

**INVITATION FOR BIDS
CONTRACT No. 2018-03**

for

**INTERIOR ALTERATIONS TO
SAN MATEO COUNTY HARBOR DISTRICT
ADMINISTRATIVE OFFICE
504 AVENUE ALHAMBRA, 2ND FLOOR,
EL GRANADA, CA 94018**

San Mateo County Harbor District



San Mateo County Harbor District

504 Avenue Alhambra, 2nd Floor, PO Box 1449
El Granada, CA 94018

For Immediate Release

DATE: 03-19-2018

**Contact: John Moren, Director of Operations
San Mateo County Harbor District
El Granada, CA 94018**

(650) 741-9163

PUBLIC NOTICE

INVITATION TO BID

NOTICE IS HEREBY GIVEN that the San Mateo County Harbor District will receive sealed bids for the Interior Alterations to the San Mateo County Harbor District Administrative Office. The District invites qualified contractors to bid on the Interior Alterations to the San Mateo County Harbor District Administrative Office at El Granada.

Project Description: Interior Alterations to (E) Office Space

Prospective Bidders are directed to the Harbor District's website for construction documents and further information.

Sealed Bid Proposals shall be submitted to the San Mateo County Harbor District, Administration Office, no later than 2:00 pm. local time on May 01, 2018, at 504 Avenue Alhambra, 2nd Floor, El Granada, CA 94018.

NOTE: THERE IS NO DIRECT USPS DELIVERY TO THE DISTRICT OFFICE

PROJECT BID SPECIFICATIONS ARE IMMEDIATELY AVAILABLE at the San Mateo County Harbor District, 504 Avenue Alhambra, 2nd Floor, El Granada, CA 94018 or on the District's website at www.smharbor.com. Phone 650-741-9163.

A MANDATORY pre-bid conference will be held on April 04th 2018 at 10:00 a.m. at the office of the Harbormaster at 504 Avenue Alhambra, 2nd Floor, El Granada, CA 94018. The job walk is mandatory for the contractor's bid to be considered responsive.

Bid and Material & Labor Bonds are required as part of this agreement.

The District reserves the right to reject any and all bids and to waive any irregularities therein. The award of this contract shall be made to the lowest responsible and responsive bidder. No proposals will be accepted by facsimile or electronic mail.

NOTICE INVITING BIDS

NOTICE IS HEREBY GIVEN that sealed bids will be received in the Harbor District Administrative Offices, San Mateo County Harbor District (District), either by U.S. Postal Service addressed to its mailing address, PO Box 1449, El Granada, CA 94018, or by courier or personal delivery to 504 Avenue Alhambra, 2nd Floor, El Granada, CA 94018, on **May 01, 2018, by 2:00 p.m., Pacific Standard Time**, at which time bids will be publicly opened and read for the following:

CONTRACT NO. 2018-03

Interiors Alterations to the
San Mateo County Harbor District Administrative Office at
504 Avenue Alhambra, 2nd floor,
El Granada, CA 94018

NOTE: THERE IS NO DIRECT USPS DELIVERY TO THE DISTRICT OFFICE

The District seeks bids for San Mateo County Harbor District Administrative Office, El Granada. Bids shall be submitted on the District's "Bid Form" and enclosed in a sealed envelope marked "**CONTRACT NO. 2018-03, San Mateo County Harbor District Administrative Office,**" and plainly endorsed with Bidder's name and address.

Bidders bidding as the prime contractor must possess a valid State of California **Class B** Contractor's License at the time of contract award. All subcontractors, if any, must be properly licensed by the State of California to perform specialized trades.

A mandatory pre-bid conference and site visit will be held prior to the date of bid opening. District staff will be available to answer general questions pertaining to the solicitation documents and the specifications. Any questions that may require staff research to answer or that will otherwise modify the meaning or intent of this solicitation shall be submitted to the District in writing as described in Special Provision 1.8. The pre-bid conference will take place on **April 4th, 2018 at 10:00 a.m.** at the San Mateo County Harbor District Office, 504 Ave Alhambra, 2nd Floor, El Granada, CA 94018. There will be a site visit immediately following the pre-bid conference. Any individuals who participate in the site visit must bring their own safety gear (hard hat, safety vest, safety glasses, and steel toed shoes) to wear during the site visit.

Bids must be accompanied by a deposit either in the form of a certified or cashier's check or Bidder's Bond, as described in the documents, which shall be applied to damages sustained by the District in the event that the successful Bidder fails or refuses to enter into a contract awarded to it by the District.

Requests for modifications or clarifications of any requirement must be submitted in writing to San Mateo County Harbor District, Director of Operations, John Moren by e-mail at jmoren@smharbor.com or by facsimile at (650) 583-4614 by **April 10th, 2018 at 4:30 p.m., Pacific Standard Time**.

This is a Public Works Contract. The general prevailing rates of per diem wages and the general prevailing rates for regular (straight) time, holiday and overtime work in San Mateo County for each craft, classification and type of worker needed to execute the Contract shall be set forth in the current

General Prevailing Wage Determinations made by the Director of Industrial Relations pursuant to California Labor Code Sections 1720 et seq. The current General Prevailing Wage Determinations are incorporated into the Contract, and are available at the California Department of Industrial Relations' website (www.dir.ca.gov/dlsr/DPreWageDetermination.htm). Should the general prevailing wage rates not specify a wage determination for a particular type of worker, attention is directed to 8 CCR 16202(b) regarding petitioning the Director of the California Department of Industrial Relations for a special wage determination. Responsibility for labor law enforcement remains with the Division of Labor Standards Enforcement.

The successful Bidder will be required to furnish a Performance Bond and a Payment Bond, both in the amount set forth in the Special Provisions.

Pursuant to Public Contract Code Section 22300, the successful Bidder may submit certain securities in lieu of the District withholding funds from progress payments (retention) during the Project.

Bids will be examined and reported to the General Manager within ninety (90) calendar days after the bids have been opened. The District reserves the right to reject any and all bids, or to waive any irregularities or informalities in any bid or in the bid procedure, or to postpone the bid opening for good cause. No Bidder may withdraw its bid for a period of ninety (90) calendar days after the date of opening of the bids. Each Bidder will be notified of award of contract, if award is made.

Contractors and subcontractors must be registered with the Department of Industrial Relations (DIR) at the time of bid, or else the bid may be rejected as non-responsive. (See Labor Code sections 1725.5 and 1771.1.) For federally funded projects, the contractor and subcontractors must be registered at the time of contract award. (See Labor Code section 1771.1(a). Each bidder must submit proof of contractor registration with DIR (e.g. a hard copy of the relevant page of the DIR's database found at: <https://efiling.dir.ca.gov/PWCR/Search>). This Contract is subject to monitoring and enforcement by the DIR pursuant to Labor Code Section 1771.4.

To inspect and obtain the Bid Documents or for additional information, please contact San Mateo County Harbor District, Director of Operations, John Moren by telephone at (650)741-9163, by facsimile at (650) 583-4614, or by e-mail at jmoren@smharbor.com.

Dated at El Granada, this 03/19/2018

GENERAL CONDITIONS AND INSTRUCTIONS FOR BIDDERS

SAN MATEO COUNTY HARBOR DISTRICT

GENERAL CONDITIONS AND INSTRUCTIONS FOR BIDDERS

These General Conditions and Instructions apply to all bids, except insofar as they may be modified by the Special Provisions, Technical Specifications or Bid Forms.

1. **Definition of Terms.** Whenever in the Bid or Contract Documents the following terms or pronouns in place of them, or abbreviations are used the intent and meaning shall be interpreted as follows:

"District" shall mean San Mateo County Harbor District.

"Board," "Director," "Directors," or "Board of Directors" shall mean the five (5) member governing board of the San Mateo County Harbor District or members thereof.

"Secretary" means the Administrative Assistant/Deputy Secretary of the Board of the San Mateo County Harbor District.

"General Manager" means General Manager of the San Mateo County Harbor District.

"Contractor" means the successful bidder to whom a contract is awarded.

"Written Order" means a written order signed by the General Manager or properly authorized representative or agent, mailed to the Contractor at the address designated in the firm's Bid, or to such other address as may be designated in writing as its official place of business.

"Bid Documents" or "Contract Documents" mean the Notice Inviting Sealed Bids, General Conditions and Instructions for Bidders, Special Provisions, Technical Specifications, Bid Forms and Addenda, if any.

"Bidder" or "Bid" means Proposer or Proposal, respectively.

2. **Explanations and Clarifications**

- A. **Request for Interpretation or Correction.** Prospective Bidders must examine the Contract Documents carefully. It shall be the duty of every person contemplating submitting a Bid for the proposed Contract, to contact the Secretary and request in writing, before bidding, an interpretation or correction of every discrepancy, ambiguity, error or omission in any of the Contract Documents which should have been discovered by a reasonably prudent Bidder.

Any interpretation, change or correction of said Contract Documents will be made by addenda only, duly issued by the District. Copies of such addenda will be mailed or delivered to each firm receiving a set of said specifications. Upon such mailing or delivery, such addendum will become a part of the Contract Documents, and binding on all Bidders whether or not actual notices of such addenda are shown.

- B. Interpretations or Corrections Binding. Only the written interpretation or correction so given by the District shall be binding. All oral modifications of the Contract Documents are void and ineffective.
3. Form of Bid and Signature. The Bid shall be made on the form provided and shall be enclosed in a sealed envelope marked and addressed as required. If the Bid is made by a sole owner, it shall be signed with the firm's full name and its address shall be given; if it is made by a partnership, it shall be signed with the partnership name by a member of the firm, who shall also sign its own name, and the name and address of each member of the firm shall be given; and if it is made by a corporation it shall be signed by **two** officers of the corporation, consisting of (1) the chairman of the board, president, or vice president, and (2) the secretary, assistant secretary, chief financial officer, assistant financial officer, or by a person authorized by the corporation to execute written Contracts on its behalf. If the Bid made by a corporation is signed by a person other than an officer, or by only one officer, there must be attached to the Bid a certified copy of a resolution of the corporation authorizing such officer or person to sign Bids on behalf of the corporation. If it is made by a joint venture, it shall be signed on behalf of each participating company by officers or other individuals who have the full and proper authorization so to do. If it is made by an LLC, it must be signed by an officer or other member who has full and proper authorization to execute contracts on behalf of the LLC. Bids submitted in any other form will be considered non-responsive and may be rejected.
4. Bid Form. Blank spaces in the Bid shall be properly filled. The phraseology of the Bid must not be changed and no additions shall be made to the items mentioned therein. Alterations by erasure or interlineations must be explained or noted in the Bid over the signature of the Bidder. If the unit price and the total amount named by a Bidder for any item do not agree, the unit price alone will be considered as representing the Bidder's intention. Any mathematical errors apparent on the face of the Bid shall be corrected and the mathematically correct total shall be used to determine the lowest Bidder.
5. Unauthorized Conditions. Unauthorized conditions, limitations or provisions attached to a Bid will render it informal and may cause its rejection. No telegraphic Bids or modifications will be considered.
6. Submission of Bid. Prior to the hour specified in the notice inviting sealed Bids, all Bids shall be delivered to the Secretary at the address shown in the Notice. All Bids shall be in a sealed envelope properly endorsed as to the item being Bid and the Bidder's name and address. No Bids received after said time or at any place other than the time and place as stated in the notice will be considered.
7. Withdrawal of Bid. Any Bid may be withdrawn at any time prior to the time fixed in the public notice for the opening of Bids only by written request for the withdrawal of the Bid filed with the District. The request shall be executed by the Bidder or its duly authorized representative.

