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SECTION 3 AWARD AND EXECUTION OF CONTRACT

3-1 AWARD OF CONTRACT

If the Contract is awarded, the award will be to the lowest responsive, responsible Bidder. In addition to price in determining the lowest responsive, responsible Bidder, consideration will be given to:

- The ability, capacity and skill of the Bidder to perform the Work;
- the ability of the Bidder to perform the Work within the time specified, without delay;
- the ability of the Bidder to perform the Work in a safe manner;
- the character, integrity, reputation, judgment, experience and efficiency of the Bidder; and
- the quality of the Bidder's performance on previous work with the Agency.

Award will be based on the lowest total price for the sum of the base bid price plus the bid prices of selected alternate or alternates. Alternates will be taken in order from a list of those items, depending on available funds as identified in the bid solicitation.

3-2 TIME OF AWARD

If the Contract is awarded, the award will be made within 30 Calendar Days after Bid Opening. If the lowest responsive, responsible Bidder refuses or fails to execute the Contract, the Agency may award the Contract to the second lowest responsive, responsible Bidder. The specified period of time within which the award of the Contract may be made may be subject to extension for further periods as agreed upon in writing by the Agency and the Bidder.

Protests must be filed in writing with the Clerk of the Board within 5 working days of Bid Opening.

3-3 CONSIDERATION OF BIDS

After the Bids have been opened and read, they will be checked for accuracy and compliance with the Specifications.

If the product of a unit price and an estimated quantity does not equal the amount bid, the unit price will govern and the correct product of the unit price and the estimated quantity will be the amount bid. If the sum of two or more items in a bidding schedule or the sum of two or more bidding schedules does not equal the total amounts quoted, the individual item or schedule amounts govern and the correct total is the amount bid. If the Bid is missing a unit price, then it may be rejected as incomplete.

After the Agency has made corrections in mathematical errors, all Bids will be compared based on the bid form.

3-4 PERFORMANCE AND PAYMENT BONDS

The format of the Performance Bond and Payment Bond forms must be those contained in Appendix A of these Specifications.

As part of the execution of the Contract, the successful Bidder must furnish Performance and Payment corporate surety bonds to the benefit of the Agency. Bonds must be executed by a surety company authorized to do business in the State of California and listed in the current Federal Department of Treasury Circular 570.

3-4.01 Performance Bond

The Performance Bond to guarantee the performance of all covenants and stipulations of the Contract must be on a form approved by the Agency and must be in a sum not less than 100 percent of the original Total Contract Price.

3-4.02 Payment Bond

The Payment Bond to guarantee the payment of wages and of bills contracted for materials, supplies, or equipment used in the performance of the Contract must be on the form provided by the Agency and must be in a sum not less than 100 percent of the original Total Contract Price.

3-5 NOTIFICATION OF SURETY COMPANIES

The surety company must be familiar with all the provisions and conditions of the Contract. It is understood and agreed that the surety company waives notice of change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications accompanying the same, or any other act or acts by the Agency or the Agency's authorized agents under the terms of the Contract; and failure to notify the surety company of changes does not relieve the surety company of its obligations under the Contract.

3-6 RETURN OF BID GUARANTEES

After Bids have been received and reviewed by the Agency, Bid Guarantees, except those submitted by the three lowest responsive, responsible Bidders, will be returned to the Bidders within 10 Calendar Days after the award of the Contract. The Bid Guarantees of the three lowest responsive, responsible Bidders will be returned, except as noted otherwise in Section 3-8, "Failure to Execute Contract", of these Specifications, within 10 Calendar Days after the successful Bidder has filed the specified bonds and proof of insurance and the Bidder and the Agency have executed the Contract.

If all Bids are rejected and no award is made, all Bid Guarantees will be returned within 10 Calendar Days of the decision of the Board not to award the Contract.

3-7 EXECUTION OF CONTRACT

Upon approval from the Agency's governing Board to award the Contract to the lowest responsive responsible bidder, the Contract must be signed by the successful Bidder and returned to the Agency, together with complete, certified copies of the Performance Bond, Payment Bond and certificates of insurance, within 10 Calendar Days of the Bidder's receipt of the documents. Receipt by the Agency of the signed documents from the Contractor constitutes "execution" of the Contract. Insurance certificates must be signed by a person authorized by the insurer to bind coverage on its behalf and must be accompanied by copies of all endorsements required by Section 3-9, "Insurance", of these Specifications. After signing by the Agency, one copy of the signed Contract, bonds, and certificates of insurance will be returned to the Contractor.

