These Instructions are to be used when the project is partially or fully funded with Federal Funds. The Bidder's and Contractor are required to comply with all Federally mandated rules and requirements. Special attention is directed to the Bid Documents and Appendix B of the Specifications for rules specific to each project.

1. BIDDING DEFINITIONS

Addendum: Written or graphic instruments issued prior to the opening of Proposals that make changes, additions, or deletions to the Bid Documents, or Contract Documents.

Bid: The completed Proposal and all associated Bid Forms, including Bidder’s Bond or other Bidder’s security. Bids not accompanied by the required documents are considered incomplete bids and are nonresponsive.

Bid Documents: All documents to be considered when preparing a Bid. The Notice to Bidders, Instructions to Bidders, Proposal and all accompanying Bid Forms, Bidder’s Bond or other Bidder’s security, and Contract Documents.

Bidder: Any individual, firm, partnership, corporation, or combination thereof, submitting a proposal for the Work contemplated, acting directly or through a duly authorized representative.

Proposal: The Proposal states the price for which the Bidder proposes and agrees to perform the Work. See Proposal and Bid Items, Bid Form No. 1.

Total Bid Price: The sum stated in the Bid for which the Bidder offers to perform the Work described in the Bid Documents. The Total Bid Price shall include the entire cost of all Work necessary for a complete and fully operational structure or facility in accordance with the requirements of the Contract Documents.

2. COMPETENCE OF BIDDERS

A. Bidders must meet all qualification requirements contained in the Bid Documents.

B. Any Bidder may be required to furnish evidence satisfactory to the District that the Bidder and its proposed Subcontractors have sufficient means and experience in the type of Work required to assure satisfactory completion of all the requirements of the Contract Documents.
3. **INELIGIBLE CONTRACTORS AND SUBCONTRACTORS**

   A. The District shall not accept a Bid from a Bidder who is ineligible to Bid or work on, or be awarded, a public works project pursuant to California Labor Code Section 1777.1 or 1777.7. Bidders and the contractor who is awarded the project contract shall not utilize, or allow work by any subcontractor who is ineligible to Bid or work on, or be awarded, a public works project pursuant to California Labor Code Section 1777.1 or 1777.7. (See California Public Contract Code Section 6109.) The California Division of Labor Standards Enforcement publishes a list of debarred contractors and subcontractors on the Internet at [www.dir.ca.gov/DLSE/debar.html](http://www.dir.ca.gov/DLSE/debar.html).

   B. To be eligible for the award of a contract, a Contractor must have a satisfactory record of integrity and business ethic. Contractors that are debarred or suspended cannot receive contract awards at any level.

4. **COMPLIANCE WITH CONTRACTOR’S LICENSE LAWS**

   A. Bidder’s attention is directed to the provisions of Chapter 9 of Division 3 of the California Business and Professions Code (“Contractors”), and §3300 of the California Public Contract Code. The Contractor must possess the required classification of Contractor’s License at the time the Bid is submitted (per Business and Professions Code §7028.15). If federal funds are involved in the project, the Contractor must possess the required classification of Contractor’s License at the time of the Contract Award (per Public Contract Code §20103.5).

   B. However, at the time the contract is awarded, the Contractor shall be properly licensed in accordance with laws of this state. The first payment for work or material under any contract shall not be made unless and until the Registrar of Contractors verifies to the agency that the records of the Contractors’ State License Board indicate that the Contractor was properly licensed at the time the contract was awarded. Any Bidder or Contractor not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the Contractors’ State License Board. The agency shall include a statement to that effect in the standard form of prequalification questionnaire and financial statement. Failure of the Bidder to obtain proper and adequate licensing for an award of a contract shall constitute a failure to execute the contract and shall result in the forfeiture of the security of the Bidder.

