

## SECTION 01 25 13

## PRODUCT SUBSTITUTION PROCEDURES

## PART 1 - GENERAL

## 1.1 SUMMARY

- A. Section Includes: Administrative and procedural requirements for handling requests for substitutions.
- B. Related Sections:
  - 1. Section 00 49 18 - Request For Product Substitution Form
  - 2. Section 01 42 00 - References

## 1.2 DEFINITIONS

- A. Substitution: The proposed change by Contractor of a product, equipment, or service required by the Contract Documents is considered to be a request for substitution. The following are not considered to be requests for substitution:
  - 1. Substitutions requested during the Bid period, and accepted by Addendum prior to opening of bids, are included in the Contract Documents and are not subject to the requirements specified in this Section.
  - 2. Revisions to the Contract Documents requested by the City.
  - 3. Specified options of products and construction methods included in the Contract Documents.
  - 4. Contractor's determination of and compliance with governing regulations and orders issued by governing authorities.

## 1.3 REQUIREMENTS

- A. Contractor's Total Bid Price for the work of this Contract shall be based on products, equipment items, or services listed by manufacturer's or supplier's name in the Technical Specifications.
- B. For a product or manufacturer which is not specifically named, submit request for substitution. Where the terms "or equal", or "or approved equal," or similar references are used, submit request for substitution for product or manufacturer not specifically indicated or named in the Specifications.
- C. Deviations from the Plans or Specifications shall not be the basis for any extra charges above the original Bid Price for the work. Substitution requests shall not be the basis for extra charges above Contractor's Bid Price for the work.
- D. Contractor shall bear the cost of making all mechanical, electrical, structural, utility, or other changes required to accommodate the proposed substitution.
- E. Substitutions described in this Section shall not be construed as submittals as described in Section 01 33 00 - Submittal Procedures.

## 1.4 SUBSTITUTIONS BY CONTRACTOR

- A. Not later than 10 calendar days before the bid opening, or within 10 calendar days after the date of Award, the Contractor shall submit a complete typewritten list of proposed substitutions including the substituted manufacturer's name, trade name, and model

number (use Section 00 49 18). During the above time period, the City will consider formal requests for proposed substitutions only under the following conditions:

1. The burden of proof as to the type, function, and quality of proposed substitutions shall be upon the Contractor.
2. The City will determine the quality and utility of the Contractor's proposed substitutions. The City's decision shall be final.
3. The City may require the Contractor to furnish at the Contractor's expense, a special performance guarantee, or other surety with respect to any substituted product, equipment item, or service.
4. After the 10 calendar day period, requests will be considered only when a product becomes unavailable due to no fault of the Contractor. In such cases, all provisions of this Section shall continue to apply.
5. The City's costs for reviewing substitution requests submitted after the 10 calendar day period shall be deducted from progress payments due the Contractor. This charge will not apply in cases where the product, equipment item, or service has become unavailable due to no fault of the Contractor.
6. With respect to all cost savings afforded by Contractor's proposed substitution, if it should be necessary (due to product unavailability) to make a substitution of any product, equipment item or service after the 10 day limit described in Article 1.4, A, then fifty percent (50%) of such savings shall revert to the City and fifty percent (50%) shall revert to Contractor. All such savings shall be shown as a credit upon final negotiation of the actual Contract Lump Sum Price. Provide manufacturer's pricing information to document actual costs of the original and the substituted product(s).

B. Supporting Data: Provide complete data similar to that required for the product originally specified, including drawings, samples, literature, or detailed information sufficient to demonstrate that the proposed substitution is equal in quality and utility to the product or equipment originally specified.

1. Provide information regarding the effect of the substitution, if any, on the construction schedule.
2. Name and address of similar projects on which the substituted product or equipment has been used, and date of installation.
3. Complete breakdown of costs, indicating the amount to be deducted from the Contract Sum if the proposed substitution is accepted.
4. Signed statement that the proposed substitution is in full compliance with the Contract Documents and applicable regulatory requirements.
5. List of other work, if any, which may be affected by the substitution.
  - a. Contractor shall be responsible for the effect of a substitution upon related work, and pay the additional costs generated thereby, including the City design services associated therewith.
6. Information on availability of maintenance service and source of replacement materials.
7. Sample of manufacturer's standard form of warranty or guarantee for the proposed substitution.
8. Where required, itemize comparison of proposed substitution with product or equipment specified and list significant variations.
9. Submit data relating to changes in contract schedule.
10. Include accurate cost data comparing proposed substitution with product or equipment indicated or specified and amount of net change in Contract Sum.
  - a. Include costs to other Contractors and costs for revisions to Drawings, Details, or Specifications.
11. Provide complete details regarding changes in requirements for power or other support facilities, auxiliary equipment or structural modifications.

- C. Manufacturer's Product Modifications: Submit a request for substitution in accordance with the above if the specified product or equipment model has been modified or improved by the manufacturer. If approved, the substitution shall be at no additional cost to the City, and all cost savings shall be credited to the City.
- D. Substitutions will not be considered for acceptance when:
  - 1. They are indicated or implied on submittals without a formal request from Contractor.
  - 2. They are requested directly by a subcontractor or supplier.
  - 3. It is specifically stated: "No Substitutions".
- E. Substitutions required by inability to obtain products or equipment specified will not be acceptable grounds for increase in Contract Sum or time for completion of the Contract.
- F. Substitute products, equipment, or services shall not be ordered without written acceptance by the City.
- G. Notify the City at the time of request for substitution where use of substituted products, equipment, or services indicated or specified would delay completion of the Contract.

