

# **CONTRACT GENERAL CONDITIONS FOR JOB ORDER CONTRACTS**



**THE CALIFORNIA STATE UNIVERSITY**

OFFICE OF THE CHANCELLOR  
CAPITAL PLANNING, DESIGN AND CONSTRUCTION

*([www.calstate.edu/cpdc](http://www.calstate.edu/cpdc))*

Revised January, 2003

**CONTRACT GENERAL CONDITIONS FOR JOB ORDER CONTRACTS**

**TABLE OF CONTENTS**

**COVER PAGE**

**TABLE OF CONTENTS ..... i**

**1.00 DEFINITIONS ..... 1**

**2.00 BIDDING ..... 4**

2.01 Contractor’s License .....4

2.02 Prequalification Rating .....4

2.03 Necessity for Careful Examination of Site and Contract Documents .....5

2.04 Bidding Information .....5

2.05 Bidding Documents .....6

2.06 Bid Proposals .....6

2.07 Competitive Bidding .....7

2.08 Mistake in Bid .....7

2.09 Small Business Five Percent Advantage .....7

2.10 Failure to Be a Responsible Bidder .....7

2.11 California Company; Reciprocal Preference Against Nonresident Contractors; Certification .....8

2.12 Disabled Veteran Business Enterprise Participation Requirement .....8

2.13 Listing of Subcontractors .....8

**3.00 AWARD AND EXECUTION OF CONTRACT ..... 8**

3.01 Award of Contract .....8

3.02 Return of Bidder’s Security .....8

3.03 Contract Bonds .....8

3.04 Execution of Contract .....9

3.05 Failure or Refusal to Execute Contract .....9

**4.00 CONDUCT OF THE WORK..... 9**

4.01 Laws to be Observed--Generally .....9

4.02 Laws to be Observed--Regarding Labor .....10

4.03 Environmental Requirements .....12

4.04 Listing and Substitution of Subcontractors .....13

4.05 Delegation of Performance and Assignment of Money Earned .....14

4.06 Contractor’s Insurance .....14

4.07 Indemnification .....16

4.08 Contractor’s Responsibility for the Work .....16

4.09 Payments by Contractor .....18

4.10 Responsibility to Secure and Pay for Permits, Licenses, Utility Connections, Etc. ....18

4.11 Patented or Copyrighted Materials .....19

4.12 Property Rights in Materials and Equipment .....19

4.13 Taxes .....19

4.14 Contract Time .....19

4.15 Labor Force and Superintendent .....20

4.16 Subsurface or Site Conditions Found Different .....20

4.17 Verifying Dimensions .....20

4.18 Meetings .....21

4.19 Contractor’s Relationship to Subcontractors .....21

4.20 Character of Workers .....21

4.21 Limitation of Construction Operations .....21

4.22 Coordination With Other Work .....22

4.23 Drawings Reflecting Actual Construction .....22

4.24 Cleanup of Project and Site .....22

4.25 Access to Work .....22

4.26 Notice for Testing .....22

4.27 Re-examination of Work .....22

4.28 Inspection of Work .....22

4.29 Testing .....23

4.30 Acceptance of Work .....23

# CONTRACT GENERAL CONDITIONS FOR JOB ORDER CONTRACTS

## TABLE OF CONTENTS

<b>5.00</b>	<b>SCOPE AND PROCEDURE FOR JOB ORDER WORK.....</b>	<b>23</b>
5.01	Pre-Construction Conference .....	23
5.02	General Scope of Work .....	23
5.03	Description of Work .....	23
5.04	Procedure for Initiating Job Order.....	24
5.05	Preparation of the Proposal .....	24
5.06	Review of the Proposal and Issuance of Job Order .....	27
5.07	Computer and Communications Equipment Requirements.....	28
5.08	University Furnished Software.....	28
5.09	Contractor’s Detailed Schedule of Work.....	28
5.10	Stop Work Order .....	28
<b>6.00</b>	<b>INTERPRETATION OF AND ADHERENCE TO CONTRACT REQUIREMENTS.....</b>	<b>28</b>
6.01	Interpretation of Contract Requirements .....	28
6.02	Issuance of Interpretations, Clarifications, Additional Instructions .....	29
6.03	Product and Reference Standards.....	29
6.04	Shop Drawings, Samples, Alternatives or Equals, Substitutions .....	29
6.05	Quality of Materials, Articles and Equipment .....	30
6.06	Testing Materials, Articles, Equipment and Work .....	30
6.07	Rejection.....	30
6.08	Responsibility of Quality .....	31
6.09	Accident Prevention .....	31
6.10	Protection of Work and Property.....	31
6.11	Construction Site Emergency .....	31
6.12	Failure to Comply with Provisions of Articles 6.9 – 6.11 .....	31
6.13	Severability.....	31
<b>7.00</b>	<b>CHANGES IN THE WORK.....</b>	<b>31</b>
7.01	Change Orders.....	31
7.02	Emergency Changes .....	31
7.03	Time Extensions, Net Credit Changes, or Minor Additive Changes.....	32
<b>8.00</b>	<b>CLAIMS AND DAMAGES.....</b>	<b>32</b>
8.01	Contractor’s Claims Review Board.....	32
8.02	Delay in Completion – Liquidated Damages.....	32
8.03	Failure to Meet Terms of Contract .....	33
8.04	Third-Party Claims .....	33
<b>9.00</b>	<b>PAYMENT AND COMPLETION .....</b>	<b>32</b>
9.01	Acceptance .....	32
9.02	Partial Payments .....	32
9.03	Stop Notices .....	33
9.04	Final Payment.....	33
9.05	Guarantee.....	34
9.06	Contractor Evaluation.....	34

**CONTRACT GENERAL CONDITIONS  
FOR JOB ORDER CONTRACTS**

**1.00 DEFINITIONS**

**Addendum** - A document issued by the University during the bidding period that modifies or supersedes portions of the contract documents.

**Adjustment Factor** - The Contractor's competitively bid price adjustment to the unit prices as published in the Unit Price Book. Contractors must bid three adjustment factors, one for work to be accomplished during normal working hours, one for work to be performed during other than normal working hours and one for work to be performed during premium working hours. All adjustment factors are expressed as an increase or decrease from the published prices.

**Architect** - The person or organization, including the authorized representative thereof, commissioned by the University for the project. For projects on which an engineer or landscape architect is commissioned instead of an architect, the term 'Architect' shall mean the design professional so commissioned for the project (if any).

**Bid Date** - The day on which bid proposals for the contract are opened.

**Bidder** - Any individual or business entity acting directly or through an authorized representative that submits a proposal for the work.

**Campus** - The California State University campus on which the project is located.

**Change Order** - A written agreement entered into after the award of the Job Order that alters or amends the Job Order. Changes in the work requested are accomplished by the issuance of a new Job Order. Changes involving extensions of time, assessment of liquidated damages, adjustment for net credits, and minor additive changes are accomplished by issuance of a written change order to the original Job Order.

**Capital Planning, Design and Construction** - A department within Business and Finance, a division in the Office of the Chancellor of The California State University, responsible for all major capital outlay projects.

**Construction Administrator** - The person delegated by the University to manage the construction phase of a Job Order.

**Construction Inspector** - The inspector on the project site who receives administrative direction from the University.

**Contract** - The contract documents which collectively represent the entire agreement between the University and the Contractor, and which supersede any prior negotiations, representations, or agreements either written or oral.

**Contract Documents** - The Bid Form, Notice to Contractors, bonds, insurance certificates, the Unit Price Book, the Technical Specifications all addenda issued, Agreement, Contract General Conditions, Supplementary General Conditions, Special Conditions, and Job Orders as applicable.

**Contractor** - The individual, firm, or corporation, its successors and assigns, that enters into a contract with the University.

**Contract Award Figure** - The price as determined on the contract award worksheet provided in the bid form.

**Days** - Means calendar days, unless otherwise stated.

**Daytime Working Hours** - A daytime work shift of eight (8) hours per day and 40 hours per week, Mondays through Fridays. Exact applicable hours are defined in the Special Conditions of this Contract.

**Directed** - 'Directed,' 'required,' 'permitted,' 'ordered,' 'designated,' 'selected,' 'prescribed' or words of like import used in the specifications or in the contract documents to mean respectively the direction, requirement, permission, order, designation, selection or prescription of the Construction Administrator, and similarly the words 'approved,' 'acceptable,' 'satisfactory,' 'equal,' 'necessary' or words of like import to mean respectively, approved by, or acceptable or satisfactory to, or equal, or necessary in the opinion of the Construction Administrator.

**Environmental Requirements** - Means all applicable federal, state, and local laws, ordinances, rules, regulations, and executive orders pertaining to environmental compliance requirements.

**Executive Dean** – University official who oversees the capital outlay process.

**Field Instruction** - A written communication to the Contractor. The field instruction may reject work or issue coordination communications under the construction inspector's signature, but when it directs additional work or work under dispute it must be issued under authority of the University.

**Final Completion of the Job Order** - The last date on which all of the following events have occurred: the University has determined that all punch list work and any other remaining work has been completed in accordance with the contract documents; final inspections have been completed and all operation systems and equipment testing have been completed; certificates of occupancy (if any) have been issued; all deliverables have been provided to the University and all contractual requirements for final payment have been completed.

**Hazardous Materials** - Asbestos and asbestos-containing materials, polychlorinated biphenyl (PCB), oil or any other petroleum products, natural gas, source material, special nuclear materials, and by-product materials regulated under the Atomic Energy Act (42 U.S.C. Sec 201 1 et G.), pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Sec 136, et M.) and any hazardous waste, 'toxic substance' (or comparable term) in the Comprehensive Environment Responsibility, Compensation and Liability Act (42 U.S.C. Sec 1801, *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. Sec 6901, et M), the Toxic Substance Control Act (15 U.S.C. Sec 2601, *et seq.*) and any rules or regulations promulgated pursuant to such statutes or any other applicable Federal or State statute, rule, or regulation or local law, ordinance, rule, or regulation, as amended in each case.

**Job Order** - A document that describes the work to be accomplished under this Contract. The University will be responsible for the development of the Job Order as well as the supervision and acceptance of the work contained within the Job Order description. The University will review the Contractor's proposal for each Job Order requested and, if acceptable, shall issue a Job Order for the work described therein. Each Job Order will include a detailed scope of work, a lump sum, firm fixed price proposal from the Contractor, a time duration for the completion of the work and any special conditions that might apply to that specific Job Order, such as liquidated damages.

**Job Order Contract** - A firm, fixed price, competitively bid, indefinite quantity type contract designed to accomplish small to medium, multi-traded maintenance, repair and minor new construction projects.

**Job Order Contractor** - See 'Contractor.'

**Job Order Proposal (JOP)** - See 'Proposal.'

**Materials** - All material of any kind, nature and class as may be specified which becomes part of or is used in the performance of the work together with all manufactured or prepared materials, articles, accessories, appurtenances and parts used therein or placed thereon.

**Maximum Contract Amount** - The maximum dollar value of work that can be ordered during the base term of the contract. This maximum contract amount may be increased by mutual agreement to an amount not greater than \$3,000,000. Refer to the Special Conditions.

**Minimum Contract Amount** - The minimum dollar value of work that will be ordered under this contract during the base term of the contract. Refer to the Special Conditions.

**Nighttime Working Hours** - A nighttime work shift of eight (8) hours per day and 40 hours per week, Mondays through Saturdays. The exact applicable hours are defined in the Special Conditions of this Contract.

**Non Pre-Priced Tasks** - Those units of work that are not included in the Unit Price Book but are within the general scope and intent of this contract and may be negotiated into the contract as needs arise. Such work requirements as shall be incorporated into and made a part of this contract for the Job Order to which they pertain, and may be incorporated into the Unit Price Book, if determined appropriated by the University, at the base price determined in this contract. Non pre-priced tasks shall be separately identified and submitted in the Job Order proposal.

**Notice to Proceed** - Written notification from the University identifying the beginning date of the contract. In reference to a Job Order issued under the contract, it is written authorization from the University for the Contractor to commence a Job Order.

**Other Contractor** - Any individual, firm or corporation (other than the Contractor) having a contract with the University for work at or near the project site.

**Owner** - The Trustees of The California State University.

**Plans** - The scope of work including task descriptions in the Unit Price Book, drawings, sketches, illustrations, specifications or other pertinent information included on or attached to the Job Order.

**Premium Working Hours** - All working hours not designated by the University as daytime or nighttime working hours. Premium working hours will include overtime, Sundays and holidays. The exact applicable hours are defined in the Special Conditions of this Contract.

**Prevailing Wages** - The general prevailing rate of wages identified by the Director of the Department of Industrial Relations of the State of California pursuant to Section 1770 of the Labor Code.

**Pre-Priced Task** - A unit of work included within the Unit Price Book for which a unit price has been established.

**Project** - Collectively, the improvements to be constructed by the Contractor pursuant to a discrete, fixed-price Job Order.

**Project Completion Time** - The period of time allotted for the Contractor to achieve final completion of Job Order.

**Project Limit Lines** - The geographical boundaries of a project, as more fully identified and described in the Job Order.

**Project Record Documents** - All documents the contract requires the Contractor to provide to the University, including but not limited to shop drawings, as-built documents, parts manuals, operation and maintenance manuals, blue line drawings, project manuals and specifications.

**Project Site** - The area where the work will be performed.

**Proposal** - The Contractor-prepared document including a lump sum, firm fixed price and schedule for the completion of a scope of work as requested by the University. The proposal shall also contain, when appropriate, approved drawings, permits, or other such documentation as the University may require for the Job Order.

**Punch List Work** - A list of items that have not been completed in accordance with the contract documents.

**Request for Job Order Proposal** - The University's invitation for a proposal for a specific Job Order, hereafter, 'Request for Proposal' or 'RFP.'

**Scope of Work** - The complete description of services to be provided by the Contractor pursuant to an individual Job Order. The scope of work may include a narrative description of the work, partial design documents, or full design documents, depending on the complexity of the specific project.

**Site** - The area specified in the specific, discrete Job Order made available for the Job Order Contractor's operation.

**State** - The State of California.

**Stop Work Order** - The suspension of the work as set forth in Article 5.10.

**Standard Specifications** - A body of documents, maintained by the University, containing instructions and requirements prepared by an Architect which complement the individual Job Order scopes of work and describe the manner of performing the work or the quantities, qualities and types of materials to be furnished.

**Subcontractor** - Any person or firm, other than the employees of the Contractor, who contracts with the Contractor or another subcontractor to furnish labor, or labor and materials, at the work site or in connection with the project with appropriate license for the work to be accomplished.

**Superintendent** - The representative of the Contractor at the construction site, who is authorized to receive instructions from the University, and who is authorized to direct the performance of the work on behalf of the Contractor.

**Supplier or Vendor** - Any person or business entity that contracts with the Contractor to provide materials or equipment.