A telephonic request is not acceptable. The District will accept facsimile or email transmissions of properly executed requests that are received by the District prior to the time fixed in the public notice for the opening of Bids. The District will not be responsible for interruptions, delays, or any other unsuccessful facsimile or email

transmission of Bid withdrawals, whether or not caused by the District's facsimile equipment. The withdrawal of a Bid does not prejudice the right of the Bidder to file a new Bid. Whether or not Bids are opened exactly at the time fixed in the public notice opening Bids, a Bid will not be received after that time, nor may any Bid be withdrawn after the time fixed in the public notice for the opening of Bids.

8. **Canvass of Bid.** At the hour specified in the notice, the Secretary will open, examine and publicly declare all Bids received. Bidders, their representatives, and others interested are invited to be present at the opening of Bids. Award will be made or Bids rejected by the District within the time specified in the Specifications or Bid Forms or, if not specified, within a reasonable time after Bids have been opened. The District reserves the right to postpone the Bid opening for its own convenience.
9. **Award of Contract.** The award of the Contract, if awarded, will be made to the lowest responsible Bidder whose Bid complies with the requirements prescribed and whose qualifications are satisfactory to the District. Such award, if made, will be made within ninety (90) days after the opening of the Bids. If the lowest responsible Bidder refuses or fails to execute the Contract or file the required bonds, the District may award the Contract to the second lowest responsible Bidder. The periods of time specified above within which the award of Contract may be made shall be subject to extension for such further period as may be agreed upon in writing between the District and the Bidders concerned. All Bidders shall be notified of the award.
10. **Rejection of Bids.** The District may reject any and all Bids, and must reject the Bid of any party who has been delinquent or unfaithful in any former Contract with the District. The District also reserves the right to waive any irregularities or informalities in any Bid or in the bidding procedure. All Bidders shall be notified of the award. All Bids must remain in effect at least ninety (90) days from the Bid opening date.
11. **Taxes.** The supplies, materials or equipment called for under the Specifications will be used by the District in the performance of a governmental function and are exempt from taxation by the United States Government, and the District will, if requested, furnish a tax exemption certificate and any and all affidavits and documents that may be necessary to establish such exemption. California State sales or use taxes shall be included in the Bid price.
12. **Additional Taxes.** Any sales tax, use tax, imposts, revenues, excise, or other taxes which may hereafter be imposed by the State of California or any political subdivision thereof, and applicable to the sale of the material delivered as a result of the Bidder's Bid and which, by the terms of the tax law may be passed directly to the purchases, will be included in the Bid price.
13. **Alternative Bid.** Submission of alternative Bid or Bids, except as specifically called for in the Specifications or Bid Forms, will render it informal and may cause its rejection.
14. **Bidder's Security.** Each Bidder shall submit with its Bid one of the following forms of Bidder's security:

- (a) An unconditional Certified or Cashier's Check on a solvent bank, in an amount equal to at least ten percent (10%) of the amount Bid, payable to the order of San Mateo County Harbor District; or
- (b) A Bidder's Bond, in an amount equal to at least ten percent (10%) of the amount Bid, using the form entitled "Bidder's Bond," provided with the Bid documents, and properly executed and acknowledged by the Bidder and by a corporate surety authorized to transact such business in the State of California and acceptable to the District.

Any condition or limitation placed upon said check or any alteration of said form of bond, or imperfection in the execution thereof, as herein required will render it informal and may, at the option of the District, result in the rejection of the Bid under which such check or bond is submitted. Said check or Bidder's Bond shall be a guarantee that the Bidder(s), if awarded the Contract, will execute the required Contract and bonds within fifteen (15) days after receipt of the contract and bond forms from the District or such additional time as may be allowed by the District. If the Bidder(s) fails or refuses to execute the required Contract and bonds within said time, the money and proceeds from the check or bond as the case may be, shall be applied towards payment of the damage to the District on account of the delay in the execution of the Contract and bonds and the performance of the work thereunder, and the necessity of accepting a higher or less desirable Bid resulting from such failure or refusal to execute the Contract and bonds required. The amount of the check or bond as the case may be, shall not constitute a limitation upon the right of the District to recover for the full amount of such damage. The check or bond of the successful Bidder(s) and the next two highest Bidders will be returned after the execution of the Contract with the successful Bidder(s) and the approval of its bonds on behalf of the District, and the checks or bonds of the other Bidders will be returned promptly after the Bids have been opened and reviewed by the District.

- 15. **Permits and Licenses.** To the extent permit and licensing requirements are applicable, the Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the work.
- 16. **Statement of Experience and Qualifications.** Upon request, the Bidder may be required to prove to the District's satisfaction that it has the skill and experience and that it has the necessary facilities and ample financial resources to perform the Contract in a satisfactory manner and within the required time.
- 17. **Waiver.** The Bidder shall represent and warrant that it has sufficiently informed itself in all matters affecting the performance of the work or the furnishing of the labor, supplies, material or equipment called for in the Specifications; that Bidder has checked its Bid for errors and omissions; that the prices stated in its Bid are correct and as intended by it and are a complete and correct statement of its prices for performing the work or furnishing the labor, supplies, materials or equipment required by the Contract Documents.

The Bidder waives any claim for the return of its Bid deposit if, on account of errors or omissions claimed to have been made by it in its Bid, or for any other reason, it should refuse or fail to execute the Contract.

18. **Non-Collusion Certification.** By submitting a Bid, the Bidder represents and warrants that such Bid is genuine and not sham or collusive or made in the interest or in behalf of any person not therein named, and that the Bidder has not, directly or indirectly, induced or solicited any other Bidder to put in a sham Bid, or any other person, firm or corporation to refrain from bidding, and that the Bidder has not in any manner sought by collusion to secure to the Bidder an advantage over any other Bidder.
19. **Penalty for Collusion.** If at any time it shall be found that the person, firm or corporation to whom a Contract has been awarded has, in presenting any Bid or Bids, colluded with any other party or parties, then the Contract so awarded shall be null and void and the Contractor and its bondsmen shall be liable to the District for all loss or damage which the District may suffer thereby and the District may advertise for a new Contract for said labor, supplies, materials or equipment.
20. **Interest of District Personnel.** By submitting a Bid, the Bidder represents and warrants that neither the General Manager, nor any Director, officer or employee of the District is in any manner interested directly or indirectly in the Bid or in the Contract which may be made under it, or in any expected profits to arise therefrom, as set forth in Article 4, Division 4, Title 1 (commencing with Sec. 1090) or Title 9 (commencing with Section 8100 of the Government Code of the State of California).
21. **Representation Before the District.** No person previously in the position of Director, Officer, employee, or agent of the District may act as an agent or attorney for, or otherwise represent, a Bidder or Contractor by making any formal or informal appearance, or any oral or written communication, before the District, or any officer or employee of the District, for a period of twelve months after leaving office or employment with the District, if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award, or revocation of a permit, license, grant or Contract.
22. **Time for Execution of Contract and Filing Bond.** The Bidder(s) to whom award is made shall execute a written Contract with the District on the form of Contract of the District and furnish a good and approved bond as herein required within fifteen (15) days after receiving the forms of Contract and bond for execution.

If the Bidder to whom award is made fails to enter into the Contract as herein provided and furnish the said bond, the award will be annulled and an award may, in the discretion of the District, be made to the Bidder whose Bid is next most acceptable; and such Bidder shall fulfill every stipulation embraced herein as if it were the party to whom the first award was made.
23. **Documents Deemed Part of Contract.** The Notice Inviting Sealed Bids, General Conditions and Instructions for Bidders, Special Provisions, Bid Form, Technical Specifications and Addenda, if any, and the Agreement will be deemed a part of the Contract.
24. **Governing Law; Compliance with Laws.** The Contractor hereunder shall be governed by the laws of the State of California. The Contractor must comply with all local, state

and federal laws, rules and regulations applicable to this Contract and to the work to be done hereunder, including, all rules and regulations of the District.

25. **Manner of Execution of Contract.** If the Contractor is an individual, the Contract shall be executed by the Contractor personally. If the Contractor is a co-partnership, it is desirable that the Contract be executed by all of the partners, but it may be executed by one of them. If the Contractor is a corporation, it must be executed by two officers of the corporation consisting of (1) the Chairman of the Board, President or Vice President; and (2) the Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer, or by a person authorized by the corporation to execute written Contracts on its behalf, and the corporate seal affixed thereto. If the corporate seal is not affixed to the Contract, or if it is executed by a person other than an officer, or by only one officer there must be attached to the Contract a certified copy of a resolution of the corporation authorizing such officer or person to execute written Contracts for and on behalf of the corporation. If the Contractor is a joint venture, the Contract must be executed on behalf of each participating firm by officers or other individuals who have the full and proper authorization so to do. If the Contractor is an LLC, the Contract must be executed by an officer or other member who has full and proper authorization to execute contracts on behalf of the LLC.
26. **Faithful Performance Bond.** Upon execution of the contract, the Contractor shall furnish a bond to guarantee the faithful performance of the contract. The amount of the bond shall be stated in the Special Provisions. The bond shall be with a California-admitted corporate surety, or with two or more sufficient sureties to be approved by the District. As an alternative to furnishing a bond, Contractor may guarantee faithful performance of the contract by (1) depositing with the District a certified check or cashier's check from a solvent bank for the prescribed amount.
27. **Effect of Extensions of Time.** Granting, or acceptance, of extensions of time to complete the work or furnish the labor, supplies, materials or equipment, or any one of the aforementioned, will not operate as a release to Contractor or the surety on Contractor's faithful performance bond from said guarantee.
28. **Changes by the Contractor.** If the Contractor, on account of conditions developing during the performance of the contract, finds it impracticable to comply with these Specifications and applies in writing for a modification of requirements, such change may be authorized only in writing by the General Manager, if not detrimental to the District.
29. **Changes by the District.** In case any work, materials or equipment shall be required which are not mentioned, specified or indicated or otherwise provided for herein, the Contractor shall, if ordered in writing by the General Manager, do and perform such work and furnish such materials or equipment at the Contractor's catalogue prices, less discounts ordinarily allowed to users of such materials or equipment or at regular labor charges less customary discounts, or both.

