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SECTION 3 AWARD AND EXECUTION OF CONTRACT

3-1 AWARD OF CONTRACT

The award of the Contract, if the Contract is to be awarded, 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.

If an alternate or alternates are selected by the County, award will be based on the lowest total price for the sum of the base bid price plus the bid prices of the 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

The award, if made, will be made within thirty (30) days after the 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 five (5) working days of opening of bids.

3-3 CONSIDERATION OF BIDS

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

In the event that the product of a unit price and an estimated quantity does not equal the extended amount quoted, the unit price shall govern and the correct product of the unit price and the estimated quantity shall be deemed to 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 shall govern and the correct total shall be deemed to be the amount bid. If the Bid is missing the unit price, then it may be deemed incomplete and the Bid may be rejected.

After the Agency has made any necessary corrections in mathematical errors appearing on the face of the Bid, 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 shall be those contained in these Specifications.

As part of the execution of the Contract, the successful Bidder shall furnish the following corporate surety bonds to the benefit of the Agency. Bonds shall 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. When the amount to be paid to the Contractor is based upon units of work to be performed or items to be provided, the term “Total Contract Price” as used below for the purpose of posting Performance and Payment Bonds shall be computed on the basis of the unit price bid multiplied by the Estimated Quantities of work to be performed.

3-4.01 Performance Bond

The Performance Bond, to guarantee the performance of all covenants and stipulations of the Contract, shall be on a form approved by the Agency and shall be in a sum not less than one hundred percent (100%) of the original Total Contract Price as set forth in the Contract.

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, shall be on the form provided by the Agency and shall be in a sum not less than one hundred percent (100%) of the original Total Contract Price as set forth in the Contract.

3-5 NOTIFICATION OF SURETY COMPANIES

The surety company shall 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 so notify the surety company of changes shall in no way 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 will be returned to the respective Bidders except those submitted by the three lowest responsive, responsible Bidders.

Bid Guarantees for Bids not to be further considered in executing the Contract will be returned within ten (10) 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 ten (10) days after the successful Bidder has filed satisfactory bonds and proof of insurance as specified 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 ten (10) days of the decision of the Board to not award the Contract.

3-7 EXECUTION OF CONTRACT

Upon approval from the Agency’s governing Board to award the Contract to the apparent low bidder, the Contract shall be signed by the successful Bidder and returned to the Agency, together with the Performance Bond, Payment Bond and certificates of insurance within ten (10) days of the Bidder’s receipt of the documents. Receipt by the Agency of the signed documents from the Contractor is deemed to constitute “execution” of the Contract. Insurance certificates shall be signed by a person authorized by the insurer to bind coverage on its behalf and shall be accompanied by copies of all endorsements required by Section 3-9, “Insurance”, of these Specifications. The successful bidder shall furnish complete, certified copies of all required bonds and insurance policies, including endorsements specifically required by Section 3-9, “Insurance”. After execution by the Agency, one copy of the executed 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 acceptable bonds and insurance certificates as provided herein within ten (10) 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 of the Bidder's Bid Guarantee. At the Agency's discretion, 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 shall 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 aforesaid, the second lowest responsive, responsible Bidder's Bid Guarantee shall 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 shall be applied as necessary to reimburse for costs incurred for failure of the successful Bidder(s) to enter into a contract. The surplus, if any, will be returned 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 shall not be deemed to constitute 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 said Bid Guarantee.

3-9 INSURANCE

The Contractor shall procure, maintain, and keep in force at all times during the term of the Contract, at the Contractor's sole expense, the following insurance:

3-9.01 General Liability

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

Each Occurrence	One Million Dollars (\$1,000,000)
Personal & Advertising Injury	One Million Dollars (\$1,000,000)
Products and Completed Operations	Two Million Dollars (\$2,000,000)
Aggregate	
General Aggregate	Two Million Dollars (\$2,000,000)
Fire Damage	One Hundred Thousand Dollars (\$100,000)

The Products and Completed Operations coverage shall be maintained for at least two years after completion of the Contract.

3-9.02 Automobile Liability

Automobile Liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of owned, hired, and

non-owned automobiles. Coverage shall be at least as broad as “Insurance Services Office Business Auto Coverage Form CA 0001,” symbol 1 (any auto). Use of any symbols other than symbol 1 for liability for corporate/business owned vehicles must be declared to and approved by the Agency. If there are no owned or leased vehicles, symbols 8 and 9 for non-owned and hired autos shall apply. Personal automobile insurance shall apply if vehicles are individually owned.