**Trustees** – The Board of Trustees of The California State University and their authorized representatives who act on behalf of the Trustees. The Trustees are the legally constituted governing body of The California State University system (see Education Code Section 66600 *et seq.*) which have full power and responsibility in the construction and development of any state university campus and any buildings or other facilities with improvements connected with The California State University (see Education Code Section 66606).

**University** - The California State University upon which the work is located and the University President and other University officers and employees acting within the scope of their duties.

**Unit Price Book** - A comprehensive listing of specific construction related tasks together with a specific unit of measurement and a unit price.

**Unit Price** - The price published in the Unit Price Book for a specific construction or construction related task. The unit prices are fixed for the duration of the contract. Each unit price is comprised of the labor, equipment and material costs to accomplish that specific task.

**Work** - All labor, materials, equipment and other incidentals required to complete a Job Order.

## 2.00 BIDDING

### 2.01 Contractor's License

No bidder may bid on work for which it is not properly licensed. The Trustees shall disregard any bid received from a bidder who is not properly licensed (Business and Professions Code, Section 7028.15). A contract shall not be awarded to a bidder who does not possess the appropriate Contractor's license. The appropriate Contractor's license is that specified in the Notice to Contractors (Public Contract Code Section 3300). Joint venture bidders must possess a joint venture license.

### 2.02 Prequalification Rating

The Trustees shall issue proposal packages for Job Order contracts only to bidders who have prequalified with the Trustees. To prequalify, a bidder must file a statement of financial condition and previous experience in performing public works on a standard questionnaire form obtained from the Trustees. Bidders shall verify under oath, the completed questionnaire, including the financial statement. The completed forms must be filed at least five days prior to the date for opening bids and approved not less than one day prior to the date set for opening bids.

Bidders may procure standard questionnaire forms from: The California State University, Office of the Chancellor, Capital Planning, Design and Construction, Attention: Prequalification Coordinator, at 401 Golden Shore, Long Beach, California, 90802-4210. Forms are also available on the Internet at [www.calstate.edu/cpdc](http://www.calstate.edu/cpdc), under 'Construction Management' (Public Contract Code Sections 10760-10763).

The Trustees will review the bidder's statement of experience and financial condition upon receipt, check references, and notify the bidder of the rating that has been established based on the information contained in the statement. The prequalification rating will be the maximum amount of a contract or contracts that the bidder may undertake with the Trustees. The Trustees shall disregard any bid received either from a bidder that is not currently prequalified, or from a bidder that is prequalified but the rating is not high enough to accommodate its bid. To bid a Job Order contract, the available prequalification rating shall be not less than fifty percent of the maximum amount of the Job Order contract. Although this prequalification permits participation in the bidding of the project, it does not mean that the bidder satisfies the requirements of being a "responsible" bidder. This determination occurs later in the process (see Article 2.10).

If two or more prospective bidders desire to bid as a joint venture on a single Job Order contract, they must file an affidavit of joint venture with the Trustees on a form obtained from the Trustees. The affidavit of joint venture will be valid only for the specific Job Order contract for which it was filed. Each party to the joint venture must be prequalified, as above, one day prior to the time set for opening for bids.

### **2.03 Necessity for Careful Examination of Site and Contract Documents**

Prospective bidders should visit the University campus for which this Job Order contract is applicable to familiarize themselves with the general state of the facilities, any special conditions that they may encounter (such as possible isolated locales), or typical weather conditions that may affect work during certain seasons. Some campuses are not located near large metropolitan areas; hence, availability of subcontractors may be a bidding concern.

Generally, prospective bidders shall examine the contract documents carefully and, before bidding, shall make a written request to the University for clarification of any ambiguity, or correction of any inconsistency or error in the documents. Requests for such clarification must be received at least ten (10) days before the date fixed for the opening of the bid. The University or its designee shall issue in writing, as an addendum, any clarification or correction, as well as any additional contract provisions the University may decide to include. Addenda shall be sent by certified or registered mail, or by overnight mail, or fax, or delivered to each prospective bidder recorded as having received a copy of the contract documents from the University and shall be available at the places where the contract documents are available for inspection by prospective bidders. Upon issuance, such addenda shall be binding on all bidders. The requirements contained in all contract documents shall apply to all addenda.

Only interpretations, corrections or additional contract provisions made in writing by the University in the form of addenda shall be binding. No officer, agent or employee of the University is authorized to alter the contract documents by any other method, and any such clarification or correction, if given, is not binding on the University.

### **2.04 Bidding Information**

#### **A. Preparation of Bids**

1. Bids must be submitted on the forms supplied by the University. Bids shall be enclosed in a sealed envelope, addressed to the University and marked with the name and address of the bidder, the bid opening date and time, and the description of the contract. All blank spaces must be filled in, using figures. Conditional bids will be rejected. Bids shall not contain any recapitulation of the work to be done. No oral, telegraphic or telephonic bids or modifications will be considered.
2. Bids that are illegible or that contain omissions, alterations, additions or items not called for in the bidding documents may be rejected as non-responsive. Any bid that modifies, limits, or restricts all or any part of such bid, other than as expressly provided for in the contract documents, will be rejected as non-responsive.
3. The University may reject as non-responsive any bid not prepared and submitted in accordance with the provisions of the contract documents.
4. Any bid received after the scheduled closing time for receipt of bids shall not be considered and will be returned to the bidder unopened (Public Contract Code Section 10766).

#### **B. Pre-Bid Conferences**

Bidders must attend one (1) mandatory pre-bid conference and may attend a second pre-bid conference if so desired. The pre-bid conferences will be held at the times and dates described in the Notice to Contractors and Special Conditions issued by the University. The purpose for the first pre-bid conference is to discuss the concept, documents and bid considerations. The purpose for the second pre-bid conference is to answer questions and discuss Job Order contracting from a Contractor's viewpoint.

#### **C. Description of the Job Order Contract Agreement**

1. This solicitation is for the award of a Job Order contract. A Job Order contract is a competitively bid, indefinite quantity contract. It includes a collection of detailed repair and construction tasks and specifications that have established unit prices. It is awarded to a Contractor for the accomplishment of repair, alteration, modernization, maintenance, rehabilitation, and construction of infrastructure, buildings, structures, or other real property. The University issues discrete, fixed priced Job Orders under the contract to accomplish the Work.
2. Minimum and Maximum Contract Values
  - a. The minimum contract value is the amount so stated by the University in the Special Conditions of the contract. The Contractor is guaranteed to receive Job Orders totaling at least the minimum amount so stated during the base contract period.
  - b. The maximum contract value is the amount so stated by the University in the Special Conditions of the contract. The Contractor will not be issued Job Orders exceeding the maximum contract value during any contract period. However, the Contractor is not guaranteed to receive this volume of work. The University has no obligation to issue Job Orders exceeding the minimum contract value.
  - c. The maximum value may be increased by mutual agreement to an amount not greater than \$3,000,000. Refer to Special Conditions.
3. Contract Term - The term of the contract is one year or when an amount equal to the maximum contract value has been ordered, whichever occurs first.



4. Adjustment Factors - There are three adjustment factors for the contract. When preparing a proposal for an individual Job Order, the Contractor shall select the appropriate adjustment factor for each task. The three adjustment factors are as follows:
  - a. Daytime working hours
  - b. Nighttime working hours
  - c. Premium working hours as defined and qualified in the Special Conditions.
5. Work to Be Performed
  - a. The Contractor shall perform the work described in the detailed scope of work referenced in each Job Order. The University shall have the right to require the Contractor to perform work at any location within the campus at the adjustment factors set forth herein.
  - b. The price of each Job Order shall be:
    - (1) the sum of the following calculation for each pre-priced task: the unit price multiplied by the quantity of units, multiplied by the appropriate adjustment factor; plus
    - (2) the total of all non pre-priced tasks.

D. Filings and Permits

Contractor shall make the necessary arrangements for and obtain all filings and permits, including payment therefore, if any are required for the work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor.

E. Final Approvals

The Contractor shall obtain all final approvals for the work, in the form of such certificates that are required by all governmental agencies having jurisdiction over the work.

F. Incidental Engineering and Architectural Services

The Contractor shall provide incidental engineering, architectural and consultant services required in connection with a particular Job Order including drawings required for filing with appropriate agencies (including hazardous materials, if necessary).

**2.05 Bidding Documents**

A. Bid Proposal Package

Following a request from a prequalified bidder, the University will furnish a bid proposal package, which when completely filled out and executed, may be submitted as a bid. Bids not presented using the furnished bid package shall be disregarded (Public Contract Code Section 10764). The bid package is not transferable to another bidder. The bid package must be submitted in the same name as is used on the bidder's license and prequalification.

The bid proposal package contains a standard bid form that shall be used for bidder's bid. Each bid shall give the adjustment factors proposed in the manner required by the bid and shall be signed by the bidder or the bidder's duly authorized representative, with its address and telephone number. If an individual makes the bid, the individual's name, postal address, and telephone number must be shown. If made by a partnership, the bid shall have the signature of all partners or an affidavit signed by all partners empowering one partner as an agent to act in their behalf and the address and telephone number of the partnership. A bid submitted by a corporation shall show the name of the state in which the corporation is chartered, the name of the corporation, its address and telephone number, and the title of the person who signs on behalf of the corporation. The corporation shall also submit a certified copy of corporate board action that identifies and authorizes the person who may sign and submit bids for the corporation. Any bid submitted that is not signed by the bidder or by the bidder's duly authorized representative shall be rejected by the Trustees.

B. Bidder's Security

All bids shall be presented under sealed cover and have enclosed an amount equal twenty-five thousand dollars (\$25,000) as bid security. The bid security may be a cashier's check, or certified check made payable to the University, or a bidder's bond. No bid shall be considered unless one of these forms of bid security is enclosed therewith (Public Contract Code Section 10765).

If the bid security is a bond, a corporation authorized as an admitted surety to issue surety bonds in California shall execute the bond, and it shall be executed on the form prescribed by the University.

**2.06 Bid Proposals**

A. Submission of Bids

Bidders shall submit bids to the office indicated on the bid form. It is the responsibility of the bidder to see that its bid is received in the proper time. Delays in timely receipt of the bid caused by the United States or the University mail

delivery system, independent carriers, acts of God, or any other cause shall not excuse late receipt of a bid. The Trustees shall return unopened, any bid received after the time specified in the Notice to Contractors or in any addendum (Public Contract Code Sections 4104.5 and 10766).

**B. Withdrawal of Bids**

Any bid may be withdrawn at any time prior to the time fixed in the public notice for the opening of bids but only by a written request from the bidder or its authorized representative filed with the University. A request to withdraw a bid orally, or by use of telegram or telephone is not acceptable. The withdrawal of a bid shall not prejudice the right of a bidder to file a new bid. This paragraph does not authorize the withdrawal of any bid after the time fixed in the public notice for the opening of bids (Public Contract Code Section 10767).

**C. Public Opening of Bids**

Bids will be publicly opened and read at the time and place stated in the Notice to Contractors. Bidders or their agents are invited to be present (Public Contract Code Section 10780).

**D. Rejection of Irregular Bids**

Bids may be rejected if they show any alterations of forms, additions not called for, conditional bids, incomplete bids, erasures, or irregularities of any kind. If the bid amount is changed after the amount has been once inserted, the change shall be initialed.

**E. Power of Attorney or Agent**

When bids are signed by an agent, a power of attorney shall either be on file with the University prior to the opening of bids or be submitted with the bid. Failure to submit a power of attorney may result in the rejection of the bid irregular and unauthorized. A power of attorney is not necessary in the case of a general partner of a partnership.

**F. Waiver of Irregularities**

The University reserves the right to waive any or all irregularities in bids submitted.

**2.07 Competitive Bidding**

If more than one bid is offered by an individual or business entity or combination thereof, under the same or different names, all such bids may be rejected.

All bidders are hereby notified that any collusive agreement fixing the prices to be bid so as to control or affect the awarding of this contract may render void any contract awarded under such circumstances. The bidder, by act of submitting a bid, certifies that in the preparation of the bid, no bid was received by the bidder from a bid depository, which depository, as to any portion of the work, prohibits, or imposes sanctions for, the obtaining by the bidder, or the submission to the bidder by any subcontractor, vendor or supplier of goods and services, of a bid outside the bid depository. The certification shall constitute a warranty, the falsity of which shall entitle the University to pursue any remedy authorized by law and shall include the right at the option of University of declaring any contract made as a result thereof to be void (Business & Professions Code Section 16600 *et seq.*).

**2.08 Mistake in Bid**

A bidder may not be relieved of a bid because of mistake unless all the elements for relief in Section 5103 of the Public Contract Code are present, and the University consents to relief. No change may be made in a bid because of a mistake. However, a bidder may pursue relief of its bid in accordance with Section 5100 *et seq.* of the Public Contract Code.

**2.09 Small Business Five Percent Bid Advantage**

A small business bid advantage of five percent shall be given to contracting firms that have been certified as a 'Small Business' by the Small Business & DVBE Certification (OSDC) in the Procurement Division of the Department of General Services. Such certification shall be in accordance with the California Code of Regulations, Title 2 Section 1896.2.

To receive the five percent advantage, certified Small Businesses shall:

- A. submit with the bid a completed 'Request for Small Business Five Percent Preference Certification,' and
- B. be certified as a Small Business upon verification in accordance with Section 1896.2, having applied for certification no later than 5:00 PM on bid date.

Small Business preference shall utilize the total weighted composite adjustment factors in determining the lowest, responsible bidder, based on the maximum contract amount, taking into consideration the \$50,000 Small Business preference limit.

**2.10 Failure to Be a Responsible Bidder**

In order to be considered for award of a contract a bidder must be a responsible bidder (Public Contract Code Section 10780). To be responsible, the bidder, in the judgment of the University, must be sufficiently trustworthy and possessed of the

requisite quality, fitness, capacity and experience to satisfactorily perform the work (Public Contract Code Section 1103). Should the University question the bidder's responsibility, the bidder shall be given an opportunity to rebut any evidence of non-responsibility, and to present evidence of responsibility. The hearing shall be informal, and may be conducted in whole or in part in writing by an individual appointed by the University to hear the matter. A decision concerning the bidder's responsibility shall be mailed to the bidder within 10 calendar days of the conclusion of the hearing. Refer to Article 8.03.

### **2.11 California Company; Reciprocal Preference Against Nonresident Contractors; Certification**

The University shall grant a California company a reciprocal preference as against a nonresident contractor from any state that gives or requires a preference to be given contractors from that state on its public entity construction contracts. The amount of the reciprocal preference shall be equal to the amount of the preference applied by the state of the nonresident contractor with the lowest responsive bid, except where the resident contractor is eligible for a California small business preference, in which case the preference applied shall be the greater of the two, but not both. Any such reciprocal preference shall be applied to the adjustment factors in determining the lowest responsible bidder.