5. **EXAMINATION OF CONTRACT DOCUMENTS AND PROJECT SITE**

   A. The Bidder shall examine carefully the site of the Work contemplated and the Contract Documents. The submission of a Proposal will be conclusive evidence that the Bidder has investigated and is fully aware of the conditions and difficulties to be encountered, of the character, quality, and quantities of work to be performed and materials to be furnished, and requirements of the Contract Documents.
B. Where investigation of subsurface conditions has been made by the District in respect to foundation, characterization of soils, groundwater, or other documents, Bidders may inspect District’s records of such investigation, including examination of samples and drill cores, if any. When such records are made available, said records represent only the authors’ opinion as to the character of material encountered in the investigations and are made available only for the convenience of Bidders.

C. Investigation of subsurface soil or groundwater conditions is made for the purpose of project design. The District assumes no responsibility, whatsoever, in respect to the sufficiency of test borings, accuracy of the log of test borings, or other preliminary investigations, or in the interpretation thereof. There is no guarantee, expressed or implied, that the conditions indicated are representative of those existing throughout the Work, or any part of it, or that unforeseen conditions may not be encountered.

D. Making information available to Bidders is not to be construed in any way as a waiver of the provisions herein and Bidders must satisfy themselves through their own investigations, analysis, and interpretations, as to conditions to be encountered.

E. No information derived from such inspection of records or preliminary investigations made by the District, from maps, or Contract Documents, will relieve in any way the Bidder from any risk or from properly fulfilling all the terms of the Contract. Records of such preliminary investigations as may have been made by the District may be viewed on the District’s web site at: https://www.valleywater.org/construction or at the District’s office 5750 Almaden Expressway, San Jose, California 95118, or at such other locations as may be stated in the Notice to Bidders.

6. ESTIMATED QUANTITIES

A. The quantities stated in the Bid Documents are approximate only, provided as a basis for the comparison of Proposals. The District does not, expressly or by implication, agree that the actual amount of Work will correspond therewith, but reserves the right to increase or decrease the amount of any class or portion of the Work, or to omit portions of the Work, as may be deemed necessary or advisable by the Engineer. The adjustment for quantities, if any, shall comply with Measurement and Payment provisions of the Specifications.

7. QUESTIONS DURING BIDDING

A. Questions regarding the Contract Documents, or any addendum thereto, shall be submitted in writing and directed to the project manager as identified in the Notice to Bidders. No interpretation of the meaning of the Contract Documents or other pre-bid documents will be made to any Bidder verbally. Any written questions received later than nine (9) calendar days before the Bid acceptance date and time may not be answered.
8. SUBSTITUTIONS OF ALTERNATIVE MATERIALS, ARTICLES, OR EQUIPMENT

A. Requests for substitutions of alternative materials, articles, or equipment will not be considered prior to Contract award, see Standard Provisions, Article 7.07. Substitutions.

9. ADDENDA

A. Addenda may be issued prior to opening Bids and are a part of the Contract Documents. All Addenda shall be considered by the Bidder in preparing its Bid. Addenda notification(s) will be sent to each planholder at the e-mail address provided for the planholders’ list and Addenda will be posted on the District’s website at: https://www.valleywater.org/construction

10. JOINT PROPOSALS

A. If two or more firms desire to Bid jointly on a project, they shall file an Affidavit of Joint Venture (see Attachment 1) with the District, or provide sufficient documentation of joint venture license status. The submitted Affidavit of Joint Venture will be valid only for the specified project for which it is filed. If such Affidavit of Joint Venture is not filed, and approved by the District, prior to the time for opening Bids on the specific project for which it is submitted, a joint Proposal submitted by two firms will be considered nonresponsive.

B. Joint Proposal requirements relating to small businesses are stated in item No. 11 of this document, Small Business Outreach Program.

11. CONTRACTING WITH SMALL MINORITY BUSINESSES, WOMEN’S BUSINESS ENTERPRISES AND LABOR AREA SURPLUS FIRMS.

a. Requirement. A Contractor must take all necessary, affirmative steps to assure that small and minority businesses, women’s business enterprises, and labor area surplus firms are used when possible. 2 C.F.R. § 200.321. These steps are in addition to full and open competition and must include, at a minimum, the following six affirmative steps.

1. Solicitation Lists. The Contractor must place small and minority businesses and women’s business enterprises on solicitation lists.