3-8 FAILURE TO EXECUTE CONTRACT

If the Bidder to whom the Contract is awarded fails to execute the Contract and file the required bonds and insurance certificates within 10 Calendar Days from the time the Contract forms are received by the Bidder, the award may be annulled and the Bidder's Bid Guarantee forfeited to the Agency up to the full amount. The Contract may then be awarded to the next lowest responsive, responsible Bidder.

If the Agency awards the Contract to the second lowest responsive, responsible Bidder, the lowest responsive, responsible Bidder's Bid Guarantee will be applied by the Agency to the difference between the lowest Bid and the Bid of the second lowest responsive, responsible Bidder.

On refusal or failure of the second lowest responsive, responsible Bidder to execute the Contract, the Agency may award it to the third lowest responsive, responsible Bidder. If the Agency awards the Contract to the third lowest responsive, responsible Bidder, in addition to application of the lowest Bidder's Bid Guarantee as stated, the second lowest responsive, responsible Bidder's Bid Guarantee will be applied by the Agency to the difference between the Bid of the second lowest responsive, responsible Bidder and the Bid of the third lowest responsive, responsible Bidder.

Additionally, any forfeited Bid Guarantee amounts will be applied as reimbursement for costs incurred for failure of the successful Bidder(s) to enter into a contract. The surplus, if any, will be returned to the defaulting Bidder(s), if a check or cash is used, or credited to the surety on the Bidder's Bond, if a bond is used.

The amount of the Bid Guarantee is not a penalty or liquidated damages. The Agency is not precluded by a Bid Guarantee from recovering from the defaulting Bidder damages in excess of the amount of the Bid Guarantee.

3-9 INSURANCE

The Contractor must procure, maintain, and keep in force at all times during the term of the Contract, at the Contractor's sole expense, the following minimum required insurance policies and limits which are intended for the protection of the Agency and the public. Contractor's obligations for loss or damage arising out of Contractor's work are in no way limited by the types or amounts of insurance set forth herein. In specifying minimum insurance requirements herein, Agency does not assert that the required minimum insurance is adequate to protect the Contractor. Contractor is solely responsible to inform itself of the types and amounts of insurance it may need beyond these requirements to protect itself from loss, damage or liability. It is the sole responsibility of Contractor to notify its insurance advisor or insurance carrier(s) regarding coverage, limits and forms specified in this Section.

The Agency reserves the right to modify the required minimum insurance coverages and limits depending on the scope and hazards of the Work.

Where a specific ISO form is referenced in these Specifications or the Contractor utilizes "a form or policy language as broad in scope and coverage" to satisfy the insurance requirements required herein, Contractor must use the most recently approved State edition or revision of the form(s) or policy language to satisfy the insurance requirements.

3-9.01 General Liability

Commercial General Liability insurance including, but not limited to, protection for claims of bodily injury and property damage, personal and advertising injury, contractual, and products and completed operations. Coverage must be at least as broad as "Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 0001" (Occurrence Form) or a form as broad in scope and coverage. The limits of liability must be not less than:

Each Occurrence	Two Million Dollars (\$2,000,000)
Personal & Advertising Injury	Two Million Dollars (\$2,000,000)
Products and Completed Operations Aggregate	Two Million Dollars (\$2,000,000)
General Aggregate	Two Million Dollars (\$2,000,000)

The Contractor's Commercial General Liability policy must contain the following provisions:

The Agency, its governing Board, officers, directors, officials, employees, and authorized agents and volunteers (collectively, “Additional Insureds”) must be included as Additional Insureds as respects liability caused, in whole or in part, by the acts or omissions of the Contractor, or the acts or omissions of those acting on behalf of the Contractor; or premises owned, occupied or used by the Contractor in conjunction with the Work. The required additional insured status of Agency may be satisfied by the following:

- A. Use of ISO Form CG 2010 11 85, if commercially available, – Additional Insured – Owners, Lessees, Or Contractors – Scheduled Person or Organization (or a form or policy language as broad in scope and coverage);

Or

- B. Use of ISO Form CG 2038 04 13 – Additional Insured – Owners, Lessees, Or Contractors – Automatic Status for Other Parties When Required in Written Construction Agreement (or a form or policy language as broad in scope and coverage);