Each bidder shall certify at the time of bid, that the bidder qualifies as a 'California company,' which means a business entity licensed in California on the date of bid opening and which is one of the following:

- A. a business entity with its prime place of business in California,
- B. an out-of-state contractor whose state does not provide a local Contractor preference, or
- C. an out-of-state contractor that has paid at least \$5,000 in sales or use taxes in the immediately preceding five years.

If the bidder does not qualify as a California company, then it shall indicate the name of the state in which its principal place of business is, and the amount of the local contractor preference in that state (Public Contract Code Section 6107).

### **2.12 Disabled Veteran Business Enterprise Participation Requirement**

California state law requires that its state agencies make efforts to achieve a goal of three (3) percent participation for disabled veteran business enterprises (DVBE) in state contracts. Under the Job Order Contracting system it is not feasible to identify potential DVBE subcontractors since the individual jobs are not known at the time of the bidding. However, the successful low bidder will be required to attempt to meet or exceed the stated DVBE goals by identifying DVBEs to be utilized on each Job Order during the proposal submission phase after contract award. Failure to comply with the DVBE requirement may cause individual proposals to be rejected, thereby endangering the potential for a Contractor to receive any or any further work under the contract. The procedure for complying with this requirement is described in Article 5.05-A.5.

### **2.13 Listing of Subcontractors**

Submittal of the list of subcontractors performing work under the Job Order in excess of one-half of one percent of the Job Order will be done by the Contractor as part of each discrete Job Order proposal and not with the bid since the scope of work is not known at the time of the bid.

## **3.00 AWARD AND EXECUTION OF CONTRACT**

### **3.01 Award of Contract**

If the University deems the acceptance of the lowest responsible bid or bids is not in the best interests of the State, the University may reject all bids (Public Contract Code Section 10785). If the contract is awarded, it shall be to the lowest responsible bidder whose proposal complies with all the requirements prescribed (Public Contract Code Section 10780). Such award shall be made within sixty days after the opening of the proposals. If the lowest responsible bidder refuses or fails to execute the contract, or perform the contract, or is found to be non-responsible, the University may award the contract to the second lowest responsible bidder. Such award shall be made within 120 days after the opening of proposals. The above time periods within which the award of contract may be made are subject to such no-cost extensions as may be agreed upon in writing between the University and the bidder concerned (Public Contract Code Section 10782).

### **3.02 Return of Bidder's Security**

Bidder's security of the second and third lowest responsible bidders may be withheld from such bidders until the contract has been finally executed. The cashier's checks and certified checks submitted by all other unsuccessful bidders shall be returned to them within ten (10) days after the contract is awarded, and their bidder's bonds shall be of no further effect (Public Contract Code Section 10784).

### **3.03 Contract Bonds**

The successful bidder shall furnish in four duplicate counterparts, two surety bonds in the form prescribed by the University, each in an amount equal to 100 percent of the awarded maximum contract value and executed by an admitted surety insurer licensed in the State of California and listed in the latest published United States Treasury Department list of "Companies

Holding Certificates of University as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.” (Reference the State of California Department of Insurance on the following web site: <http://www.insurance.ca.gov/docs/FS-Licensestatus.htm>, and the US Treasury listing at the following web site: [http://www.fms.treas.gov/c570/c570.html#Certified\\_Companies](http://www.fms.treas.gov/c570/c570.html#Certified_Companies).) One of the surety bonds shall guarantee faithful performance of the contract by the Contractor and the other shall secure payment of laborers, mechanics, or materialmen employed on the project. Such bonds are subject to the approval of the University. Contract bonds shall remain in full force and effect during the term of the contract including the one-year guarantee period, unless a longer bond period is stipulated in the contract documents (see Article 9.05; Public Contract Code Sections 10821-10824).

All alterations, extensions of time, extra and additional work, and other changes authorized by any part of the contract, including determinations made under Article 8.01 shall be made without securing the consent of the surety or sureties on the contract bonds.

Whenever the University has cause to believe that the surety has become insufficient, the University may demand in writing that the Contractor provide such further bonds or additional surety, not exceeding that originally required, as in the University’ opinion is necessary, considering the extent of the work remaining to be done. Thereafter no payment shall be made to the Contractor or any assignee of the Contractor until the further bonds or additional surety have been furnished (Public Contract Code Section 10825).

Riders or modifications of any kind on bidders bonds, performance bonds and payment bonds are not acceptable and may result in a bidder being disqualified as non-responsive. Bond document forms approved by the Trustees and provided by the University must be used without alteration.

#### **3.04 Execution of Contract**

The contract shall be signed by the successful bidder in four duplicate counterparts and returned to the University together with the contract bonds and certificates evidencing the required insurance coverage (see Article 4.06) within ten days of receipt from the University, not including Saturdays, Sundays, or legal holidays. No contract shall be binding upon the University until it has been executed by the Contractor, the University, and the University’s legal counsel (Public Contract Code Section 10820).

When the contract has been fully executed, the University may contact the Contractor to begin joint scoping of potential projects. The University will issue individual Notices to Proceed for each discrete Job Order.

#### **3.05 Failure or Refusal to Execute Contract**

Failure or refusal by the bidder to execute the contract within the time set in Article 3.04 shall be just cause for the rescission of the award and the forfeiture of the bidder’s security. Failure or refusal to file acceptable bonds within the time set in Article 3.04 constitutes a failure or refusal to execute the contract. If the successful bidder fails or refuses to execute the contract, the University may award the contract as set forth in Article 3.01. On the failure or refusal of the second lowest responsible bidder to execute the contract, bidder’s security in each case shall be forfeited (Public Contract Code Sections 10781-10783).

### **4.00 CONDUCT OF THE WORK**

#### **4.01 Laws to be Observed--Generally**

- A. The Contractor shall observe all state and federal laws that affect the work under this contract. The Contractor shall hold harmless, defend and indemnify the University against any claim arising from the violation of any law, whether by itself or its agents, employees or subcontractors. If a conflict arises between the provisions of this contract and a law, the Contractor shall immediately notify the University in writing. ‘Law’ as used in this paragraph includes statutes and regulations adopted pursuant to statute, as well as executive orders, authoritative interpretations and other rules and directives issued by legally constituted authority.
- B. In executing this contract, the Contractor swears, under penalty of perjury, that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of a federal court which directs the Contractor to comply with an order of the National Labor Relations Board. The University may rescind this contract if Contractor falsely swears to this statement (Public Contract Code Section 10296).
- C. The Contractor acknowledges state of California policy regarding the importance of child and family support obligations expressed in Public Contract Code Section 7110(a). The Contractor acknowledges that to the best of its

knowledge, it is fully complying with the earning assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the State's Employment Development Department.

- D. The contracting parties shall be subject to examination and audit by both the Trustees (or designee) of The California State University and the State Auditor of the State of California at any time during construction and for a period of three (3) years after final payment of the contract. Such examination and audit shall include access to the Contractor and the subcontractor records as delineated in the following:

The Contractor's records which shall include but not be limited to accounting records (hard copy, as well as computer readable data if it can be made available), written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other supporting evidence deemed necessary by the Trustees/Auditor General to substantiate charges related to this contract (all foregoing hereinafter referred to as 'records') and shall be open to inspection and subject to audit and/or reproduction to adequately permit evaluation and verification of (a) the Contractor's compliance with contract requirements and (b) compliance with provisions for pricing change orders, payments or claims submitted by the Contractor or any of its payees. The Contractor is required to have as part of the records the following reports: a detailed cost ledger reflecting total charges against the project which present an itemization by invoice and labor costs by cost codes; a summary report identifying total project costs by cost codes; and a subcontractor history report including each subcontract amount and change orders issued thereto.

- E. The Contractor's work under this contract shall comply with all applicable building codes pertaining to the individual project sites. As a minimum, compliance with Title 24 will apply.
- F. If the Contractor is a natural person, the Contractor certifies in accepting this contract that she/he is a citizen or national of the United States or otherwise qualified to receive public benefits under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193; 110 Stat. 2105, 2268-69).

#### **4.02 Laws to be Observed--Regarding Labor**

##### **A. Nondiscrimination**

1. During the performance of the contract, the Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40) or sex. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
2. Contractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 *et seq.*), the regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285 *et seq.*) and the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code Sections 11135-11139.5).
3. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the Trustees upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours notice, to such of its books, records, accounts, other sources of information, and its facilities as said Department or Trustees shall require to ascertain compliance with this clause.
4. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
5. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the agreement.

##### **B. Hours of Labor**

Eight (8) hours of labor constitutes a legal day's work. The Contractor shall forfeit, as a penalty to State, \$25.00 for each worker employed in the execution of the contract by the Contractor or by any subcontractor under it for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day, and forty hours in any one calendar week, in violation of the provisions of the Labor Code, and in particular, Sections 1810 to 1815, thereof, inclusive, except that work performed by employees of the Contractor in excess of eight hours per day, and forty hours during any one 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 as provided in Section 1815.

C. Prevailing Wage

1. Wage rates set forth are the minimum that may be paid by the Contractor on a public works contract (see definition of public works, Labor Code Section 1720) Public works also means hauling refuse from a public works site to an outside disposal location per Labor Code Section 1720.3. Nothing herein contained shall be construed as preventing the Contractor from paying more than the minimum rates set forth. No extra compensation whatsoever will be allowed by the University due to the inability of the Contractor to hire labor at minimum rates, nor for the necessity for payment by the Contractor of subsistence, travel time, overtime, or other added compensations, all of which possibilities are elements to be considered and ascertained to the Contractor's own satisfaction in preparing the bid.
2. If it becomes necessary to employ crafts other than those listed, the Contractor shall notify the University immediately, and the University will ascertain additional prevailing rates and the rates thus determined shall be applicable as minimum from time of initial employment.
3. Pursuant to Labor Code Section 1770, the Director of the Department of Industrial Relations has ascertained the general prevailing rate of per diem wages and the general prevailing rate for legal holiday and overtime work for each craft needed in execution of the contract as set forth in the Notice to Contractors. The Trustees shall furnish the Contractor a copy of the prevailing rates, which Contractor shall post at the job site.
4. The Contractor and any subcontractor under the Contractor shall comply with Labor Code Section 1775. The Contractor shall include provisions in its contract with its subcontractors that will require compliance with Labor Code Section 1775. As required by Section 1775(b) the Contractor shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815 in the contract between the Contractor and the subcontractor. The Contractor shall monitor its subcontractors' compliance with the prevailing wage law as required by Section 1775(b). In accordance with Section 1775, the Contractor and any subcontractor under the Contractor shall forfeit as a penalty to the State not more than \$50 for each calendar day or portion thereof, for each worker paid less than the prevailing wage rates for the work or craft in which the worker is employed for any public work done under the contract by it or, except as provided in 1775(b), by any subcontractor under it. In addition to this penalty, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor or subcontractor. If a worker employed by a subcontractor on a public works project is not paid the general prevailing per diem wages by the subcontractor, the Contractor is not liable for any penalties under 1775(a) unless the Contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the Contractor fails to comply with the requirements of 1775(b).
5. In accordance with Labor Code Section 1776, the Contractor and subcontractors shall keep an accurate payroll record, on forms provided by the Division of Labor Standards Enforcement (or shall contain the same information as the forms provided by the division) showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and actual per diem wages paid to each journeyman, apprentice or worker employed in connection with the public work. Each payroll record shall contain verification by written declaration that it is made under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor and subcontractors have complied with the requirements of Labor Code Sections 1771, 1811 and 1815 for any work performed by its employees on the project. The Contractor's and subcontractor's payroll records shall be available for inspection at all reasonable hours, and a certified copy shall be made available upon request to the employee or his or her authorized representative, the University, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards. Upon receipt of written notice from the Trustees, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, and within ten days of that receipt, the Contractor shall file with the requesting entity a certified copy of the payroll records. Should the Contractor or subcontractor fail to comply within the ten-day period, the Contractor or subcontractor shall forfeit \$25 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, these penalties shall be withheld from progress payments then due. Contractor is not subject to a penalty assessment due to the failure of a subcontractor to comply with this section.
6. The Contractor is required to submit a minimum of the first week's certified payroll for its workers and all subcontractors for each job order. Additional weeks may be required at the discretion of the University.

D. Workers' Compensation

The Contractor shall be required to secure payment of workers' Compensation to its employees in accordance with Labor Code Section 3700 and shall file with the University prior to performing the work the certification required in Labor Code Section 1861 (refer also to Article 4.06-A of these General Conditions).

E. Apprentices

If the Contractor or any subcontractor employs workers on the project in any apprenticeable craft, it shall apply to the joint apprenticeship committee administering the apprenticeship standards for the craft in the area of the work for a certificate approving the Contractor or subcontractor for the employment and training of apprentices. The Contractor or subcontractor shall employ the number of apprentices or the ratio of apprentices to journeymen specified in the certificate unless the conditions set out in Labor Code Section 1777.5 excuse it from this requirement.

Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade in which they are employed and shall be employed only in the work of the craft or trade to which they are indentured. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship agreements under which a person is training.

The Contractor or subcontractor employing journeymen or apprentices in any apprenticeable craft or trade shall contribute to the fund or funds set up in the area of work to administer the apprenticeship program in each trade in which it employs such journeymen or apprentices in the same amount and manner as the contributing Contractors.

Special attention is directed to Labor Code Sections 1777.5, 1777.6 and 1777.7, and California Code of Regulations, Title 8, Section 200 *et seq.* Each Contractor and subcontractor must, prior to commencement of work under this contract, contact the Division of Apprenticeship Standards, 455 Golden Gate, 8<sup>th</sup> Floor, San Francisco, California, 94102, or one of its branch offices to ensure compliance and understanding of the law regarding apprentices and specifically the required ratio thereunder. Responsibility for compliance with this section lies with the prime Contractor.

F. Education, Counseling, and Training Programs

All educational, counseling and vocational guidance programs and all apprenticeship and on-the-job training programs, under this contract, shall be open to all qualified persons, without regard to race, sex, color, religion, national origin or ancestry. Such programs shall be conducted to encourage the fullest development of the interests, skills, aptitudes, and capacities of all students and trainees, with special attention to the problems of culturally deprived, educationally handicapped, or economically disadvantaged persons. Expansion of training opportunities under these programs shall also be encouraged with a view toward involving larger numbers of participants from these segments of the labor force where the need for upgrading levels of skills is the greatest.

G. Occupational Safety and Health

The Contractor shall comply with all the provisions of the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. Section 651 *et seq.*) and all rules, regulations, and orders adopted pursuant thereto. The Contractor shall comply with all the provisions of the California Occupational Safety and Health Act of 1973 (Labor Code Section 6300 *et seq.*) and all rules, regulations and orders adopted pursuant thereto. These laws provide for job safety and health protection for workers.

The Contractor shall obtain copies of such safety orders as are applicable to the type of work to be performed and shall be governed by their requirements in all construction operations. The Contractor shall fully inform each subcontractor and materials supplier as to the requirements of the applicable safety orders.