The limits of liability shall not be less than:

Corporate/business owned or commercially insured vehicles, including non-owned and hired, \$1,000,000 Combined Single Limit. Individually owned vehicles, \$500,000 Combined Single Limit or, if split limits are used, \$250,000 per person, \$500,000 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 limits of Employers' Liability shall not be less than:

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 shall be endorsed to state that the Workers' Compensation carrier waives its right of subrogation against the Agency, its governing Board, officials, directors, agents, employees and volunteers.

In the event the Contractor is self-insured, the Contractor shall 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

If the Special Provisions require limits of general liability insurance of more than one million dollars (\$1,000,000) per occurrence, the Contractor shall carry excess or umbrella liability insurance providing excess coverage at least as broad as the underlying coverage for general liability, automobile and employer's liability with a limit equal to the amount stated in the Special Provisions per occurrence and aggregate.

3-9.04.A Contractor's Equipment

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

3-9.04.B Railroad Protective Liability

When stated as a requirement in the Special Provisions, the Contractor shall 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 with limits of liability as set forth in the Special Provisions.

3-9.04.C Builder’s Risk Insurance

When stated as a requirement in the Special Provisions, the Contractor shall 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 equal to one hundred percent (100%) of the contract value of the Work. Valuation shall include the cost of materials and the cost of labor to install materials.

- a. Coverage shall be written on a completed value, non-reporting form, on a replacement cost basis, and shall cover the property against all risks of physical loss or damage including:
 - i. land movement and flood
 - ii. loss that ensues from design error, defective materials, or faulty workmanship
 - iii. mechanical breakdown or electrical damage including testing, magnetic disturbance and changes in temperature or humidity.

The property covered shall include the Work, including any materials, equipment, or other items to be incorporated therein while the same are located at the construction site, stored off site, while in transit or at the place of manufacture. The policy shall contain a provision that the interests of the Agency, the Contractor, and its Subcontractors are covered and that any loss shall be payable to the Agency, the Contractor, and its Subcontractors as their interests may appear.

When stated as a requirement in the Special Provisions, Builders Risk insurance shall include Delay in Opening coverage with limits of liability, and for the period of time, as set forth in the Special Provisions. Coverage shall include debt service, expense, loss of earnings or rental income or other loss incurred by the Agency, without deduction, due to the failure of the project being completed on schedule.

- b. The maximum deductible for land movement and flood allowable under this policy shall be five percent (5%) of replacement value at the time of loss per occurrence and in the aggregate (if commercially available and at a reasonable cost) or, five percent (5%) of the contract value of the Work per occurrence and in the aggregate. The maximum deductible for all other perils allowable under this policy shall be ten thousand dollars (\$10,000) unless approved by the Agency. All deductibles shall be borne solely by the Contractor, and the Agency shall not be responsible to pay any deductible, in whole or in part.
- c. The Agency and the Contractor waive all rights against each other and against all other contractors and their subcontractors for loss or damage to the extent reimbursed by Builders’ Risk insurance or any other property or equipment insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance. If the policies of insurance referred to in this section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed to obtain such consent.
- d. If not covered by Builders’ Risk insurance or any other property or equipment insurance required by this Contract, the Contractor shall procure, maintain, and keep in force at all times during the term of the Contract, at the Contractor’s sole expense, property insurance for portions of the Contractor’s work and/or equipment to be incorporated therein stored offsite or in transit.

3-9.04.D Environmental Liability Insurance

When stated as a requirement in the Special Provisions, the Contractor shall procure, maintain, and keep in force at all times during the term of the Contract, at the Contractor’s sole expense, Environmental Liability insurance which includes coverage for sudden and accidental

pollution arising out of the handling of hazardous materials or hazardous wastes, and coverage for liability arising out of the handling of asbestos. If coverage for Environmental Liability insurance 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. Insurance must be maintained and evidence of insurance must be provided for at least one (1) year after completion of the Contract.
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 completion of the Contract.