Or

- C. Use of ISO Form CG 2033 04 13 – Additional Insured – Owners, Lessees, Or Contractors – Automatic Status When Required in Construction Agreement with You (or a form or policy language as broad in scope and coverage);

Or

- D. Use of CG 20 10 (all editions other than 11 85) – Additional Insured – Owners, Lessees, Or Contractors – Scheduled Person or Organization

3-9.01.A Additional Insured – Completed Operations

Any issuance of an additional insured form other than ISO Form CG 2010 11 85 (which automatically includes Completed Operations for Additional Insureds) must also require issuance of an endorsement to add Completed Operations for the Agency as an additional insured. Contractor may utilize ISO Form CG 20 37 04 13 – Additional Insured – Owners, Lessees, Or Contractors – Completed Operations (or a form or policy language as broad in scope and coverage).

3-9.01.B Additional Insured – Protocols

Any issuance of CG 20 10 (any edition) or a comparable form must utilize the following protocol:

Scheduled Name must be: All entities or persons as required by contract

Scheduled Locations must be: All locations as required by contract

And

Any issuance of CG 20 37 04 13 or a comparable form must utilize the following protocol:

Scheduled Name must be: All entities or persons as required by contract

Scheduled Locations must be: All locations as required by contract.

3-9.01.C General Aggregate Limits

The Contractor's Commercial General Liability insurance policy must include an endorsement or policy language stating that any General Aggregate limits must apply separately to the Work using ISO CG 25 03 05 09 (or a form or policy language as broad in scope and coverage).

3-9.01.D Waiver of Subrogation

The Contractor's Commercial General Liability policy must include a waiver of subrogation in favor of the Additional Insureds. Such waiver of subrogation must be on ISO Form CG 24 04 10 93 – Waiver of Transfer of Rights of Recovery Against Others to Us (or a form or policy language as broad in scope and coverage).

3-9.01.E Primary Insurance

The Contractor's Commercial General Liability policy must contain an endorsement using ISO Form CG 20 01 04 14 (or a form or policy language as broad in scope and coverage) that for any claims related to this Contract, the Contractor's insurance coverage must be primary insurance as respects the Agency, its governing Board, officers, directors, officials, employees, and authorized agents and volunteers (Additional Insureds). Any insurance or self-insurance maintained by the Additional Insureds must be excess of the Contractor's insurance, whether the Contractor's insurance is self-insurance, a primary Commercial General Liability policy, excess or umbrella policy, or a combination thereof, and must not contribute with it.

3-9.01.F Separation of Insured

The Contractor's Commercial General Liability policy must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3-9.01.G Insurance Proceeds

If the Contractor maintains higher limits than the minimums shown above, whether on a primary or excess basis, the Agency requires and must be entitled to coverage with the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverages shall be available to the Agency.

3-9.01.H Extension of Completed Operations

Contractor must maintain the required Commercial General Liability policy, including Completed Operations, at not less than the required minimum limits, for not less than two (2) years after Final Acceptance of the Work. Contractor must furnish the Agency with original certificates and copies of required amendatory endorsements, or original certificates and copies of the applicable insurance policy language effecting coverage required by this contract; or a combination thereof, for the required two (2) years.

3-9.01.I Contractual Limitations

Contractor is expressly prohibited from using either ISO or manuscript endorsements that are intended to remove or restrict contractual coverage for an Additional Insured, or an indemnitee in a hold harmless agreement, under the Contractor's Commercial General Liability policy. Such endorsements include, but are not limited to, ISO CG 21 39 10 93 and CG 24 26 04 13; or later approved State editions or revisions.

3-9.01.J Additional Insured Requirements for Sub-Contractors

Contractor must require each of its subcontractors, at every tier, to include the Agency, its governing Board, officers, directors, officials, employees, and authorized agents and volunteers as Additional Insureds. Where commercially available, Contractor must require its subcontractors to use ISO Form CG 20 38 04 13 – Additional Insured – Owners, Lessees, Or Contractors – Automatic Status for Other Parties When Required in Written Construction

Agreement (or a form or policy language as broad in scope and coverage). If not commercially available, any other additional insured form or policy language may be used by subcontractors, subject to Contractor’s approval.