The Contractor's Bid to perform any changes requested by the District shall include the cost of the material, engineering time, labor for installation if required and a reasonable markup, if any.

In case any work, materials or equipment which are mentioned, specified or indicated or otherwise provided for in the contract or in the Specifications forming a part of the contract shall be required to be omitted from, in or about the work, the Contractor shall, if ordered by the General Manager, omit the performance of such work and the furnishing of such materials or equipment and there shall be deducted from the amount to be paid to the Contractor the amount which the General Manager and the Contractor shall determine and mutually agree to be the reasonable value of such work, materials or equipment, and such determination and agreement shall be final and conclusive upon the Contractor.

It is understood, however, that the amount of work, materials or equipment required by the Contract shall not, in accordance with the above provisions referring to additions or omissions, be so increased or diminished as substantially to alter the general character or extent of the Contract.

30. Change Orders. The Contract may be modified or changed by the District from time to time, in order to carry out and complete more fully and perfectly the work agreed to be done and performed. An order that modifies or changes work to be performed under the Contract shall be valid only if issued in writing and signed by the General Manager and shall designate (1) the change in cost or manner of payment, if any and (2) the effect on time for Contract performance, if any. Work so ordered must be performed by the Contractor.

31. Disputed Work/Claims. The Contractor must promptly comply with the following procedures in the event the Contractor has any dispute regarding (1) the District's determination on any change orders relative to adjustments in Contract price, time for performance or any other requirement or (2) whether a determination or order by the District violates the provisions of the Contract. Before proceeding with such work or complying with such determination or order, or simultaneously, the Contractor must notify the General Manager in writing of the reasons for the Contractor's opinion with respect to the dispute and request a final determination. The General Manager shall render the final determination within a reasonable time of receipt of such written request.

If the General Manager determines that the work in question is Contract work and not extra work, or that the determination or order complained of is proper, he/she will direct the Contractor to proceed, and the Contractor must promptly comply. However, in order to reserve its right to claim compensation for such work or damages resulting from such compliance, the Contractor must, within ten (10) days after receiving notice of the General Manager's determination and direction, notify the General Manager in writing that the work is being performed, or that the determination direction is being complied with under protest.

If the Contractor fails to so appeal to the General Manager for a determination, or having so appealed, should the Contractor thus fail to notify the General Manager in writing of its protest, the Contractor shall be deemed to have waived any claim for extra compensation or damage therefore. Oral appeals or oral protests, no matter to whom made, shall not be deemed even substantial compliance with the provisions of this Section.

32. **Notice of Potential Claim.** The Contractor shall not be entitled to the payment of any additional compensation or damages for any cause, including any act or failure to act by the District, or the happening of any event, thing or occurrence, unless, it shall give the District due written notice of potential claim as described below. Compliance with this section shall not be a prerequisite as to matters within the scope of the protest provisions in General Condition 31, "Disputed Work/Claims."

The written notice of potential claim shall set forth the reasons for which the Contractor believes additional compensation or damages will or may be due, the nature of the cost involved and, insofar as possible, the amount of the potential claim. The notice must be given to the General Manager prior to the time that the Contractor shall have performed the work giving rise to the potential claim for additional compensation or damages, if based on an act or failure to act by the District, or in all other cases, within fifteen days after the happening of the event, thing or occurrence giving rise to the potential claim.

It is the intention of this section that differences between the parties arising under and by virtue of the Contract be brought to the attention of the District at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The Contractor agrees that it shall have no right to additional compensation or damages for any claim that may be based on any such act, failure to act, event, thing or occurrence for which no written notice of potential claim as required was filed.

33. **Contractor's Liability.** The Contractor will indemnify, keep and save harmless the District, its agents, officials and employees, against all suits or claims arising out of any injury or death to persons or property caused by, resulting from, relating to, or alleged to have been caused by, result from, or relate to, the acts or omissions of the Contractor (including its employees and subcontractors) , whether or not it has been alleged that the injury was caused through a negligent act or omission of the Contractor (or its employees or subcontractors), unless the injury was caused by the willful misconduct or the sole or active negligence on the part of the District, its agents, officials or employees. The Contractor will, at its own expense, defend any and all such actions, and will at its own expense pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith. If any judgment is rendered against the District in any such action, the Contractor will at its own expense satisfy and discharge the same.
34. **Approval by the General Manager.** The work shall be executed under the direction and supervision of the General Manager or his designee, on whose inspection all work shall be accepted or condemned. The General Manager shall have full power to reject or condemn any materials furnished or work performed under the Contract which do not conform to the terms and conditions set forth in the Contract Documents.
35. **Defective or Damaged Work.** The Contractor agrees that within ten calendar days after being notified in writing by the District of any work not in accordance with the requirements in the Contract or of any defects in the work, it will commence and prosecute with due diligence all work necessary to fulfill the requirements of the Contract or correct the defect, and will complete such work in a reasonable period of time and at no additional cost to the District.

If the Contractor fails to promptly comply with this provision, the Contractor hereby authorizes the District to proceed to have such work done at the Contractor's expense, and Contractor agrees to honor and pay the costs and charges upon the District's demand. In the alternative, the District may elect to deduct the costs and charges from any compensation due or to become due to the Contractor. The District shall be entitled to all costs and expenses, including reasonable attorney's fees, necessarily incurred upon the Contractor's refusal to pay the above costs and charges. Nothing in the provision shall limit or restrict the warranty provisions set forth in the General Conditions, Special Provisions, and Technical Specifications.

36. **Independent Contractor.** Neither Contractor nor any of the Contractor's employees is, or shall be deemed, an agent or employee of the District, and in the performance of all work hereunder, Contractor shall be an independent Contractor, shall comply with all applicable Worker's Compensation laws, shall comply with and carry all policies of insurance required by the Longshoremen's and Harbor Worker's Compensation Act, shall pay all required Social Security taxes and Unemployment Compensation taxes, and shall pay or perform all other obligations imposed upon an employer of labor, all at Contractor's expense, and, furthermore, shall indemnify the District against any and all liability as a result of Contractor's failure to perform any of the foregoing requirements.
37. **Protection of Work and of Persons and Property.** During performance and up to the date of final acceptance by the District, the Contractor shall be under an absolute obligation to protect the finished and unfinished work against any damage, loss or injury. In the event of damage, loss or injury to the finished and unfinished work, the Contractor shall promptly replace or repair such work, whichever the District shall determine to be preferable. The obligation to deliver finished work in strict accordance with the Contract shall be absolute and shall not be affected by the District's approval of or failure to prohibit means and methods of construction used by the Contractor.

During the performance of this Contract and up to the date of final acceptance, the Contractor must take all reasonable precautions to protect the persons and property of others from damage, loss or injury. Within three (3) days after notice to it of the happening of any such loss, damage or injury to work, persons and property, the Contractor shall make a full and complete report thereof in writing to the District.

Under this article the Contractor assumes the following distinct and several risks, whether they arise from acts or omissions (whether negligent or not) of the Contractor, or the District, or the District's Representative, or of third persons; or from any other cause, and whether such risks are within or beyond the control of the Contractor, excepting risks which arise solely from District or District Representative's active negligence or affirmative acts with actual and willful intent to cause the loss, damage and injuries, and professional errors and omissions of the District or of the District's Representative:

- a. The risk of loss or damage to the finished and unfinished Work prior to final acceptance by the District;
- b. The risk of claims, just or unjust, by third persons against the Contractor, the District or the District's Representative on account of injuries (including wrongful death), loss or damage of any kind whatsoever arising or alleged to arise out of or

in connection with the performance of the Work (whether or not actually caused by or resulting from the performance of the Work) or out of or in connection with the Contractor's operations or presence at or in the vicinity of the work site, whether such claims are made and whether such injuries, damage and loss are sustained at any time both before and after final acceptance of the Work;

- c. The risk of loss or damage to any property, including the loss of use thereof of the Contractor, and of claims made against the Contractor, the District, or the District's Representative for loss or damage to any property, including the loss of use thereof of subcontractors, material men, workmen and other performing the Work, occurring at any time prior to completion of removal of such property from the premises or in the vicinity thereof.

Neither the acceptance of the completed Work or payment therefore shall release the Contractor from its obligations under this article. The enumeration elsewhere in this Contract of particular risks assumed by the Contractor or of particular claims for which it is responsible shall not be deemed to limit the effect of the provisions of this article or to imply that it assumes or is responsible for only risks or claims of the type enumerated; and neither the enumeration in this article nor the enumeration elsewhere in this Contract of particular risks assumed by the Contractor or of particular claims for which it is responsible shall be deemed to limit the risks which the Contractor would assume or the claims for which it would be responsible in the absence of such enumerations.

Except as these specifications otherwise may provide, all loss or damage of any sort or nature arising from any unforeseen obstruction or difficulties, either natural or artificial, or from any act or omission not authorized by these specifications on the part of the Contractor, or any agent or person employed by it, shall be the responsibility of the Contractor.

The provisions of this Article shall not be deemed to create any new right of action in favor of third parties against the Contractor, or the District.

38. **Damages.** All loss or damage arising from any unforeseen obstruction or difficulties, whether natural or artificial, which may be encountered in the prosecution of the work, or the furnishing of the supplies, materials or equipment, or from any action of the elements prior to the final acceptance of the work or of the supplies, materials or equipment, or from any act or omission not authorized by these Specifications on the part of the Contractor or any agent or person employed by it shall be sustained by the Contractor.
39. **Failure to Complete Contract-Effect.** In case of failure on the part of the Contractor to complete its Contract within the specified time or within authorized extensions thereof, the Contract may be terminated and the District shall in such event not thereafter pay or allow to the Contractor any further compensation for any labor, supplies or materials furnished by it under said Contract; and the District may proceed to complete such Contract either by reletting or otherwise, and the Contractor and its bondsmen shall be liable to the District for all loss or damage which it may suffer on account of the Contractor's failure to complete its Contract within the specified time.
40. **Non-Performance of Contract.**

- a. Right to Stop Work. Authority to stop the work, in whole or in part is vested in the District and may be invoked whenever it deems such action necessary to insure proper execution of the Contract; work may not be resumed until the District has given written consent.

