

Response to Draft Report
On
Certification Review of the
Southern California Rapid Transit District

1970-01-14 11:00 AM

APR 28 '93

11851

AG 6 '90

SCRTD
1984
.R47

APR 28 '93

S.C.R.T.D. LIBRARY

Response to Draft Report
on
Certification Review of the
Southern California Rapid Transit District

The SCRTD response to certain issues and deficiencies identified in the draft report prepared by UMTA is given below in the format and order presented in the draft report.

VI. Mandatory Requirements

A. Written Operating Procedures

UMTA Findings: SCRTD's current written procedures fail to prescribe procedures governing certain aspects of procurement; and, written procedures are deficient in other areas which necessitates revisions to insure full compliance with the requirements of UMTA Circular 422D.1A.

SCRTD Response: Concur. Procedures have been implemented to incorporate the specified areas of omission. The recommendations given by UMTA regarding the observed deficiencies have been adopted and procedures have been revised to reflect the changes. (See Exhibits 1 through 17)

B. Established Procurement Practices Relating to Competitively Negotiated Procurements

UMTA Findings: SCRTD has attempted to establish appropriate selection procedures governing its procurement of professional services (other than Architectural/Engineering). However, the newly established procedures are deficient and have resulted in unsound procurement practices.

SCRTD Response: Concur. Further revisions to the referenced 1984 negotiation procedure have been made to correct the deficiencies noted with regard to proposal evaluations, determination for zone-of-consideration/competitive range and responsibility, records, and conformity with applicable statutory and regulatory requirements at both local and federal levels. SCRTD also concurs that personnel involved with procurement determinations be knowledgeable in skills pertaining to their area of responsibility. (See Exhibits 12, 18 19 and 20)

C. Inadequate Basis/Lack of Documentation to Support Sole Source Determination

UMTA Findings: Formalized procedure governing sole source procurement is absent from SCRTD's procedures, and sole source justifications included in the file to support some contract awards were found to be inadequate.

SCRTD Response: Concur. Sole source procedures have been developed and implemented which insure conformity to the standards of UMTA Circular 4220.1A. Particular emphasis has been placed on determining the appropriateness of work under negotiated changes, justification for changes, detailed file documentation, and avoidance of get-well practices. (See Exhibits 1, 19, and 20)

D. Construction Modification (Change Order) Procedures

UMTA Findings: Deficiencies were found in SCRTD's practices and procedures relative to change orders.

1. Autonomy of Contracts and Procurement Activity (System of Checks and Balances)

UMTA Findings: Absence of a checks and balances system between programmatic considerations and procurement matters exists.

SCRTD Response: Concur. Organizationally, the Office of Contracts, Procurement and Materiel reports to the Assistant General Manager for Management and is responsible for all District procurement functions regardless of project office origination or project management. Clauses have been rewritten to affirm the Contracting Officer (Director, OCPM) authorities. SCRTD assures UMTA that contracting authorities rest only with the General Manager and Director of Contracts, Procurement and Materiel or their designated representatives (COR, COTR). Approval of all modifications rests with the contracting officer. (See Exhibits 8 and 23)

2. Cost-Plus-Percentage-of-Cost (CPPC/Post Pricing)

UMTA Findings: Standard pricing clauses for SCRTD construction change orders are based on actual costs incurred plus the application of a predetermined fixed percentage rate for profit and overhead.

SCRTD Response: Concur. The SCRTD procurement manual has been revised to incorporate the various contract types which may be employed. Cost Plus Percentage Cost is expressly prohibited under the revision. Pricing of construction change orders shall be accomplished in compliance with sound procurement standards set forth in UMTA 4220.1A. (See Exhibit 15)

3. Inadequate Documentation/Inappropriate Issuance of Change Orders

UMTA Findings: Review of the files disclosed that documentation is insufficient to enable a determination concerning the validity of various changes, and some change orders provided for work to which the contractor was already bound.

SCRTD Response: Concur. SCRTD has adopted procedures to insure that complete and adequate documentation supports all change orders. (See Exhibit 8)

4. Inadequate or Improperly Documented Cost/Price Analysis/No Evidence of Negotiations

UMTA Findings: SCRTD files for construction change orders do not indicate proper analysis of contractor's pricing for realism or reasonableness, thus making the change order process a rubber stamp operation.

SCRTD Response: Concur. Cost and price analyses are prepared and used in negotiation for all change orders. Formal procedures have been adopted to insure that all negotiations with contractors are documented and that written cost and price analyses accompany change orders. (See Exhibits 1, 8, 13 and 14)

5. Contract Provisions Governing Disputes and Claims

UMTA Findings: Contracts do not provide procedures governing disputes and claims resolution, nor time frames for the negotiation and settlement of claims.

SCRTD Response: Concur. (See Exhibits 5, 9 and 24)

6. Independent Engineer's Estimate

UMTA Findings: Review of files disclosed that an independent engineer's estimate of project estimated cost is not customarily prepared.

SCRTD Response: Concur. An independent engineer's estimate is prepared for each project and is provided to the Contracting Officer for inclusion in the file. (See Exhibit 8)

7. Inappropriate/Inadequately Documented Experience and Liquidated Damages Provisions

UMTA Findings: Formal procedures governing the application of experience criteria and documentation of the files supporting the determination of reasonableness have not been adopted. Liquidated damages criteria were found to be deficient in the same manner.

SCRTD Response: Concur. SCRTD has adopted procedures that will insure compliance with UMTA standards regarding criteria for developing liquidated damages and experience requirements. (See Exhibits 2, 3 and 4)

E. Experience Requirements/Liquidated Damages/Pre-Qualifications of Manufacturers and/or Products

UMTA Findings: Formalized procedures have not been developed governing inclusion of liquidated damages in contracts, use of experience requirements, and pre-qualification of manufacturers or products.

SCRTD Response: Concur. Formal procedures have been developed and implemented for each of these areas. (See Exhibits 2, 3, 4, 16 and 25)

F. Inadequate Analysis of Cost Data/Depth of Audit Report

UMTA Findings: Evidence of cost analysis was not found in several contracts reviewed. Some audit reports contained insufficient data or information to enable a determination of the reasonableness of the total cost proposed.

SCRTD Response: Concur. (See Exhibits 13, 14 and 26)

G. Inappropriate Contract Type

UMTA Findings: Contracts were reviewed which indicated inappropriate use of contract type (fixed price, time and materials).

SCRTD Response: Concur. Provisions for the appropriate selection of contract types have been incorporated into the procurement procedures. (See Exhibit 15)

H. Informal Bid Procedures

UMTA Findings: SCRTD has adopted simplified procedures to be utilized for procurements between \$10,000 and \$25,000 in value.

SCRTD Response: Concur. SCRTD implemented simplified procurement procedures for all procurements under \$25,000 based upon statutory provisions of the California Public Contract Code, enacted in 1982. SCRTD will revise the procedure to conform to the standards set forth in OMB A-102 and UMTA 4220.1A for federally-funded procurements. (See Exhibit 21)

I. Minority Business Enterprise-Responsiveness vs. Responsibility

UMTA Findings: SCRTD evaluates the issue of DBE/WBE compliance with solicitation requirements as a matter of responsiveness, and thereby is not acting consistent with certain aspects of the Comptroller General's rulings in this area (Paul N. Howard case, CPD #11B-199145, November 28, 1980).

SCRTD Response: SCRTD concurs in that the District procedures do not follow the rulings of the Comptroller General under the Howard case. However, a review of various state and federal court decisions, as cited under our Exhibit 27, indicates that the courts have determined that the issue of DBE/WBE compliance is, in fact, a matter of responsiveness rather than responsibility. (See Exhibit 27)

J. Required Contract Clauses

UMTA Findings: Some contracts reviewed did not contain the clauses required pursuant to requirements of UMTA 4220.1A.

SCRTD Response: Concur. After review of additional contracts subsequent to the UMTA certification review process, SCRTD has concluded that the absence of clauses in the contracts cited was inadvertent and does not reflect the current practice or intent. To insure future compliance with the requirement, both the procedures and contract check list form applicable to clauses have been revised appropriately. (See Exhibit 24)

K. Code of Conduct

UMTA Findings: SCRTD does not have an effective code of conduct.

SCRTD Response: Concur. A new code has been developed and approved by the Board of Directors and is being prepared for distribution to all employees, officers and agents. (See Exhibit 28)

VII. Technical Review Findings and Conclusions

3. Grantee Staff Responsibilities.

(c) Compliance with UMTA guidelines.

UMTA Findings: The District has not achieved compliance with UMTA guidelines in that "UMTA Clauses" are not always included in the solicitation/contract clauses.

SCRTD Response: Concur. See item J response.

INDEX OF EXHIBITS

NUMBER

1	Procedure; Non-Competitive Negotiation
2	Procurement Manual Revision; Liquidated Damages
3	Procedure; Liquidated Damages
4	Procedure; Responsibility Criteria and Requirement
5	Procurement Manual Revision; Procurement Policies
6	Procurement Manual Revision; Progress/Invoice Payments
6-A	Procedure; Processing of Payment Requests
7	Procedure; Contract Administration
8	Procedure; Contract Changes
9	Procedure; Contract Claims
10	Procedure; Contract Termination
11	Procedure; Contract Close Out
12	Procedure; Negotiated Procurements
13	Procurement Manual Revision; Cost/Price Analysis
14	Procedure; Cost/Price Analysis
15	Procurement Manual Revision; Contract Types
16	Procurement Manual Revision; Testing
17	Procedure; Warranties
18	Procurement Manual Revision; Negotiated Procurement
19	Procurement Manual Revision; Documentation
20	Procedure; Procurement Documentation
21	Procedure; Informal Purchases
22	Office of Contracts, Procurement and Materiel Training Plan
23	Procedure; Contracting Officer Authority
24	Procedure; Contract Clauses
25	Procedure; Pre-Award Survey
26	Letter; Contract Audit Guidelines
27	Letter; DBE/WBE Requirements
28	Policy Revision; Code of Conduct

EXHIBIT 1



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

Non Competitive Negotiation

I. AUTHORITY:

- A. UMTA Circular 4220.1A
- B. State and local law governing District procurements
- C. District Rules and Regulations, Board Policy, Administrative Policy

II. OBJECTIVES:

To insure adherence to all applicable federal, state and local law with respect to procurements by non-competitive negotiation, and to provide contracting personnel with standard and consistent criteria for justifying noncompetitive negotiation.

III. POLICY:

It is the District policy to conduct all procurements of supplies, services, and construction by competitive means, either formal advertising or competitive negotiation. Under some circumstances, non-competitive negotiation is justifiable.

IV: PROCEDURE:

- A. Receipt of one response or no responses after appropriate solicitation of a number of sources either by formal advertising or competitive negotiation.
 - 1. If there is no positive response to a solicitation document, or only one bid or proposal is received, after solicitation of several sources in accordance with appropriate law and administrative procedures, the following action shall be taken:
 - a. If "no submission" responses are unclear as to reasons for not bidding or proposing, the sources shall be contacted and asked for any such reasons.
 - b. The specifications shall be reviewed to determine whether they are or are not overly restrictive.



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

c. The Contracting Officer (CO) after reviewing the facts pertaining to the lack of response shall decide upon one of the following courses of action.

- (1) Resolicit immediately with revised specifications.
- (2) Postpone resolicitation until more of the potential sources have the capacity to perform.
- (3) Accept the sole bid in the case of a formally advertised procurement.
- (4) Negotiate with the sole proposer, in the case of a negotiated procurement.
- (5) With Board approval, for procurements greater than \$25,000 (\$10,000 if UMTA grant funded) negotiate with sources in the marketplace if no response to a formally advertised procurement is received.