H. Assignment of Rights Relating to Federal and State Anti-Trust Actions

The Contractor and all subcontractors shall be bound by the provisions of Public Contract Code 7103.5 as follows: in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the Trustees 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. Section 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) or Part 2 of Division 7 of the California Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the Trustees tender final payment to the Contractor, without further acknowledgment by the parties.

**4.03 Environmental Requirements**

A. Air and Water Pollution Control

The Contractor shall comply with all air and water pollution control rules, regulations, ordinances and statutes which apply to the work performed under the contract, including any air pollution control rules, regulations, ordinances and statutes adopted under the University of Section 11017 of the Government Code. Contractor must be eligible to perform work for the State by not being found to be in violation of the regulations adopted in accordance with Government Code Section 4477.

In the absence of any applicable air pollution control rules, regulations, ordinances or statutes governing solvents, all solvents, including but not limited to the solvent portions of paints, thinners, curing compounds, and liquid asphalt used on the project, shall comply with the applicable material requirements of the Air Quality Management District (AQMD). All containers of solvent, paint, thinner, curing compound or liquid asphalt shall be labeled to indicate that the contents fully comply with these requirements.

Unless otherwise provided in the special provisions, material to be disposed of shall not be burned either inside or outside the premises.

A regular watering program shall be initiated to adequately control the amount of fugitive dust in accordance with applicable AQMD rules. Exposed soil surfaces shall be sprayed with water at least daily and as needed to mitigate dust (see also Article 4.08-D).

Trucks hauling dirt from the site shall be covered in accordance with applicable state and local requirements. To reduce exhaust emissions, unnecessary idling of construction vehicles and equipment shall be avoided.

**B. Sound Control Requirements**

The Contractor shall comply with all sound control and noise level rules, regulations and ordinances that apply to the work. In the absence of any such rules, regulations and ordinances, the Contractor shall conduct its work to minimize disruption to others due to sound and noise from the workers, and shall be responsive to the University's requests to reduce noise levels.

Each internal combustion engine, used for any purpose on the project or related to the project, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without a muffler. Construction equipment shall be fitted with modern emission control devices and shall be kept in proper tune.

Loading and unloading of construction materials will be scheduled so as to minimize disruptions to University activities. Construction activities will be scheduled to minimize disruption to the University and to University users.

**C. Environmental Clearances**

The Contractor shall provide to state and federal agencies all information necessary for environmental clearances and other authorizations necessary for this project. The Contractor shall comply with the provisions, including giving notices during construction when so required. The Contractor shall not be compensated for the delays in obtaining environmental clearances and authorizations; however, an appropriate extension of time will be granted in accordance with the provisions in Article 4.14-F, 'University's Adjustment of Job Order Time,' of these General Conditions, if the Contractor demonstrates to the satisfaction of the University that it has made every reasonable effort to obtain the requisite clearance or authorizations, and cannot obtain it in a timely manner.

**D. Public Contract Code Section 10295.5 requires that no State agency shall purchase or utilize sand, gravel, aggregates, or other minerals unless the source is on an eligible list identifying operations that have met certain requirements of the Surface Mining and Reclamation Act of 1975 (Public Resources Code Section 2710 *et seq.*). Accordingly, the Contractor shall submit to the University documentation that it is complying with the requirements of this law in purchasing these materials.**

**E. Archaeological Finds**

If the Contractor discovers any artifacts during excavation and/or construction, the Contractor shall stop all affected work and notify the University, who will call in a qualified archaeologist designated by the California Archaeological Inventory to assess the discovery and suggest further mitigation, as necessary.

If the Contractor discovers human remains, the Contractor shall notify the University who will be responsible for contacting the county coroner and a qualified archaeologist. If the remains are determined to be Native American, the University shall contact the appropriate tribal representatives to oversee removal of the remains.

**4.04 Listing and Substitution of Subcontractors**

Each Job Order proposal shall have listed therein the name, address, telephone number and license number and location of the place of business of each subcontractor under subcontract to the Contractor, that will perform work or labor or render services for the Contractor in excess of one-half of one percent of the Contractor's Job Order proposal. The proposal shall also state the portion of work or labor or rendition of services that each such subcontractor will do.



The Contractor shall not substitute any subcontractor in place of a subcontractor listed in its Job Order proposal except as authorized in the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100 *et seq.*). Section 4108 of the Public Contract Code requires that the Contractor clearly advertise the specific bond requirements for the project, including the requirement of a bond, the kind of a bond, and the amount of the bond, in order to be eligible to substitute a subcontractor under Section 4107(a)(4) of the Public Contract Code.

#### **4.05 Delegation of Performance and Assignment of Money Earned**

The performance of all or any part of this contract may not be delegated without the written consent of the University. Consent will not be given to any proposed delegation that would relieve the Contractor or its surety of their responsibilities under the contract.

The Contractor may assign moneys due or to become due under the contract, only upon written consent of the University. Assignment of moneys earned by the Contractor shall be subject to proper retention in favor of the University and to all deductions provided for in the contract and such moneys shall be subject to being used by the University for the completion of the work in the event the Contractor is in default.

#### **4.06 Contractor's Insurance**

The Contractor shall not commence work until it has obtained all the insurance required in this Article, and such insurance has been approved by the Trustees.

##### **A. Policies and Coverage**

1. The Contractor shall obtain and maintain for the term of the contract the following policies and coverage:
  - a. Comprehensive or Commercial Form General Liability Insurance, on an occurrence basis, covering work done or to be done by or on behalf of the Contractor and providing insurance for bodily injury, personal injury, property damage, and contractual liability. The aggregate limit shall apply separately to the work.
  - b. Business Automobile Liability Insurance on an occurrence basis, covering owned, hired, and non owned automobiles used by or on behalf of the Contractor and providing insurance for bodily injury, property damage, and contractual liability. Such insurance shall include coverage for uninsured and underinsured motorists.
  - c. Worker's Compensation including Employers Liability Insurance as required by law.
  - d. Course of Construction Insurance covering all risk of loss, maintained at one hundred percent of the completed value based on the insurable portion of the work, including materials at the project site, stored off the project site, and in transit. The insurable portion of the work is ninety percent of the contract amount unless adjusted by the Supplementary General Conditions. The Contractor's liability for damages proximately caused by acts of God (as defined in Public Contract Code section 7105) and not involving Contractor negligence shall be limited to five percent of the contract amount if the work damaged is built in accordance with the contract and applicable building standards.
2. The Contractor also may be required to obtain and maintain the following policies and coverage:
  - a. Environmental Impairment Liability Insurance may be required should the work involve hazardous materials, such as asbestos, lead, fuel storage tanks, and PCBs.
  - b. Other Insurance may be required by agreement between the Trustees and the Contractor.

##### **B. Verification of Coverage**

The Contractor shall submit certificates of insurance and original endorsements to the policies of insurance required by the contract to the Trustees as evidence of the insurance coverage. The scope of coverage and deductible shall be shown on the certificate of insurance. The certificates of insurance and endorsements shall provide for no cancellation or modification of coverage without thirty days written notice to the Trustees. Renewal certifications and endorsements shall be timely filed by the Contractor for all coverage until the work is accepted as complete pursuant to Article 8.01. The Trustees reserve the right to require the Contractor to furnish the Trustees complete, certified copies of all required insurance policies.

##### **C. Insurance Provisions**

The insurance policies shall contain, or be endorsed to contain, the following provisions:

1. For the general and automobile liability policies, the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents are to be covered as additional insureds.
2. For any claims related to the work, the Contractor's insurance coverage shall be primary insurance as respects the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents. Any insurance or self-insurance maintained by the State of California,

the Trustees of the California State University, their officers, employees, representatives, volunteers, and agents shall be in excess of the Contractor's insurance and shall not contribute with it.

3. Each insurance policy required by this Article shall state that coverage shall not be canceled by either party, except after thirty days prior written notice by certified mail, return receipt requested, has been given to the Trustees.
4. The State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance.
5. Course of construction coverage shall contain the following provisions:
  - a. The Trustees shall be named as loss payee; and
  - b. The insurer shall waive all rights of subrogation against the Trustees.

D. Amounts of Insurance

1. For all projects other than those involving hazardous materials, the insurance furnished by Contractor under this Article shall provide coverage in amounts not less than the following, unless a different amount is stated in the Supplementary General Conditions:
  - a. Comprehensive or Commercial Form General Liability Insurance — Limits of Liability  
\$2,000,000.00 General Aggregate  
\$1,000,000.00 Each Occurrence combined single limit for bodily injury and property damage.
  - b. Business Automobile Liability Insurance — Limits of Liability  
\$1,000,000.00 Each Accident combined single limit for bodily injury and property damage to include uninsured and underinsured motorist coverage.
  - c. Workers' Compensation limits as required by law with Employers Liability limits of \$1,000,000.00
  - d. Course of Construction Insurance - 100% of the completed value of the work as provided in subsection 'A.'
2. For projects involving hazardous materials, only the Contractor and its hazardous materials subcontractor(s) shall provide coverage in amounts not less than the following, unless a different amount is stated in the Supplementary General Conditions:
  - a. Comprehensive or Commercial Form General Liability Insurance — Limits of Liability  
\$10,000,000.00 General Aggregate  
\$5,000,000.00 Each Occurrence combined single limit for bodily injury and property damage.
  - b. Business Automobile Liability Insurance — Limits of Liability  
\$1,000,000.00 Each Accident combined single limit for bodily injury and property damage to include uninsured and underinsured motorist coverage.  
  
Hazardous material transporter services must also have:
    - (1) MCS-90 endorsement
    - (2) Sudden & Accidental Pollution endorsement — Limits of Liability\*  
\$2,000,000.00 Each Occurrence  
\$2,000,000.00 General Aggregate  
\*A higher limit on the MCS-90 endorsement required by law must be matched by the Sudden & Accidental Pollution Insurance.
  - c. Workers' Compensation limits as required by law with Employers Liability limits of \$1,000,000.00.
  - d. Course of Construction Insurance - 100% of the completed value of the work as provided in subsection 'A.'
  - e. Environmental Impairment (pollution) Liability Insurance — Limits of Liability  
\$10,000,000.00 General Aggregate  
\$5,000,000.00 Each Occurrence combined single limit for bodily injury and property damage, including clean up costs.

E. Acceptability of Insurers.

Insurers shall be licensed by the State of California to transact insurance and shall hold a current A.M. Best's rating of no less than A-VII, or shall be a carrier otherwise acceptable to the University.

F. Subcontractor's Insurance.

Contractor shall ensure that its subcontractors are covered by insurance of the types and the amounts required by this Article. Contractor shall not allow any subcontractor to commence work on its subcontract until the insurance has been obtained. Only the Contractor and its hazardous materials subcontractor(s) shall have the coverage for projects involving hazardous materials as required in Article 4.06-D.2.

G. Miscellaneous

1. Any deductible under any policy of insurance required in this Article shall be Contractor's liability.
2. Acceptance of certificates of insurance by the Trustees shall not limit the Contractor's liability under the contract.
3. In the event the Contractor does not comply with these insurance requirements, the Trustees may, at its option, provide insurance coverage to protect the Trustees. The cost of the insurance shall be paid by the Contractor and, if prompt payment is not received, may be deducted from contract sums otherwise due the Contractor.
4. If the Trustees are damaged by the failure of Contractor to provide or maintain the required insurance, the Contractor shall pay the Trustees for all such damages.
5. The Contractor's obligations to obtain and maintain all required insurance are nondelegable duties under this contract.

**4.07 Indemnification**

- A. The Contractor shall hold harmless, defend, and indemnify the State of California, the Trustees of The California State University, the University, and the officers, employees, representatives and agents of each of them, from and against all claims, damages and losses arising out of, resulting from, or relating to (1) the failure of the Contractor to perform its obligations under the contract or the performance of its obligation in a willful or negligent manner; (2) the inaccuracy of any representation or warranty by the Contractor given in accordance with or contained in the contract documents; and (3) any claim of damage or loss by any subcontractor, or supplier, or laborer against the Trustees arising out of any alleged act or omission of the Contractor or any other subcontractor, or anyone directly or indirectly employed by the Contractor or any subcontractor.
- B. The Contractor shall hold harmless, defend, and indemnify the State of California, the Trustees of The California State University, the University, and its officers, employees, representatives and agents from and against all claims, damages and losses arising out of, resulting from, or relating to the negligent acts or omissions or willful misconduct of the Contractor, a subcontractor, or anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in Article 4.07-C. Such obligation shall, however, apply in proportion to and to the extent that any such losses result from the negligent acts or omissions by an employee of the Contractor, a subcontractor, or a person indirectly employed by the Contractor or a subcontractor, or anyone for whose acts either may be liable.
- C. In claims against any person or entity indemnified under this Article made by an employee of the Contractor or a subcontractor, or indirectly employed by either of them, or anyone for whose acts either may be liable, the indemnification obligation under this Article shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a subcontractor under workers compensation laws, disability benefit laws, or other laws providing employee benefits.
- D. The indemnification obligations under this Article shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.
- E. The Contractor shall hold harmless, defend, and indemnify the State of California, the Trustees of The California State University, the University, and its officers, employees, representatives and agents from and against all claims, damages and losses resulting from any claim of damage made by any separate Contractor of the Trustees against the Trustees arising out of any alleged acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by either the Contractor or subcontractor, or anyone for whose acts either the Contractor or subcontractor may be liable.
- F. The Contractor shall hold harmless, defend, and indemnify the separate Contractors of the State of California, the Trustees of The California State University, the University, and its officers, employees, representatives and agents from and against all claims, damages and losses arising out of the negligent acts or omissions or willful misconduct of the Contractor, a subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor, or anyone for whose acts the Contractor or subcontractor may be liable. The Trustees shall cause a reciprocal indemnification provision in favor of the Contractor to be included in its contracts with separate Contractors of the Trustees. Liability for any negligent act or omission or willful misconduct shall be apportioned pursuant to the applicable law of the State of California.

**4.08 Contractor's Responsibility for the Work**

A. Generally

The Contractor shall be responsible for all work performed under this contract, and no subcontractor will be recognized as such. For purposes of assessing responsibility to the Contractor, all persons engaged in the work shall be

considered employees of the Contractor. The Contractor shall give its personal attention to the fulfillment of the contract and keep all phases of the work under its control.

The University will not arbitrate disputes among subcontractors nor between the Contractor and one or more subcontractors concerning responsibility for performing any part of the project.

B. Quality Control

The Contractor shall be fully responsible for the quality of materials and workers' skill in the project. The Contractor shall not rely upon the inspection and testing provided by the University other than those special inspections and tests performed by the University's selected laboratories for which there are written reports.

C. Burden for Damage

From the issuance of the official notice to proceed until the formal acceptance of each discrete Job Order by the University, the Contractor shall have the charge and care of and shall bear the risk of damage to the campus facilities and materials and equipment for the Job Order.