Contractor must also require each of its subcontractors, at every tier, to include the Agency, its governing Board, officers, directors, officials, employees, and authorized agents and volunteers as Additional Insureds for Completed Operations utilizing an ISO form, if commercially available, or other form or policy language as broad in scope and coverage.

It is the express duty of the Contractor that it verify that its subcontractors, at every tier, have endorsed their respective Commercial General Liability policies to comply with this section to include the Agency, its governing Board, officers, directors, officials, employees, and authorized agents and volunteers as Additional Insureds, including Completed Operations, and in compliance with the protocols as required herein.

Failure of the Contractor to obtain additional insured status for the Agency, its governing Board, officers, directors, officials, employees, and authorized agents and volunteers by its subcontractors, at every tier, must be considered a material breach of the Contract.

3-9.02 Automobile Liability

Automobile Liability insurance providing protection for bodily injury and property damage arising out of ownership, operation, maintenance, or use of owned, hired, and non-owned automobiles. Coverage must be at least as broad as ISO Business Auto Coverage Form CA 0001 (or a form or policy language as broad in scope and coverage), symbol 1 (any auto), if commercially available. Use of any symbols other than symbol 1 for liability for corporate/business owned vehicles must be declared to and approved by the Agency in writing. If there are no owned or leased vehicles, symbols 8 and 9 for non-owned and hired autos must apply.

The Contractor’s Commercial Automobile Liability policy must include the Agency, its governing Board, officers, directors, officials, employees, and authorized agents and volunteers as indemnitees and additional (designated) insureds as required by contract.

The minimum limits of liability must not be less than:

Corporate/business owned:	
Vehicle Type and Weight	Minimum Limits
Private passenger	\$1,000,000 Combined Single Limit
Light or medium rated trucks	\$1,000,000 Combined Single Limit
Heavy, extra-heavy or tractor trailer	\$2,000,000 Combined Single Limit*

*Note: Commercial Auto Policies do not allow application of limits by vehicle. If Contractor will utilize any heavy, extra-heavy, or tractor trailer vehicles on the Work, then the minimum \$2,000,000 must be required regardless of the number or mix of vehicles. A Commercial Auto Policy with \$1,000,000 Combined Single Limit and an Excess or Umbrella Policy with not less than \$1,000,000 Each Occurrence will satisfy the \$2,000,000 requirement.

If there are no corporate/business owned vehicles, then personal automobile insurance requirements apply to any individually owned personal vehicles used by the Contractor on the Project.

The limits of liability must not be less than:

Individually owned vehicles: \$300,000 Combined Single Limit or, if split limits are used, \$100,000 per person, \$300,000 each accident, \$100,000 property damage.

3-9.03 Workers' Compensation

Workers' Compensation insurance, with coverage as required by the State of California (unless the Contractor is a qualified self-insurer with the State of California), and Employers' Liability coverage. The minimum limits of Employers' Liability are:

Each Accident	One Million Dollars (\$1,000,000)
Disease Each Employee	One Million Dollars (\$1,000,000)
Disease Policy Limit	One Million Dollars (\$1,000,000)

The Workers' Compensation policy required hereunder must be endorsed to state that the Workers' Compensation carrier waives its right of subrogation against the Agency, its governing Board, officers, directors, officials, employees, and authorized agents and volunteers. In the event the Contractor is self-insured, the Contractor must furnish a Certificate of Permission to Self-Insure by the Department of Industrial Relations Administration of Self-Insurance, Sacramento.

3-9.04 Excess or Umbrella Liability

The contractor is granted the option of arranging the required coverages and limits under a single policy or by a combination of underlying policies with the balance provided by an Excess or Umbrella liability policy equal to the total Per Occurrence and Aggregate limits required on the Commercial General Liability policy and the Combined Single Limit on the Commercial Automobile Liability policy.

The Agency, as an Additional Insured, requires and must be entitled to coverage for the higher limits maintained by the Contractor on any Excess or Umbrella policy. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverages must be available to the Agency before the Agency's available self-insurance, primary insurance or excess insurance must be called upon to protect the Agency.

3-9.05 Contractor's Equipment

The Contractor, and each of its Subcontractors, must separately insure its own equipment for loss and damage. The Contractor's Property and Inland Marine policies, and including every Subcontractor at every tier, must include, or be endorsed to include, a waiver of subrogation for the benefit of the Agency, its governing Board, officers, directors, officials, employees, and authorized agents and volunteers which might arise by reason of damage to the Contractor's or Subcontractor's property or equipment (owned, leased, hired or borrowed) in connection with work performed under this Contract by the Contractor or any Subcontractor at any tier.