2. If the Contracting Officer decides to negotiate with the sole proposer in a negotiated procurement, the proposal shall be evaluated, scored and negotiated in the same manner as if there were competition. The proposer shall not be informed that no competition exists. In addition to the documentation normally required, the Contracting Officer shall make the following determinations:

- a. The proposal is technically adequate;
- b. The cost or price is reasonable; and
- c. Resolicitation would be unlikely to improve the competitive environment:

Such determination shall be made after research of prior District experience, or the experience of other agencies with procurements of a similar nature.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE 2 OF 4



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

B. Noncompetitive Negotiation After Solicitation of Only One Source (Sole Source)

1. Justification Criteria

Sole Source procurement shall be permitted only under one or more of the following circumstances:

- a. The products or services are available from only one source.
- b. The District's Board of Directors by a two-thirds vote declares that a public exigency or emergency will not permit a delay incident to competitive negotiation.
- c. There is no positive response to a formally advertised or negotiated procurement.
- d. UMTA or appropriate state/local agencies authorize a sole source procurement.

2. Procurement Steps

a. Prior Authorization

Prior to solicitation, the Director, OCPM shall sign a determination and findings memorandum stating that one or more of the above sole source justification criteria have been satisfied.

b. Solicitation, Evaluation, and Negotiation

Solicitation, proposal evaluation and negotiation shall be carried out in a manner similar to negotiated procurements, except that procedures and documentation appropriate only to competitive circumstances shall be eliminated.



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

c. Source Selection Memorandum

The Source Selection Memorandum shall contain material similar to that derived from competitive negotiation. However, an additional determination and findings shall be incorporated to the effect that:

- (1) The negotiated goods or services are technically adequate; and
- (2) The negotiated price is fair and reasonable.

Such determination and findings shall be justified by research of prior District experience or the experience of other agencies with procurements of a similar nature.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE 4 OF 4

EXHIBIT 2

PROCUREMENT MANUAL
SECTION V, POLICIES
PARAGRAPH D.2.R

The following has been incorporated into the District Procurement Manual.

r. Liquidated Damages

- (1) The intent of the District to apply liquidated damages provisions to any contract or portion thereof, regardless of the item or method of procurement, must be definitively set forth in the contract solicitation document and the contract. Such notification to the contractor shall be accomplished by inclusion of the applicable liquidated damages clause as prescribed in the District Standard Clause Index, and shall identify specific milestones which shall be subject to liquidated damages when appropriate.
- (2) Liquidated damages provisions shall be used only where both: (a) the time of delivery or performance is such an important factor in the award of the contract that the District may reasonably expect to suffer damage if the delivery or performance is delinquent, and (b) the extent or amount of such damage would be difficult or impossible of ascertainment of proof.
- (3) In making decisions as to whether liquidated damages provisions are to be used, consideration should be given to their probable effect on such matters as pricing, competition, and the costs and difficulties of contract administration, as well as the availability of provision elsewhere in the contract for recovery of excess costs in termination cases.
- (4) When the Contracting Officer determines that the use of a provision for liquidated damages is appropriate and necessary in a contract, a determination and findings to justify (a) the need for the clause and (b) that the rate of assessment is reasonable and proper and not arbitrarily determined will be prepared.
- (5) The rate of liquidated damages stipulated must be reasonable in relation to anticipated damages, considered on a case-by-case basis, since liquidated damages fixed without any reasonable reference to probable damages may be held to be not compensation for anticipated damages caused by delay, but a penalty and therefore unenforceable.

- (6) When a liquidated damages clause is used, the contract shall set forth the amount which is to be assessed against the contractor for each calendar day of delay. The amount of liquidated damages may not be stated as a percentage of the contract value. The daily assessment may be a large amount relative to the contract value and may exceed the contract value if the estimated damages justify such an amount.
- (7) When a basis for termination for default exists under a contract containing a liquidated damages provision, appropriate action should be taken expeditiously to obtain performance by the contractor or to exercise the right to terminate. If delivery or performance is desired after termination for default, efforts must be made to obtain it elsewhere within a reasonable time. Contracts containing liquidated damages provisions must be efficiently administered to prevent undue loss to defaulting contractors and to protect the interest of the District and UMTA.
- (8) Where the assessment of liquidated damages is appropriate under a District contract but extenuating circumstances appear to justify the remission, in whole or in part, of such liquidated damages, the Contracting Officer, in conjunction with the user or responsible project manager, shall review all relevant information regarding the procurement and, if determined appropriate, prepare a formal finding for remission of damages. This finding, with a recommendation for action, shall be submitted to the Board of Directors when required.

EXHIBIT 3



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

B. Estimation of cost of damages

1. The PM shall prepare a comprehensive estimate of the probable costs associated with delay or non-performance. The cost shall be a specified dollar amount to be assessed on a calendar day basis.
2. Factors which should be considered, but not limited to, in preparing a damages estimate are:
 - a. Costs of District and/or consultant project and support staff.
 - b. Increased costs of contract administration.
 - c. Increased costs to other contractors which result in damages to the District.
 - d. Costs of substitute facilities.
 - e. Costs of continued use of real estate, facilities rentals, etc.
 - f. Escalation costs.
 - g. Termination and rebidding costs.
 - h. Utility usage costs.
 - i. Loss of revenue or productivity.
 - j. Increased cost of inspection.
 - k. Other applicable direct cost (i.e., reproduction, travel, subsistence, etc.).
 - l. Other reasonable business costs incurred as a consequence of delay or non-performance.
3. The PM shall forward a recommendation, including supporting information on evaluation of the appropriate factors, for liquidated damages to be included in the solicitation document.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE 2 OF 4



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE: Liquidated Damages

I. AUTHORITY:

- A. UMTA Circular 4220.1A
- B. State and local law governing District procurements
- C. District Rules and Regulations, Board Policy, and District Administrative Policy

II. OBJECTIVES:

To implement District procurement policy for the application of Liquidated Damages provisions, and to establish a methodology for determining and assessing such damages.

III. PROCEDURES

A. Determination of applicability:

- 1. Consideration of the applicability of liquidated damages provisions in a contract shall commence in the procurement planning phase.
- 2. Applicability shall be evaluated by the responsible department Project Manager (PM), in conjunction with the Contracting Officer (CO) and other project personnel as needed, considering:
 - a. Consequences of delay or non-performance on project schedule.
 - b. Consequences of delay or non-performance on other related contracts.
 - c. Probable damages which are reasonable to expect as a result of delay or non-performance.
 - d. Probable impact of including liquidated damages provisions on contract cost, competition, and difficulties in contract administration.
- 3. Elements of performance (milestones, deliverables, etc.) which are made subject to liquidated damages must be specific, clearly defined, and considered individually in the evaluation process.



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

4. The CO shall prepare a Determination and Findings report, based upon the PM's recommendation and available procurement data, certifying the necessity for liquidated damages provisions and the reasonableness of the assessment rate.
5. The CO will insure the appropriate liquidated damage clause(s) is included in the solicitation document.

C. Assessment

1. The PM shall report any failure of performance by the contractor which is subject to liquidated damages to the CO, in writing, identifying the contractual obligation involved and the nature of the non-performance.
2. The CO shall review the contract documents, including other provisions for mitigating damages to the District, and consult with the PM, Legal staff, and other District or consultant personnel to develop a District position.
3. The CO shall promptly notify the contractor of the assessment of liquidated damages, the amount, commencement date, and the reason therefor in writing, by certified mail.
4. The CO shall notify the Accounting and Finance Department of the action taken against the contractor, and direct withholding of progress payments, retention, or final payment in the amount assessed as appropriate.

D. Mitigation of damages

The CO, in consultation with the PM, shall review alternatives to mitigate damages, including obtaining performance by the contractor. If delivery or performance is desired after termination, efforts shall be made to obtain it elsewhere within a reasonable time.

E. Remission

1. Should remission of liquidated damages be determined to be in the best interests of the District, the CO shall prepare, or cause to be prepared, a Determination and

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE 3 OF 4



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

Findings report jointly executed with the PM and General Counsel.

2. Recommendation for remission of assessed liquidated damages which require Board of Directors action will be placed on the agenda by the CO. The Board report shall be prepared in the format for committee consideration.
3. The contractor and Accounting and Finance Department shall be promptly notified of a remission of liquidated damages.

F. Delegation of authority

The authorities of the CO and PM set forth in this procedure may be delegated to appropriate designated personnel. Such delegation shall be in writing.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE 4 OF 4

EXHIBIT 4



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE: Responsibility Criteria and Requirements

I. AUTHORITY

- A. UMTA Circular 4220.1A
- B. State and local law governing District procurements
- C. District Rules and Regulations, Board Policy, District Administrative Policy

II. OBJECTIVES

To establish means of determining applicability of special responsibility criteria to procurements.

III. General Policy

In order to maximize competition, the District shall not establish arbitrary mandatory responsibility requirements among the responsibility criteria for any procurement. Definitive mandatory responsibility requirements shall be imposed only when the nature of the procurement is such that such requirements are judged essential to proper performance of the contract, and that not meeting the requirements constitutes an unacceptable risk of unsatisfactory performance.

IV. PROCEDURE

- A. The District shall make awards only to contractors that show adequate evidence of ability to perform the work successfully under the terms and conditions of a proposed contract. Among the responsibility criteria to be used in determination of eligibility for award are the following:
 - 1. financial resources
 - 2. personnel resources
 - 3. facilities and equipment
 - 4. integrity
 - 5. compliance with public policy
 - 6. record of prior performance
 - 7. special responsibility criteria, where appropriate

ISSUE DATE
2/3/86

REVISION DATE

PREPARED BY
OCPM/RS

APPROVED BY

PAGE 1 OF 2



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

B. Determination of Responsibility Requirements

Prior to issuing a solicitation, the Contracting Officer shall determine if definitive mandatory responsibility requirements are essential to proper performance of the contract. The determination shall be made only after consideration of the following factors:

1. Length of performance period, and effect of a learning curve on timeliness of performance.
2. Record of the District with prior procurements of a similar nature that indicates definitive mandatory requirements are essential.
3. Record of other businesses and public agencies with prior procurements of a similar nature, that indicates definitive mandatory requirements are essential.
4. Criticality of procurement to achievement of District objectives, and conversely, impact of contractor's failure to perform on achievement of District objectives.
5. Complexity or uniqueness of procurement, which requires contractor to be able to present unusually strong credentials in order to minimize risk of failure to perform.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF

2 2

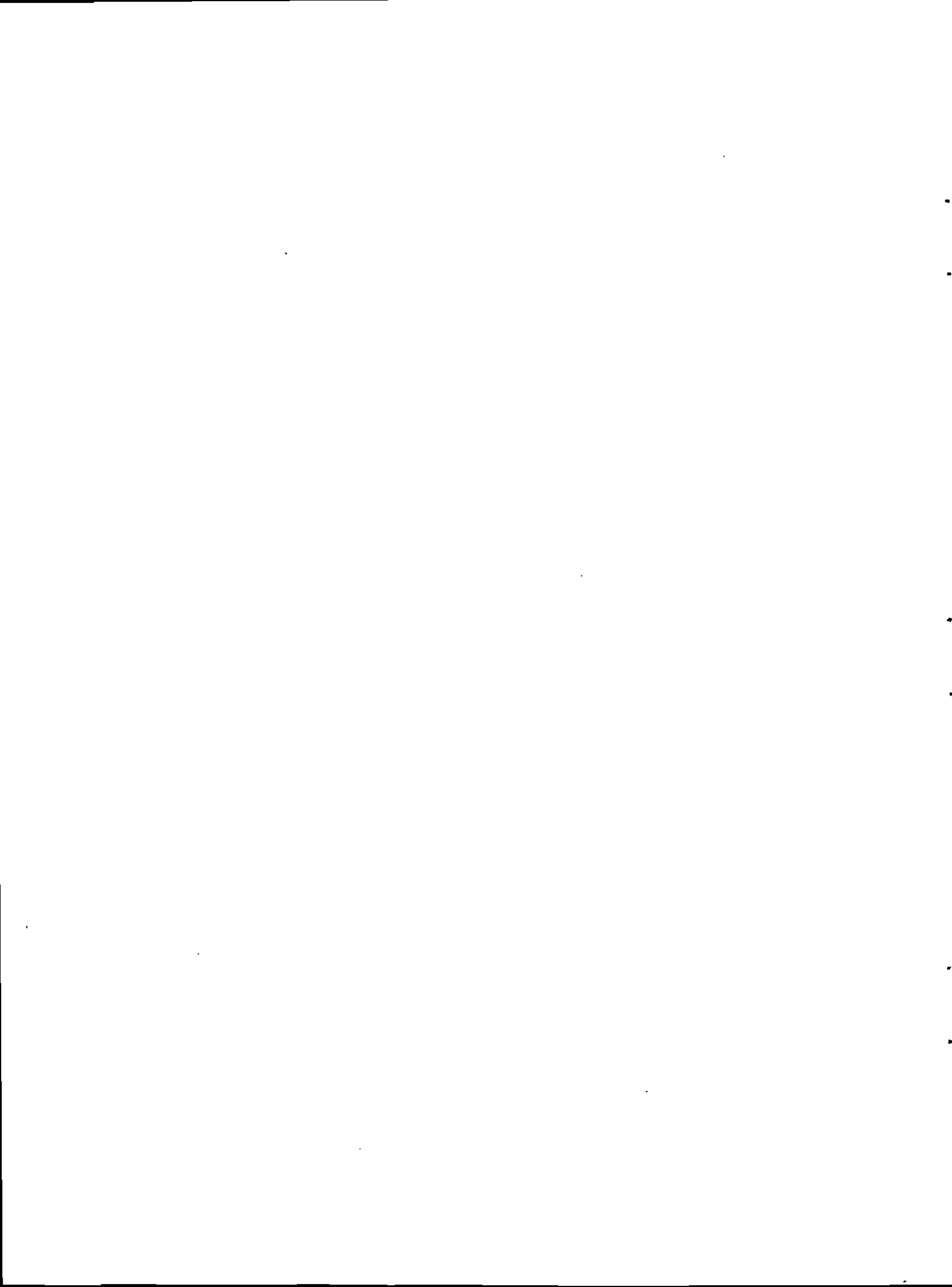
EXHIBIT 5

PROCUREMENT MANUAL
SECTION V: POLICIES
Paragraph D.2.

The following is incorporated as an amendment to the Procurement Manual.

- t. District contracts shall contain such clauses as are appropriate to insure a sound and complete contract. These clauses shall be selected for inclusion from the prescribed Clauses Index without change. Contracts funded wholly or in part by the federal government (Department of Transportation) shall contain clauses as required by UMTA C 4220.1A and the Grants funding contract.
- u. All contractor claims will be promptly evaluated and processed by District staff. Every effort will be made to resolve claims in a mutually satisfactory manner. Claims which cannot be resolved shall be regarded as disputes and referred to Contracting Officer for resolution. The Contracting Officer shall review all aspects of the claim, conduct such investigations and hearings as may be appropriate and render a decision on the claim.
- v. Contractors may file a written protest of the Contracting Officer's claim decision to the District Contract Appeals Board (CAB) which is composed of the Assistant General Manager for Management, the Controller-Treasurer-Auditor, and the General Counsel. The CAB shall review the merits of the claim and shall issue a decision. The CAB's decision shall be final and shall not be subject to further review within the District.

EXHIBIT 6



PROCUREMENT MANUAL
SECTION XI: PROGRESS/INVOICE PAYMENTS

The following revision is made to Section XI of the Procurement Manual.

XI. Progress/Invoice Payments

- A. The Treasurer/Controller/Auditor is designated the responsible Department for insuring the appropriateness, accuracy and timeliness of progress and invoice payments.
- B. Contracts and purchase orders shall be available to the Accounting and Finance Department for use in the payment process. OCPM shall provide assistance to Accounting and Finance and Audit as requested.

EXHIBIT 6-A

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT

ACCOUNTING & FISCAL DEPARTMENT

PROCESSING PROGRESS PAYMENTS/INVOICES FOR CONTRACTS

STAFF SECTION

- Obtain and file contract summary reports.
- Progress payment requests/invoices will be referred to the staff section of the Director of Finance for review prior to payment.
- Staff section will:
 1. Compare progress payment requests/invoices against contract summary reports for reasonableness.
 2. Ascertain that the requests/invoices do not exceed amount authorized by Contracting Officer for the contract (including change orders).
 3. Note any unusual items and obtain clearance/approvals prior to payment.
 4. After completing above steps, release the requests/invoices for payment.

EXHIBIT 7



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE: CONTRACT ADMINISTRATION

I. AUTHORITY:

- A. UMTA Circular 4220.1A
- B. State and local law governing District procurements
- C. District Rules and Regulations, Board Policy, and District Administrative Policy

II. OBJECTIVES:

To establish procedures to be employed in administration of all District contracts.

III. POLICY:

The Contractor is ultimately responsible for timely and satisfactory completion of his contract. However, in order to avoid project delays and increased costs resulting from late deliveries and poor contractor performance, the District must monitor Contractor performance throughout the life of the contract. The effort devoted to monitoring the Contractor must be governed by the complexity, urgency, and value of the contract. Generally, the monitoring activity will consist of a coordinated effort between the user department Project Manager (PM) or Resident Engineer (RE), who is responsible for the technical administration of the contract, and the Contracting Officer (CO), who is responsible for all contractual aspects of the project.

IV. RESPONSIBILITIES:

- A. Project Manager - The specific duties of the PM will vary depending upon the requirements of the project. Generally, the PM's responsibilities shall include the following:
 - 1. Monitor and assess technical performance and project progress.
 - 2. Provide technical direction to the contractor.
 - 3. Initiate and respond to correspondence relating to project technical matters and questions. Provide copies of all correspondence to the CO.



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

CONTRACT ADMINISTRATION

4. Coordinate project activities, as necessary, with interested District offices, other contractors, relevant public agencies, and other activities as required.
5. Review and recommend action on contractor requests for payment.
6. Initiate requests and prepare all documentation for change orders.
7. Assist the CO in contractual negotiations with the contractor.
8. Maintain project technical data and documentation.
9. Verify contractor's compliance with technical requirements of the contract.

B. Contracting Officer - The CO is responsible for all contractual matters relating to the projects. His routine responsibilities include the following:

1. Notify Contractor of contract award.
2. Provides direction to Contractor on all contractual matters.
3. Obtain all necessary contract documentation from the Contractor.
4. Negotiate, approve, and issue all contract changes and prepare all contract amendments.
5. Verifies Contractor compliance with contract requirements.
6. Originate, receive and transmit all correspondence with Contractor regarding contractual matters for all contracts other than construction.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE 2 OF 4



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

CONTRACT ADMINISTRATION

7. Review proposed Contractor subcontracts and grant approval for placement.
 8. Prepare contractual memoranda for presentation to District staff, Board of Directors and Board committees.
 9. Attend project progress meetings between contractors and other District staff.
 10. Maintain records and files of all data relating to contract performance.
 11. Perform contract close-out in accordance with established procedures.
3. Contracting Officer's Representative (COR) - The COR is responsible to perform such duties and functions as may be delegated by the CO.

V. PROCEDURES:

- A. Immediately after approval of award, the CO shall notify the Contractor and arrange for execution of the contract.
- B. The CO shall establish the contract file and initiate administration activities. As soon as practicable, the CO shall meet with the PM and the COR to discuss and define the specific methods and procedures to be employed on the project.
- C. If required by the contract, the CO shall obtain all relevant documentation from the Contractor before work begins. This documentation may include items such as permits, bonds, insurance certificates and other materials as specified in the contract.
- D. After receipt of all required documentation and after coordination between the PM and the CO, an authorization to begin work shall be issued. This notification may be a formal notice to proceed (NTP), if so specified in the contract, or if a NTP is not specifically required by contract, a letter

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE 3 OF 4



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE: CONTRACT ADMINISTRATION

acknowledging execution of the contract and providing any initial guidance considered appropriate by the CO.

- E. During the term of the contract, the PM and COR shall monitor Contractor progress and promptly inform the CO of any deficiencies in Contractor performance or deviations by the Contractor from the requirements of the contract. Based on this information, the CO shall take appropriate action to protect the District's interests and to preserve and enforce the terms of the contract.
- F. Requirements for changes and contract amendments shall be identified by the PM and forwarded to the CO for processing in accordance with the established change order procedure.
- G. The PM shall conduct project reviews as specified in the contract and/or as necessary to assess project progress. The CO and the COR may participate in these reviews as considered appropriate. Any deficiencies in Contractor performance shall be identified, documented and forwarded by the CO to the contractor for corrective action.
- H. Contractor invoices and requests for payment shall be reviewed by the PM for accuracy and verification of the amounts claimed. After review, the invoices are sent to the Controller-Treasurer-Auditor for further processing.
- I. Copies of all correspondence, both to and from the Contractor, shall be provided to the CO for inclusion in the contract file. All District correspondence which potentially impacts upon the costs, schedule, performance or general terms and conditions of the contract shall be transmitted to the Contractor only by the CO or Resident Engineer for Construction Contracts. Any Contractor correspondence received by the PM or other District employee which potentially impacts upon these areas shall immediately be forwarded to the CO for action.
- J. After project completion, the CO shall initiate contract close-out in accordance with established close-out procedures.

EXHIBIT 8





OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

CONTRACT CHANGES

I. AUTHORITY

- A. UMTA Circular 4220.1A
- B. District Rules and Regulations
- C. District Office of Contracts, Procurement and Materiel Procedures Manual

II. OBJECTIVES

To establish authority and procedures for issuance of changes to District contracts.

III. POLICY

The District reserves the right in all contracts to order changes in plans, specifications and performance. All such changes which result in an adjustment in price, schedule or contract terms and conditions shall be authorized in writing by the Contracting Officer (CO) and shall be formalized by execution of a contract amendment.

IV. RESPONSIBILITIES

A. The Contracting Officer is responsible to:

- 1. Insure all necessary change order documentation is obtained.
- 2. Conduct negotiations with contractors.
- 3. Issue change orders and contract amendments as authorized herein.
- 4. Maintain appropriate contract files.

B. The Project Manager (PM) is responsible to:

- 1. Assemble appropriate supporting data and documentation.
- 2. Obtain necessary approvals of the requisition for the proposed change.

ISSUE DATE

3-13-86

REVISION DATE

PREPARED BY

OCPM

APPROVED BY

PAGE 1 OF 4



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

3. Obtain change proposal from contractor.
 4. Assist CO in change order negotiations.
- C. The Contracting Officer's Representative (COR) is responsible to:
1. Represent the CO in administration of the contract.
 2. Perform such duties and exercise such authority as may be specifically delegated in writing by the CO.