The Contractor, at its own expense, shall promptly rebuild, repair, restore, and make good all such damage to any portion or to all of the project and materials therefor before the acceptance of the project by the University except for such damage as is proximately caused by acts of the federal government or public enemy. In case of suspension of work from any cause whatever, the Contractor shall be responsible for all materials, and shall properly store them, if necessary, and shall provide suitable drainage and erect temporary structures where necessary.

If the Contractor damages any property belonging to the University, the University may, in addition to other remedies available to the University, retain from the money due to the Contractor an amount sufficient to ensure repair of the damage or an amount to contribute toward repair of the damage.

Neither the State of California, the Trustees of The California State University, the University, nor the officers, employees, representatives, or agents of each of them shall be responsible for any damage to the project and materials and equipment for the project.

D. Protection of Adjoining Facilities

The Contractor shall protect adjoining property and nearby buildings, roads, and other facilities and improvements from dust, dirt, debris and other nuisances arising out of Contractor's operations or storing practices. Dust shall be controlled by sprinkling or other effective methods acceptable to University. An erosion and sedimentation control program shall be initiated, which includes measures addressing erosion caused by wind and water and sediment in runoff from site. A regular watering program shall be initiated to adequately control the amount of fugitive dust in accordance with applicable Air Quality Management District (AQMD) rules (see also Article 4.03-A).

E. Safety

The Contractor shall exercise precaution at all times for the protection of persons and their property. The Contractor shall install adequate safety guards and protective devices for all equipment and machinery, whether used in the work or permanently installed as part of the project. The Contractor shall also provide and adequately maintain all proper temporary walks, roads, guards, railings, lights, and warning signs. The Contractor shall comply with all applicable laws relating to safety precautions, including the safety regulations of the California Division of Industrial Safety. Unless the Contractor designates other employees, its superintendent shall have the duty of prevention of accidents. The Contractor shall institute a safety program which includes all trades on the site.

Renovation, expansion, or remodel work of any existing building may expose workers to asbestos and/or lead-containing materials. The Contractor shall comply with all applicable laws addressing such exposure, including the Cal/OSHA Lead in Construction Standards (Title 8, California Code of Regulations, Section 1532.1).

The University may bring to the attention of the Contractor a possible hazardous situation in the field regarding the safety of personnel on the site. The Contractor shall be responsible for verifying that all local, state, and federal workplace safety guidelines are being observed. In no case shall this right to notify the Contractor absolve the Contractor of its responsibility for monitoring safety conditions. Such notification shall not imply that anyone other than the Contractor has assumed any responsibility for field safety operations.

Explosives shall not be used without first obtaining written permission from the University and then shall be used only with the utmost care and within the limitations set in the written permission and in accordance with prudence and safety standards required by law. Storage of explosives on the project site or University is prohibited. Powder activated tools

are not explosive for purposes of this Article; however, such tools shall only be used in conformance with State safety regulations.

In the event of an accident, the Contractor shall make available to the University copies of its accident report to its insurance carrier. The Contractor shall determine the cause of the accident and immediately correct any equipment, procedure, or condition contributing to the accident.

F. Utilities

1. If the Contractor discovers utility facilities not identified in the Job Order documents, the Contractor shall immediately notify the University and the utility involved, in writing, of such discovery. When the Contractor is required by the scope of work to locate, remove or relocate utility facilities not identified in the individual discrete Job Order documents with reasonable accuracy, it shall be compensated for any reasonable actual added cost incurred by the issuance of a new Job Order. The Contractor shall also be compensated for the cost of repairing any damage resulting from the discovery of such unidentified utility facility when such damage does not result from the failure of the Contractor to exercise reasonable care. All such compensation to the Contractor shall be determined utilizing the pricing procedure described in Article 2.04-C.5. The University or the public utility, where it is the owner of the utility facilities, shall have the sole discretion to perform repairs, or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price, where such work is required to facilitate the project. The Contractor shall not be assessed liquidated damages for delay in the completion of the project which is caused by the failure of the University or the owner of the utility to provide for removal or relocation of such unidentified utility facilities.
2. With the exception of the identification of main or trunk line utility facilities in the contract documents, the foregoing provisions of subdivision (1) shall not apply to, and University shall have no obligation to indicate, the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the project can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the construction.
3. Except as expressly provided in subdivisions (1) and (2) above, the Contractor shall be responsible at its own cost for all work, expense, or special precautions caused by the existence or proximity of utilities encountered at the site or in the performance of the project work including, without limitation, repair of any damage that may result including any damage resulting from hand or exploratory excavation. The Contractor is cautioned that the utilities encountered at the site may include communication cables or electrical cables conducting high voltage. When excavating in the vicinity of the ducts enclosing such cables, special precautions are to be observed by the Contractor at its own cost and shall include the following: all cables and their enclosure ducts shall be exposed by careful hand excavation so as not to damage the ducts or cables nor cause injury to persons, and appropriate warning signs, barricades, and safety devices shall be erected.
4. The Contractor shall provide as-built drawings of all utilities encountered and constructed to the University, indicating the size, horizontal location, and vertical location based on the project benchmark or a stable datum.

G. Hazardous Materials

1. Asbestos - The Contractor is prohibited from installing any asbestos-containing materials or products in any work to be performed under this contract without the written consent of the University Executive Dean and University Director of Environmental Health and Safety. The Contractor shall be responsible for removal and replacement costs should it be determined this provision has been violated; this responsibility shall not be limited in duration by project completion, the warranty period, or other provisions of this contract.
2. Lead - The Contractor is prohibited from installing any lead-containing materials or products, including paint, in any work to be performed under this contract without the written consent of the University Executive Dean and University Director of Environmental Health and Safety. The Contractor shall be responsible for removal and replacement costs should it be determined this provision has been violated; this responsibility shall not be limited in duration by project completion, the warranty period, or other provisions of this contract.

**4.09 Payments by Contractor**

In accordance with Section 7108.5 of the Business and Professions Code, the Contractor agrees to promptly pay all subcontractors within ten (10) days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed Contractor on account of the work performed by its subcontractors, to the extent of each such subcontractor's interest therein.

**4.10 Responsibility to Secure and Pay for Permits, Licenses, Utility Connections, Etc.**

The Contractor shall secure all permits and licenses required for any operations required under this contract and shall pay all costs relating thereto as well as all other fees and charges that are required by the United States, the State, the county, the city, a public utility, telephone company, special district, or quasi-governmental entity. It is the responsibility of the Contractor to

ascertain the necessity of such permits and licenses in preparing its bid and include in its bid the cost thereof as well as adjustments for any delays that may be caused by securing permits and licenses.

#### **4.11 Patented or Copyrighted Materials**

The Contractor shall assume all costs arising from the use of patented or copyrighted materials, equipment, devices, or processes used on or incorporated in the project and agrees to save harmless, defend, and indemnify the State, the Trustees of The California State University, Trustees' Consultants, the University, and the officers, agents and employees of each of them from all suits, actions, or claims for, or on account of, the use of any patented or copyrighted materials, equipment, devices, or processes.

#### **4.12 Property Rights in Materials and Equipment**

Nothing in the contract shall be construed as vesting in the Contractor any property right in the materials or equipment after they have been attached to or permanently placed in or upon the work or the soil or after payment has been made for fifty percent or more of the value of the materials or equipment delivered to the site of the work whether or not they have been so attached or placed. All such materials or equipment shall become the property of University upon being so attached or placed or upon payment of fifty percent or more of the value of the materials or equipment delivered on the site but not yet installed and the Contractor warrants that all such property shall pass to University free and clear of all liens, claims, security interests, or encumbrances.

#### **4.13 Taxes**

The Contractor shall pay all taxes imposed by law which are levied or become payable as a result of the Contractor's performance under this contract.

#### **4.14 Contract Time**

##### **A. Time of the Essence**

All time limits specified in this contract are of the essence of the contract.

##### **B. Starting and Completion Date**

The University shall designate in the Notice to Proceed the starting date of each discrete Job Order on which the Contractor shall immediately begin and thereafter diligently prosecute the work to completion. The Contractor agrees to complete the work on the date specified for completion of the Contractor's performance in the Job Order unless such time is adjusted, in writing, by the University. The Contractor may complete the work before the completion date if it will not interfere with the University or their other Contractors engaged in related or adjacent work. The work shall be regarded as completed as noted on the University's Notice of Completion. This date shall be used as the date the guarantee period begins as defined in Article 9.05, Guarantee.

##### **C. Adjustment of Job Order Time Due to Acts of God, etc.**

The Contractor shall not be assessed with liquidated damages, nor the cost of engineering and inspection during any delay in the completion of the project caused by acts of God, the public enemy, fire, flood, earthquake, epidemic, quarantine restriction, strike, freight embargo, discovery of archaeological or paleontological artifacts, and unusual action of the elements; provided that the Contractor shall notify the University in writing of the causes of delay within seven days from the beginning of any such delay. The University shall determine the facts with regard to the delay and the reasonable period of time by which the date of completion should be extended by reason thereof, if any. The University's findings thereon shall be final and conclusive.

There shall be no compensation to the Contractor for costs associated with this kind of delay.

The term 'unusual action of the elements' is limited to extraordinary, adverse weather conditions and conditions immediately resulting therefrom which cause a cessation in the progress of the work which will delay the time of completion of a Job Order.

The Contractor shall have no right to an adjustment in the time of completion due to weather conditions or industrial conditions which are normal for the locality of the site. The time period for completion of each Job Order will be calculated with consideration given to the average climatic range and usual industrial conditions prevailing in the locality of the site.

##### **D. Adjustment of Job Order Time Due to Acts of the University**

If the Contractor is delayed in completing a Job Order by reason of any act of the University not provided by the contract, or by reason of changes without agreement being reached as to any time adjustments, the time for completion of a Job Order may be extended for a period commensurate with the delay. The Contractor shall notify the University

in writing of the causes of the delay within seven days from the beginning of the delay. The causes of delay shall be subject to the same determinations as stated in Article 4.14-C above.

- E. Contractor to Fully Prosecute work  
No extension of time will be granted for any of the causes for which extensions are granted unless the Contractor demonstrates to the satisfaction of the University that the Contractor has made every reasonable effort to complete all work under a Job Order not later than the date prescribed, or as soon as possible thereafter, notwithstanding delay in the work due to any such cause.
- F. University's Adjustment of Job Order Time  
Even though the Contractor has no right to an extension of time for completion, the University may extend the time at the request of the Contractor if they determine it to be in the best interest of the State. If the time is extended, the University may, in lieu of assessing liquidated damages, charge the Contractor, its successors, heirs, assigns, or sureties, and deduct from the final payment for the work all or any part, as they may deem proper, of the value of the lost use of the completed project, and of the actual cost to the University of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the contract, and which accrue during the period of such extension. The University may also extend the time for completion if the reason is due to circumstances beyond the control of the Contractor or the University (e.g., awaiting environmental clearance).

#### **4.15 Labor Force and Superintendent**

- A. The Contractor shall employ a full-time competent construction superintendent and necessary staff. The construction superintendent shall devote full time to the work and shall have full authority to act for the Contractor at all times. The superintendent shall prepare a daily report that includes worker count, work in progress and pertinent details relating to the progress of the work. Such report shall be provided to the Trustees upon request.
- B. Contractor shall enforce strict discipline and good order at all times among Contractor's employees and all subcontractors. Contractor shall not engage any employee not skilled in the task assigned. All employees assigned to the work by Contractor shall perform in the best manner and shall cooperate fully with the University and all other representatives of the University. The Contractor shall remove from the work any employee of the Contractor or of any subcontractor when so directed by the University.
- C. Contractor's Responsibility for Work:
  - 1. The work shall be under the charge and care of the Contractor until final acceptance by the University, including all punch list items, unless otherwise specified in the contract documents. The Contractor shall assume all responsibility for injury or damage to the work by action of the elements and fire and from any other causes whatsoever, whether arising from the execution, or from the non-execution, of the work. The Contractor shall rebuild, repair, restore and make good, at its expense, all injuries or damages to any portion of the work occasioned by any of the above causes before final completion.
  - 2. When the University furnishes equipment or materials to the Contractor for use or inclusion in the work, the Contractor's responsibility for all such equipment and materials shall be the same as if furnished by him/her.
  - 3. The Contractor shall not have work performed, nor shall it employ labor or means, in the carrying out of this Contract that would in any way cause or result in a suspension, or delay of, or strike upon the work to be performed hereunder of any of the trades working in or about the premises herein described, or in or about any other building of the University.
  - 4. As a minimum staffing level, the Contractor shall have at all times a project manager, estimator, office manager and superintendent assigned to the contract. Additional staff will be assigned depending on the work load level but at all times the Contractor shall maintain a ratio of at least one (1) superintendent for every six (6) Job Orders.

#### **4.16 Subsurface or Site Conditions Found Different**

Should the Contractor encounter subsurface or physical conditions at the site materially differing from those shown on or described in or indicated in the Job Order, the Contractor shall immediately give written notice to the University of the differing conditions and shall not disturb the differing conditions until directed to do so by the University.

#### **4.17 Verifying Dimensions**

- A. The Contractor shall take all measurements at the site and shall verify all dimensions at the site before submitting its proposal and before proceeding with the work.
- B. During the progress of work, the Contractor shall verify all field measurements prior to fabrication of building components or equipment, and proceed with the fabrication to meet field conditions.

- C. Special locations for equipment, pipelines, ductwork and other such items of work, where not dimensioned on plans, shall be determined by sole authority of the University.
- D. The Contractor shall be responsible for the proper fitting of the work in place.

#### **4.18 Meetings**

The Contractor shall attend all scheduled progress meetings and any other special meetings as directed by the University.

#### **4.19 Contractor's Relationship to Subcontractors**

- A. The Contractor shall have full responsibility for all portions of the work furnished by every subcontractor and for all acts and omissions (whether willful, negligent, or otherwise) of every subcontractor and such subcontractor's employees. All work, acts, and omissions, of every subcontractor and such subcontractor's employees shall be deemed those of Contractor for all purposes of the contract.
- B. Before entering into any subcontract, the Contractor shall inform each subcontractor fully and completely of all requirements of this contract relating to the work to be performed under the subcontract. The Contractor shall require all agreements with or between subcontractors to be in writing. Every subcontract shall provide expressly that such subcontract (and all rights of any subcontractor thereunder) is subject in all respects whatsoever to all requirements of this contract and that all work under the subcontract shall comply with all requirements of this contract. Each subcontract shall include a provision authorizing termination for necessity or convenience by the Contractor and a provision under which the subcontractor agrees that the subcontractor's obligations shall be assigned to the University, at the University's election, upon a termination of Contractor's rights to perform the (effective upon the giving of the University's notice of termination under either such Section). Upon the University's request, the Contractor shall deliver to the University a counterpart original of the signed subcontract between Contractor and each subcontractor (and any modifications thereof). Each subcontract shall contain the same terms and conditions as to method of payment for work, and as to retained percentages, as are set forth in this contract; and Contractor shall pay each subcontractor in accordance with the terms of the applicable subcontract, the contract general conditions and state statutes for work performed by such subcontractor.
- C. The Contractor's execution of any subcontract shall be deemed a representation to the University that the Contractor (1) has informed the subcontractor fully and completely of all requirements of this contract relating directly or indirectly to the subcontractor's work; and (2) has taken all steps necessary to ensure that each and every subcontractor meets the minimum qualifications required by the University of any Contractor submitting bids for any University work.
- D. The Contractor shall make certain that all subcontractors employed are properly licensed and are in good standing with the Contractor's State License Board.