3-9.06 Railroad Protective Liability

When stated as a requirement in the Special Provisions, the Contractor must procure, maintain, and keep in force at all times during the term of the Contract, at the Contractor's sole expense, Railroad Protective Liability insurance, and other related coverages with limits of liability as set forth in the Special Provisions.

3-9.07 Builder's Risk Insurance

When stated as a requirement in the Special Provisions, Agency must procure, maintain, and keep in force at all times during the term of the Contract and until the date of transfer of the insurable interest to and acceptance by the Agency, at the Agency's sole expense, Builder's Risk insurance with limits of liability equal to one hundred percent (100%) of the replacement cost of the Work, which must include the cost of materials and the cost of labor to install materials. The Contractor and sub-contractors must be included under the Agency's Builder's Risk insurance and listed on a certificate of insurance as additional insureds. The Agency's Builder's Risk insurance must contain a waiver of subrogation in favor of the Contractor and all subcontractors on the project.

1. The Agency's Builder's Risk insurance must cover the project for loss or damage due to all risks of physical damage or loss, land movement and flood.
2. The Contractor must be responsible for the first \$25,000, per occurrence, of any loss caused by all risks of physical damage or loss and flood. The Contractor shall not be responsible for the deductible if the loss is caused by land movement.

When stated as a requirement in the Special Provisions, the Contractor must procure, maintain, and keep in force at all times during the term of the Contract and until the date of transfer of the insurable interest to and acceptance by the Agency, at the Contractor's sole expense, Builder's Risk insurance with limits of liability and other related coverages as set forth in the Special Provisions.

3-9.08 Contractor's Pollution Liability Insurance

When stated as a requirement in the Special Provisions, the Contractor must procure, maintain, and keep in force at all times during the term of the Contract, at the Contractor's sole expense, Contractor's Pollution Liability (CPL) insurance which provides coverage for liability arising from the sudden and accidental release of pollution on the project site or transportation of pollutants from or to the project site. The CPL must provide coverage for:

1. Insuring all of the services the Contractor provides in the normal course of operations under the Contract. Partial operations coverage is unacceptable.
2. Bodily injury, sickness, disease, sustained by any person, including death.
3. Property damage includes physical injury to or destruction of tangible property including the resulting loss of use thereof; clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed including diminution of value and Natural Resources damages.
4. Defense costs including costs, charges and expenses incurred in the investigation, adjustment or defense of claims.
5. Contractual liability coverage, e.g. coverage for liability assumed by the named insured under a written contract or agreement.
6. The full scope of the Contractor's operations as described within the scope of the Work.
7. The policy must provide coverage for third-party claims arising from owned and non-owned disposal sites utilized in the performance of this contract.
8. This coverage can be provided on either claims made or occurrence based policy form.
9. The policy must insure contractual liability, be Primary and Non Contributory and name Agency as an Additional Insured.

Contractor or its subcontractors, if involved with the removal of asbestos or lead, the removal/replacement of underground tanks, or use of toxic chemicals and substances, must purchase and thereafter maintain CPL insurance in the amount of not less than five million dollars (\$5,000,000) per claim (or pollution incident) and five million (\$5,000,000) aggregate.

If CPL coverage is written on a claims-made form, the following provisions apply:

1. The "Retro Date" must be shown, and must be on or before the date of the Contract or the beginning of the Work.
2. Contractor must maintain the required CPL policy at not less than the required minimum limits, for not less than one (1) year after Final Acceptance of the Work.
3. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the Contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of one (1) year after Final Acceptance of the Work.

