

CONTRACT CONDITIONS

SECTION III

CONTRACT CONDITIONS

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DEFINITION OF TERMS

Whenever the following terms are used in these specifications, in the Agreement, in any documents or in other instruments pertaining to construction where these specifications govern, the intent and meaning shall be interpreted as follows, all of which are applicable to both the singular and plural thereof.

AGREEMENT: The written agreement between TSID and SUPPLIER covering the work to be performed; other Contract Documents are attached to the Agreement.

ADDENDUM: A supplement to any of the Contract Documents issued, in writing, after advertisement of, but prior to, the opening of bids for an Agreement.

ADVERTISEMENT: An announcement inviting bids for work to be performed and materials to be furnished.

APPLICATION FOR PAYMENT: A statement and invoice provided by SUPPLIER to TSID for MATERIALS DELIVERED.

AS APPROVED: The words "as approved", unless otherwise qualified, shall be understood to be followed by the words "by TSID".

BIDDER: Wherever the word "bidder" occurs in these Contract Documents, the word shall signify any person, firm, partnership, or corporation submitting a proposal on this project.

BID SECURITY: The certified check, cashier's check, or surety bond, which is required to be submitted with the Proposal to insure execution of the Agreement and the furnishing of the required bonds.

CHANGE ORDER: A written order to the SUPPLIER signed by TSID, authorizing an addition, deletion or revision in the work, or an adjustment in the Contract Price or the Contract Time issued after execution of the Agreement.

CONTRACT: See Agreement.

CONTRACT DOCUMENTS: The "Contract Documents" consist of the invitation to bid, the instructions to bidders, the proposal, the agreement, the general conditions, the supplementary conditions, the specifications, and the drawings, including all modifications thereof incorporated into the documents before their execution, and including all other requirements incorporated by specific reference thereto. These form the Agreement.

CONTRACT CONDITIONS

CONTRACT PRICE: The total amount payable to SUPPLIER under the Agreement.

SUPPLIER: The person or persons, co-partnership, corporation, or joint venture who have entered into an agreement with TSID as party or parties of the second part, or its or their legal representatives. The word "SUPPLIER", although used herein as terming an individual, shall be taken to mean the SUPPLIER, its agents, employees, officials, sub-suppliers, or anyone connected with the work herein set forth on behalf of the SUPPLIER.

CONTRACT TIME: The number of calendar days stated in the Contract Documents, allowed for delivery of materials, including authorized time extensions. If a calendar date of completion is stated in the proposal, in lieu of a number of calendar days, the contract shall be completed by that date.

DAY: Unless otherwise stated, the term "day" shall be taken to mean a calendar day of 24 hours, beginning at 12:00 midnight. Saturdays, Sundays and holidays shall be included.

TSID: Unless otherwise provided, wherever the word "TSID" occurs in these Contract Documents, the word shall signify Three Sisters Irrigation District.

INSPECTOR: An authorized representative of TSID or TSID assigned to make field observations of the materials furnished or being furnished by the SUPPLIER.

INTENTION OF TERMS: Whenever, in these specifications, the words "required", "permitted", "ordered", "designated", "prescribed", or words of the like import are used, it shall be understood that the requirement, permission, order, designation, or prescription of TSID is intended; and similarly, the words "approved", "acceptable", "satisfactory", or words of like import shall mean approved by, or acceptable to, or satisfactory to TSID, subject in each case to the final determination of TSID.

LABORATORY: The official testing laboratories of TSID or such other laboratories as may be designated by TSID.

MATERIALS: Any substance incorporated in the bid proposals.

MODIFICATION: (a) A written amendment of the Contract Documents signed by both parties, (b) a Change Order, (c) a written clarification or interpretation issued by TSID.

CONTRACT CONDITIONS

NOTICE OF AWARD: The written notice by TSID to the apparent successful Bidder stating that upon compliance with the conditions precedent to be fulfilled by Bidder within the time specified, TSID will execute and deliver the Agreement to Bidder.

NOTICE TO PROCEED: A written notice to the SUPPLIER fixing the date on which to begin the actual manufacturing the materials. If applicable, the Notice to Proceed shall state the date on which the Contract Time will commence to run.

PROPOSAL: The written offer of the bidder submitted on the approved proposal form setting forth the prices for the materials.