V. PROCEDURE

- A. When it is determined that a change in contract plans, specifications or scope of work which may affect contract price or schedule is necessary or desirable, the PM shall process a requisition for the proposed change in accordance with the established requisition procedure. The PM shall develop and include with the requisition an independent estimate of the value of the change.
- B. After submission of the requisition, the PM shall request that the contractor submit a written proposal for accomplishment of the work required by the change. Such proposal shall contain price and/or costing data sufficient to permit a detailed evaluation of the cost of the proposed change by the District and shall be subject to District audit in accordance with the basic contract terms. If authorization of the change is urgently required, the contractor's proposal may be requested prior to or simultaneously with processing of the requisition. However, in any case, the PM's estimate of the value of the change must be developed independently of the contractor's cost proposal.
- C. The CO, or COR if so designated, assisted by the PM and other District staff as necessary, shall analyze the contractor's proposal and negotiate an equitable adjustment to the contract. A Cost/Price analysis of the proposal shall be conducted and shall be used as a basis for determining reasonableness of the price of the change. The analysis shall be included in the file supporting the change order.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF

2 4



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

- D. After completion of negotiations, the CO shall prepare a formal contract amendment which incorporates the negotiated change into the contract. The amendment shall be reviewed by the Legal Department for form and sufficiency.
- E. Contract amendments which exceed \$24,999 or which, when added to previous contract amendments, increase the original contract price by up to 10% or by \$24,999, whichever dollar amount is greater, must be submitted to the Board of Directors for approval. Amendments for lesser amounts may be approved by the General Manager or his designee.
- F. Three copies of the approved contract amendment shall be sent to the contractor for signature. After receipt of the signed copies, the amendment shall be executed by the CO and one copy returned to the contractor. The two remaining copies shall be distributed internally in accordance with the District's normal procedure for processing of contracts.
- G. When determined to be necessary by the CO, the contractor may be directed to proceed with the changed work prior to agreement as to an equitable adjustment in price and/or schedule. Such direction must be in writing and signed by the CO.
- H. In the event the contractor and the CO cannot reach final agreement as to an adjustment in schedule or price, the CO, after consultation with the PM and consideration and evaluation of all relevant factors, shall issue a determination as to the adjustment to be made. The contractor shall be directed to proceed with the changed work in accordance with the provisions of the contract.

VI. EMERGENCY CHANGES

When necessary to protect life or property or to avoid a serious work stoppage, the PM or other authorized District representative may direct a change in the contractor's work. Whenever possible, such changes shall be in writing and shall provide the details of the changed work. If time does not permit advance written authorization, direction shall be given verbally and followed by written notice as soon as practicable. In every case, all such changes must be confirmed in writing by the CO and supporting



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

contract documentation completed in accordance with established procedures.

VII. CONSTRUCTION CONTRACTS

Changes to Construction Contracts may be directed by means of the Contract Change Order Form. This form shall be prepared by the Resident Engineer and shall be approved by the CO or COR, as appropriate. Otherwise, the above procedures for cost analysis and authorization of the change shall also be applicable to construction contract changes.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF

4

4

EXHIBIT 9



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE: CONTRACTOR CLAIMS

I. AUTHORITY:

- A. UMTA Circular 4220.1A
- B. State and local law governing District procurements
- C. District Rules and Regulations, Board Policy, Administrative Policy

II. OBJECTIVES:

To describe procedures for the processing and resolution of contractor claims.

III. GENERAL:

When a mutually satisfactory agreement cannot be reached between the District and the contractor as to the contractual adjustment to be made as a result of changed work, the Contractor may submit a claim for reimbursement. The District shall consider all such claims and take action to resolve them in accordance with the terms of the contract and this procedure.

IV. RESPONSIBILITIES:

- A. The Contracting Officer (CO) is responsible to:
 - 1. Insure action is taken to thoroughly investigate and dispose of all claims in accordance with the contract terms.
 - 2. Coordinate, negotiate and issue final determinations of all contractual claims.
- B. The Project Manager (PM) is responsible to:
 - 1. Investigate all contractor claims and submit written evaluations and recommendations to the CO.
 - 2. Otherwise assist the CO as necessary in review, investigation and resolution of claims.

ISSUE DATE

2/3/86

REVISION DATE

PREPARED BY

OCPM

APPROVED BY

PAGE 1 OF 3



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE: CONTRACTOR CLAIMS

C. Other District offices shall be responsible to provide assistance in review of claims as requested by the CO.

V. PROCEDURES:

- A. The CO shall be immediately informed upon receipt by any District employee of a contractor's submission, or notice of intention of submission, of a claim for contract adjustment. Personnel in receipt of such a submission or notice should offer no opinion as to the merits of the claim to the claimant. The Contractors should be advised that all queries and contacts regarding claims shall be through the PM or the designated Contracting Officer Representative (COR) and that any discussions regarding the claim shall be conducted by the above personnel.
- B. Upon receipt of notice of intention to file a claim, or of receipt of a verbal claim, the CO shall direct the Contractor to submit full details of the claim, together with all justifications and supporting documentation, for consideration. The Contractor should be advised that his claim cannot be considered until such written submission is made.
- C. The CO shall initially review all submitted claims to determine if they have been filed within the time requirements established in the contract. Claims not timely submitted shall be rejected unless the CO determines, for good cause, that the claim should be considered on its merits, irrespective of contractual requirements for timely submission.
- D. All claims found to be acceptable for consideration shall be thoroughly investigated by the CO. Discussions may be held with the Contractor and other offices and activities as appropriate. A detailed analysis of the claim shall be requested from the PM and the Legal Department shall be requested to conduct a review of the submission. If necessary, the CO may also request assistance from other District offices in analysis of the claim.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF

2 3



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

CONTRACTOR CLAIMS

- E. Based upon the PM's analysis and the preliminary legal opinion, the CO shall make a written determination for disposition of the claim. The determination shall be coordinated with the user department and the Legal Department.
- F. After approval of the disposition of the claim by the CO, the Contractor shall be formally notified of the District's decision. If settlement of the claim involves payment of additional funds to the contractor, the claim will be processed in accordance with established procedures for expenditure approvals, including approval of the Board of Directors, if required, prior to finalization of the claim.
- G. If the contractor does not accept the final decision of the CO regarding the disposition of the claim, he may appeal the decision to the SCRTD Contract Appeals Board (CAB). When notified of an appeal of a claim, the CAB shall request that OCPM provide them with all information regarding the claim. The CAB shall also request that the contractor provide details as to the basis of the appeal. The CAB shall review all aspects of the claim and issue a determination for resolution of the claim. The CAB's decision shall be final and the claims shall be subject to no further review by the District.
- H. If additional payment under the contract is involved, a contract amendment will be prepared and included in the contract.

ISSUE DATE	REVISION DATE	PREPARED BY	APPROVED BY	PAGE 3 OF 3
------------	---------------	-------------	-------------	-------------

EXHIBIT 10



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:
CONTRACT TERMINATION

I. AUTHORITY:

1. UMTA Circular 4220.1A
2. State and local law governing District procurements
3. District Rules and Regulations, Board Policy, Administrative Policy

II. OBJECTIVES:

To establish procedures to be used when it becomes necessary to terminate a District contract.

III. POLICY:

The District retains the right in all contracts to terminate all or a part of the contract performance when such termination is determined to be in the District's best interests. Termination actions may be taken for the convenience of the District or because of failure of the contractor to perform in an acceptable manner.

IV. RESPONSIBILITIES:

- A. The Contracting Officer (CO) is responsible to thoroughly investigate, evaluate and issue final direction to the contractor regarding contract termination.
- B. The Project Manager (PM) is responsible to provide recommendations to the CO regarding the proposed termination and to assist in assessing the impact of the proposed action.

V. PROCEDURE:

A. GENERAL

1. When a user department determines that contractor performance under a District contract is no longer necessary or that performance is so deficient that contract termination should be considered, the PM should immediately contact the CO to establish the actions to be taken.

f-13

ISSUE DATE

2/3/86

REVISION DATE

PREPARED BY

APPROVED BY

PAGE 1 OF 5



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE: CONTRACT TERMINATION

2. The PM and the CO shall review all aspects of the procurement before proceeding with termination action. Consideration should be given to such factors as estimated termination costs and status of contract performance. The projected costs of termination should be carefully weighed against those of continued performance to insure the best course of action is selected.
3. If it is determined that a termination action should be taken, the CO shall prepare a Determination and Findings Report and a recommendation for Board of Directors action when appropriate. The recommendation shall be coordinated with the user department and the Legal Department.
4. The CO shall issue a notice of termination to the Contractor. If timely notification is necessary, the initial notice may be made verbally. In every case, the notification shall be confirmed by certified mail, return receipt requested. The notice shall direct the Contractor to stop work as of the effective date of termination, and shall include the reason for the termination, the extent of performance to be terminated and instructions for termination of subcontractors, if appropriate.
5. Within ten working days, the Contractor shall also be provided any other instructions regarding the termination, such as directions for disposition of property, processing of inventory and submission of final invoice and settlement proposal, as may be appropriate.

B. TERMINATION FOR DEFAULT (CAUSE)

1. If a termination for default is considered, such factors as the impact upon project schedule, potential costs associated with reprocurement, and availability of alternative sources of supply should also be considered. In addition, the District's previous actions regarding notification of deficiencies and requests for corrective

ISSUE DATE	REVISION DATE	PREPARED BY	APPROVED BY	PAGE	OF
------------	---------------	-------------	-------------	------	----



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE: CONTRACT TERMINATION

actions must be carefully reviewed and thoroughly documented before proceeding with the termination action.

2. The District may terminate contracts for supplies and services, in whole or in part, if the Contractor:
 - a. fails to make delivery of the supplies or to perform the services within the time specified in the contract;
 - b. fails to perform any other provision of the contract;
 - c. fails to make progress so as to endanger performance of the contract;
3. If the CO determines that termination for default is proper, after obtaining the necessary internal coordination and approvals, he shall immediately issue notice of termination upon the Contractor's failure to make timely deliveries. If the termination is for any other failure, the CO shall issue a written notice specifying the failure and giving the Contractor a period of 10 days, or longer, if appropriate, in which to cure the failure. Upon the expiration of the cure period, the CO may issue a default termination notice unless he determines that the failure has been cured.
4. When the CO determines that termination for default is appropriate, he will notify the Contractor, in writing of the termination action. The notice shall:
 - a. describe the Contractor's acts or omissions which resulted in the decision to terminate;
 - b. state that the Contractor's right to proceed with contract performance, in whole or in part, is terminated;
 - c. state that the District may obtain performance of the terminated contract from other sources and that the Contractor shall be liable for any increased costs;

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE: CONTRACT TERMINATION

- d. state that the District reserves all rights and remedies provided by law or under the contract; in addition to reprocurement costs.
- 5. If the contract is terminated for default, the District may take over and complete the work, or cause it to be completed, and the Contractor and his sureties shall be liable for any increased costs incurred thereby. The Contractor and his sureties shall also be liable for liquidated damages, if appropriate, or for actual damages if liquidated damages are not provided in the contract.
- 6. The CO shall take such actions as may be necessary to obtain the goods or services to have been provided under the defaulted contract. These actions may include obtaining contract performance from the defaulted Contractor's surety or obtaining performance by award of a new contract to another Contractor. The method of procurement to be employed shall be determined after consideration of all relevant information, including the urgency of the requirement. The CO shall use reasonable diligence to obtain the lowest price possible for the reprocured goods or services.