#### **4.20 Character of Workers**

- A. The Contractor shall employ only competent and efficient laborers, mechanics, or artisans. Whenever, in the opinion of the University, any employee is careless, incompetent, violates safety or security rules, obstructs the progress of the work, acts contrary to instructions or acts improperly, or fails to follow the safety requirements of this contract, the Contractor shall, upon request of the University, discharge or otherwise remove such person from the work and shall not employ such person, except with the written consent of the University. The Contractor shall not permit any person to enter any part of the work or any buildings connected therewith who is under the influence of intoxicating liquors or controlled substances.
- B. The Contractor and the Contractor's employees shall be subjected to the same general rules of conduct while on University property that apply to University employees. The University reserves the right to refuse access to any Contractor's employee if the University determines it to be in the best interests of the University.
- C. The Contractor shall make certain that all subcontractors employed are properly licensed and in good standing with the California State License Board.

#### **4.21 Limitation of Construction Operations**

The Contractor shall limit the area and nature of the construction operations to that which is authorized in the plans or specifications or approved by the University.



#### **4.22 Coordination With Other Work**

The University reserves the right to do other work in connection with the project or adjacent thereto by contract or otherwise, and the Contractor shall at all times conduct the work so as to impose no hardship on the University or others engaged in the University's work nor to cause any unreasonable delay or hindrance thereto. Where two or more Contractors are employed on related or adjacent work, each shall conduct their operation in such a manner as not to cause delay or additional expense to the other.

The Contractor shall be responsible to others engaged in the related or adjacent work for all damage to work, to persons and to property, and for loss caused by failure to complete the work within the specified time for completion. The Contractor shall coordinate its work with the work of others so that no discrepancies shall result in the project.

#### **4.23 Drawings Reflecting Actual Construction**

During the course of construction, the Contractor shall maintain as-built drawings (if part of a Job Order) kept up each day to show the project as it is actually constructed. Every sheet of the plans that differs from the actual construction shall be marked and sheets so changed shall be noted on the title sheets of the plans. All change orders shall be shown by reference to sketch drawings and any supplementary drawings or change order drawings shall be included. The altered contract drawings shall be sufficiently detailed so that future work on the project or in adjacent areas may be conducted with a minimum of difficulty. Prior to the completion of the project, and prior to release of the final retention payments, the 'as-built' drawings and marked up drawings, if any, shall be transmitted to the Construction Administrator.

#### **4.24 Cleanup of Project and Site**

The Contractor shall clean up its work at frequent intervals and shall clean up its work at other times when directed by the University. At all times while finish work is being done, floors shall be kept broom clean. Upon completion of the work, the Contractor shall promptly remove from the premises construction equipment and any waste materials not previously disposed of, leaving the premises thoroughly clean and ready for occupancy.

When two or more Contractors are engaged in work at or near the site, each shall be responsible for cleanup and removal of its own rubbish, equipment, and any waste materials not previously disposed.

In the event the Contractor does not maintain the project or the site clear of debris and rubbish in a manner acceptable to the University, the University may, at its option, cause the project or site to be properly cleaned and may withhold the expense incurred therefor from payments due the Contractor.

#### **4.25 Access to Work**

The University shall at all times have access to the work and the Contractor shall maintain such access during the work on a project.

#### **4.26 Notice for Testing**

If the contract documents, the University's instructions, state laws, or regulations, require that any work be inspected or tested, the Contractor shall give the University timely notice of readiness of the work for inspection or testing and the date fixed for inspection or testing. The Contractor shall at all times permit the Trustees to visit and inspect the work and shall maintain proper facilities and provide safe access for such inspection. Work requiring testing, inspection or verification shall not be covered up without such test, inspection, or approval.

#### **4.27 Re-Examination of Work**

Re-examination of any part of the work may be ordered by the University, and if so ordered the work must be uncovered by the Contractor. If the University finds such work to be in accordance with the contract, the University shall pay the cost of reexamination and if the University does not find such work to be in accordance with the contract, the Contractor shall pay or be back-charged for the cost of re-examination.

#### **4.28 Inspection of Work**

A. All work, all materials whether or not incorporated in the work, all processes of manufacture, and all methods of construction shall be, at all times and places, subject to the inspection of the University, and the University shall judge the quality and suitability of the work, materials, processes of manufacture, and methods of construction for the purposes for which such work, materials, processes of manufacture and methods of construction are used. The University may direct that any work not approved by the University shall, at no cost to the University, be immediately removed, reconstructed, made good, replaced or corrected by the Contractor to the satisfaction of the University. This corrective work shall include all work of any third party destroyed or damaged by such removal or replacement. Rejected material shall be removed immediately from the site at no extra cost to the University. Acceptance of material

and workmanship by the University shall not relieve the Contractor from the Contractor's obligation to replace all work that is not in full compliance with the contract.

- B. If, after inspection, the University determines that it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the contract, the compensation to be paid to the Contractor shall be reduced by an amount which, the University deems equitable.

#### **4.29 Testing**

All materials and equipment used in the work shall be subject to inspection and testing in accordance with accepted standards to establish conformance with specifications and suitability for uses intended, unless otherwise specified in the contract. If any work shall be covered or concealed without the approval or consent of the University, that work shall, if directed by the University, be uncovered for examination. Any inspection by the University or by a testing laboratory on behalf of the University does not relieve the Contractor of the responsibility to maintain quality control of materials, equipment and installation to conform to the requirements of the contract. If any test results are below specified minimums, the University may order additional testing. The Contractor shall pay the cost of additional testing, any additional professional services required, and any other expenses incurred by the University as a result of such additional testing.

#### **4.30 Acceptance of Work**

No previous inspection shall relieve the Contractor of the obligation to perform the work in accordance with the contract. No payment, either partial or full, by the University to the Contractor shall excuse any failure by the Contractor to comply fully with the contract. The Contractor shall remedy all defects, and shall incur the cost of any damage to other work resulting therefrom.

### **5.00 SCOPE AND PROCEDURE FOR JOB ORDER WORK**

#### **5.01 Pre-Construction Conference**

After award of the contract and before the issuance of the first discrete Job Order under this contract, the University will conduct a conference to acquaint the Contractor with University policies and procedures that are to be observed during the prosecution of the work and to develop mutual understanding relative to the administration of the contract.

#### **5.02 General Scope of Work**

This is an indefinite-quantity contract for construction work. All costs associated with preparing proposals shall be the responsibility of the Contractor.

#### **5.03 Description of Work**

- A. Work shall be performed only as authorized by Job Orders issued in accordance with the contract general conditions. The Contractor shall furnish to the University the construction services, supplies, equipment and related activities specified in the Job Orders up to and including the maximum contract value. The University shall order at least the minimum contract value.
- B. The work of this Contract shall be determined by individual Job Orders. The Contractor shall perform its Job Order construction work in accordance with this contract including provision of all pricing, management, shop drawings, documents, labor, materials, supplies, parts (to include system components), transportation, facilities, supervision, and equipment needed to complete each Job Order. The Contractor shall provide quality assurance as specified in strict accordance with Article 4 of the Contract General Conditions. The Contractor shall also be responsible for site safety as well as site preparation and cleanup.
- C. Contractor shall maintain accurate and complete records, files and documents to include state and local laws, ordinances, rules and regulations and manufacturers' instructions and recommendations which are necessary and related to the work to be performed.
- D. Contractor shall prepare and submit required reports, maintain current record drawings, and submit required information. The Contractor shall provide materials lists to include trade names, brand names, model number, and ratings (if appropriate) for all materials necessary for a complete job.
- E. In addition to the tasks and requirements in the University's Standard Specifications and the Unit Price Book, the University may, from time to time, require non pre-priced tasks. The parties will price these requirements in accordance with the procedures set forth below.

- F. The University Standard Specifications and Standard Details, as amended, shall be used in the execution of work under the contract and are incorporated by reference and made a part of this Contract. Each Job Order shall state the applicability of those documents and standards to the Job Order. In the case of any inconsistency between this Contract and the University's Standards, the University's Standards shall govern.
- G. The Contractor may be required to provide architectural, structural, mechanical, electrical, civil, or other engineering services for performance-based scopes of work as requested by the University or as required for filings or permits or submittal of documents for regulatory agency approval. The services shall be provided by architects or engineers registered and insured in the State of California to practice in the particular professional field involved. Professional liability coverage shall be at least \$1,000,000. All documents prepared by architects, consultants and engineers for the Contractor under this Contract are subject to review of the University. Review by the University does not relieve any architects, consultants or engineers from the professional liability associated with documents they have prepared.

**5.04 Procedure for Initiating Job Order**

- A. As the need exists for performance by the Contractor under the terms of this Contract, the University will notify the Contractor of a project.
- B. The Contractor shall respond by:
  - 1. Obtaining from the University the scope of the requirement and collect any documents.
  - 2. Visiting the proposed site with the University staff and participating in a joint scope meeting which will at a minimum include establishment of the following:
    - a. Job order number and title
    - b. Existing site conditions
    - c. Methods and alternatives for accomplishing work
    - d. Definition and refinement of requirements
    - e. Detailed scope of work
    - f. Requirements for design drawings, sketches, submittals, catalogue cuts, samples, shop drawings, etc.
    - g. Tentative construction schedule (bar chart or critical path method schedule)
    - h. Preliminary quantity estimates
    - i. Proposal due date
- C. Upon completion of the joint scoping process, the University will issue a Request for Proposal and a detailed scope of work that require the Contractor to prepare a proposal for the work under consideration. The detailed scope of work, unless modified by both the Contractor and the University, will be the basis on which the Contractor will develop its proposal and the University will evaluate the proposal.

**5.05 Preparation of the Proposal**

- A. The Contractor will prepare a proposal in accordance with the following:
  - 1. Pre-priced tasks: For pre-priced tasks the Contractor shall identify the task and quantities required from the Unit Price Book. The unit price set forth in the Unit Price Book shall serve as the base price for the purpose of the operation of this provision. The Contractor's proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done and that the tasks proposed are reasonable for the work to be performed. Documentation to be submitted with the proposal shall include, as appropriate, but not be limited to, design drawings, calculations, catalog cuts, specifications, and subcontractor list, DVBE participation and construction schedule.
  - 2. Non pre-priced tasks: Non pre-priced tasks, if any, shall be separately identified and submitted in the proposal. Information submitted in support of non pre-priced tasks shall include, but not be limited to, the following:
    - a. Complete specifications and technical data, including task content, support drawings, task cost data, quality control and inspection requirements.
    - b. Work schedule.
    - c. Costing data shall include a cost analysis report, establishing the basis for selecting the approach proposed for accomplishment of the requirements. Unless otherwise directed by the University, costing data will be submitted demonstrating that the Contractor sought and received three quotes. The Contractor shall provide an installed unit price (or demolition price if appropriate) that shall include all costs required to accomplish the non pre-priced task.
    - d. The final price submitted for non pre-priced tasks shall be according to the following formula:
      - (1) Contractor Performed Duties
        - A = Direct labor cost and fringe benefits per prevailing wage rates
        - B = Direct material costs (supported by quotes)

C = Direct equipment costs (supported by equipment amortization data)  
D = Allowable overhead costs = A x 55% (this includes Worker's Compensation insurance)  
E = Allowable profit = (A + B + C) x 10%

(2) Subcontractor Performed Duties

F = Cost of subcontractors to contractor (supported by quotes)

G = Contractor's allowance for subcontractor cost = F x 5%

H = Contractor's overhead for subcontractor cost in accordance with the following schedule:

F x 0% for NPP tasks < 10% of total Work Order Value

F x 7% for NPP tasks 10-20% of total Work Order Value

F x 10% for NPP tasks > 20% of total Work Order Value

Total Cost of Non Pre-Priced Task = A + B + C + D + E + F + G + H

- e. Following approval by the University of a non pre-priced task and unit price, the non pre-priced task unit price will be entered into the computer database.
- f. The total extended price for the non pre-priced task will be determined by multiplying the unit price by the quantity required. The price offered in the proposal will be determined by multiplying the total extended price by an adjustment factor of 1.000.
- g. After a non pre-priced task is used on three separate Job Orders, the unit price for such task will be established, following approval by the University, and fixed as a permanent pre-priced task that will no longer require price justification.
- h. The University's determination as to whether an item is a pre-priced task or a non pre-priced task shall be final, binding and conclusive as to the Contractor.
3. The Contractor's proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done, and that the tasks proposed are reasonable for the work to be performed. Documentation to be submitted with the proposal shall include, but not be limited to:
- Design drawings, calculations, specifications, and architectural renderings
  - Catalog cuts
  - Subcontractor and material supplier list
  - DVBE compliance documents
  - Construction schedule (detailed bar chart)
  - Special insurance
  - For special equipment a copy of the warranty document may be required.
4. Contractor's proposal shall be submitted by the date indicated on the Request for Proposal. The time allowed for preparation of the Contractor's proposal would depend on the complexity and urgency of the Job Order. On complex Job Orders, such as Job Orders requiring engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents with the proposal and so reflected in the proposal due date entered on the Request for Proposal. In emergency situations and minor maintenance and repair Job Orders requiring immediate completion, the proposal may be required quickly and the due date will be so indicated on the Request for Proposal.
5. The Contractor's proposal shall include compliance with the DVBE participation requirement. The following guidelines apply:
- Special Definitions
    - 'Disabled Veteran' as used herein, means a veteran of the military, naval or air services of the United States with at least a ten (10) percent service-connected disability who is a resident of the State of California.
    - 'Disabled Veteran Business Enterprise' (DVBE) as used herein, means a business concern certified by the Small Business & DVBE Certification (OSDC) as meeting all of the following:
      - The business is at least 51 percent owned by one or more disabled veterans, or in the case of a publicly owned business, at least 51 percent of its stock is owned by one or more disabled veterans; a subsidiary which is wholly owned by a parent corporation, but only if at least 51 percent of the voting stock of the parent corporation is owned by one or more disabled veterans; or a joint venture in which at least 51 percent of the joint venture's management and control and earnings are held by one or more disabled veterans.
      - One or more disabled veterans manage and control the daily business operations. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business concern.
      - A sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.