SPECIFICATIONS: The terms, provisions, and requirements contained herein as supplemented by such special conditions as may be necessary, pertaining to either the materials and/or work to be furnished under the Agreement.

STANDARD SPECIFICATIONS: Codes, rules and regulations referred to in these specifications by basic name or designation only, shall be considered to be of the latest issue with all amendments as of the date of these specifications. Applicable portions of such shall become a part of these Contract Documents.

SURETY: A corporation, licensed to conduct the business of surety in the State of Oregon, and named in the current list of approved sureties published by the U.S. Treasury Department Circular 570. All bonds signed on behalf of the Surety must be accompanied by a certified copy of the authority to act.

If the Surety on any bond furnished by the SUPPLIER is declared bankrupt or becomes insolvent or its rights to do business is terminated in the State of Oregon or it ceases to meet the requirements outlined above, SUPPLIER shall within five days thereafter, substitute another Bond and Surety, both of which shall be acceptable to TSID.

WRITTEN NOTICE: Wherever the term "Written Notice" occurs in these Contract Documents, the term shall signify a written communication delivered in person to the individual, or to a member of the firm, or to an officer of the corporation for whom it is intended, or, if delivered or sent by registered mail, to the last business address known to it who gives the notice.

CONTRACT DOCUMENTS

INTENT OF CONTRACT DOCUMENTS:

The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. Materials described in words that so applied have a well known technical and trade meaning shall be held to refer to such recognized standards.

INCONSISTENCIES AND OMISSIONS:

Any inconsistency, conflict, error or omission found in the Contract Documents shall be reported to TSID in writing immediately and before proceeding with the work affected thereby; however, SUPPLIER shall not be liable to TSID or TSID for its failure to discover any conflict error or inconsistency in the Contract Documents. TSID will clarify inconsistencies or omission, in writing, within a reasonable time. The decision of TSID shall be final.

In resolving inconsistencies among two or more sections of the Contract Documents, precedence shall be given in the following order:

- Modifications - the last in time being the first in precedence, including all Addenda to the Contract Documents
- Agreement
- Supplementary Conditions
- Instructions to Bidders
- General Conditions
- Specifications

ALTERATIONS AND CHANGE ORDERS:

TSID, without invalidating the Agreement, may at any time order additional materials. All additional materials shall be authorized by Change Order and executed under the conditions of the original Agreement, except that claim by either party for time and payment increase or decrease caused thereby shall be adjusted at the time of ordering such change.

THE SUPPLIER AND ITS EMPLOYEES

REJECTED MATERIAL:

Any material condemned or rejected by TSID or its authorized inspector because of non-conformity with the Contract Documents shall be removed at once from the vicinity of the work by the SUPPLIER at its own expense, and the same shall not be used on the work.

UNNOTICED DEFECTS:

Failure on the part of TSID to condemn or reject bad or inferior materials shall not be construed to imply acceptance of such materials.

NO PERSONAL LIABILITY OF PUBLIC OFFICIALS:

In carrying out any of the provisions hereof in exercising any authority granted by the Agreement, there will be no personal liability upon any public official.

GENERAL LIABILITY

The Supplier shall hold harmless TSID, its employees, offices, agents, and representative, from any loss or damage to person or property arising out of the negligent acts of the Supplier or Supplier's staff, agents, or representatives in the performance of this Contract, and shall indemnify TSID for any and all damages, including legal costs and attorney's fees, arising from such negligent acts. Nothing in this paragraph shall be interpreted to require the Supplier to hold harmless or indemnify TSID for damages resulting from the negligent acts of TSID, its employees, officers, agents and representatives.

PROPERTY RIGHTS IN MATERIAL:

Nothing in the Agreement shall be construed as vesting in the SUPPLIER any right of property in the material used after they have been attached or affixed to the work or the soil and accepted by TSID. All such materials shall become the property of TSID upon being so attached or affixed and accepted.

MATERIALS AND APPLIANCES:

Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of good quality. The SUPPLIER, shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

In selecting and/or approving equipment for installation in the project TSID and TSID assume no responsibility for injury or claims resulting from failure of the equipment to comply with applicable national, state, and local safety codes or requirements, or the safety requirements of a recognized agency, or failure due to faulty design concepts, or defective workmanship and materials.