- b. Rejection of Materials and Workmanship. The District has the right to reject defective material and workmanship and to require its replacement or correction without additional cost to District. Defective material and workmanship includes, but is not limited to, materials and workmanship that does not meet the requirements of the specifications of this Contract reasonably interpreted in the sole discretion of the District. Contractor shall promptly segregate and remove rejected work. All adjacent work disturbed by removal of such work shall be replaced in accordance with this Contract and without expense to the District including work of other Contractors disturbed by such removals and replacements.
 - (1) If Contractor fails to proceed at once with replacement of rejected work, District may, by Contract or otherwise, replace such material and correct such workmanship and charge the cost to the Contractor, or District may terminate right of the Contractor to proceed. The Contractor and its surety shall be liable for any damage to same extent as provided for by terminations hereunder.
 - (2) If rejected materials are not removed within a reasonable time, District may cause them to be removed and stored at Contractor's expense three days after issuing written notice to so remove them. If Contractor does not pay for such removal and storage within six days thereafter, District may, six days after further written notice, sell the materials and credit Contractor with net proceeds after all costs of removal and sale are deducted. If materials so removed are valueless or sale does not meet cost of removal, Contractor shall bear all resultant loss.

- c. Neglected Work. District may perform or employ others to undertake portions of the work persistently neglected by the Contractor if work is still proceeding unsatisfactorily three days after written notice to the Contractor. In such case work will be done according to the Contract Documents and the cost deducted from next payment falling due to the Contractor. Such action shall in no way affect status of either party under Contract, nor be held as basis of any claim by the Contractor or for extension of time.

- d. Right to Withhold Payment. Part or whole of any payment or any certificate may be withheld by District if such course is deemed necessary to protect District from loss on account of Contractor's failure to meet its obligations or if balances unpaid to Contractor are insufficient to complete the work. This right may also be exercised if in District's opinion the work will not be completed in time specified for performance of the Contract.

41. Termination of Right to Proceed. If the Contractor should appear to the District to be in default and the Contractor fails to remedy its default within five (5) days after receipt

from the District of notice of such default, the District may terminate the Contractor's right to proceed with work or that portion which the District determines is most directly affected by the default.

The term "default" for purposes of this provision includes, but is not limited to, the performance of work in violation of the terms of the Contract; abandonment, assignment or subletting of the Contract without approval of the District, bankruptcy or appointment of a receiver for Contractor's property; failure to maintain the schedule of work; refusal or failure to maintain the schedule of work; refusal or failure properly to prosecute the work; use of materials, supplies, plant or equipment of improper quality or quantity; refusal or failure to provide proper workmanship; failure to take effective steps to end a prolonged labor dispute; and the performance of the Contract in bad faith.

Upon the District's termination of the Contractor's right to proceed with the work or a portion of it, the District will have the right to complete the work or the portion by whatever means and methods it deems expedient, including the hiring of others on such terms as the District deems advisable.

The expense of completing such work or portion thereof, together with a reasonable charge for managerial and administrative services as certified by the District, will be charged to the Contractor, and the expense so charged will be deducted by the District out of such monies as may be due or may at any time thereafter become due to the Contractor. In case such expense is more than the sum which otherwise would have been payable to the Contractor under the Contract, then the Contractor or its surety or sureties shall promptly pay the amount of such excess to the District, upon notice from the District of the excess so due. The District may, in its sole discretion, withhold all or any part of any progress payments otherwise due to the Contractor until completion and final settlement of the work covered by such notice of default.

42. **Payments.** Unless otherwise stated in the Specifications or Bid forms, the District shall pay the Contractor within thirty (30) days after the District issues a written notice of final acceptance.
43. **Liquidated Damages.** It is agreed by the parties to the Contract that time is of the essence, and in event of delay in completion of the work or the delivery of the supplies, materials or equipment beyond the date set forth in the Contract documents, or beyond authorized extensions thereof, damage will be sustained by the District and that it is or will be impracticable to determine the actual amount of the damage by reason of such delay, and it is, therefore, agreed that the District shall be paid an amount as set forth in the Special Provisions as liquidated damages. If no amount is set forth, Contractor shall be liable for actual damages for each and every calendar day that the time consumed in said completion extends beyond the date herein specified in that the District will suffer by reason of said delay or default. If the delay in delivery is caused by strikes, government controls or other causes beyond the control of the Contractor, an extension of time without liquidated damages liability shall be granted by the District upon a proper showing and finding by the District that the extension is justified.

44. **Insurance Certificates.** Certificates of insurance required by the Special Provisions shall be delivered to the District concurrently with the executed Contract. The District reserves the right to request certified copies of an insurance policy if questions arise.

All required insurance under this Contract shall provide adequate protection for the San Mateo County Harbor District, its Officers, Agents, Representatives and Employees, while acting in such capacity and their successors or assignees, as they now or as they may hereinafter be constituted singly, jointly or severally, and the Contractor, against all claims, liability damages and accidents of any kind.

45. **Infringement of Patents.** The Contractor agrees that it will, at its own expense, defend all suits or proceedings instituted against the District and pay any award of damages assessed against the District in such suits or proceedings, insofar as the same are based on any claim that the materials or equipment, or any part thereof, or any tool, article or process used in the manufacture thereof, constitutes an infringement of any patent of the United States provided the District gives to the Contractor prompt notice in writing of the institution of the suit or proceeding and permits the Contractor through its counsel to defend the same and gives the Contractor all needed information, assistance and authority to enable the Contractor so to do.

46. **Assignment.** The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of the Contract or its right, title or interest in or to the same, or any part thereof, without previous consent in writing of the General Manager endorsed thereon or attached thereto.

47. **Warranty of Title.** Contractor shall warrant to the District, its successors and assigns, that the title to the material, supplies or equipment covered by the Contract, when delivered to the District or to its successors or assigns, is free from all liens and encumbrances.

48. **Warranty of Fitness.** Contractor hereby warrants that all materials furnished shall meet the requirements and conditions of the Bid documents; shall be fit for the purposes intended and fulfill its design functions; shall be free of all patent and latent defects in design materials, and workmanship and perform satisfactorily.

It is understood and agreed that by acceptance of this warranty and the acceptance of materials or supplies to be manufactured or assembled pursuant to these Specifications, District does not waive any warranty, either expressed or implied in Sections 2312 to 2317, inclusive, of the Commercial Code of the State of California or any products liability of the Contractor as determined by any applicable decision of a court of the State of California or of the United States.

49. **Time of Completion.** The Contractor shall complete all or any designated portion of the work called for under the Contract in all parts and requirements within the time set forth in the Special Provisions.

Time shall be computed starting the first day after the effective date of the Notice to Proceed. The effective date of the Notice to Proceed will be the date stated as such in the

Notice to Proceed, provided that in no case will such effective date be earlier than the date of the issuance of such Notice to Proceed.

50. **Or Approved Equal Clause.** In order to establish a basis of quality, certain materials, processes and type of machinery and equipment, or kinds of materials may be specified on the plans or herein, either by description of process or by designating a manufacturer by name or by referring to a brand of product designation, or by specifying a kind of material. It is not the intent of these Specifications to exclude other processes, equipment or materials of equal Value, Utility or Merit which are approved by the District.

51. **Antitrust Claims.** The Contractor's attention is directed to California Government Code Section 4552, which shall be applicable to the Contractor and its subcontractors:

In submitting a Bid to a public purchasing body, the Bidder offers and agrees that if the Bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Bidder for sale to the purchasing body pursuant to the Bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the Bidder.

52. **Environmental and Safety and Health Standards Compliance.** Contractor shall comply with applicable environmental statutes, regulations and guidelines in performing the work under this Contract. The Contractor shall also comply with applicable Occupational Safety and Health standards, regulations and guidelines in performing the work under this Contract.

53. **Equal Employment Opportunity.** In connection with the performance of this Contract, the Contractor shall not discriminate against any employee or an applicant for employment because of race, color, religion, gender, national origin, ancestry, age, marital status, pregnancy, medical condition, disability, or sexual orientation as provided for in Federal, State and local laws in consideration of an award.

The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during their employment, without regard to the above factors. Such actions shall include but not be limited to the following: demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay; other forms of compensation; and selection for training, including apprenticeship.

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

55. **Qualification Questionnaire.** The Contractor shall submit, prior to execution of this Agreement, documentation showing whether or not the Contractor, any officer of the Contractor, or any employee of the Contractor, has ever been disqualified, removed, or otherwise prevented from bidding on or completing any federal, state or local government project because of a violation of law or safety regulation. For this purpose,

Contractor must complete the Bidders Statement of Qualification Questionnaire and Financial Statement with Business Reference.

56. Bid Protest Procedures. FAILURE TO COMPLY WITH ANY OF THE REQUIREMENTS SET FORTH IN THE DISTRICT'S BID PROTEST PROCEDURES MAY RESULT IN REJECTION OF THE PROTEST.

a. Protests Based Upon the Specifications.

- (1) Pre-Protest Procedures. Bidders must first utilize any procedures in the specifications for Approved Equals or Requests for Clarifications or Modifications, prior to submitting a protest. If the bidder disagrees with the District's decision on such requests, the bidder may then avail itself of the bid protest procedures.
- (2) Submission of Protest. Protests based upon restrictive specifications or alleged improprieties in the bidding procedure or contract specifications, which are apparent or reasonably should have been discovered prior to bid opening, shall be filed in writing with the District not later than five calendar days before the bid opening or proposal due date. The protest must clearly specify in writing the grounds and evidence on which the protest is based. If the protestor later raises new grounds or new evidence that reasonably could have been raised, the District will not consider such new grounds or evidence in the determination on the protest. Staff shall respond to the protest with its written determination prior to bid opening or proposal due date. Where the staff determination could affect bid responses, an appropriate extension of the bid opening or proposal due date may be granted.
- (3) Review by the General Manager. If the protest is denied, the bidder may pursue its protest to the General Manager. Within forty-eight (48) hours of receipt of the staff's written determination to deny the protest, the bidder must submit in writing to the General Manager a statement of the reasons for the protest, with supporting evidence, and document that it has exhausted all administrative remedies at the District staff level. The General Manager will issue a written decision prior to the bid opening, which shall be final.

b. Protests Based Upon Contract Award.