3-9.09 Other Provisions

1. Contractor must maintain all insurance coverages and limits in place at all times and provide the Agency with evidence of each policy's renewal within ten (10) Calendar Days after its anniversary date. Contractor is required by this Agreement to immediately notify Agency if it receives a communication from its insurance carrier or agent that any required insurance is to be canceled, non-renewed, reduced in scope or limits (excepting reduction of limits due to claims) or otherwise materially changed. Contractor must provide evidence that such cancelled or non-renewed or otherwise materially changed insurance has been replaced or its cancellation notice withdrawn without any interruption in coverage, scope or limits. If commercially available, each insurance policy must state that coverage must not be cancelled by the Contractor or its insurer, reduced in scope of coverage or limits (excepting reduction by claims), non-renewed, or otherwise materially changed unless the insurer(s) provide thirty (30) Calendar Days written notice to the Agency prior to such change. Ten (10) Calendar Days prior written notice must be given to the Agency in the event of cancellation due to nonpayment of premium.
2. Failure to maintain required insurance in force must be considered a material breach of the Agreement.
3. All of the Contractor's insurance coverage, except as noted below, must be placed with insurance companies with a current A.M. Best rating of at least A-VII and admitted to write insurance in California. Any use of a non-admitted insurer must be disclosed and must require Agency approval in writing, which approval must not be unreasonably withheld.

Exceptions:

- a. Underwriters at Lloyd's of London, which are not rated by A.M. Best.
 - b. Workers' Compensation which is provided through a State Compensation Insurance Fund or a qualified self-insurer for Workers' Compensation under California law.
4. The Contractor must sign and file with the Agency the following certification prior to commencing performance of the work of the Contract:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the

Work of this Contract.”

Said certification is included in the Contract, and signature and return of the Contract must constitute signing and filing of the said certification.

5. The Agency, at its discretion, may require new types of insurance coverage or increase the limits of insurance coverage required hereunder at any time during the term of the Contract by giving thirty (30) Calendar Days written notice to the Contractor. Contractor must immediately procure such insurance or increase the limits of coverage and provide certificates of insurance, including copies of all required endorsements, to the Agency within thirty (30) Calendar Days of receipt of the Agency’s request. Agency’s requirements must be reasonable but must be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required. Any claim by Contractor that Agency’s insurance changes result in higher costs will be subject to review and approval by Agency, whose approval will not be unreasonably withheld.
6. All required insurance coverage herein must be subject to the approval of the Agency, but any acceptance of insurance certificates and endorsements by the Agency must in no way limit or relieve the Contractor of its duties and responsibilities in this Contract.
7. If the Contractor fails to procure or maintain insurance as required by this Section and any Special Provisions, or fails to furnish the Agency with proof of such insurance, the Agency, at its discretion, may procure any or all such insurance. Premiums for such insurance procured by the Agency must be deducted and retained from any sums due the Contractor under the Contract. Failure of the Agency to obtain such insurance must in no way relieve the Contractor from any of the Contractor’s responsibilities under the Contract. Any failure of the Contractor to maintain any item of the required insurance must be considered a material breach of the Contract.
8. The making of progress payments to the Contractor must not be construed as relieving the Contractor of responsibility for loss or damage, or destruction occurring prior to final acceptance by the Agency.
9. The Agency is authorized to execute amendments and waivers, with or without conditions, to the insurance requirements of the Contract. The Agency will provide such amendments or waivers in writing to the Contractor.
10. Contractor is responsible for the acts and omissions of all its subcontractors, at every tier, and must require all its subcontractors to maintain adequate levels of insurance, including required endorsements and policy coverages, as stated herein.
11. The failure of the Agency to enforce in a timely manner any of the provisions of this Section must not act as a waiver to enforcement of any of these provisions at any time during the term of the Contract.

3-9.10 Deductibles and Self-Insured Retention

Any deductible or self-insured retention that applies to Commercial General Liability or Automobile Liability must be declared to the Agency. Any deductibles or self-insured retention in excess of \$100,000 must be declared to and accepted by Agency in writing. Contractor has the option to provide by separate letter the amount of its General Liability, Automobile Liability, and, if applicable, CPL deductible or self-insured retention to Agency’s Risk Management Office for Agency’s confidential review and acceptance prior to the execution of this Agreement. Agency reserves the right to require Contractor to substantiate its ability to maintain a deductible or self-insured retention in excess of \$100,000 through furnishing appropriate financial reports. All deductibles or self-insured retentions must be borne solely by the Contractor, and the Agency must not be responsible to pay any deductible or self-insured retention, in whole or in part.