C. TERMINATION FOR CONVENIENCE

- 1. A no-cost settlement agreement is appropriate if no amounts are due the District under the contract and the Contractor has either incurred no costs for the terminated portion of the contract or agrees to waive re-imbursement of incurred costs.
- 2. A no-cost settlement agreement should be included with the Notice of Termination if appropriate.
- 3. If a no-cost settlement is not appropriate, the terminated Contractor shall be requested to submit his settlement proposal as soon as practicable after termination of the contract. The final date for submission shall be one year after the effective date of termination unless the CO authorizes, in writing, an extension for submission.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE: CONTRACT TERMINATION

4. Based upon the Contractor's submission and consideration of all relevant information, the CO shall make a settlement of the terminated contract. The policies and procedures outlined in the Federal Acquisition Regulations, Part 49 - Termination of Contracts, may be used as a guide for arriving at the final settlement. After conclusion of all settlement actions, the CO shall prepare a memorandum which describes all elements of the settlement for inclusion in the contract file.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF

EXHIBIT 11



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

CONTRACT CLOSE-OUT

I. AUTHORITY:

- A. UMTA Circular 4220.1A
- B. State and local law governing District procurements
- C. District Rules and Regulations
- D. District Office of Contracts, Procurement and Materiel Procedures Manual

II. OBJECTIVES:

To provide guidance for contract close-out upon project completion.

III. POLICY:

The contract is considered physically complete when all contract items are delivered and accepted and all services are performed by the contractor and accepted by the District. The contract shall not be closed until the contract is physically complete and all other contractual documentary and procedural requirements have been completed.

IV. RESPONSIBILITIES:

- A. The Contracting Officer (CO) is responsible to insure that contract files are complete and that all close-out actions are completed in a timely manner.
- B. The Project Manager (PM) is responsible to insure that all contractually required supplies and services have been delivered by the contractor and accepted by the District.
- C. The Contracting Officer's Representative (COR) shall perform such duties as may be delegated by the CO.
- D. Other District offices shall provide such assistance to the CA as may be necessary during the close-out process.

V. PROCEDURES:

- A. Prior to the scheduled contract completion date, the PM shall confirm that no contractor effort will be required after the

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:
CONTRACT CLOSE-OUT

specified date and that the contract may be closed out. This action shall be initiated at least 60 days prior to the specified completion date, whenever possible. This is necessary to determine whether there will be an overrun, to negotiate and extend the period of performance, if necessary, and to allow sufficient procurement lead time if there is a follow-on effort. If the contract is to be completed on schedule, the CO shall proceed with the contract close-out, otherwise, other appropriate action shall be taken.

- B. If the PM determines no follow-on contract effort is required, he shall, as appropriate, obtain a Notice of Completion from the contractor, issue a Notice of Acceptance, and advise the CO of contract completion.
- C. Upon written verification by the PM of completion of all work under the contract, the CO shall initiate actions specified in the "Contract Close-Out Checklist", Attachment 1 to this procedure.
- D. The CO shall obtain the contractor's closing statement, if appropriate, and final release certificate. These actions shall be accomplished by transmission of the contract close-out letter (Attachment 2 with enclosure).
- E. Amounts withheld from payment pursuant to contract provisions shall not be released for payment until all closing documentation has been completed, District property held by the contractors has been disposed of, and agreement has been reached as to the amount of the final payment.
- F. The CO shall determine if a final contract audit is required and when required, shall assist the District Auditor in performance of the audit.
- G. Based on the results of the final audit, final negotiations of indirect costs, burden rates, and disputed costs shall be conducted by the CO with assistance of the PM or COR.
- H. A final contract amendment which establishes the final contract amount, will be processed on all contracts where

ISSUE DATE	REVISION DATE	PREPARED BY	APPROVED BY	PAGE	OF
------------	---------------	-------------	-------------	------	----



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE: CONTRACT CLOSE-OUT

adjustment of the contract price is necessary as a result of final negotiations and resolution of outstanding costs.

- I. After completion of negotiations, and execution of the final contract amendment final payment, including any withheld amounts, shall be made.
- J. The CO, assisted as necessary by other District offices, shall complete any other close-out actions as necessary and prepare files for storage.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF

CONTRACT CLOSE-OUT CHECKLIST

Contractor _____ Total Contract Amount _____

Contract Number _____ Amendment Numbers _____

Description of Service _____

Completion Date _____

Initial and Date

1. Statement from Project Manager Certifying Completion and Acceptance of Work. _____
2. Record of Final Acceptance _____
3. All Contract Deliverables Received _____
4. Close-out letter to contractor _____
5. Final Invoice Received _____
6. Contract Audit Requested _____
7. Contract Audit Completed _____
8. Final Cost/Price Negotiations Completed _____
9. Closing Documents and Contractor Release Reviewed and Acceptable _____
10. Final Payment Approved _____



ATTACHMENT 2

Contractor Name

Contractor Address

Subject: Contractor No. _____

for _____

Gentlemen:

Records in our office indicate the subject contract has been completed.

Please complete the enclosed Final Release Forms and return both copies to this office.

Sincerely yours,

enclosure

Contractor's Final Release Form

ms45

jj

CONTRACTOR'S FINAL RELEASE

Pursuant to the terms of Contract No. _____, as amended, and in consideration of the sum of _____ Dollars (\$ _____), which has been or is to be paid under the said contract to _____ (hereinafter called the Contractor) or its assignees, if any, the Contractor for itself and its subcontractors, upon payment of the said sum by the Southern California Rapid Transit District (hereinafter called the District), does release and discharge the District their officers, agents, and employees, of and from all liabilities, obligations, claims and demand whatsoever under or arising from the said Contract.

IN WITNESS WHEREOF, this release has been executed this _____ day of _____, _____.

By: _____

CERTIFICATE

I, _____, certify that I am _____ (Title) of the firm named as Contractor in the foregoing release; that _____, who signed said release on behalf of the Contractor and its subcontractors, was the _____ (Title) of said firm; that said release powers as so constituted.

(If Corporation Affix
Corporate Seal)



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE: Solicitation, Evaluation, Negotiation,
Selection and Award of Negotiated Awards
~~Other Than Architect/Engineer~~

I. AUTHORITY:

- A. UMTA Circular 4220.1A
- B. State and local law governing District procurements
- C. District Rules and Regulations, Board Policy, Administrative Policy

II. OBJECTIVES:

To insure adherence to all applicable federal, state and local law governing District with respect to negotiated procurements and to provide contracting personnel with a standard and consistent procedure for carrying out solicitation, evaluation, negotiation, selection and award of negotiated procurements.

III. PROCEDURE:

A. Solicitation

1. Contents of Request for Proposals

The Contracting Officer, (CO) shall issue Requests for Proposals (RFP's). In addition to containing a statement of work and submission instructions, the RFP shall contain a set of evaluation criteria sufficiently detailed to give responsible proposers clear and complete guidelines for presenting their qualifications to perform the required work.

2. Number of Sources Solicited

- a. Proposals shall be sent to as many sources as practicable to ensure adequate competition, consistent with the nature and requirements of the procurement. RFP's shall be sent to firms included on a proposer list developed prior to solicitation and to those firms responding to public advertisement of the RFP.
- b. The availability of RFP's shall be advertised, at a minimum, in a newspaper of general solicitation in the



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

Los Angeles region. Advertisements shall also be placed in the following:

- (1) Ethnic newspapers and minority/women association journals, whenever such placement will further the District's policy of maximizing disadvantaged and women-owned business enterprise contracting opportunities.
- (2) In national trade journals, when sources in a national market, and located outside of Southern California, have the ability to perform the required work, and advertisement in such journals will enhance competition.

3. Duration of Solicitation

RFP's shall remain open for a minimum of ten calendar days from date of advertisement in a newspaper of general circulation in the Los Angeles region. Longer periods shall apply, depending upon the complexity of the procurement or the length of anticipated responses. Generally, a period of not less than 30 days is appropriate for federally funded procurements.

4. Receipt of Proposals

a. Sealed proposals shall be received in the Office of Contracts, Procurement and Materiel, logged in and date stamped. Proposals must be received prior to the closing time. Late proposals will be accepted only under the following circumstances:

- (1) Proven mishandling by District personnel, in spite of good faith efforts of the proposer to submit prior to the deadline.



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

(2) Late delivery by the United States Postal Service, when the proposal was sent by registered or certified mail, return receipt requested, not less than five calendar days prior to the date due. Proposers must prove date of submission by legible postmarks.

- b. Proposals which are inexcusably late shall be returned to the proposers unopened.
- c. After logging and time stamping by OCPM clerical staff, proposals shall be taken to their assigned contract administrator.
- d. After the submission time has passed, the contract administrator and support staff shall open all proposals, and assign each copy a control number. As soon as possible, proposals shall be distributed to appropriate staff. In those cases where cost proposals are submitted under separate cover, such cost proposals shall be maintained in a secure location until after technical proposal evaluations are completed.

5. Maintenance of Confidentiality

- a. Proposals shall be treated as restricted and confidential documents.
- b. Their contents shall not be disclosed to persons outside of the solicitation-award process until after contract award. Copies of proposals not distributed shall be maintained in a secure location.
- c. All District and any outside personnel who receive copies of proposals shall be required to execute a "Declaration of Confidentiality" in a form approved by the Director of Office of Contracts, Procurement and Materiel and legal staff.



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

d. Additionally, prior to contract award, no information may be divulged to other than authorized persons pertaining to:

- (1) Names of proposers.
- (2) Number of proposals received.
- (3) Relative standings of proposers.
- (4) Opinions as to the outcome of the procurement.

B. Evaluation

1. Proposal Review Staff

a. Proposals shall be reviewed by appropriate District staff and, if necessary, outside individuals who have particular expertise not available in-house.

b. Informal review procedures may be used under the following circumstances:

- (1) The procurement is for less than \$25,000 for District-funded and \$10,000 for federally-funded procurements.
- (2) The procurement is not complex.
- (3) There are no DBE/WBE goals and associated subcontracting provisions.

c. For proposals which do not qualify for informal review procedures, the CO may appoint a Proposal Evaluation Committee (PEC). Such appointment shall be by memorandum, and shall be subject to approval by the General Manager. A PEC may be restricted to the CO or his designated representative when appropriate.

d. Membership of the appointed PEC shall consist of the following at a minimum:

- (1) OCPM

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF

4

12



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

- (2) User Department
- (3) Equal Opportunity
- (4) Legal
- e. Additional departments shall be represented if they have an operating interest in the product or services to be furnished.
- f. All departments represented on the PEC shall have at least one vote.
- g. The CO shall have the right to grant additional voting strength to a department if such is deemed to be in the District's best interest.
- h. Non-voting members such as outside consultants, alternates, and a secretary may be appointed to PEC's as necessary. However, the size of PEC's shall be kept at the minimum number consistent with adequate review.
- i. Members of PEC's shall be selected based upon their technical knowledge of the product or services. Members of the Board of Directors and the Executive Staff shall not be appointed to PEC's, nor shall any person be appointed to a PEC whose presence thereon would be a conflict of interest.
- j. Following review, evaluation and scoring of written proposals, a "competitive range" shall be established. The competitive range shall consist of all proposals which appear to have a reasonable chance of contract award without extensive re-writing of the proposal. It shall not necessarily be those proposals which have the highest scores. The competitive range shall include those proposals which are judged clearly acceptable and those which are judged defective but capable of being made acceptable through discussions. Considerations in establishing the competitive range are the following:

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE 5 OF 12



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

- (1) Technical and price considerations.
 - (2) Range and groupings of scores.
 - (3) Amount of competition in written proposals.
 - (4) Extent to which deficient proposals are judged to be capable of being made acceptable through modification as a result of written and oral discussions.
- k. When there is uncertainty as to whether or not a proposal should be included in the competitive range, the uncertainty shall be resolved by inclusion. For example, a proposal with a marginal technical score, but a very favorable price shall be included in the competitive range. Likewise, a proposal with a high technical score and a very high price shall be included in the competitive range unless the price is so high as patently to constitute bad faith.
- l. OCEM staff shall prepare a memorandum recommending the competitive range. This memorandum shall include a synopsis of the procurement to date, narrative summaries of the features, strengths and weaknesses of each written proposal received, proposal, scores, and cost/price data. The cost or price analysis shall be made part of or attached to the memorandum.
- m. The memorandum shall be signed by all staff evaluating the proposal; this shall include all voting members of the PEC.
- n. The CO or designee shall review the memorandum recommendation and shall establish the competitive range. If the CO agrees with the recommendation, a signature of concurrence shall be sufficient to establish the competitive range. If the CO disagrees with the recommendation, he shall execute a separate memorandum establishing the competitive range and justifying the decision.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE DF

6 12



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

C. Negotiation

1. Negotiating Committee

Depending upon the value and complexity of the procurement, negotiations may be held by individual OCPM staff or a committee. If the Proposal Evaluation Committee also serves as a negotiating committee, it shall be called the "Proposal Evaluation/Negotiation Committee (PENEC)". If a separate contract negotiation committee (CNC) is appointed, the representation and appointment procedure shall be similar to those for the PEC. All qualified District staff shall be eligible to serve on a CNC, including executive staff, unless there is a conflict of interest. Members of the Board of Directors shall not be eligible to be members of a CNC.