- (1) Notice of Staff Recommendation for Award of Contract. Upon conclusion of the bid evaluation for each contract, the District shall send a notice to all bidders of the staff's recommendation for contract award. Such notice shall be sent at least seventy-two (72) hours prior to the Board or Committee meeting, if applicable, at which the recommendation will be considered.
- (2) Submission of Protest; Initial Procedures. Protests based upon alleged improprieties that are not apparent or which could not reasonably have

been discovered prior to bid opening, such as disputes over the staff recommendation for contract award, shall be submitted in writing to the District by the deadline specified in the notice from the District advising of the staff's recommendation for award of contract.

- (3) The protest must clearly specify in writing the grounds and evidence on which the protest is based. If the protestor later raises new grounds or new evidence not previously set forth in written submissions that reasonably could have been raised earlier, the District will not consider such new grounds or evidence in the determination on the protest.
 - (4) The Deputy Secretary of the District will make best efforts to notify the other bidders of the protest, and the time and place it will be considered by the Board.
- c. Proceedings Before the Board. The protestor may appear before the Board to present evidence in support of its appeal. After consideration of the protestor's evidence, the staff recommendation, and any other relevant information, the Board may determine whether to reject or allow the protest. Upon Board action, a written statement of the reasons therefore shall be included in the record.

The decision of the Board on the protest and the award of contract, if such a decision is made, shall be final.

- d. Protests after Contract Award. No protests will be considered after contract award, except for compelling reasons whereby the lateness is due to the District's untimely handling of the protest submission. In no event will the District consider protests filed after contract award due to the neglect of the protestor. Failure to comply with the time periods for filing protests as set forth herein shall be a basis for rejection of the protest.
57. **Air Pollution Control.** The Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to any work performed pursuant to the Contract, including any air pollution control rules, regulations, ordinances and statutes, specified in Section 11017 of the Government Code. Material to be disposed of shall not be burned, either inside or outside the work site.
58. **Water Pollution Control.** The Contractor shall comply with all water pollution control rules, regulations, ordinances and statutes which apply to any work performed pursuant to this Contract.

The Contractor shall exercise every reasonable precaution to protect streams, lakes, reservoirs, bays, coastal waters and other bodies of water from pollution with fuels, oils, bitumens, calcium chloride and other harmful materials, and shall conduct and schedule its operations so as to avoid or minimize muddying and silting of said waters.

59. **Compliance with Law.**

- (a) The Contract documents, and the rights of the parties thereunder, shall be interpreted in accordance with the laws of the State of California.

- (b) The Contractor warrants that all operational practices of the Contractor, and all workmanship and material, equipment and articles used in the performance of the work hereunder shall be in accordance with the rules and requirements of the United States Coast Guard in effect at the time of Contractor's submission of Bid. In addition, all safety orders, rules and recommendations of the State of California, Division of Industrial Safety, and the United States Department of Labor, Occupational Safety and Health Administration applicable to the work to be done under this Contract shall be obeyed and enforced by the Contractor.

60. **Discharge of Liens.** The Contractor shall pay all costs and expenses incident to any work performed by it or for its account, and shall not create, incur, suffer or permit to be placed or imposed any lien or encumbrance or charge in any way arising from any act or omission of the Contractor. The Contractor shall orally or in writing inform all persons dealing with it in performing the work of the provisions of this paragraph.

The Contractor shall immediately discharge or cause to be discharged any lien or right in rem of any kind, other than in favor of the District, and if any such lien or right in rem is not immediately discharged, the District may, after notification to the Contractor, discharge or cause to be discharged such lien or right at the expense of the Contractor.

SPECIAL PROVISIONS

SAN MATEO COUNTY HARBOR DISTRICT

CONTRACT NO. 2018-03

**Interior Alterations to the San Mateo Harbor District Administrative Office at
504 Avenue Alhambra, 2nd floor, El Granada, CA 94018**

SPECIAL PROVISIONS

Coordination of General Conditions and Instructions for Bidders, Special Provisions, and Technical Specifications. The General Conditions and Instructions for Bidders, Special Provisions, and Technical Specifications are intended to be complementary and to describe and provide for a complete work. In the event that there are inconsistencies or discrepancies between provisions contained in these components of the Contract Documents, the Special Provisions and Technical Specifications shall govern over the General Conditions and Instructions for Bidders.

SECTION 1. BID REQUIREMENTS AND CONDITIONS

- 1.1 **Bid Invited.** The San Mateo County Harbor District (District) invites bids for the **Interior Alterations to the San Mateo Harbor District Administrative Office**, in full accordance with these specifications.
- 1.2 **Schedule of Activities.** Listed below is the “Schedule of Activities” which outlines pertinent dates of which Bidders should make themselves aware. These dates may be subject to change.

| DATE | ACTIVITY |
|-----------------------------|--|
| April 04, 2018 @ 10:00 a.m. | Mandatory Pre-Bid Conference and site visit at San Mateo County Harbor District office, 504 Avenue Alhambra, 2nd Floor, El Granada, CA 94018 |
| April 10, 2018 @ 4:30 p.m. | Written requests for approved equals/modifications/clarifications are due. |
| April 20, 2018 | District will respond to requests for approved equals (Postmarked). |
| May 01, 2018 @ 2:00 p.m. | Bid Opening San Mateo County Harbor District |

- 1.3 **Bid Form.** Bids shall be submitted on the District’s “Bid Form” attached hereto, enclosed in a sealed envelope marked “**CONTRACT NO. 2018-03, Interior Alterations to the San Mateo Harbor District Administrative Office,**” and plainly endorsed with the Bidder’s name and address. Bids must be received by the Deputy Secretary, San Mateo County Harbor District, at its mailing address PO Box 1449, El Granada, CA 94018, or by courier or personal delivery to 504 Avenue Alhambra, 2nd Floor, El Granada, CA 94018 by **May 01, 2018, 2:00 p.m. Pacific Time**, at which time they will be publicly opened and read in the Board Room of said building. **NOTE: THERE IS NO DIRECT USPS DELIVERY TO THE DISTRICT OFFICE**

- 1.4 The Total Bid Price shall include all labor, equipment, materials, applicable taxes, delivery charges, warranties, insurance, license fees, bonds, and all other costs necessary for the Interior Alterations at 504 Avenue Alhambra, 2nd Floor, El Granada, CA 94018.

Each Bid Form must be signed on Bid Form page 2 by one or more individuals with authority to bind the Contractor to the bid. Please refer to General Condition 3 and the Bid Form. All bids without the appropriate signature(s) on Bid Form page 2 may be deemed non-responsive and may result in the rejection of the bid. Bidder must submit the three-page Bid Form properly executed.

- 1.5 **Examination of Contract Documents and Site of Work.** The Bidder shall have examined carefully the Contract Documents. The submission of a Bid shall be conclusive evidence that the Bidder has investigated and is satisfied as to the conditions to be encountered, the character, quality and scope of work to be performed, the quantities of materials to be furnished and the requirements of the Contract Documents.

- 1.6 **Pre-Bid Conference and Site Visit.** A mandatory pre-bid conference and site visit will be held prior to the date of bid opening. District staff will be available to answer general questions pertaining to the solicitation documents and the specifications. Any questions that may require staff research to answer or that will otherwise modify the meaning or intent of this solicitation shall be submitted to the District in writing as described in Special Provision 1.8. The pre-bid conference will take place on **April 4th, 2018, at 10:00 a.m., Pacific Standard Time, in the San Mateo County Harbor District office at 504 Avenue Alhambra, 2nd Floor, El Granada, CA 94018.**

- 1.7 **Documents to Accompany Bid.** The bid shall be accompanied by the following:

- (1) The Bidder's Bond or certified or cashier's check required by Section 14 of the General Conditions and Section 1.10 of the Special Provisions in an amount equal to at least ten percent (10%) of the proposed Total Bid Price
- (2) Certificate of Insurance in accordance with Special Provision 4.1.C
- (3) List of Subcontractors
- (4) Acknowledgement of Addenda, if any
- (5) Qualification Questionnaire
- (6) Proof of DIR Registration in accordance with Special Provision 5.15
- (7) Non-Collusion Declaration

- 1.8 **Approved Equals and Qualified Products.** It should be understood that specifying a brand name or specific types of components and/or equipment in these specifications shall not relieve the Bidder from its responsibility to furnish the end product in accordance with the warranty and contractual requirements. The Bidder is responsible for notifying the District of any inappropriate brand names, or types of components and/or equipment that may be called for in these specifications and to propose a suitable substitute for consideration.

Unless otherwise specifically provided in the specifications, reference to any equipment, material, article or patented process by trade name, make, or catalog number shall be regarded as establishing a standard of quality and shall not be construed as limiting competition; and a Bidder may, at its option, use any equipment, material, article or process which, in the judgment of the District, is equal to that designated.

The Bidder shall furnish, at its own expense, all test results, technical data, and background information required by the District in making the determination as to whether the proposed equipment, material, article or process is an approved equal. The District shall be the sole judge as to the comparative equality and suitability of alternative equipment, article, material or process and its decision shall be final.

1.9 Request for Approved Equals/Questions/Clarifications. A Bidder may submit to the District requests for approved equals, modifications, or clarifications regarding any requirements, terms, or conditions contained herein. Any such requests must be received in writing by **April 10th, 2018, at 4:30 p.m., Pacific Time.** Any requests of approved equals must be fully supported with samples, technical data, test results, or other pertinent information as evidence that the substitute offered is essentially equal or better than that specified in the Contract Documents. The District shall make a determination on each Bidder's request under this procedure in writing. The written determination shall be mailed or otherwise furnished to the Bidder by **April 20th, 2018.** Failure of the District to respond within the time limit shall be deemed to be a denial of request. In the event that a request for an approved equal, modification, or clarification is granted, an addendum detailing the approved equal, modification, or clarification will be mailed or otherwise furnished to all potential Bidders who received bid packets.

1.10 Single-Bid Response. In the event of a single-bid response, the District reserves the right to conduct a price and/or cost analysis of the bid to verify that the bid price is fair and reasonable. The Bidder will be expected to cooperate in this process and to submit cost and pricing data to verify that the bid price is fair and reasonable. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost of the replacement and the prices quoted and shall include the computations and projections used by the Bidder.

Failure to submit the data as requested by the District within ten (10) calendar days of receipt of written notification to the sole offeror shall result in the Bidder being declared non-responsive.

1.11 Bidder's Bond. As required by Section 14 of the General Conditions and Instructions for Bidders, the Bidder's Security to be submitted with the Bid shall be in the amount of at least ten (10) percent of the Total Bid Price as specified on the Bid Form.