3-9.11 Verification of Coverage

Contractor must furnish the Agency with original certificates and copies of required amendatory endorsements, or original certificates and copies of the applicable insurance policy language effecting coverage required by these Specifications; or a combination thereof. Agency reserves the right to require that Contractor also provide a copy of the declarations page and a copy of the schedule of forms and endorsements of each policy of insurance required hereunder. Agency also reserves the right to require that Contractor, through its broker, provide explanatory memoranda regarding coverages, endorsements, policy language, or limits as required hereunder. All required verifications of coverage are to be received and approved by the Agency before work commences. However, failure to obtain the required documents prior to the work beginning must not waive the Contractor's obligation to provide them. The Agency reserves the right to require complete copies of all required insurance policies, including endorsements, required by these Specifications, at any time. If the Contractor utilizes proprietary coverage forms or endorsements, the Contractor has the option of having its broker provide explanatory memoranda confirming coverage and limits as required hereunder.

The Agency may approve self-insurance programs in lieu of required policies of insurance if, in the opinion of the Agency, the interest of the Agency and the public is adequately protected.

3-9.12 Notification of Claim or Lawsuit

If any claim for damages is filed with the Contractor or if any lawsuit is instituted against the Contractor that arises out of or is in any way connected to the Contractor's performance under the Contract, and in any way, directly or indirectly, contingently or otherwise, affects or might reasonably affect the Agency, the Contractor must give prompt and timely (within thirty (30) Calendar Days following the date of receipt of a claim or ten (10) Calendar Days following the date of service of process of a lawsuit) written notice thereof to Agency.

3-10 ESCROW BID DOCUMENTS

If noted in the Special Provisions, the three low bidders must submit one copy of all documentary information generated in preparation of bid prices for this project. This material is hereinafter referred to as Escrow Bid Documents (EBDs).

The successful Bidder agrees, as a condition of award of the Contract, that the EBDs constitute the only complete documentary information used in preparation of his bid. No other bid preparation information will be considered in resolving disputes.

Nothing in the EBDs changes or modifies the terms or conditions of the Contract.

3-10.01 Ownership

The EBDs are and will always remain the property of the Contractor subject only to joint review by the Agency and the Contractor, except as provided for herein.

The Agency stipulates and expressly acknowledges that the EBDs, as defined herein, constitute trade secrets. This acknowledgment is based on the Agency's express understanding that the information contained in the EBDs is not known outside the Contractor's business, is known only to a limited extent and only by a limited number of employees of the Contractor, is safeguarded while in the Contractor's possession, and is extremely valuable to competitors by virtue of it reflecting the Contractor's contemplated techniques of construction.

The Agency acknowledges that EBDs and the information contained therein are made available to the Agency only because the action is an express prerequisite to award of the Contract. The Agency acknowledges that the EBDs include a compilation of information used in the Contractor's business, intended to give the Contractor an opportunity to obtain an advantage over competitors who do not know of or use the contents of the documentation. The Agency agrees to safeguard the EBDs and all information contained therein to the fullest extent

permitted by law.

3-10.02 Purpose

EBDs will be used to assist in the negotiation of price adjustments and variations and in the settlement of disputes, claims and other controversies. They will not be used for pre-award evaluation of the Contractor's anticipated methods of construction or to assess the Contractor's qualifications for performing the Work.

3-10.03 Format and Contents

EBDs may be submitted in the Bidder's usual cost estimating format. It is not intended that extra work be required in preparing the bid, but the EBDs must be adequate to enable complete and proper understanding and proper interpretation for their intended use. The EBDs must be in the English language only.

The EBDs must clearly itemize the estimated costs of performing the work of each item contained in the Bid Schedule. Items should be separated into sub-items as required to present a complete and detailed cost estimate and allow a detailed cost review. The EBDs must include all quantity take-offs, crews, equipment, calculations of rates of production and progress, copies of quotations from sub-Contractors and suppliers, and memoranda, narratives, consultants reports, add/deduct sheets and all other information used by the Contractor to arrive at the prices contained in the bid. Estimated costs must be broken down into the Contractor's usual estimate categories such as direct labor, repair labor, equipment operation, equipment ownership, expendable materials, permanent material and subcontract costs as appropriate. Plant and equipment and indirect costs should be detailed in the Contractor's usual format. The Contractor's allocation of plant and equipment, indirect costs, contingencies, mark-up and other items to each bid item must be clearly indicated.

The EBDs must clearly show in calculations, text, or both, the relationship between baseline indications presented in the Contract Documents and assumptions that form the basis for the Contractor's means, methods, equipment selection, rates of production, and costs.

All costs must be identified. For bid items with an extended amount less than \$10,000 estimated unit costs are acceptable without a detailed cost estimate, provided that labor, equipment, materials and subcontracts, as applicable, are included and indirect costs, contingencies, and mark-up, as applicable, are allocated.