2. Solicitations. The Contractor must assure that it solicits small and minority businesses and women’s business enterprises whenever they are potential sources.

3. Dividing Requirements. The Contractor must divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women’s business enterprises.
(4) **Delivery Schedules.** The Contractor must establish delivery schedules, *where the requirement permits*, which encourage participation by small and minority businesses and women’s business enterprises.

(5) **Obtaining Assistance.** The NFE must use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

(6) **Prime Contractor Requirements.** The Contractor must require the prime contractor, if subcontracts are anticipated or let, to take the five affirmative steps described.

12. **PROPOSAL**

A. The Proposal, when filled out by the Bidder and executed, shall be submitted as the Bidder’s proposal. All Proposals shall state the prices proposed in figures in the spaces provided. The Proposal must be signed by an authorized representative of the Bidder, with the authority to bind the Bidder. The Bidder shall fill out all blanks in the Proposal as therein required.

B. Payment for the various items listed in the Proposal shall constitute full compensation for furnishing all plant, labor, equipment, appliances, and materials, and performing all operations required to complete all work in conformity with the Contract Documents. All costs for Work not specifically mentioned in the Proposal or within payment clauses shall be included in the Contract prices for the items listed in the Proposal and Bid Items, Bid Form No. 1.

C. In the case of unit price items, the amount set forth under the "Total" column shall be the extension of the item unit price Bid on the basis of the estimated quantity for the item.

D. In case of discrepancy between the item unit price and the total price set forth for the item, the item unit price shall prevail. If the amount set forth as an item unit price is ambiguous, unintelligible, or uncertain for any cause, or is omitted, or in the case of unit basis items, is the same amount as the entry in the "Total" column, then the amount set forth in the "Total" column for the item shall prevail in accordance with the following:

1. As to lump sum items, the amount set forth in the "Total" column shall be the item price.

2. As to unit basis items, the amount set forth in the "Total" column shall be divided by the estimated quantity for the item and the price thus obtained shall be the item unit price.
13. REJECTION OF BIDS

A. Bids may be rejected if they show any alterations of the Form, additions not called for, conditional Bids, incomplete Bids, erasures, or irregularities of any kind. Proposals in which the prices, in the opinion of the District, are unbalanced, may be rejected.

B. When Proposals are signed by an agent, other than an officer of the Bidder, a written authorization or Power of Attorney, as appropriate, should be on file with or prior to the District opening Bids; otherwise, the Bid may be rejected.

14. PROPOSAL GUARANTEE

A. All Bids shall be presented under sealed cover and accompanied by one of the following forms of Bidder’s security: cash, a cashier’s check, certified check, or an original Bidder’s Bond executed by an admitted surety, made payable to the District. The security shall be in an amount equal to at least ten percent (10) of the total Bid price in the Proposal. The District will reject as nonresponsive any Bid submitted without the required Bidder’s security.

B. A Bidder’s Bond will not be accepted unless it substantially conforms to the Bidder’s Bid Bond form included with the Bid Documents; is properly filled out; and executed.

15. RETURN OF BIDDER’S SECURITY

A. No later than sixty days (60) after the award of the Contract to the responsible Bidder, submitting the lowest responsive Bid, the security of the unsuccessful Bidder(s) will be returned, except for Bidder’s Bonds and any guarantees which have been forfeited.

16. WITHDRAWAL OF BIDS

A. Prior to the deadline for Bid opening, a submitted Bid may be revised or withdrawn by submitting a written request. The request shall be executed by the Bidder or duly authorized representative.

B. Withdrawal of a Bid does not prejudice the right of the Bidder to file a new or revised Bid at any time prior to the time fixed for receiving Bids in the Notice to Bidders.

C. Whether or not Bids are opened exactly at the time stated in the Notice to Bidders, a Bid will not be accepted after the time stated.
17. DISQUALIFICATION OF BIDDERS

A. Submittal of more than one Bid from an individual, firm, partnership, corporation, or a combination thereof under the same or different names, will not be considered. If there is reason for believing that collusion exists among the Bidders, none of the participants in such collusion will be considered for award of this Contract.