SECTION 2. AWARD OF CONTRACT

2.1 Award of Contract. The award of Contract, if any, will be made within ninety (90) calendar days after the date of bid opening to the lowest responsible Bidder based on the Total Bid Price. Each bid as submitted shall remain in effect for ninety (90) calendar days after the date the bids are opened. No Bidder may withdraw its bid during this time period. The lowest responsive and responsible Bidder shall be determined by comparing

and evaluating the Total Bid Price as set forth in the Bid Form. The District reserves the right to reject any and all bids or to waive any irregularities in any bid or in the bidding procedure.

2.2 **Contract Bonds**

- A. **Performance Bond.** The Performance Bond as described in Paragraph 26 of the General Conditions shall be in the amount of one hundred percent (100%) of the total contract price, as awarded by the District. Said bond shall guarantee the Contractor's faithful performance of the Contract and compliance with all terms, conditions and requirements specified in the Contract Documents and shall remain in full force and effect for a period of twelve (12) months after the District's final acceptance of the Contractor's work in accordance with Special Provision 3.2 hereof. The Contractor shall use the form entitled "Performance Bond" included in the Contract Documents.
- B. **Payment Bond.** The Contractor shall provide a payment bond in the amount equal to one hundred percent (100%) of the total contract price and issued by California admitted surety. The payment bond shall provide security for Contractor's full payment to all subcontractors for costs of materials, equipment, supplies, and labor furnished in the course of the performance of the Contract. Full compensation for furnishing the payment bond is included in the total contract price.

SECTION 3. CONTRACT PERFORMANCE

- 3.1 **General.** The Contractor shall perform all work and undertake all services detailed in the Contract Documents in accordance with the specified requirements, terms and conditions.
- 3.2 **Acceptance and Payment.** The Contractor shall notify the District once it has completed all work and services detailed in the Contract Documents in accordance with the specified requirements, terms and condition. Following the Contractor's notification, the District shall undertake a thirty (30)-calendar-day period for inspection. The District will notify the Contractor in writing within said thirty (30) calendar days as to whether the work and services have been accepted.

If the District determines that the work and services are not in conformity with the specification requirements, or that there are defects or deficiencies requiring correction, the District will notify the Contractor of such deficiencies or nonconformity in writing within the aforementioned thirty (30)-day period. The Contractor shall promptly correct or remedy any and all deficiencies or defects noted by the District at no cost to the District. The Contractor shall complete the necessary corrections within fifteen (15) days of the District's notification of deficiencies or nonconformity. At such time as the Contractor has made all necessary corrections to the satisfaction of the District, the District shall issue the Contractor a written notice of final acceptance. In the event the Contractor fails to remedy the deficiencies, the District shall have the right to reject the work and terminate the Contract for breach as provided below in Special Provision Section 3.7, **Termination.** Alternatively, the District may cause the repair to be made by

its own or other forces, whereupon the cost of the repair shall be deducted from sums otherwise due the Contractor.

After final acceptance by the District, the Contractor may thereupon furnish to the District satisfactory evidence that all liens, claims and demands of Subcontractors, laborers and materialmen, arising out of such work, are fully satisfied, and that all of the work is fully released from all liens, claims and demands of whatever kind and nature and whether just or otherwise.

In accordance with Paragraph 42 of the General Conditions, the District shall make payment to the Contractor following the receipt of proper statements or invoices for the work within thirty (30) days of the date of final acceptance of the work by the District. The acceptance by the Contractor of the final payment, whether such payment be made pursuant to any judgment of any court, or otherwise, shall constitute and operate as a release to the District of any and all claims of the Contractor and liability to the Contractor for anything theretofore done or furnished for or relating to or arising out of this Contract and the work done hereunder, and for any prior act, neglect or default on the part of the District or any of its directors, officers, agents or employees excepting only claims against the District for the amounts deducted or retained in accordance with the terms and provisions of this Contract by law. Should the Contractor refuse to accept the final payment as tendered by the General Manager, it shall constitute waiver of any right to interest thereon.

3.3 Liquidated Damages. Liquidated Damages as set forth in General Conditions and first 7 days at \$250.00 per day, and after that \$500.00 per day.

Time of Performance. The project will be completed in full no later than sixty (60) calendar days after receiving Notice to Proceed.

3.4 Interference with District Operations. Any and all work must not interfere with the District's normal operations including operation of San Mateo Harbor District Administrative Offices.

3.5 Warranty. All work, including all installation work or repairs, is guaranteed by the Contractor against failure, damage, defect, or non-compliance with the Contract of any kind for a period of one (1) year from the date of District's final acceptance. The Contractor must furnish a Performance Bond therefore as provided in the Special Provisions. In addition to said guarantee, the District will have the benefits of any manufacturer's or builder's guarantee given by a manufacturer or builder. Where any individual work item is incomplete at the time of acceptance by the District, the guarantee will run from the date of completion of such item. If the Contractor fails to proceed promptly with any repairs as directed by the District, such corrections and repairs shall be effected at the Contractor's expense at such time as the District may determine. The District may deduct the cost of such repairs from any amount owed to the Contractor or require the Contractor to reimburse such costs to the District.

It is understood and agreed that the District does not waive any warranty, either express or implied, in Sections 2312 through 2317, inclusive, of the California Commercial Code,

or any liability of the manufacturer or Contractor as may be determined by a decision of the court of the State of California or of the United States.

3.7 Termination. The District may terminate the Contract for convenience for any reason at any time by giving the Contractor fifteen (15) days' notice thereof. Notice of termination shall be by Certified Mail. Upon termination for the convenience of the District, the District shall pay the Contractor the allowable costs incurred to the date of termination and those costs deemed reasonably necessary by the District to affect the termination. In the event that the Contractor breaches the terms or violates the conditions of this Contract and does not correct such breaches or violations within ten (10) days following notice thereof from the District, the District may immediately terminate the Contract and shall pay the Contractor only for work performed in full conformance with the specifications to the date of termination, less any costs incurred by the District to repair and complete any remaining work under the Contract. The District reserves the right to pursue any and all remedies available in equity or law in the event the District suffers any damages due to the Contractor's breach of terms or violation of the conditions in this Contract.

3.8 Protection of Property. The Contractor shall exercise every precaution to ensure that no injury or damage occurs to District property as a result of its operations. Should any existing property be damaged by or through any of the Contractor's operations, such injury or damage shall be replaced or repaired immediately by the Contractor, at Contractor's sole cost, in a manner satisfactory to the District.

SECTION 4. INSURANCE

4.1 Insurance Requirements

A. Types of Insurance

Contractor shall not commence work until proper evidence of insurance coverage of the types and amounts specified in this Section has been provided to District. Contractor shall not violate or permit to be violated any conditions or provisions of said policies of insurance, and at all times shall satisfy the requirements of the insurer for the purpose of maintaining said insurance in effect.

If any claim is made by any third person against Contractor on account of any incident connected to the Contract, Contractor shall promptly report the fact in writing to District, giving full details of the claim.

Any person, firm, or corporation that Contractor authorizes to work upon the District's property, including any Subcontractor, shall be deemed to be Contractor's agent and shall be subject to all applicable terms of this Contract. Prior to the Contractor's start of the work or entry onto the District's property, Contractor agrees to require its Subcontractors to procure and maintain, at Contractor's (or its Subcontractor(s)) sole cost and expense (and to prove to the District's reasonable satisfaction that it remains in effect throughout the performance of the work under this Contract), the kinds of insurance described below. Such insurance must remain in effect throughout the term of this Contract and will be at the sole cost and expense of Contractor (or its Subcontractor(s)).

1. Commercial General Liability Insurance

The Contractor shall, at its own expense, procure and maintain Commercial General Liability insurance providing bodily injury and property damage coverage with a combined limit of at least One Million Dollars (\$1,000,000) each occurrence. This insurance shall include but not be limited to premises and operations, contractual liability covering the indemnity provisions contained in this Contract, personal injury, products and completed operations, and broad form property damage, and include a Cross Liability endorsement.

Said Policy shall protect Contractor and District in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

2. Business Automobile Liability

Contractor shall, at its own cost and expense, procure and maintain Business Automobile Liability insurance providing bodily injury and property damage with a combined single limit of at least Two Million Dollars (\$2,000,000) per occurrence for all owned, non-owned and hired automobiles. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

3. Workers' Compensation and Employers' Liability Insurance

If Contractor employs any person to perform work in connection with this Contract, Contractor shall procure and maintain at all times during the performance of such work Workers' Compensation Insurance, ***including Harbor Workers Act Insurance***, in conformance with the laws of the State of California, and Federal laws where applicable. Employers' Liability Insurance shall not be less than Five Million Dollars (\$5,000,000) for each accident and Five Million Dollars (\$5,000,000) for each disease, with a policy limit of Five Million Dollars (\$5,000,000).

The policy shall contain a waiver of subrogation in favor of the San Mateo County Harbor District and its officers, directors, employees, volunteers, and agents, while acting in such capacity, and their successors and assignees, as they now or as they may hereafter be constituted, singly, jointly, or severally.

4. Marine General Liability.

Marine General Liability including Wharfingers Liability, Contractual Liability, Products and Completed Operations and Personal Injury coverage with limits of liability of not less than \$5,000,000 per occurrence.

5. Protection & Indemnity.

The Contractor shall provide Protection and Indemnity (including crew), Collision Liabilities and Vessel Pollution insurance covering all vessels, barges or other marine equipment that will be used in connection with this project. The limits of liability shall be not less than \$5,000,000.

B. General Insurance Requirements

1. Acceptable Insurance

All policies will be issued by insurers acceptable to the District. This insurance shall be issued by an insurance company or companies authorized to do business in the State of California with minimum "Best's" rating of A- and with minimum policyholder surplus of Fifty Million Dollars (\$50,000,000) or a company acceptable to District in its sole discretion. All policies shall be issued in a form satisfactory to the General Manager of the District and shall be issued specifically as primary insurance. Workers' Compensation coverage requirements may be met with the California State Compensation Fund.

2. Procure and Maintain Insurance

Contractor must, at its own cost and expense, procure and maintain at all times during the performance of this Contract, all of the required policies specified above. The failure to procure or maintain the required insurance policies and/or an adequately funded self-insurance program acceptable to the District will constitute a material breach of the Contract.

3. Terms of Policies

All insurance specified above shall remain in force until all work to be performed is satisfactorily completed. If the insurance is provided on a claims-made basis it must remain in force for the entire term of the Contract and a minimum of three (3) years thereafter.