2. Conduct of Negotiations

a. Negotiations shall consist of written or oral discussions with proposers in the competitive range. The objective of the discussions shall be to develop the best possible technical proposals for the lowest possible price or estimated cost, consistent with law and good procurement practice.

b. Discussions shall cover both technical and cost/price areas of proposals, and shall be essentially unrestricted, except for the following:

(1) The product or services must be within the RFP scope, and must not include items which were expressly excluded by the RFP.

(2) "Technology transfer" shall not be used. Technology transfer is the practice of revealing to a proposer methods, offerings or other distinctive features of another proposer, with the objective of making proposers technically the



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

same. Attempts to improve proposals technically shall focus upon the stated objectives of the procurement, and shall draw upon information generally available to all proposers.

- (3) "Auctioning" or the appearance of auctioning shall not be permitted. Auctioning is the disclosure of any one proposer's price or cost information among other proposers with the objective of reducing all prices or cost estimates. Such disclosure may or may not be identified as to source. It shall be permissible in price/cost discussions for District negotiators to state that a proposer's quotations are "high", "unreasonable", "out of the market" or the like, so long as no other proposer's quotations are designated as a goal, expressly or implicitly. Furthermore, it shall be permissible to support the District's position with information that is a matter of public record, or with data from private sources used with permission of such sources.
- (4) Notes on negotiations shall be maintained in detail sufficient to document all significant events.
- (5) The cost/price analysis shall be used by the negotiating committee in negotiation of both the individual elements of the Contract work program, and of the overall contract price.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF

8 12



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

3. Dropping of Proposers from Competitive Range

- a. The negotiation process shall attempt to retain all proposers within the the competitive range. If any proposer fails to cure deficiencies in its proposal, or otherwise fails to come to substantial agreement with the District in matters of services, cost, price or terms and conditions, it may be dropped from the competitive range. Dropping a proposer from the competitive range shall be documented and justified, and shall be approved by the Contracting Officer.
- b. A proposer dropped from the competitive range shall be so notified promptly in writing.

4. Best and Final Offers

- a. At the conclusion of negotiations, the District shall solicit "Best and Final Offers" (BAFO's) from all proposers still within the competitive range. BAFO requests shall consist of the following:
 - 1. A cover letter stating that negotiations are concluded, expressly requesting the BAFO, and giving the cut-off date for submission.
 - 2. Clarifications and, as permitted by the RFP, modifications to services which were agreed to in negotiations. These may be made part of the cover letter if they are not long, or include as an attachment thereto.
 - 3. Any forms needed by the proposer to convey BAFO information.
 - 4. A contract, or contractual document, for signature by the proposer, containing, or clearly referencing, all agreements made in contract negotiations.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF

9 12



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

- b. BAFO requests shall be sent to all proposers in the competitive range at the same time by certified or registered mail, return receipt requested.
- c. Proposers shall be given a sufficient amount of time to submit BAFO's; at a minimum, seven calendar days from date of mailing.
- d. BAFO's shall be received in OCPM at the common cut-off date. Late BAFO's shall not be considered unless the circumstances of lateness are the same as those excusing late proposals.

5. Evaluation of Best and Final Offers

- a. BAFO's shall be reviewed, evaluated and scored according to the criteria set forth in the RFP, or according to new criteria, if use of new criteria is deemed to be:
 - 1. In the best interest of the District.
 - 2. Permitted by law.
 - 3. Not contradictory to the original RFP criteria.
- b. The CO shall approve any new evaluation criteria.
- c. If BAFO evaluation criteria are different from written proposal evaluation criteria, proposers shall be fully informed of the new criteria with or prior to the BAFO request.
- d. Scores of individual negotiating committee members shall be averaged to produce a composite BAFO score for each proposer.

D. Source Selection

- 1. After review, evaluation and scoring of BAFO's OCPM staff shall prepare a Source Selection Memorandum which shall have the following components:



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

- a. Recommendation for contract award.
 - b. Synopsis of procurement history.
 - c. Summary of negotiations (This may be a separate attached document).
 - d. Narratives presenting features, strengths and weaknesses of BAFO proposals.
 - e. Composite technical and price scores of proposers.
 - f. Cost/price analysis of BAFO proposals (This may be a separate attached document.)
 - g. Conclusion justifying the recommendation.
2. Source selection memoranda shall be in a format basically compatible with the Board report format, so as to minimize rewriting for those procurements needing Board approval.
 3. The Source Selection Memorandum shall be signed by all staff evaluating the BAFO's; this shall include all voting members of the negotiating committee.

E. Contract Award

1. The CO shall review the Source Selection Memorandum and shall act, depending upon the dollar value of the procurement.
 - a. If the procurement is less than \$25,000, the CO shall make the award decision.
 - b. If the procurement is greater than \$25,000, the CO shall recommend an award to the Board of Directors, using the appropriate report documentation. Report documentation shall include a list of alternatives to the recommended award, and the probable consequences of each alternative.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF

11 12



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

2. If the CO agrees with the Source Selection Memorandum, his signature of concurrence shall be sufficient to award, or recommend award of a contract. If the CO does not agree with the Source Selection Memorandum, he shall prepare and execute a separate memorandum awarding, or recommending award of, a contract, and justifying the decision.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE 12 OF 12

EXHIBIT 13

3. Cost/Price Analysis

A cost or price analysis shall be performed in conjunction with all new contracts or modifications to contracts for procurement for construction, material supplies, equipment and services. The Contracting Officer (CO) shall insure that an appropriate price or cost analysis is performed and properly used in the process of contract negotiation or award.

a. Price Analysis

Price analysis (as distinguished from cost analysis) is the process of examining and evaluating a prospective price without regard to the separate cost elements and proposed profit of the prospective contractor. Price analysis, without resorting to cost analysis, may be used to support the reasonableness of awards when price competition is adequate or when price analysis, by itself, provides a reasonable basis for award. Some form of price analysis is used in the evaluation of every price proposal received in response to a negotiated procurement and every formally advertised bid.

Perhaps the greatest advantage of price analysis is that it quickly reveals major inconsistencies and apparent discrepancies. It then makes it unnecessary to conduct time-consuming, detailed analysis of obviously unacceptable proposals. In addition, price analysis permits the CO to determine whether, and to what extent, a closer examination of individual elements of cost and profit may be necessary.

Price analysis is basically a comparative process. Therefore, it is meaningful only if the data being compared are in fact comparable. This may not be the case, for example, when prices have been based on different assumptions about technical or performance requirements. If a price proposal seems extremely low (that is, if it appears to be out of line with the District cost estimate), it is necessary to determine whether the offeror has made an error or misinterpreted the contract requirements. The importance of a good, realistic cost estimate prepared by the District cannot be overstated. It is one of the essential elements in the comparative process used in price analysis.

b. Cost Analysis

(1) General

Cost analysis of a cost proposal involves verification of all cost data and examination of specific elements of cost. Judgments must be made about such questions as the necessity and reasonableness of the proposed costs and the basis on

PROCUREMENT MANUAL
SECTION V POLICIES
Paragraph D.3 COST/PRICE ANALYSIS

which particular overhead costs were allocated to the contract.

Cost analysis requires the evaluation of specific elements of cost to ascertain whether the price is reasonable. It should be emphasized that this technique operates more to control and reduce costs than to restrict profit. If costs are overestimated or if they contain provisions for events unlikely to occur, they may generate more excessive profits than an overly generous profit allowance would. Thus, cost analysis extends to two areas: the reasonableness of the amounts stated and the necessity for incurring certain costs.

Cost comparisons should be one of the first steps in the analytic process, since comparisons of elements often disclose areas requiring further scrutiny. It might involve a comparison of the contractor's historical or estimated costs with his latest income or operating statement. Comparison of this kind relies on recorded costs derived from the contractor's accounting records. This part of cost analysis may be performed through audit assistance.

The extent or depth of cost analysis should proceed as necessary to ensure reasonableness of prices, taking into account the expected dollar value of the procurement and the time available for evaluation. Normally, the possible benefits of cost analysis should not be outweighed by the administrative cost to the District and the prospective contractor.

(2) Fair and Reasonable Price

To determine the reasonableness of proposed contract prices, some form of price or cost analysis is required in connection with every procurement. The phrase "fair and reasonable price" is subjective and implies a personal viewpoint. The CO must determine the price that he considers is fair under current market conditions, reasonable to the prospective contractor, and reasonable to District.

(3) Profit Factor

When price competition is absent, the proposed profit and cost must be evaluated in sufficient detail to determine the reasonableness of the overall price. The CO must then determine an appropriate profit objective by applying various factors, such as:

PROCUREMENT MANUAL
SECTION V POLICIES
Paragraph D.3 COST/PRICE ANALYSIS

- (a) Contractor's input to total performance. Profit should be based on how much he, as opposed to a lower-tier subcontractor, will contribute to total performance.
- (b) Contractor's assumption of risk. The greater the risk, the greater the Contractor's profit objective will be. The District's objective normally will be to place the maximum risk upon the Contractor, where possible. Maximum risk to the Contractor occurs in a firm, fixed-price contract for a complex design or service that is realistically priced. Minimum risk to the Contractor is assumed in a cost-plus-fixed-fee contract.
- (c) Weighted guidelines. This method applies a pre-determined range of values to each profit consideration or factor. The different values reflect that some profit factors are more important than others.
- (d) Other selected factors. For example, prior record of performance on District contracts.

Although a percentage approach to profit may be taken, it should not be a substitute for an evaluation of the profit factors on the total profit dollar amount.

(4) Contractor Cost or Pricing Data Forms

A certificate of current cost and pricing data is required on all procurements of \$100,000 or greater. For other negotiated procurements, Optional Form 60 or FAA form 4400, will be used regardless of dollar amount. These forms are to be submitted with the Contractor's price proposal.

(5) Audit Assistance

The CO will request audit assistance on all cost proposals that may result in a contract of \$100,000 or greater, and on modifications that increase or decrease the contract by \$100,000 or greater. The internal audit services of the District Controller's Office will provide that service. Requests for such assistance shall be made to the District's Controller. Audit assistance may be requested for procurement actions under \$100,000 when warranted by unusual circumstances.

6. Documentation of Cost/Price Analysis

The CO, or his designee will produce documentation of negotiations with contractors in the form of a Memorandum of

PROCUREMENT MANUAL
SECTION V POLICIES
Paragraph D.3 COST/PRICE ANALYSIS

Negotiations. A separate memorandum to the contract file shall document the determinations and findings which result from the cost or price analysis in each case.