- b. Goal Attainment or 'Good Faith Effort'
- In order to satisfy and be responsive to this requirement, the Contractor must either meet the DVBE Participation Goal or document a 'Good Faith Effort' to meet that goal as follows:
- (1) DVBE Participation Goal Attainment  
The three (3) percent DVBE Participation Goal is attained when:
    - (a) The Contractor is not a DVBE and is committed to use DVBEs for not less than three (3) percent of the contract dollar amount; or
    - (b) The Contractor is a DVBE and committed to performing not less than three (3) percent of the contract dollar amount with its own forces or in combination with those of other DVBEs.
  - (2) Good Faith Effort  
A 'Good Faith Effort' to meet the DVBE goal is achieved by doing both of the following items prior to the submission of each discrete proposal for each Job Order. Each of these items must be satisfied for each Job Order proposal submitted. The Contractor shall:
    - (a) contact the Trustees' DVBE Coordinator at the telephone number provided in the individual Job Order Request for Job Order proposal to identify potential DVBEs. This call will initiate the provision of information to the Contractor;
    - (b) contact other state and federal government agencies and local DVBE organizations to identify potential DVBEs for this contract; for each Job Order.
- c. Documentation Requirements
- The successful Contractor must document its effort to either meet the DVBE participation goal requirement or make a good faith effort to do so.

Contractors who propose goal attainment are encouraged to submit documentation for making a 'Good Faith Effort' also. This will provide 'back-up' eligibility, ensuring against the possibility that the Trustees will not agree that goal attainment has, in fact, been met.

The Contractor's efforts to meet the contract DVBE Participation Goal and/or make a 'Good Faith Effort' to meet the goal must be sincere, and the documentation must be sufficient to reasonably demonstrate that sincerity to the Trustees. Final determination of DVBE Participation Goal Attainment or a 'Good Faith Effort' by the Contractor shall be at the Trustees' sole discretion.

- (1) Required Documentation  
The DVBE documentation forms that must be completed are as follows, and instructions for completing the required forms correctly are included to assist the bidder.
  - (a) DVBE Transmittal Form  
Contractors must fill out and attach the DVBE transmittal form as a cover sheet to the required documents and submit it and the additional required documentation along with all other required submissions in the proposal packages for each Job Order. All requested DVBE documentation must be completed on the forms provided and submitted with the DVBE Transmittal Form.
  - (b) Summary of Disabled Veteran Owned Business Participation (Attachment 1)  
Whether DVBE Participation Goal Attainment or the 'Good Faith Effort' alternative is chosen, Summary of Disabled Veteran Owned Business Participation, Attachment 1, must be completed showing the type of work and company proposed for DVBE participation, their subcontractors (if any), and other related information. If no participation is achieved, the Contractor is to state 'N/A' or 'None' on the first line of the form. Complete the form providing the information as follows:
    - (i) Company Name - list the name of the company proposed for DVBE participation. If the prime Contractor is a DVBE, its name must also be listed to receive participation credit.
    - (ii) Nature of work - identify the proposed work or service to be provided by the listed company.
    - (iii) Contracting With - list the name of the department or company with which the company listed is contracting.
    - (iv) Tier - the contracting tier should be indicated with the following level designations:  
0 = Prime Contractor;  
1 = First tier subcontractor/supplier;  
2 = Second tier subcontractor/supplier of first tier subcontractor/supplier;  
3 = Third tier subcontractor/supplier of second tier subcontractor/supplier;

- (v) Claimed DVBE Value - the total dollar amount of the value claimed by a disabled veteran business enterprise..
- (vi) Percentage of Contract - compute the percentage (%) of the total claimed DVBE value of the total Job Order dollar amount.
- (vii) DVBE Certification - The Contractor must include one copy of the DVBE certification letter from the Small Business & DVBE Certification (OSDC) for each DVBE firm listed on the Summary of Disabled Veteran Owned Business Participation.
- (c) Contractor's Certification (Attachment 2)  
The Contractor must sign and include the DVBE Certification, certifying that each firm listed on the Summary of Disabled Veteran Owned Business Participation (Attachment 1) complies with the legal definition of DVBE.
- (d) Documentation of Good Faith Effort (Attachment 3, 3 pages)  
Contractor's must submit documentation to support their contacts with the Trustees, other state and federal governmental agencies, and other organizations that helped identify or provided a list of interested DVBEs for this contract. A list of dates, times, (if known), organizations contacted, and contact names and phone numbers must be provided to corroborate these contacts.
- (2) Time Frame for Submitting Documentation  
The DVBE participation documentation must be submitted with each discrete Job Order.
- d. Use of Proposed DVBE  
If awarded the Job Order, the successful Contractor must use the DVBE subcontractors and/or suppliers listed in its Job Order proposal unless it has requested substitution and has received approval of the Trustees in compliance with the Subletting and Subcontracting Fair Practices Act.
- e. Additional DVBE Information Sources  
For more information regarding DVBE certification, copies of directories or for general DVBE information, contact:  
State of California, Department of General Services  
Small Business & DVBE Certification (OSDC)  
P.O. Box 989052, West Sacramento, California, 95798-9052 (mailing address)  
707 Third Street, First Floor, Room 400, West Sacramento, California 95605 (physical address)  
telephone number: (800) 559-5529 or (916) 375-4940  
Or, via the Internet at [www.dgs.ca.gov/osbcr](http://www.dgs.ca.gov/osbcr).

#### **5.06 Review of the Proposal and Issuance of Job Order**

- A. The University will evaluate the Contractor's proposal and proposed tasks and compare these with the University's cost estimate of the detailed scope of work to determine the reasonableness of approach, including the nature and quantity of tasks proposed.
- B. The University reserves the right to reject a proposal for any reason, including, but not limited to, the quantities or tasks selected by the Contractor, schedule, inadequate documentation, unacceptable pricing for non pre-priced tasks, selection of material, equipment or subcontractors. The University also reserves the right not to issue a Job Order if that is determined to be in the best interests of the University or the proposed cost exceeds the University's estimate. The Contractor has no claim to recoup proposal expenses. The University may pursue the performance of such work by other means.
- C. By submitting a signed proposal to the University, the Contractor agrees to accomplish the work set forth in the detailed scope of work in accordance with the Request for Proposal. It is the Contractor's responsibility to include the necessary tasks and quantities in each discrete proposal prior to delivering it to the University.
- D. Each discrete Job Order provided to the Contractor shall state the agreed upon requirements and fixed price. All clauses of this Contract shall be applicable to each discrete Job Order. Job orders will be written on a University provided form. The Job Order, signed by the University and delivered to the Contractor constitutes the University's acceptance of the Contractor's proposal. A signed copy will be provided to the Contractor.
- E. In the event that immediate emergency response is necessary the Contractor shall be required to conform to alternative procedures as established by the University. The Contractor shall begin work as directed notwithstanding the absence of a fully developed Request for Proposal, detailed scope of work, or Job Order. The Contractor shall be compensated in accordance with the Unit Price Book and non pre-priced tasks as if the work had been ordered under the standard process.

### **5.07 Computer and Communications Equipment Requirements**

The Contractor shall provide computer systems as described in the Special Conditions of this contract at locations determined by the University and shall maintain them in an operational condition.

### **5.08 University-Furnished Software**

University-furnished software will be provided to the Contractor for use as a tool to assist with expedient preparation of proposals in response to University issued Request for Proposals. This software will contain an electronic version (copy) of the Unit Price Book, which can be accessed on the equipment provided by the Contractor to locate and select desired items from the Unit Price Book. Once the desired items are selected, the software shall provide for selection of quantities and based on the selected quantities, will extend and total Unit Price Book costs for each proposal. The software will also permit introduction of non pre-priced tasks and the application of the adjustment of the factors. The cost of installation and maintenance of the software is the responsibility of the University.

### **5.09 Contractor's Detailed Schedule of Work**

- A. The Contractor shall submit with each proposal a bar chart or CPM schedule setting forth the manner and sequence of the work. The Contractor shall schedule the work in accordance with the time duration set forth in the Request for Proposal. The Contractor shall have broad discretion in scheduling the work. The University's basis for disapproval of any schedule shall generally be limited to a determination that the work sequence lacks logic, is unreasonable, is incomplete or is inconsistent with any other contractual requirement, such as a phasing plan or work shift requirements, noise, class schedules, campus holidays or non-construction activity days.
- B. With respect to any submission by the Contractor under this Section, no review, acceptance or approval by the University shall release or relieve the Contractor from its obligation to fully and properly complete the work, or any other duty, responsibility or liability imposed on it under this Contract, including, but not limited to the obligation to complete the work within the Job Order completion time.

### **5.10 Stop Work Order**

- A. The University may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work or change or delete any item of the work from the Job Order.
- B. Upon receipt of the notice of termination, the Contractor shall act promptly to minimize the expenses resulting from such termination. The University shall pay the Contractor the costs actually incurred by the Contractor up to the date of such termination, but in no event shall the Contractor be entitled to compensation in excess of the total consideration of the contract. In the event of such termination the University may take over the work and prosecute it to completion by contract or otherwise and may take possession of and may utilize such materials, appliances, and equipment as may be on the site and necessary or useful in completing the work.

## **6.00 INTERPRETATION OF AND ADHERENCE TO CONTRACT REQUIREMENTS**

### **6.01 Interpretation of Contract Requirements**

- A. Correlation  
Contract documents shall be interpreted as being complementary, requiring a complete project. Any requirement occurring in any one of the contract documents is as binding as though occurring in all contract documents. Generally, the specifications address quality, types of materials and contract conditions while the drawings show placement, sizes, fabrication details of materials.
- B. In the event of conflict in the contract documents, the priorities stated below shall govern:
  - 1. Addenda shall govern over all other contract documents and subsequent addenda shall govern over prior addenda only to the extent modified.
  - 2. In case of conflict between plans and specifications, the specifications shall govern.
  - 3. Conflicts within the plans:
    - a. Schedules, when identified as such, shall govern over all other portions of the plans.
    - b. Specific notes shall govern over all other notes and all other portions of the plans except the schedules described in Article 6.01-B.3 (a), above.
    - c. Larger scale drawings shall govern over smaller scale drawings.
    - d. Figured or numerical dimensions shall govern over dimensions obtained by scaling.

4. Conflicts within the specifications: 'Contract General Conditions' shall govern over all sections of the specifications except for specific modifications thereto that may be stated in Supplementary General Conditions or addenda. No other section of the specifications shall modify the contract General Conditions.
  5. In the event provisions of codes, safety orders contract documents, referenced manufacturers specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.
- C. In the event of omissions in the contract documents, the following shall apply:
1. If the contract documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials, or equipment, but there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the contract documents in accordance with such standard. 'Minor Detail' shall include the concept of substantially identical components, where the price of each such component is small even though the aggregate cost or importance is substantial, and shall include a single component that is incidental, even though its cost or importance may be substantial.
  2. The quality and quantity of the parts or material so supplied shall conform to trade standards and be compatible with the type, composition, strength, size, and profile of the parts of materials otherwise set forth in the contract documents.

### **6.02 Issuance of Interpretations, Clarifications, Additional Instructions**

Should the Contractor discover any conflicts, omissions, or errors in the contract or have any question concerning interpretation or clarification of the contract, the Contractor shall request in writing interpretation, clarification, or additional detailed instructions, before proceeding with the work affected.

The University, shall, within a reasonable time, issue in writing the interpretation, clarification, or additional detailed instructions requested.

Should the Contractor proceed with the work affected before receipt of the interpretation, clarification, or instructions from the University, the Contractor shall replace or adjust any work not in conformance therewith and shall be responsible for any resultant damage or added cost.

Should any interpretation, clarification, or additional detailed instructions, in the opinion of the Contractor, constitute work beyond the scope of the contract, the Contractor must submit written notice thereof to the University within seven calendar days following receipt of such interpretation, clarification, or additional detailed instructions and in any event prior to commencement of work thereon. The Contractor shall submit an explanation of how the interpretation, clarification, or additional detailed instruction constitutes work beyond the scope of the contract, along with a detailed cost breakdown and an explanation of any delay impacts. If, in the judgment of the University, the notice is justified, the interpretation, clarification or additional detailed instructions shall either be revised or the extra work authorized by contract change order or by field instruction with a change order to follow. If the University decides that the claim is not justified and the Contractor still fails to agree, the Contractor shall nevertheless perform such work upon receipt from the University of a written order to do so. At the conclusion of each day when the Contractor performs disputed work, the Contractor shall prepare for that day time and materials records which shall be verified by the Inspector at the conclusion of that day. In such case, the Contractor shall have the right to have the claim later determined pursuant to this contract (see Article 8.01). The Contractor shall have no claim for additional compensation because of such interpretation, clarification, or additional detailed instruction, unless he gives written notice within seven calendar days as specified above, and satisfies the provisions of Article 4.14.

### **6.03 Product and Reference Standards**

#### **A. Product Designation**

When descriptive catalog designations, including the manufacturer's name, product brand name, or model number are referred to in the contract, such designations shall be considered as being those found in industry publications of current issue at the date the Notice to Contractors is issued.

#### **B. Reference Standards**

When standards of the federal government, trade societies, or trade associations are referred to in the contract by specific date of issue, these shall be considered a part of this contract. When such references do not bear a date of issue, the current and most recently published edition at the date specified in the Notice to Contractors shall be considered a part of this contract.

### **6.04 Shop Drawings, Samples, Alternatives or Equals, Substitutions**

#### **A. Submittal Procedure**

The Contractor shall review and approve all shop drawings. 'Shop drawings' include drawings, diagrams, illustrations, schedules, performance charts, brochures and catalogs and other data prepared by the Contractor or any subcontractor,



manufacturer, supplier or distributor, and which illustrate some portion of the work. The Contractor shall promptly review and mark the shop drawing approved and submit to the University, so as to cause no delay in the work, together with samples as required by the contract and shall also submit any offers of alternatives or substitutions. At least six copies of shop drawings shall be submitted. All such submittals shall be sent to the party given in the instructions to the Contractor at the job start meeting. A letter shall accompany the submitted items which shall contain a list of all matters submitted and shall identify all deviations in the shop drawings and samples from the requirements of the contract. Failure by the Contractor to identify all deviations may render any action taken on the materials submitted to be void. Whether to void such action shall be in the discretion of the University. By submitting the approved shop drawings and samples, the Contractor represents that the data contained therein have been verified with conditions as they actually exist and that the shop drawings and samples have been checked and coordinated with the contract.

**B. Samples**

Samples are physical examples furnished by the Contractor to illustrate materials, equipment, color, texture, or workmanship, and to establish standards by which the work will be judged.