4. Self-Insurance

Upon evidence of financial capacity satisfactory to the District and Contractor's agreement to waive subrogation against the District respecting any and all claims that may arise, the Contractor's obligations

hereunder may be satisfied in whole or in part by adequately funded self-insurance.

5) Deductibles and Retentions

The Contractor shall be responsible for payment of any deductible or retention on the Contractor's policies without right of contribution from the District. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that the policy of the Contractor or any subcontractor contains a deductible or self-insured retention, and in the event that the District seeks coverage under such policy as an additional insured, the Contractor shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy for a lawsuit arising from or connected with any alleged act or omission of the Contractor, subcontractor, or any of their officers, directors, employees, agents, or suppliers, even if the Contractor or subcontractor is not a named defendant in the lawsuit.

C. Evidence of Insurance and Endorsements

Prior to commencing of work or entering onto the District's property, Contractor shall file a Certificate of Insurance with the District evidencing the foregoing coverages, including the following endorsements:

1. The insurance company(ies) issuing such policy(ies) will provide at least thirty (30) days' notice to the District of cancellation or non-renewal.
2. That the policy(ies) is primary insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim that Contractor is liable for under this Section, up to and including the total limit of liability, without right of contribution from any other insurance maintained or which may be maintained by the San Mateo County Harbor District.
3. Such insurance shall include as additional insureds the San Mateo County Harbor District, and its respective directors, officers, employees, and agents while acting in such capacity, and their successors or assignees, as they now or as they may hereafter be constituted, singly, jointly, or severally.
4. The policy must also contain either a Cross Liability endorsement or Severability of Interests Clause and stipulate that inclusion of the District as an additional insured will not in any way affect the District's rights as respects any claim, demand, suit or judgment made, brought, or recovered against the Contractor. Said policy shall protect Contractor and the District in the same manner as though a separate policy had been issued to each,

but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

D. **Consequence of Lapse**

Should any required insurance not be procured or lapse during the term of this Contract, requests for payment originating after such lapse will not be processed until the District receives satisfactory evidence of reinstated coverage as required by the Contract. If insurance is not reinstated, the District, may, at its sole option, terminate this Contract effective on the date of such lapse of insurance.

SECTION 5. PUBLIC WORKS PROVISIONS

5.1 Labor Compliance Requirements

In the performance of this Contract, Contractor's attention is directed to the following requirements of the Labor Code:

- A. **Hours of Labor.** Eight hours labor constitutes a legal day's work. Contractor shall forfeit, as penalty to District, \$25 for each worker employed in the performance of the Contract by 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 day and 40 hours in any one calendar week in violation of the provisions of the California Labor Code and in particular, Sections 1810 to 1815, inclusive. Work performed by employees of the Contractor in excess of eight hours per day and 40 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.
- B. **Prevailing Wages.** Contractor shall comply with California Labor Code Sections 1770 to 1780, inclusive. In accordance with Section 1775, the Contractor shall forfeit as a penalty to District an amount as determined by the Labor Commissioner not to exceed \$200 for each calendar day or portion thereof for each worker paid less than stipulated prevailing wage rates for such work or craft in which such worker is employed for any work done under the contract by him or by any subcontractor under it in violation of the revisions of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to Section 1775, the difference between such stipulated 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 stipulated prevailing wage rate shall be paid to each worker by Contractor. Pursuant to the provisions of Section 1773 of the Labor Code, the District has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work applicable to the work to be done from the Director of the Department of Industrial Relations. Copies of the prevailing wage rates are on file at the District and are available for review upon request. Pursuant to §1773.2

of the Labor Code, the Contractor shall post general prevailing wage rates at a prominent place at the site of the work.

- C. Payroll Records. Contractor and each subcontractor shall submit electronic certified payroll records to the California Labor Commissioner in the manner and format set forth in California Labor Code section 1771.4.

The Contractor's attention is directed to the following provisions of Labor Code Section 1776. The Contractor shall be responsible for the compliance with these provisions by its subcontractors.

- (a) Each contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.
- (b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
 - (i) A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - (ii) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to the District, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - (iii) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Contractor, subcontractor and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.
- (c) Unless required to be furnished directly to the Labor Commissioner in accordance with Labor Code Section 1771.4(3)(b), the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.

- (d) The Contractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within ten (10) days after receipt of a written request.
 - (e) Any copy of records made available for inspection as copies and furnished upon request to the public or the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor shall not be marked or obliterated.
 - (f) The Contractor shall inform the District of the location of records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
 - (g) In the event of noncompliance with the requirements of this Section, the Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects such contractor must comply with this Section. Should noncompliance still be evident after such 10-day period, the Contractor shall, as a penalty the State or the District, forfeit One-Hundred Dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The penalties specified in subdivision (g) of Labor Code Section 1776 for noncompliance with the provisions of said Section 1776 may be deducted from any monies due or which may become due to the Contractor.
 - (h) The Contractor and each subcontractor shall preserve their payroll records for a period of three (3) years from the date of completion of the Contract.
- D. Labor Non-discrimination. Attention is directed to Section 1735 of the Labor Code which provides that Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, except as provided in Section 12940 of the Government Code. Contractor further agrees to include a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.
- E. Apprentices. The Contractor and all subcontractors shall comply with the requirements of California Labor Code sections 1777.5, 1777.6 and 1777.7 regarding the employment of apprentices.

5.2 Prohibition Against Contracting with Debarred Subcontractors

Contractor is prohibited from performing work on a public works project with a subcontractor who is ineligible to perform work on the public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

5.3 Use of Subcontractors

Contractor shall not subcontract any work to be performed by it under this Agreement without the prior written approval of the Agency. Contractor shall be solely responsible for reimbursing any subcontractors and the Agency shall have no obligation to them. Attention is directed to the requirements of Section 4100 to 4113, inclusive of the California Public Contract Code which may be applicable to the work covered by this section of the Agreement. Each Contractor shall list the name and business address of each subcontractor to whom the Contractor proposes to subcontract a portion of the work in an amount in excess of one-half of one percent (0.5%) of the Total Contract Price, along with a description of the portion of the work which shall be done by each subcontractor, by executing the "List of Subcontractors" form attached to this Contract.

5.4 Prompt Payment to Subcontractors

Pursuant to Business and Professions Code Section 7108.5, the Contractor shall pay each first tier Subcontractor under this Contract for satisfactory performance of work under its subcontract no later than 7 days from the Contractor's receipt of payment from the District for such work. The Contractor shall require each first tier Subcontractor to make payments to lower tier Subcontractors in a similar manner. The District shall have no obligation to pay or to verify the payment of money to any Subcontractor, except as may otherwise be required by law.

The Contractor, not the District, shall be solely responsible for payment to Subcontractors at any tier for any amounts owing from the Contractor. All such Subcontractors agree that they shall have no claim, and shall take no action against the District or its officers, directors, employees or sureties, for non-payment by the Contractor.

5.5 Prompt Payment

The District will make progress payments within thirty (30) days after receipt of an undisputed and properly submitted progress payment invoice pursuant to Section 20104.50 of the Public Contract Code. No such payment will be made when, in the judgment of the Engineer, (a) the work is not proceeding in accordance with the provisions of the Contract; (b) the Contractor is not complying with the requirements of the Contract; or (c) when the total value of the work done as shown on the invoice does not exceed Three Hundred Dollars (\$300.00). No such invoice or payment will be construed to be an acceptance of any work or materials. Before any progress payment or the final payment is made, the Contractor may be required to submit satisfactory evidence that he is not delinquent in payments to its employees, subcontractors, suppliers or other creditors for labor and materials incorporated into the work. Pursuant to Public Contract Code Section 20104.50, if the District fails to make a progress payment in a timely manner, it shall pay interest to the Contractor at the legal rate set forth in Section 685.010(a) of the California Code of Civil Procedure.

5.6 Non-Collusion Declaration

Pursuant to Public Contract Code section 7106, Contractor shall execute a Non-Collusion Declaration, in a form provided by the Agency, which is attached and incorporated herein.

5.7 Third-Party Claims

Pursuant to Public Contracts Code Section 9201, the District shall have full authority to compromise or otherwise settle any claim relating to the Agreement at any time. The District will provide for timely notification to the Contractor of the receipt of any third-party claim, relating to the Agreement. Notice shall be in writing and will be provided within thirty (30) days. The District shall be entitled to recover its reasonable costs incurred in providing such notification.

5.8 Claims Procedures

Compliance with all change order procedures is a prerequisite to filing a Public Contract Code Claim pursuant to this section. Claims must be submitted no later than (a) 30 days after change order procedures are complete and the Contractor has notified the General Manager in writing that the work is being performed, or that the determination direction is being complied with, under protest as per General Conditions 30 and 31 or (b) 30 days after the occurrence of the event giving rise to the claim.

In accordance with the procedures set forth in Public Contract Code sections 9204 and 20104-20104.6, a Contractor may submit a claim by registered or certified mail with return receipt requested, for one or more of the following: (a) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by the District; (b) payment by the District of money or damages arising from work done by, or on behalf of, the Contractor pursuant to this contract and payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled; or (c) payment of an amount that is disputed by the District.

The Contractor shall furnish reasonable documentation to support the claim, including but not limited to: 1) a clear, concise recital of the basis upon which the claim is asserted, including a designation of the provisions of the Contract Documents upon which the claim is based, 2) a statement as to the amount of time and/or compensation sought pursuant to the claim; 3) whether the Contractor's claim arises from an ongoing occurrence, and if so a description of the specific Work activities affected by the claim, 4) a time impact analysis in the event that Contractor requests a time extension, 5) full and complete cost records supporting the amount of any claim for additional compensation, and 6) a notarized certification by the Contractor as follows: "Under the penalty of law for perjury or falsification and with specific reference to the California False Claims Act, Government Code Section 12650 et seq., the undersigned hereby certifies that the information contained herein is a true, accurate and complete statement of all features relating to the claim asserted." Failure by the Contractor to provide sufficient documentation will result in denial of the claim. The District reserves the right to request additional documentation, or clarification of the documentation provided.

Upon receipt of a claim, the District will conduct a reasonable review and provide a written statement to the Contractor identifying what portion of the claim is disputed and what portion is undisputed within 45 days of receipt of the claim. The District and Contractor may, by mutual agreement, extend the 45 day time period. For any undisputed portion of a claim, the District must make payment within 60 days of its issuance of the written statement.