#### 1.5 QUALITY ASSURANCE

- A. Certify with each substitution request that Contractor:
  - 1. Has investigated the proposed substitution and determined that it is equal to or superior in all respects to the product or equipment indicated or specified.
  - 2. Will furnish the same warranty/guarantee or bond for the proposed substitution as for the product or equipment indicated or specified.
  - 3. Will coordinate the installation of an accepted substitution into the Work and make such other changes as required to complete the work in accordance with the Contract Documents and applicable regulatory requirements.
  - 4. Waives claims for additional costs associated with the substitution which may subsequently become apparent.
  - 5. Will pay costs of changes to Contract Documents required by accepted substitutions.

#### 1.6 PROJECT CONDITIONS

- A. The City will receive and consider Contractor's request for substitutions only under the following conditions as determined by the City. If the following conditions are not satisfied, the City will return the request without action except to record noncompliance with the requirements.
  - 1. The burden of proof as to the type, function, and quality of proposed substitutions shall be upon Contractor.
  - 2. The City will determine the quality and utility of Contractor's proposed substitutions. The City's decision shall be final.
  - 3. The City may require Contractor to furnish at Contractor's expense, a special performance guarantee, or other surety with respect to any substituted product, equipment, or service.
  - 4. Extensive revisions to the Contract Documents are not required.
  - 5. The substitution requested is consistent with the general intent of the Contract Documents.
  - 6. The request is timely, fully documented, and properly submitted.
  - 7. The specified product or equipment cannot be provided within the Contract Time as substantiated by written documentation from the supplier or vendor. The City will not consider the request if the product or equipment cannot be provided as a result of failure to execute the Work promptly or coordinate activities properly.

8. The specified product or equipment cannot receive necessary approval by a governing authority, and the requested substitution can be approved by the governing authority.
  9. The specified product or equipment cannot be coordinated with other specified products or materials, and where Contractor certifies that the proposed substitution can be coordinated.
- B. Failure of Contractor to provide substitution requests in a timely manner shall be sufficient cause for rejection by the City of any substitutions proposed.
- C. Contractor's submittal and the City's acceptance of shop drawings, product data, or samples for work not conforming to the requirements of the Contract Documents shall not constitute an acceptable or valid request for substitution, nor do they constitute approval.

#### 1.7 THE CITY'S ACTION

- A. All substitutions shall require written approval by the City.
- B. The City's approval of any substitution shall not relieve Contractor from compliance with all other requirements of the Contract Documents and for adequacy of the substituted items.
- C. It shall be understood that:
1. The City will determine whether or not a product, equipment, or service is equal for the purpose intended in quality and utility to that specified. The City's acceptance of substitutions shall not be construed as relieving Contractor of its responsibility to comply with the requirements of the Contract Documents.
  2. The decision of the City on all such questions of equality and acceptability of proposed substitutions shall be final.
  3. No claim of any sort shall be made or allowed against the City, its agents or sub-consultants as a result of any final decision to accept or reject any proposed substitute product, equipment, or service.
  4. Use the specified product or equipment if the proposed substitution is not accepted or if the City's decision is not received within the time specified above.
- D. If necessary, the City will request additional documentation for evaluation within one week of receipt of a substitution request. Promptly provide the additional documentation requested. The City will notify Contractor of acceptance or rejection of proposed substitutions within 2 weeks of receipt of the additional documentation.
- E. Contractor shall be responsible for all resultant changes and all additional costs which the accepted substitution requires in Contractor's work, the work of its subcontractors of all tiers and of other Contractors, and shall effect such changes without cost to the City.
- F. If a proposed substitution is not accepted, use the product, equipment, or service originally specified or indicated.

#### 1.8 DESIGN INTENT

- A. In preparing these Specifications, the City has named those products which to his knowledge can meet the Specifications and are equivalent in construction, functional efficiency, and durability.
- B. The first-named manufacturer is the basis for the project design and the use of alternative named, second-named, or unnamed manufacturers' products may require modifications in the project design and construction. If such alternatives are proposed by the

Contractor and are favorably reviewed by the City, the cost of all modifications including utilities and support systems will be borne entirely by the Contractor.

#### 1.9 CONTRACTOR'S REPRESENTATION

- A. Requests for substitution(s) constitute a representation that the Contractor:
1. Has investigated the proposed substitution and determined that it is equal to or superior in all respects to the product indicated or specified.
  2. Will furnish the same warranty/guarantee or bond for the proposed substitution as for the product indicated or specified.
  3. Will coordinate the installation of an accepted substitution into the Work and make such other changes as required to complete the work in accordance with the Contract Documents and applicable regulatory requirements.
  4. Waives claims for additional costs associated with the substitution which may subsequently become apparent.
  5. Will pay costs of changes to Contract Documents required by accepted substitutions.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF SECTION