**C. Alternatives or Equals**

For convenience in designation on the plans or in the specifications, certain materials or equipment may be designated by a brand or trade name or the name of the manufacturer together with catalog designation or other identifying information, hereinafter referred to generically as 'designated by brand name.' Alternative material or equipment which is of equal quality and of the required characteristics for the purpose intended may be proposed for use provided the Contractor complies with the following requirements:

1. The Contractor shall submit its proposal to the University for an alternative as an "equal" in writing no later than 35 days after the award of the contract, unless otherwise specified in the Supplementary General Conditions. In exceptional cases the University may give written consent to a submittal or re-submittal received after the expiration of the time limit designated. The Contractor is responsible for timely submittal of its proposed "or equal."
2. No proposal will be considered unless accompanied by complete information necessary to permit determination of the equality of the offered materials or equipment. Samples shall be provided when requested by the University.
3. The burden proof as to the comparative quality and suitability of the offered materials or equipment shall be upon the Contractor. Where the material is specified by capacity or performance, the burden of proof shall be on the Contractor to show that any particular equipment or materials meet the minimum capacities or the performance requirements specified. The Contractor shall furnish at its own expense all information necessary for a determination as to whether the minimum capacities or performance requirements will be met. Such information shall be submitted prior to award of the contract as required by Public Contract Code Section 3400.

The University shall be the judge of such matters. If the University rejects the use of any alternative materials or equipment, then one of the products designated by brand name shall be furnished.

If changes or delays are required for proper installation or fit of alternative materials, articles, or equipment, or because of deviations from contract documents, such changes or delays shall be made at the Contractor's expense without recourse for reimbursement from the University.

**6.05 Quality of Materials, Articles and Equipment**

Materials, articles and equipment furnished by the Contractor for incorporation into the work shall be new. When the contract requires that materials, articles or equipment be furnished, but the quality or kind thereof is not specified, the Contractor shall furnish materials, articles or equipment at least equal to the kind or quality or both of materials, articles or equipment which are specified.

**6.06 Testing Materials, Articles, Equipment and Work**

Materials, articles, equipment or other work requiring tests are specified in the contract. Materials, articles and equipment requiring tests shall be delivered to the site in ample time before intended use to allow for testing and shall not be used prior to testing and receipt of written approval. The Contractor shall be solely responsible for notifying the University where and when materials, articles, equipment and work are ready for testing. Should any such materials, articles, equipment or work be covered without testing and approval, if required, they shall be uncovered at the Contractor's expense.

**6.07 Rejection**

Should any portion of the work done or any materials, articles or equipment delivered fail to comply with the requirements of the contract, such work, materials, articles or equipment shall be rejected in writing and shall immediately be made satisfactory to the University, by the Contractor, at no additional expense to the University. Any materials, articles or

equipment that are rejected shall immediately be removed from the premises at the expense of the Contractor. The University may retain one and one-fourth times the cost of the rejected materials, articles, equipment, and work from any payments due the Contractor until it is made acceptable to the University.

#### **6.08 Responsibility of Quality**

The testing and inspection provided by the University shall not relieve the Contractor of its responsibility for the quality of materials and workmanship provided by the Contractor, and the Contractor shall make good all defective work discovered during or after completion of the project.

#### **6.09 Accident Prevention**

The Contractor shall, at all times, take every precaution against injuries to persons or damage to property and for the safety of persons engaged in the performance of the work (see Article 4.08–E, Safety).

#### **6.10 Protection of Work and Property**

- A. The Contractor shall, at all times, guard each site from injury or loss in connection with the work. The Contractor shall, at all times, guard and protect the Contractor's work, and adjacent property. In carrying out its obligations hereunder, Contractor shall take into account that the site is an educational facility which may be or may become fully or partially occupied and utilized by teachers and students and in that event the Contractor must take into account that the students utilizing or attending the educational facilities are susceptible to the hazards of attractive nuisances or other hazards present on construction sites.
- B. The Contractor shall have full responsibility to install, protect, and maintain all materials and supplies in proper condition and forthwith repair, replace and make good any damage thereto until final acceptance. The Contractor shall maintain an inventory of all materials and supplies for the work at the site that are delivered to the site or approved for off-site storage facilities.

#### **6.11 Construction Site Emergency**

- A. A construction emergency is defined as an unforeseen condition or event requiring prompt action by the Contractor. Construction site emergencies include, but are not limited to, construction related accidents; uncontrolled release of asbestos, lead dust or other hazardous materials; natural disasters; automobile accidents; and fires.
- B. The Contractor must notify the University of a construction site emergency, within a half-hour of the occurrence of the event.

#### **6.12 Failure to Comply with Provisions of Items 6.9 - 6.11**

This Contract may, at the sole option of the University, be declared void and no effect if the Contractor fails to comply with the provisions of items 6.9 – 6.11.

#### **6.13 Severability**

If any provision of the contract documents is invalid or unenforceable as against any person or party, the remainder of the contract documents and the applicability of such provision to other persons or parties shall not be affected thereby. Each provision of the contract documents shall, except as otherwise herein provided, be valid and enforceable to the fullest extent permitted by law.

### **7.00 CHANGES IN THE WORK**

#### **7.01 Change Orders**

Additive changes in the work requested in a Job Order (unless very minor) are dealt with by the issuance of a new Job Order to accommodate the changes. The procedures for the issuance of such a Job Order are the same as the procedures for the issuance of the original Job Order. Any additions are therefore calculated by using the appropriate item in the Unit Price Book, times the quantity to be added, times the appropriate adjustment factor. Time will be negotiated as appropriate for the scope of work.

#### **7.02 Emergency Changes**

Changes in the work made necessary due to unforeseen site conditions, discovery of errors in plans or specifications requiring immediate clarification in order to avoid a serious work stoppage, changes of a kind where the extent cannot be determined until completed, or under any circumstances whatsoever when deemed necessary by the University are kinds of emergency

changes which may be authorized by the University in writing to the Contractor. The Contractor shall commence performance of the emergency change immediately upon receipt of written direction from the University.

Compensation for emergency changes shall be accommodated by the same process described in Articles 2.04-C.5(b) and 5.06-E.

### **7.03 Time Extensions, Net Credit Changes, or Minor Additive Changes**

A change order may be issued to a Job Order to extend the Job Order time as provided in article 4.14-F, to assess liquidated damages as provided in Article 8.02, to adjust the contract for a net credit per Article 4.28-B, to delete a portion of the scope, or to perform a minor additive portion of work. The Unit Price Book shall be used for additive work, and the appropriate cost for deleted work shall be taken from the approved proposal.

## **8.00 CLAIMS AND DAMAGES**

### **8.01 Contractor's Claims Review Board**

In accordance with Article 6.02, should the contractor disagree with the determination of the University on a matter that substantially affects the Contractor's costs, compensation, or extent of work, the Contractor may file a claim with the University and request a review of the decision. The contractor must proceed with the work upon receipt from the University of a written order to do so, and within 15 days notify the University, by letter, that it protests the decision.

All claims arising from this contract shall be submitted in writing to the University no later than 30 calendar days after the County Recorder's recordation date on the University's Notice of Completion. The Contractor's failure to submit its claims to the University within this 30-day period shall constitute a waiver by the Contractor of such claims. Once the claims have been submitted, Contractor shall have 30 additional calendar days in which to submit six copies of a total and detailed claims package. Failure to submit the full detailed package within this second 30-day period shall constitute a waiver by the Contractor of such claims.

Before the Contractor files a claim with the University, the Contractor shall make a reasonable effort to analyze the claim to determine the truth of the information comprising the claim. The Contractor shall not present a subcontractor claim without making a reasonable effort to determine the truth of the facts comprising the claim. Only claims reasonably determined by the Contractor to be true may be filed with the University. By submitting a claim, the Contractor affirms that the claim is submitted in good faith, that the facts supporting the claim are true and accurate, and that the claim in the reasonable opinion of the Contractor constitutes a basis under the contract for additional compensation. Further, the Contractor submits the claim recognizing the significant civil penalties and treble damages which follow from making a false claim or presenting a false claim to the Trustees (see Government Code Sections 12650 *et seq.*).

The University will convene a Contractor's Claims Review Board to hear the submitted claims at the completion of the project. Each Claims Review Board shall continue to function until all pertinent facts are reviewed, and it arrives at a recommendation. It is a lay board; attorneys and third party claims specialists may not participate in the hearings, with the exception of scheduling consultants. The Board's recommendation will be made as soon as possible after the conclusion of the hearing. The decision of the Claims Review Board exhausts the Contractor's contractual and administrative remedies with the University.

### **8.02 Delay in Completion - Liquidated Damages**

If the work is not completed within the time required, damage will be sustained by the University. It is, and will be, impractical and extremely difficult to determine the actual damage that the University will sustain by reason of the delay. It is therefore agreed that the Contractor will pay to the University the sum of money stipulated per day in the Job Order for each day's delay in completing the work beyond the time prescribed, see Article 9.01 Acceptance. A credit change order shall be executed to assess liquidated damages. If the Contractor fails to pay such liquidated damages, the University may deduct the amount thereof from any money due or that may become due the Contractor under the contract (Public Contract Code Section 10826). If the University has occupancy of all or a portion of the project, the University may reduce the amount of assessment of liquidated damages, if it is determined to be in the best interest of the University.

The application of liquidated damages shall be noted on the Request for Proposal for each work order. The University reserves the right to negotiate the amount of liquidated damages for each Job Order, but in no event will the liquidated damages be less than the following schedule:

## SCHEDULE FOR LIQUIDATED DAMAGES

<u>Job Order Amount</u>	<u>Calendar Day</u>
\$1.00 to \$25,000.00	\$ 235.00
\$25,001.00 to \$100,000.00	\$ 325.00
\$100,001.00 to \$250,000.00	\$ 410.00
\$250,001.00 to \$400,000.00	\$ 500.00

### **8.03 Failure to Meet Terms of Contract**

If the University deems that the Contractor has failed to supply an adequate working force, or material of proper quality, or has failed in any other respect to prosecute the work with the diligence and force specified in the contract, it may take any of the actions authorized in Public Contract Code Section 10843 *et seq.* The Contractor's failure to complete a punch list with diligence is an example of such failure to meet the terms of the contract.

### **8.04 Third-Party Claims**

The Trustees have full authority to compromise or otherwise settle any claim relating to a contract at any time. However, the Trustees shall notify the Contractor of the receipt of any third-party claim relating to the contract (Public Contract Code Section 9201).

## **9.00 PAYMENT AND COMPLETION**

### **9.01 Acceptance**

When the discrete Job Order has been completed in all respects in accordance with the contract documents to the full satisfaction of the University, the University will then file a Notice of Completion with the County Recorder in the county in which the project is located. The date of recording on the Notice of Completion shall be the official completion date relating to claims and stop notices. All stop notices must be filed with the University within 30 calendar days after the County Recorder's recordation date on the University's timely Notice of Completion. All claims arising from this contract shall be submitted in writing to the University no later than 30 calendar days after the recordation date on the University's Notice of Completion, see Article 8.01.

### **9.02 Partial Payments**

Once each month during the progress of the work on each discrete Job Order, the Contractor shall submit a partial payment request. The partial payment request shall be based on the approved bid breakdown for the cost of the work completed plus the acceptable materials delivered to the site or stored subject to the control of the Contractor and not yet installed. The partial payment request shall be submitted on the monthly anniversary of the day selected by the Contractor in the pre-construction conference. Partial payment requests shall be processed with a minimum of a five-percent retention. This retention is part security for the fulfillment of an individual Job Order by Contractor. Partial payments shall not be construed as acceptance of any work that is not in accordance with the requirements of the Job Order. Payment will be processed in accordance with Section 10853 of the Public Contract Code. Such procedure provides for 39 days processing, from the date of receipt at the University, prior to late payment penalty.

### **9.03 Stop Notices**

The University shall retain out of any money due or that may become due the Contractor, sums sufficient (125 percent of the claim) to cover claims filed pursuant to the stop notice provisions of the law (Civil Code, Section 3082 *et seq.*).

Preliminary notices and stop notices should be addressed to the Construction Administrator and sent to the individual and address identified in the award of contract letter and at the pre-construction conference. Contractor shall be responsible to communicate this information to all subcontractors.

### **9.04 Final Payment**

After acceptance of the project as complete, the Contractor shall submit to the Construction Administrator a payment request of the total due under the contract less the retention. This payment request will be processed in the same manner as the partial payment requests. Refer to Article 9.02.

The Contractor shall submit a request for payment of the retention. The Contractor shall be notified by the University of the date of recordation of the Notice of Completion. The retention payment will be processed by the University 30 calendar days after the date of recordation by the county recorder.

The University shall continue to retain funds to cover liquidated damages, stop notices, state labor commissioner claims, back charges from the University, unexecuted credit change orders, and other such claims that may be received up to the end of the 30 days period following recordation. If any stop notice has been filed, payment shall be withheld in an amount of at least 125 percent of the total claims filed until either the rights under the stop notice have been settled or the Contractor has posted sufficient bond in an amount of at least 125 percent of the total claims filed to secure payment of such claims.

#### **9.05 Guarantee**

The Contractor hereby unconditionally guarantees the work under this contract to be in conformance with the contract requirements and to be and remain free of defects in workmanship and materials for a period of one year from the date of acceptance of the project pursuant to Article 4.14-B, unless a longer guarantee period is stipulated in the contract documents. By this guarantee the Contractor agrees, within the guarantee period, to repair or replace any work, together with any adjacent work that may be displaced in so doing which is not in accordance with the requirements of a Job Order issued under this contract or which is defective in its workmanship or material, all without any expense whatsoever to the University.

The Contractor shall secure from the manufacturers of all equipment and materials required under the contract such manufacturer's standard warranties and guarantees (or such other warranties and guarantees as the specifications may require) in the name of such person or entity as the University may direct and shall transmit those warranties and guarantees to the University.

The Contractor who is responsible for the entire work shall sign special guarantees that are required by any Job Order, and the subcontractor that performs the work shall countersign.

Contract bonds shall remain in full force and effect during the one-year guarantee period, unless a longer bond period is stipulated in the contract documents.

The Contractor further agrees that within ten calendar days after being notified in writing by the University of any work not in accordance with the requirements of any Job Order issued under this contract or of any defects in the work, it shall commence and prosecute with due diligence all work necessary to fulfill the terms of this guarantee and to complete the work in accordance with the requirements of the contract within a reasonable period of time. The Contractor, in the event of failure to so comply, does hereby authorize the University to proceed to have the work done at the Contractor's expense, and it agrees to pay the cost thereof upon demand. The University shall be entitled to all costs necessarily incurred upon the Contractor's refusal to pay the above cost.

Notwithstanding the foregoing paragraph, in the event of an emergency constituting an immediate hazard to health or safety of the Trustees' employees, property, or licenses, the University may undertake at the Contractor's expense, without prior notice, all work necessary to correct such hazardous conditions caused by the work of the Contractor not being in accordance with the requirements of any Job Order issued under this contract.

#### **9.06 Contractor Evaluation**

A contractor evaluation will be performed by the University, and a report filed with the Trustees after completion of the contract. If the Contractor fails to perform the construction contract responsibly by failing to complete all work and requirements, including honoring the warranty, the construction administrator shall so state the facts on the Contractor Evaluation Form. An evaluation, which results in a non-responsible contractor finding, could affect the Contractor's prequalification and may cause the Contractor to be deemed ineligible to bid on Trustees' work. Refer also to Article 2.10.

End of Contract General Conditions for Job Order Contracts