SAMPLES, TESTING AND INSPECTION:

All materials to be incorporated in the work shall be subject to sampling, testing, and approval. Samples furnished by the SUPPLIER shall be representative of the materials to be used. TSID may select samples or may require that samples be delivered to and tested as required by the Specifications at the laboratory designated by TSID.

All sampling and testing of materials shall be done in accordance with the latest designated standard methods of AASHTO, ASTM, etc. or in accordance with special methods designated in the Specifications.

The SUPPLIER shall furnish, without extra charge the necessary test pieces and samples, including facilities and labor for obtaining the same, as requested by TSID. When required, the SUPPLIER shall furnish certificates of tests of materials and equipment made at the point of manufacture by a recognized testing laboratory.

PERMITS AND LICENSES:

The SUPPLIER shall keep himself fully informed of all local ordinances, State and Federal laws, ordinances and regulations, in any manner affecting the work herein specified. It shall at all times comply with said ordinances, laws, and regulations, and protect and indemnify TSID and officers and agents against any claim or liability arising from or based on the violation of such laws, ordinances, or regulations.

CORRECTION OF DEFECTIVE WORK AFTER FINAL ACCEPTANCE (WARRANTY):

All materials shall be guaranteed for a period of one (1) year against defects in materials and workmanship. The SUPPLIER hereby agrees to make, at its own expense, all repairs or replacements necessitated by defects in materials. that become evident within one (1) year after the date of written notice from TSID recommending final acceptance of the entire project, or entire schedule, by TSID. The SUPPLIER also agrees to hold TSID harmless from claims of any kind arising from damage due to said defects. The SUPPLIER shall make all repairs and replacements promptly upon receipt of written orders for same from TSID. If the SUPPLIER fails to make the repairs and replacements promptly, TSID may do the work, and the SUPPLIER and its surety shall be liable for the cost thereof.

PAYMENT

BASIS OF PAYMENT:

In consideration of the faithful performance of all the covenants, stipulations, and conditions in these Contract Documents, TSID covenants and agrees to pay the Supplier the amount bid as adjusted when so stipulated in the Supplier's Proposal on the basis of the unit prices named in the Supplier's Proposal for the materials actually delivered as determined by the final estimate of TSID, and less any deductions for claims and damages paid by TSID due to acts or omissions of the SUPPLIER and for which it is liable under this Agreement.

SUPPLIER warrants and guarantees that title to all materials covered by any application for payment, whether incorporated in the project or not, will pass to TSID at the time of payment free and clear of all liens, claims, security interests and encumbrances.

CHANGE ORDERS:

Payment or credit for any alterations covered by a Change Order shall be determined by one or a combination of the methods set forth in 1, 2, or 3 below:

1. **UNIT PRICES.** If applicable, those unit prices stipulated in the Proposal, or unit prices negotiated and mutually acceptable to the SUPPLIER and TSID.

In "1" above, Supplier's quotations for Change Orders shall be in writing and firm for a period of forty-five (45) days. Any compensation agreed upon, and subsequently paid by TSID for materials defined in a Change Order shall be deemed to include all costs and expenses related to such materials.

Material charges shall be substantiated by valid copies of vendors' invoices for materials used in the alterations covered by Change Orders.

ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE:

The acceptance by the SUPPLIER of the final payment shall release TSID and TSID as agent of TSID from all claims and all liability to the SUPPLIER for all things done or furnished in connection with the materials, and every act of TSID and others relating to or arising out of the work. No payment, however, final or otherwise, shall operate to release the SUPPLIER from obligations under these Contract Documents.

NO WAIVER OF RIGHTS:

Neither the inspection by TSID, through TSID or any of its employees, nor any order by TSID for payment of money, nor any payment for, or acceptance of, the whole or any part of the work by TSID or TSID, nor any extension of time, nor any possession taken by TSID or its employees, shall operate as a waiver of any provision of these Contract Documents, or any power herein reserved to TSID, or any right to damages herein provided, nor shall any waiver of any breach in this Agreement be held to be a waiver of any other or subsequent breach.

LITIGATION FEES AND EXPENSES

In the event suit or action is instituted to enforce any of the terms or conditions of this Agreement, the losing party shall pay to the prevailing party, in addition to the costs and disbursements allowed by statute, such sum as the court may adjudge reasonable as attorney's fees in such suit or action, in both trial and appellate courts.