18. RELIEF OF BIDDERS

A. Attention is directed to the provisions of California Public Contract Code Sections 5100-5107 that set forth the criteria and procedures for relief of Bidders, and for authorizing Contract Award to another Bidder.

19. BID PROTEST

A. Any Bid protest relating to the form or content of the Bid Documents must be submitted in writing to the Engineer as identified in the Special Provisions, Engineer, Article 14.01. The protest must be received before 5 p.m. three (3) business days in advance of the Bid opening. Any Bidder who fails to submit a protest before the Bid opening deadline will be deemed to have waived any protest to the form or content of the Bid Documents.

B. Any Bid protest unrelated to Paragraph A. must be submitted in writing to the Engineer identified in the Special Provisions, Engineer, Article 14.01. The protest must be received before 5 p.m. on the third business day following the Bid opening.

C. The protest document must contain a complete statement of the basis for the protest. The protest must refer to the specific portion(s) of the Bid Documents that form the basis for the protest. The protest must include the name, address, and telephone number of the person representing the protesting party.

D. The Engineer’s final decision on a protest will be issued in writing no later than ten (10) calendar days following receipt of the protest.

20. AWARD OF CONTRACT

A. The District Board of Directors reserves the right to reject any and all Bid Proposals and to waive minor defects or irregularities in any submitted Bid Form(s).

B. The Contract, if awarded, will be to a responsible Bidder, submitting the lowest responsive Bid. The award, if made, will be within 45 calendar days after the opening of the Proposals. If the lowest responsible Bidder refuses or fails to execute the Contract, the award may be made to the second lowest responsible Bidder. The award, if made, will be within 75 calendar days after the opening of the proposals. If the second lowest responsible Bidder refuses or fails to execute the Contract, the Contract may be awarded to the third lowest responsible
Bidder. The award, if made, will be made within 105 calendar days after the opening of the proposals.

C. 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 Bidder concerned.

21. CONTRACT BONDS

A. The Contractor shall furnish on the forms provided by the District, a performance bond and a payment bond executed by both the Contractor and the sureties, each equal to 100 percent (100%) of the Contract Sum.

B. All bonds must be issued by California-admitted sureties.

C. Should any surety or sureties be deemed unsatisfactory at any time by the District, notice will be given to the Contractor to that effect, who shall promptly substitute a new surety or sureties satisfactory to the District. No further payment shall be deemed due or will be made pursuant to the Contract until the new sureties shall qualify and be accepted by the District.

D. In its sole discretion, the District may allow the Contractor to provide Contract Bonds from multiple sureties in order to meet the Contract Bonds requirements.

22. EXECUTION OF CONTRACT

A. The successful Bidder will sign and return the Agreement prior to Contract award by the District.

B. The Contractor must submit the required bonds and insurance documents within ten (10) days of District’s Notice of Contract Award letter, not including Sundays and legal holidays.

C. Formation of a contract between the District and the Contractor requires accomplishment of the following: (1) execution of the Agreement by Contractor; (2) submission by Contractor, and acceptance by District of the required Contract Bonds, and insurance coverages and documents; and (3) execution of the Agreement by District. No Contract is formed until these three elements have been accomplished to the satisfaction of the District.

23. FAILURE TO EXECUTE CONTRACT

A. Failure to execute the Agreement after Contract award and to file acceptable bonds and insurance documents as provided herein, within ten (10) days, not including Sundays and legal holidays, shall be just cause for the District’s annulment of the award and forfeiture of the Bidder’s security.
24. NO VERBAL AGREEMENTS

A. No conversation with any officer, employee, agent or District's Consultant(s), either before, during, or after the execution of the Agreement, affects or modifies any terms or obligations contained in the Contract Documents, nor entitle Contractor to any adjustment in the Contract Time(s) or Contract Sum whatsoever.

25. NON-DISCLOSURE AGREEMENT

A. Some projects will require prospective Bidders and other parties to execute a Non-Disclosure Agreement (NDA) prior to receiving Bid Documents. The NDA is available on the District's website at: https://www.valleywater.org/construction.

B. The Notice to Bidders will identify whether a project requires an NDA.

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