Bid Documents provided by Agency should not be included in the EBDs unless needed to comply with the above requirements.

3-10.04 Submittal

The three lowest Bidders must submit the EBDs in a sealed container (e.g., sealed envelope, box or carton sealed with tape, locked strongbox, etc.), and the container must be clearly marked on the outside with the Bidder's name, date of submittal, project name, Contract No., and the words "Escrow Bid Documents". The EBDs must be submitted by 4:00PM on the first Monday following the Bid Opening to:

Sacramento County Department of General Services
Contract and Purchasing Services Division
9660 Ecology Lane
Sacramento, CA 95827

The EBDs must be accompanied by the "Bid Documentation Certification", signed by an individual authorized by the bidder to execute the bid, stating that the material in the Escrow Bid Documentation constitutes all the documentary information used in the preparation of the bid and that he or she has personally examined the contents of the EBDs container and has found

that the documents in the container are complete.

"Escrow Bid Document Certification"

The undersigned hereby certifies that the bid documentation contained herein constitutes all the information used in preparation of the bid and that I have personally examined these contents and have found that this bid documentation is complete.

Signature:

Print Name:

Title:

Firm:

Date::

Prior to award of the contract, the EBDs will be examined, organized and inventoried by representatives of the Agency, together with members of the Contractor's staff who are knowledgeable in how the bid was prepared. This examination is to ensure that the EBDs are authentic, legible, and complete. It will not include review of and will not constitute approval of proposed construction methods, estimating assumptions, or interpretations of the contract documents. Examination will not alter any condition(s) or term(s) of the Contract.

If all documentation required in the "Format and Contents" has not been included in the original submittal, additional documentation must be submitted, at the Agency's discretion, prior to award of the Contract. The detailed breakdown of estimated costs must be reconciled and revised, if appropriate, by agreement between the Contractor and Agency before making the award.

Timely submission of the complete EBDs is an essential element of the low Bidder's responsibility and a prerequisite to Contract award. Failure to submit EBDs within the specified time frame may render the bid non-responsive.

If the Bidder's bid is based on subcontracting any part of the Work, each Subcontractor whose total subcontract price exceeds five percent of the total contract price proposed by the bidder must provide separate EBDs to be included with those of the bidder. These documents will be opened and examined in the same manner and at the same time as the examination described above for the apparent successful bidder. Failure to submit EBDs within the specified time frame may render the bid non-responsive.

If the Contractor subcontracts any portion of the Work after award, the Agency retains the right to require the Contractor to submit EBDs from the Subcontractor before the subcontract is approved. This Section is not intended to and must not be interpreted as a waiver by the Agency of any of the requirements or provisions of Public Contract Code Section 4100 et seq. known as the Subletting and Subcontracting Fair Practices Act.

3-10.05 Storage

The EBDs will be stored by the Contract and Purchasing Services Division, Sacramento County Department of General Services, unless the Contractor requests, in writing, that the EBDs be placed in escrow with a mutually agreeable third-party escrow agent. The cost of storage by a third-party escrow agent will be borne by Contractor.

3-10.06 Examination

The EBDs can be examined by both Agency and the Contractor, at any time deemed necessary by either Agency or the Contractor, to assist in the negotiation of price adjustments and change orders, or the settlement of disputes.

Examination of the EBDs is subject to the following conditions:

As trade secrets, the EBDs are proprietary and confidential as described above.

Agency and Contractor will each designate, in writing to the other party a minimum of ten Calendar Days prior to examination, representatives who are authorized to examine the EBDs. No other persons will have access to the EBDs.

Access to the EBDs will take place only in the presence of duly designated representatives of both Agency and the Contractor.

3-10.07 Final Disposition

The EBDs will be returned to the Contractor when the Contract has been completed and final settlement has been achieved.

The EBDs submitted by unsuccessful bidders will be returned unopened, unless opened as provided for above, following execution of the Contract.

This Specification is not intended to create confidential status to EBDs in the event of litigation between Contractor and Agency. If litigation occurs, all EBDs are subject to discovery and are not considered confidential. If litigation commences between Agency and Contractor, upon ten Calendar Days written notice to contractor, Agency may demand and Contractor must permit Agency to copy all materials submitted into escrow pursuant to this Specification.