If the Contractor disputes the District's written statement, or if the District fails to respond, the Contractor may demand an informal conference to meet and confer for settlement of the issues in dispute. The District will then schedule the meet and confer conference within 30 days of the demand. Within 10 business days following the meet and confer conference, the District will provide a written statement identifying the portion of the claim that remain in dispute. Any payment due on an undisputed portion of the claim will be made within 60 days of the meet and confer conference.

After the meet and confer conference, any disputed portion of the claim shall be submitted to non-binding mediation. Alternatively, upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable. If mediation is unsuccessful, the parts of the claim that remain in dispute shall be subject to applicable procedures set forth below.

Failure of a public entity to respond to a claim within the time periods described above shall result in the claim being deemed rejected in its entirety. Additionally, amounts not paid in a timely manner shall bear interest at 7 percent per year.

In the event that the mediation is unsuccessful, Contractor must file a government claim pursuant to Government Code section 910 et seq. in order to initiate a civil action.

In any civil action filed to resolve claims, the court shall submit the matter to nonbinding mediation within 60 days following the filing or responsive pleading, provided that the parties have not already participated in mediation of the claim as outlined above. If the matter remains in dispute after nonbinding mediation, the court shall submit the matter to

judicial arbitration pursuant to Code of Civil Procedure section 1141.10 et seq. If the matter remains in dispute after judicial arbitration, the District or the Contractor may request a trial de novo.

5.9 Contractor's License Requirements

Contractor and any approved subcontractors shall hold such current and valid Contractor's Licenses as required by California Law and as applicable for the work to be performed under this contract.

5.10 Payment of Workers' Compensation

Contractor shall sign and file with the Agency the following certification prior to performing the work of the Agreement:

"I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Agreement."

5.11 Examination and Audit of Records

Pursuant to Government Code Section 8546.7, Contractor shall retain all project-related records for a period of 3 years after final payment on this Agreement, which shall be subject to audit or inspection by the Agency or the State Auditor during this period.

5.12 Anti-Trust Claim Assignment

Pursuant to Public Contract Code 7103.5, the contractor offers and agrees to assign to the District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Contract. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor, without further acknowledgment by the parties.

5.13 Utility Relocation

If applicable, pursuant to California Government Code Section 4215, if during the course of the work the Contractor encounters utility installations which are not shown or indicated in the contract plans or in the specifications or which are found in a location substantially different from that shown, and such utilities are not reasonably apparent from visual examination of the work site, then it shall promptly notify the District in writing. Where necessary for the work of the Contract, the District will amend the contract to adjust the scope of work and the compensation to allow the Contractor to make such adjustment, rearrangement, repair, removal, alteration, or special handling of such utility, including repair of the damaged utility. If the Contractor fails to give the notice specified above and thereafter acts without instructions from the District, then it shall be liable for any or all damage to such utilities or other work of the Contract which

arises from its operations subsequent to the discovery, and it shall repair and make good such damage at its own cost.

5.14 Excavation

If applicable, in accordance with state law (Public Contract Code Section 7104), with respect to any work involving digging trenches or excavations that extend deeper than four feet, the Contractor shall notify the District promptly in writing of any of the following conditions: (a) material that the Contractor believes may be hazardous waste, as defined in California Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law; (b) subsurface or latent physical conditions at the site differing from those indicated; (c) unknown physical conditions at the site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents. Contractor shall notify the District of such conditions prior to disturbing them, and shall await direction from the District as to how to proceed.

5.15 Trench Safety

If applicable, excavation for any trench 5 feet or more in depth shall not begin until the Contractor has received approval from the District, of the Contractor's detailed plan for worker protection from the hazards of caving ground during the excavation of such trench. Such plan shall be submitted at least 5 days before the Contractor intends to begin excavation for the trench and shall show the details of the design of shoring, bracing, sloping or other provisions to be made for worker protection during such excavation. No such plan shall allow the use of shoring, sloping or a protective system less effective than that required by the Construction Safety Orders of the Division of Industrial Safety; and if such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared and signed by an engineer who is registered as a Civil or Structural Engineer in the State of California. Attention is directed to the provisions of Section 6705 of the Labor Code concerning trench excavation safety plans.

5.16 Public Works Registration

The Contractor must be registered with the California Department of Industrial Relations pursuant to Labor Code Section 1725.5. **BIDDERS MUST SUBMIT PROOF OF CONTRACTOR REGISTRATION WITH THE DIR IN THE FORM OF A HARD COPY OF THE RELEVANT PAGE OF THE DIR'S DATABASE FOUND AT: <https://efiling.dir.ca.gov/PWCR/Search>.**

This Contract is subject to monitoring and enforcement by the DIR pursuant to Labor Code Section 1771.4. The Contractor must post job site notices, as prescribed by regulation. The Contractor shall furnish the records specified in Labor Code Section 1776 directly to the Labor Commissioner, monthly in a format prescribed by the Labor Commissioner.

5.17 Compliance With All Applicable Laws

The Contractor shall comply with all the applicable requirements of federal, state and local laws, statutes, and ordinances relative to the execution of the Construction Work. In the event Contractor fails to comply with these requirements, the District may stop any Construction Work until such noncompliance is remedied. No part of the time lost due to any such cessation of the Construction Work shall be made the subject of a claim for an extension of time or increase in the compensation.

5.18 Permit Compliance

The Contractor shall comply with all the applicable requirements of federal, state and local permits relative to the execution of the Construction Work. In the event Contractor fails to comply with these requirements, the District may stop any Construction Work until such noncompliance is remedied. No part of the time lost due to any such cessation of the Construction Work shall be made the subject of a claim for an extension of time or increase in the compensation.

The following permits have been submitted by the District:

- (a) Building Permit Application submitted to the County of San Mateo, pending Plan Check comments, Permit not issued to date.

5.19 Iran Contracting Act

The undersigned Bidder certifies that it is not, at the time of bidding, on the California Department of General Services (DGS) list of persons determined to be engaged in investment activities in Iran or otherwise in violation of the Iran Contracting Act of 2010 (Public Contract Code Section 2200-2208).

5.20 Safety Requirements

The Contractor shall promptly and fully comply with and carry out, and shall without separate charge therefore to the District, enforce compliance with the safety and first aid requirements prescribed by applicable State and Federal laws and regulations, rules and orders and as may be necessary to ensure that all Construction Work shall be done in a safe manner and that the safety and health of the employees, agents and the people of local communities is safeguarded. Compliance with the provisions of this Section by subcontractors shall be the responsibility of the Contractor. All installed, dismantled, and removed material, equipment and facilities, without separate charge therefore to the District, shall fully conform with all applicable State and Federal safety laws, rules, regulations and orders and it shall be the Contractor's responsibility to furnish only such material, equipment and facilities.

5.21 Retention on Progress Payments

If the Contract utilizes progress payments, five percent (5%) will be deducted from each progress payment and held in retention by the District. The remainder less any other deductions taken in accordance with this article will be paid to the Contractor as progress payments. The Contractor acknowledges and agrees that, pursuant to Public Contract

Code section 7200, the percentage of retention amounts withheld by the Contractor from its Subcontractors may not exceed the percentage withheld by the District from the Contractor as specified herein.

Contractor shall release retention to a Subcontractor within 30 days of the Subcontractor satisfactorily completing all required work. Upon satisfactory completion of a Subcontractor's work, including provision of appropriate releases, certificates, evidence of the Subcontractor's compliance with all applicable requirements of the Contract Documents, and all other documents as may be required by the Contractor and the District to close-out the subcontract, the Contractor may submit an application to the District for the release of the portion of the retention attributed to the Subcontractor's work. The Contractor's application shall certify that the Subcontractor has:

- a) Completed all work required to be performed under its subcontract;
- b) The amount withheld by the Contractor under the subcontract; and
- c) That the Subcontractor has provided all backup information, stop payment notice, and lien releases required to close-out the subcontract.

Within 7 days following receipt of payment from the District for the completed Subcontractor Work, the Contractor shall release all monies withheld as retention from the Subcontractor, even if the Work to be performed by the Contractor or other Subcontractors is not completed and has not been accepted. The Contractor shall, by appropriate agreement with each Subcontractor, require each first tier Subcontractor to make payments to lower tier subcontractors in a similar manner.

5.22 Release of Retention

Upon the District's issuance of Notice of Final Acceptance the District will release the amount retained.

5.23 Securities in Lieu of Retention

Pursuant to Public Contract Code Section 22300, the successful Bidder may submit Securities in lieu of retention payments by the District. Upon Contractor's request, the District will make payment of funds withheld from progress payments, pursuant to the requirements of California Public Contract Code Section 22300, if Contractor deposits in escrow with the District or with a bank acceptable to the District, securities eligible for investment under California Government Code Section 16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Contractor and the District, upon the following conditions:

- (1) Contractor shall bear the expenses of the District and the escrow agent in connection with the escrow deposit made.
- (2) Securities or certificates of deposit to be placed in escrow shall be of a value at least equivalent to the amounts of retention to be paid to Contractor pursuant to this article.

(3) Contractor shall enter into an escrow agreement satisfactory to the District, which agreement shall be substantially similar to the form provided in California Public Contract Code Section 22300.

(4) Contractor shall obtain the written consent of the surety to such agreement.

SECTION 6. HAZARDOUS CHEMICALS AND WASTES

For the purposes of this Section only, the term "claims" shall include (a) all notices, orders, directives, administrative, or judicial proceedings, fines, penalties, fees, or charges imposed by any governmental agency with jurisdiction, and (b) any claim, cause of action, or administrative or judicial proceeding brought against the District, its directors, or employees, or for any loss, cost (including reasonable attorney's fees), damage, or liability, sustained or suffered by any person or entity, including the District. The Contractor shall bear full and exclusive responsibility for any release of hazardous or nonhazardous chemicals or substances during the course of performance of this Contract. The Contractor shall immediately report any such release to the District. The Contractor shall be solely responsible for all claims and expenses associated with the response to, removal and remediation of the release, including, without limit, payment of any fines or penalties levied against the District by any agency as a result of such release and shall hold harmless, indemnify, and defend the District from any claims arising from such release.

If the performance of the work outlined by these Contract specifications creates any hazardous wastes, those wastes shall be properly disposed of according to federal, state, and local laws, at the expense of the Contractor. The Contractor shall dispose of the wastes under its own EPA generator number. In no event shall the District be identified as the generator. The Contractor shall notify the District of any such hazardous wastes and the District reserves the right to a copy of any test conducted on the wastes and, at its cost, to perform additional tests or examine those wastes, prior to disposition. The Contractor shall hold harmless, indemnify, and defend the District from any claims arising from the disposal of the hazardous wastes, regardless of the absence of negligence or other malfeasance by the Contractor.