3-9.04.E Other Provisions

1. The Contractor's General Liability, policy shall contain the following provisions:
 - a. The Agency, its governing Board, officers, directors, agents, employees, and volunteers shall be covered as additional insureds as respects liability arising out of the acts or omissions by or on behalf of the Contractor, or premises owned, occupied, or used by the Contractor. The policy shall contain no special limitations on the scope of coverage afforded to the Agency, its governing Board, officers, directors, agents, employees and volunteers.
 - b. The Contractor's General Liability policy shall be specifically endorsed to name the Agency, its governing Board, officers, directors, agents, employees and volunteers as additional insureds utilizing ISO form CG 20 10 11/85 or its equivalent to provide additional insured coverage, including completed operations. If the additional insured form does not include completed operations, the General Liability policy shall be endorsed to add completed operations using ISO form CG 20 37 07/04 or its equivalent – if commercially available and at a reasonable cost. If the Contractor's General Liability policy utilizes blanket or automatic additional insured coverage, the coverage shall include or be endorsed to include completed operations.
 - c. The Contractor's General Liability policy shall be endorsed to include a waiver of subrogation in favor of the Agency as named on the "Additional Insured" endorsement. Such waiver of subrogation shall be on ISO Form CG 24 04 10/93 "Waiver of Transfer of Rights of Recovery Against Others to Us" or its equivalent.
 - d. For any claims related to this Contract, the Contractor's insurance coverage shall be primary insurance as respects the Agency, its governing Board, officers, directors, agents, employees and volunteers. Any insurance or self-insurance maintained by the Agency, its officers, officials, employees, agents, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
 - e. The Contractor's General Liability insurance policies shall contain an endorsement stating that any aggregate limits shall apply separately to the Work.
 - f. The Contractor's insurance shall 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.
2. The Contractor's Automobile Liability policy shall name the Agency, its governing Board, officers, directors, agents, employees and volunteers as additional insureds utilizing ISO form CA 20 48 02/99 Designated Insured, or its equivalent.
3. Each insurance policy shall state that coverage shall not be cancelled by the Contractor or the Agency, reduced in scope of coverage or in limits, non-renewed, or otherwise materially changed unless the insurer(s) provide thirty (30) days written notice to the Agency prior to such change. Ten (10) days prior written notice shall be given to the Agency in the event of cancellation due to nonpayment of premium.

4. All of the Contractor's insurance coverage, except as noted below, shall be placed with insurance companies with a current A.M. Best rating of at least A-:VII.
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.
 - c. For liability insurance required under Section 3-9.04D (Environmental Liability insurance), insurance requirements shall be placed with insurance companies with a current A.M. Best rating of at least B+:VII.
5. The Contractor shall 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 shall constitute signing and filing of the said certification.
6. 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) days written notice to the Contractor. Contractor shall 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) days of receipt of the Agency's request.
7. The required insurance coverage shall be subject to the approval of the Agency, but any acceptance of insurance certificates by the Agency shall in no way limit or relieve the Contractor of its duties and responsibilities in this Contract.
8. 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 shall be deducted and retained from any sums due the Contractor under the Contract. Failure of the Agency to obtain such insurance shall 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 is sufficient cause for termination of the Contract.
9. The making of progress payments to the Contractor shall not be construed as relieving the Contractor of responsibility for loss or damage, or destruction occurring prior to final acceptance by the Agency.
10. 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.
11. Contractor is responsible for the acts and omissions of all its subcontractors and shall require all its subcontractors to maintain adequate insurance.

The failure of the Agency to enforce in a timely manner any of the provisions of this Section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the Contract.

3-9.04.F Deductibles and Self-Insured Retention

Any deductible or self-insured retention that applies to Commercial General Liability or Automobile Liability must be declared to and approved by the Agency.

3-9.05 Tracking and Reporting Job-Related Incidents

The Contractor shall report by telephone to the Agency within twenty-four (24) hours and also provide a written report to the Agency within fifteen (15) days after the Contractor or any subcontractors or agents have knowledge of any incident involving death of or injury to any person or persons, or damage in excess of ten thousand dollars (\$10,000) to the Work, property of the Agency or others, arising out of any work done by or on behalf of the Contractor as part of the Contract. Such report shall contain:

1. the date and time of the incident,
2. the names and addresses of all persons involved, and
3. a description of the incident and the nature and extent of injuries and/or damages.

The Contractor and all Subcontractors shall cooperate with the Agency’s independent investigatory efforts and provide the Agency with related documentation when requested (excluding confidential information restricted by law).

If requested, the Contractor shall report to the Agency their Recordable Incidence Rate (RIR) and Lost Time Incidence Rate (LTIR) at the end of each project.

The Contractors’ incidence rates shall be calculated in accordance with the following:

- Recordable Incidence Rate (RIR)

$$\frac{\text{Number of OSHA Recordable Cases X 200,000*}}{\text{Total hours worked by all employees for the Contract}}$$

- Lost Time Incidence Rate (LTIR)

$$\frac{\text{Number of Lost Time injuries and illnesses X 200,000*}}{\text{Total hours worked by all employees for the Contract}}$$

Note: A fatality shall not be considered a Lost Time Case (LTC) and shall not be included in the rate. Furthermore, all work-related fatalities, and all other serious injuries meeting the legal criteria for “reporting”, shall be reported immediately to Cal/OSHA as required by law and reported immediately to the Agency as indicated above.

** 200,000 is equivalent to the number of work hours worked by 100 full time employees at 40 hours per week/50 weeks per year.*

3-9.06 Notification of Claim or Lawsuit

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