EXHIBIT 14

S.C.R.T.D. LIBRARY



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

Cost and Price Analysis

I. AUTHORITY:

- A. UMTA Circular 4420.1A
- B. DOT Order 4600.9B, Change 5
- C. District Rules and Regulations

II. OBJECTIVES:

- A. To define the requirements for conducting cost and price analyses on all procurements and modifications involving District contracts.
- B. To set forth direction in the techniques of conducting cost and price analyses.

III. PROCEDURE:

A. For Formally Advertised Procurements (BIDS)

- 1. Price analysis of formally advertised procurements shall be performed on all formally advertised procurements. The price analysis will be used to determine the reasonableness of a proposed price as compared with others proposed under the same or similar solicitation.
- 2. The price analysis shall be performed by the Contracting Officer (CO) or his designee.
 - a. Applications
 - (1) Where adequate competition exists.
 - (2) Where standard items are being purchased that are readily available and sold to the public in substantial quantities in a price competitive environment.
 - (3) Where items being purchased are "off the shelf" and have a clear price history.

b. Methods for Conducting a Price Analysis

ISSUE DATE

2/3/86

REVISION DATE

PREPARED BY

OCPM

APPROVED BY

PAGE OF

1

13



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

(1) Comparing Competitively Submitted Prices. This method is used in conjunction with formally advertised procurements and is predicated upon the assumption that adequate price competition exists.

(a) The following criteria should be examined to make a determination as to whether adequate price competition exists:

- 1) There should be at least two offerors;
- 2) These offerors can satisfy the requirements identified by the purchaser;
- 3) The offerors are independently contending for the award; and
- 4) The offerors submit price offers that are responsive to the requirements of the solicitation.

(2) Comparing Prices of Previous Procurements

- (a) Establish whether the initial price was competitive.
- (b) Establish whether any significant differences in the terms of the two prices compared could account for a price disparity.
- (c) Assure that the prices compared fall within the same general time frame.

(3) Comparing Proposed Price with Catalog or Market Price



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

(a) This method is to be used only in cases where the established catalog or market price is:

- a. for a commercial item,
- b. sold in substantial quantities and
- c. offered to the general public.

(b) The catalog price must be published, available for inspection by customers and it must state the price at which recent sales have been made to buyers from the general public.

(c) A market price is one that has been recently established in an open market transaction between buyers and sellers independent of the manufacturer or vendor.

(4) Comparing Proposed Price with Independent Estimate

(a) Independent estimates are to be made by qualified District personnel.

(b) This method is a requirement of UMTA and is not an alternative form of price analysis.

(c) DOT Order 4600.9B should be used for guidance in this area.

B. For Negotiated Procurements (Proposals)

1. Applications

Price and Cost Analyses required hereunder will be performed by the CO or his designee.

a. Price analysis or cost analysis, whichever is appropriate, will be performed on all negotiated

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE 3 OF 13



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

procurements. The price analysis will be used to determine the reasonableness of a proposed price as compared with others proposed under the same or similar solicitations.

- b. Cost analysis will be used to achieve a fair and equitable pricing arrangement in the absence of adequate price competition, and where price analysis by itself does not assure the reasonableness of an offeror's price. Cost analysis shall be performed on all negotiated procurements exceeding \$100,000.
- c. The purpose of cost analysis is to determine the reasonableness of a proposed contract price whenever a contractor or offeror is required to submit cost or pricing data. Cost analysis is an evaluation of the contractor's proposed costs or pricing data and of the assumptions and judgmental factors used in projecting the estimated costs. Cost analysis is used to form an opinion on the degree to which a contractor's proposed costs represent what the contract should cost if the contractor uses reasonable economy and efficiency.
- d. No matter which of the following methods are to be utilized to accomplish the cost analysis the three most important factors which govern the process of analyzing cost data submitted by the contractor are:
 - (1) reasonableness, i.e., costs do not exceed that which would be incurred by an ordinary, prudent person in the conduct of a competitive business;
 - (2) allowability, i.e., cost accounting standards is applied to guidance provided by the District;
 - (3) allocability, i.e., costs can be assignable or chargeable to one or more specific cost objective(s) or to the indirect cost pool.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE 4 OF 13



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

e. These three primary issues are fundamental to the cost analysis process. Every technique applied to the cost analysis process is aimed at determining reasonableness, allowability and allocability.

2. Methods of Conducting A Price Analysis
Refer to Section IV.1.b.

3. Methods of Conducting a Cost Analysis

a. Analyzing The Cost Of Direct Material

The cost analyst should use one of the following techniques in determining whether the quantity and price of materials are actually within the prescribed guidelines.

(1) Statistical Approach

Data gathered from prior projects of a similar nature may be utilized to estimate the direct material requirement costs for the current project. The cost analyst must determine that the prior data are meaningful and represent the most recent data available.

Material costs may be estimated as a percentage of direct labor, a percentage of direct engineering, or a percentage of direct manufacturing costs.

(2) Priced Bill of Materials

The cost analyst should review the priced bill of materials for proper cost identification; high cost items; efficient usage of materials; and compare the specifications to bill of materials for scrap/waste allowance determination.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE 5 OF 13



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

(3) Average Estimate of Materials

The average estimate of materials is based upon historical bills of materials. To do this an analyst must consider any technological changes in the method of manufacturing, tooling, possible increases in item prices along with any increase/decrease to the quantity of items to develop an average cost of materials.

(4) Average Cost Per Unit

By utilizing a learning curve on historical and current procurements, the cost analyst can develop an average cost per unit that would reflect a more accurate average unit cost projection. The analyst must consider other circumstances of historical procurements also. Comparable line items are quantity, volume, quality and delivery terms.

b. Labor Costs

Labor costs are more difficult to analyze than direct material costs. Certain methods are listed below for the cost analyst to identify and analyze labor costs whether direct or indirect..

The following summary illustrates the differences between the two categories:

(1) Direct Labor

- (a) Directly associated with a product and usually produces a change in raw materials
- (b) readily identified with a product
- (c) can be identified and measured in association with a given task

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE DF

6 13



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

(d) generally includes direct factory labor, fabrication labor, assembly labor and quality control

(2) Indirect Labor

All labor hours not chargeable as directly pertaining to contract performance are classified as indirect, as defined above, and are chargeable generally through overhead cost pools.

(a) can not be assigned to a particular product or divided into quantities that are associated with individual end items

(b) generally includes indirect factory labor

(c) engineering, tooling, planning, expediting and estimating are generally called indirect manufacturing labor

Regardless of the classification used by the contractor, the analyst should insure that the method of classification is applied consistently within the particular contract and among the vendor's other contracts that are to be examined.

c. Analyzing Overhead Costs

A contractor's overhead costs are those cost items which are applicable to his labor. A contractor will estimate his overhead costs and production level to arrive at an overhead application rate. Since actual indirect costs cannot be identified until the end of the accounting period, the contractor must estimate at the beginning of the period the direct and indirect costs that will be incurred. The cost analyst must realize that the contractor's estimate of overhead should be based on

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF

7 13



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

his total workload, because the volume of work affects the unit cost of a product.

The cost analyst should determine that the period considered in the estimated overhead cost is consistent with the contract contemplated; forecast the production and sales volume for that period; review projections of the manpower by functional areas; check the component elements of overhead for reasonableness, necessity, and allocability to the contemplated contract; establish an estimate of the total amount of applicable overhead costs; and determine a reasonable estimate of the overhead dollars applied to the contemplated contract.

(1) Determination of Direct Labor Hours

By utilizing a flow process chart, a cost analyst can break down the procedures and activities in the production process. By doing so, the cost analyst can then identify work units according to operation, transportation, inspection, delay and storage. Each operation is then identified as being either direct labor or indirect labor.

Standard time studies is also used as another method of estimating direct labor hours. This method has been developed and utilized on an industry-wide basis. It is quite often used for large organizations involved in major procurements.

One major concern for the cost analyst to be aware of when using the standard time studies is the efficiency of the supplier's operations.

The learning curve technique is also another method for estimating direct labor hours. This method can be beneficial; i.e., when production activity is increased an improvement process is

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF

8 13



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

activated. As such, when more units are produced the actual labor-hours required to perform a particular operation are reduced.

Another aspect of analyzing the labor element is labor wages. Since most manufacturers employ both high and low wage laborers in their manufacturing process, they use an average wage figure in estimating their direct labor costs. This is good reason for the cost analyst to have a good hands-on knowledge of the manufactured item.

The cost analyst can determine an appropriate wage rate using graphical and computational techniques. By using historical data, the cost analyst may make a projection of the expected or anticipated wage rates for the period of the contract. When labor rates are predicted, the average historical rates are generally adjusted to eliminate the effects of change in economic levels. Then the adjusted rate is correlated with the laborers and the number of labor hours.

(2) Determination of Indirect Labor Hours

All Labor hours not chargeable as directly pertaining to contract performance are classified as indirect, as defined above, and are chargeable generally through overhead cost pools.

d. Other Direct Costs (ODC)

There are times when costs usually treated as overhead items are charged as other direct costs. Examples of Other Direct Costs are special insurance, special travel expenses, mobilization costs, certain clerical salaries, supplies, computer expenses reproduction and communication expenses.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE 9 OF 13



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

(1) Acceptability Criteria

For costs usually treated as indirects, the cost analyst should determine the need for special treatment, the necessity for incurrence and reasonableness of the amount. The company's accounting and estimating practices must provide consistent treatment of these special costs during the period under review. To prevent duplication, when other direct costs items of expense are considered, similar costs should be excluded from overhead applied to the estimate.

e. Subcontract Costs

These are costs incurred for parts, components or services produced or performed by other than the prime contractor in accordance with the prime contractor's designs, specifications or directions and applicable only to the prime contract. While subcontract evaluation and analysis are the responsibility of the prime contractor, or higher-tier subcontractor, the cost analyst is responsible for the total price paid by the District, and must assume that the prime has performed an adequate and acceptable analysis of the subcontract proposal.

(1) Submission of Subcontract Costs

The prime or higher-tier subcontractor is responsible for submitting subcontractor costs or pricing data with its proposal, under stated circumstances, and he must include his evaluation and assessment of the subcontractor proposals to which these data relate.

(2) Evaluation of Subcontract Costs

The cost analyst should make a determination that the subcontracted items or services have

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF

10 13



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

been selected through a competitive procedure to the extent possible and represent what is needed to meet the contract specifications. Analysis of what the subcontracted items or services should cost can be secured through a review of current catalog prices, if for items and a review of current labor hour rates, if for services. If the subcontracted item or service was not proposed on a competitive basis, but upon negotiation, the cost analyst must review the methodology used by the prime to negotiate for the item or service.

f. General and Administrative Costs (G&A)

G&A includes indirect expenses such as the company's general and executive offices, executive compensation, the cost of staff services (e.g., legal, accounting, public relations, financial and similar expenses), and other miscellaneous expenses related to the overall business which are identifiable with the production of a specific product unit or contract.

(1) Submission of G&A Costs

Proposers will generally submit G&A data in the form of a percentage of some appropriate cost base. The cost analyst should determine whether the proposer's G&A rate has been audited by a cognizant government auditor or has not. If the contractor cannot provide evidence that the rate has been established through negotiation, the cost analyst should assess the allowability of the cost elements included in G&A and the reasonableness of the proposed rate.

g. Profit

Profit represents a projected or known monetary excess realized by a performer after the deduction

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE 11 OF 13



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

of cost (both direct and indirect) incurred or to be incurred in the performance of a job, task or series of the same.

