity.

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

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

**27. WAIVER OF RIGHTS**

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

**28. CONFIDENTIALITY**

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



# EXHIBIT D IRAN CONTRACTING ACT CERTIFICATION

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

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

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

### CERTIFICATION FOR PARAGRAPH 1:

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

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

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

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

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

**OR**

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