(1) Determination of Profit

In determining appropriate profit level for a particular contract, the following elements should be considered and evaluated:

- (a) Contractor effort - The amount or degree of actual contractor effort devoted to performance of the contract. This should include an assessment of the difficulty of the work to be performed and the kinds of skills required of the contractor.
- (b) Degree of risk - The amount of profit should reflect the degree of risk assumed by the contractor. This assessment should include consideration of such factors as the contract type, the reliability of the cost estimate, and the anticipated degree of technical innovation required for contract performance.
- (c) Extent of Contractor's investment - The profit level should recognize the extent of the contractor's overall investment, in facilities and funding and other areas, in performance of the contract.
- (d) Assistance to be furnished by the District - Unusual District assistance in the form of facilities, financing or other special assistance should result in a lower profit level for the contractor.
- (e) Contractor's performance - The contractor's past and present performance in such areas as cost control, quality control,

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF

12 13



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

and compliance with schedules and other contract requirements should be evaluated and recognized in establishing profit factors.

- (f) Additional factors - Any other factors which are appropriate for consideration on a particular procurement.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF
13 13

EXHIBIT 15

The following revision is made to the Procurement Manual.

F. Contract Types

1. General

There are two basic families of contract types: The fixed-price family and the cost family. The fixed-price family is the only type of pricing arrangement that can be used in conjunction with formally advertised procurements.

In negotiated procurements, either the fixed-price or the cost-reimbursement type contract can be used.

The primary difference between the two families of contract types is risk.

- a. In the fixed-price family, the risk of performing the contract for a lump sum falls on the Contractor. If there is an unanticipated cost overrun, the Contractor--not the District--must pay for it.
- b. In the cost-reimbursement family, the burden of risk falls on the District, who must not only pay the Contractor a guaranteed fee, but must pay costs--whether they exceed or fall short of original estimates.

The District shall not use a cost-plus-a-percentage-of-cost contract. Such contracts are prohibited by law where Federal funds are utilized and by District policy where District funds are used.

2. FIXED PRICE CONTRACTS Fixed-price types of contracts provide for a firm price or, in appropriate cases, an adjustable price. These contracts all have the common characteristic in that they bind the Contractor to complete the work at a fixed amount of compensation regardless of the cost performance.

a. Firm Fixed Price Contract

- (1) Description. A firm-fixed price contract is characterized by a lump-sum price not subject to any adjustment on the basis of the Contractor's cost experience performing the contract. It provides maximum incentive for the Contractor to control cost and perform effectively.
- (2) Application. A firm-fixed-price contract is suitable for acquiring commercial products or commercial-type products or for acquiring other supplies or services where reasonably definite functional or detailed specification exists and the Contracting Officer can establish fair and reasonable prices at the outset, such as when:

- (a) There is adequate price competition;
- (b) There are reasonable price comparisons with prior purchases of the same or similar supplies or services made on a competitive basis or supported by valid cost or pricing data;
- (c) Available cost or pricing data permits realistic estimates of the probable cost of performance; or;
- (d) Performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the Contractor is willing to accept a firm fixed price representing assumption of the risks involved.

b. Fixed-Price with Escalation (FP)

- (1) Description: A fixed-price contract is characterized by a lump-sum price subject to upward or downward adjustments in the stated contract price depending on contingencies specified in the Contract. Economic price adjustments are of three general types.
 - (a) Adjustments based on established prices.
 - (b) Adjustments based on actual costs of labor or material.
 - (c) Adjustments based on cost indexes of labor or material.
- (2) Application. Refer to the guideline set forth in FAR, section 16.203-2, for application limitation and recommended contract clauses.

c. Fixed-Price Incentive (FPI)

- (1) Description. This type of lump-sum contract is characterized by an adjustment formula in the contract which relates to the efficiency of the Contractor. A target profit and target cost are negotiated, along with a profit formula. The Contractor's profit increases or decreases according to the formula as the actual costs are less or more, respectively, than the target cost. The fixed-price incentive contract is distinguished from the cost-incentive contract by the inclusion of a ceiling price. Costs in excess of the ceiling are borne entirely by the Contractor.

- (2) Application. A fixed-price incentive contract is appropriate when a firm-fixed-price contract is not appropriate and the required supplies or services can be acquired at a lower cost and, in certain instances, with improved delivery or technical performance, by relating the amount of profit or fee payable under the contract to the Contractor's performance. See FAR, Section 16.401.

d. Fixed Price with Price Redetermination (FPPR)

- (1) Description. This is essentially a lump-sum contract with adjustments within specified limits negotiated as actual costs become known. As in fixed-price escalation contracts, the District assumes the risk of contingencies which may occur. The price redetermination may be made either at specified times during performance or after completion of performance.

- (2) Application: This type of contract should be used in limited instances only. See FAR, section 16-205-2 for application and limitations.

3. Cost-Reimbursement-Contracts - Cost-reimbursement types of contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the Contracting Officer.

a. Cost-Reimbursement (CR)

- (1) Description. A cost contract is a cost-reimbursement contract in which the contractor receives no fee.

- (2) Application. A cost contract may be appropriate for research and development work, particularly with non-profit educational institutions or other non-profit organizations, and facilities contract.

b. Cost-Sharing (CS)

- (1) Description. A cost-sharing contract is a cost-reimbursement contract in which the contractor receives no fee and is reimbursed only for an agreed upon portion of its allowable costs.

- (2) Application. This type of contract is used where the benefits of a research and development contract accrue to both parties.

c. Cost-Plus-Incentive-Fee (CPIF)

- (1) Description. This type of contract is similar to the fixed-price incentive contract, discussed earlier, except there is no ceiling price.
- (2) Applications. See FAR, Section 16.404-1.

d. Cost-Plus-A-Fixed-Fee (CPFF)

- (1) Description. The contract receives a set fee and is reimbursed for all costs allowable under established cost principles.
- (2) Application. This type of contract should be used only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract. See FAR, Section 16.306 for limitations.

e. Cost-Plus-Percentage-of-Cost (CPPC)

- (1) Description. Pricing is based on actual costs incurred by contractor plus a fixed percentage of profit on those costs.
- (2) Applications. This type of contract should never be used.

4. Other Forms of Contracts

a. Time-and-Material/Labor-Hour

- (1) Description. A time-and-material contract provides for acquiring supplies or services on the basis of (1) direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit and (2) material at cost.
- (2) Application. Time-and-Materials/Labor-Hour contract is the least preferred method of contracting and should be used with caution. It may be used only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate cost with any reasonable degree of confidence. See FAR Section 16.601.

5. Letter Contract

This is an interim type of contractual agreement which gives the Contractor a NOTICE TO PROCEED for the manufacture of

PROCUREMENT MANUAL
SECTION V POLICIES
PARAGRAPH F

supplies or performance of services. It is used in negotiated procurements only when a definitized fixed-price or cost-reimbursement contract cannot be negotiated in sufficient time to meet the procurement requirement. It shall contain appropriate provisions to protect the expenditure of funds, such as the following:

- (1) The date that the Contractor will have to commence performance;
- (2) The extent and method of payment in the event of termination either for the convenience of the District or for default;
- (3) The provision that the Contractor is not authorized to expend monies or incur obligations in excess of the stated amount;
- (4) The type of contract anticipated;
- (5) As many definitive contract provisions as possible;
- (6) The Contractor's obligation to provide such price and cost information as may reasonably be required by the District;
- (7) The prompt entry into good faith negotiations by the Contractor and the District to reach agreement and execute a definitive contract.

EXHIBIT 16

PROCUREMENT MANUAL
SECTION IX TESTING

The following revision is made to the Procurement Manual.

IX. TESTING

The Director of OCPM may require testing products by appropriate departments when he deems such test to be in best interest of the District. Testing requirements shall not be unreasonably imposed or implemented so as to inhibit competition. These procedures shall apply to the procurement of supplies only. Testing procedures and requirements for construction contracts shall be governed by the applicable construction specification.

A. Conditions for Testing

Products that differ from the referenced part number, and/or equal products or liquid chemicals spelled out in the specification are to be considered for testing and/or for the award when the grantee determines that the product is equal in all material respects.

if specifications are complete and definitive and no in-service testing is required, then pre-bid approval is not necessary. Any vendor who states he can meet the specifications is allowed to bid. The successful bidder's product will undergo testing to ensure conformance to specifications.

Chemical products in bids usually have very definitive specifications so no pre-bid approval is necessary.

B. Quality Requirements

1. The Quality Control (QC) Department is responsible for developing the requirements for inspection, testing, and other contract quality requirements essential to ensure the integrity of the supplies.
2. The QC Department performs all actions necessary to verify whether the supplies conform to contract quality requirements and to insure that parts and chemicals will not create a safety hazard to equipment or personnel.
3. The QC Department maintains test results for five years.

C. Inspection and Testing

The District's representatives may, with final completion of all of contractor's obligations under the contract, inspect and test all or any part of the work at any time. Contractor shall make available tools, pits, hoists, scaffolds, platforms, other equipment and assistance, as may be necessary for inspection under this paragraph.

PROCUREMENT MANUAL
SECTION IX TESTING

D. Inspection of Supplies and Workmanship

The District may test or inspect all supplies or workmanship to the extent practicable and, in any event, prior to acceptance by the District. The District may reject or require correction of defective material, workmanship or nonconformity to the contract.

E. Product Prequalification

When it is impractical to create specific design or performance specifications for a type of product to be purchased, the District may specify a list of approved products by reference to a particular manufacturer's number or seller's in accordance with the following product prequalification procedure:

1. The District must make reasonable efforts to notify all known manufacturers or vendors or competitive products of its intention to accept applications for inclusion in its list of prequalified products. Notification shall include, but not be limited to, advertisement in a trade journal of state-wide distribution when possible.
2. The District may notify vendors and manufacturers appearing in the appropriate list maintained by the District.
3. The District must permit applications for prequalification of similar products prior to advertisement for bids on products if time is available. A prequalification approval can be obtained prior to the next procurement cycle.

The product prequalification procedure under this section does not apply to construction contracts.

F. Test to Qualify Products

1. The District will accept products to be approved for its use by submitting samples to the quality control section.
2. Vendor will incur all costs for samples and delivery.
3. Products supplied may be consumed in tests and vendor will be notified prior to test procedures if that is the case.
4. The QC Department will assign a test number for product and will notify OCPM of that number to incorporate with the District's current computer listing.
5. Vendor will be notified of future acceptance or rejection of product by the OCPM. Test results from #37-83 will be submitted to OCPM for future procurement.

EXHIBIT 17



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE: WARRANTIES

I. AUTHORITY:

- A. UMTA Circular 4220.1A
- B. State and local law governing District Procurements
- C. District Rules and Regulations, Board Policy, Administrative Policy

II. OBJECTIVES:

The principal purposes of warranty in a District contract are to delineate the rights and obligations of the contractor and the District for defective items and to foster quality performance. General warranties survive acceptance of the contract items for a stated period of time or use, or until the occurrence of a specified event, notwithstanding other contractual provisions pertaining to acceptance by the District. Thus, they allow the District additional time after acceptance in which to assert a right consistent with the warranty provisions included in the contract.

III. PROCEDURE:

1. Nature of the Item. The nature of the item and its end use must be considered in determining whether a warranty is appropriate. This consideration includes the complexity and function of the item, the degree of the development of the item, the difficulty of detecting defects in the item prior to acceptance, and the potential harm to the District which could result if the item were defective. The type of specification involved should also be considered. When the design of the item is specified in detail by the District, the contractor's obligations under a warranty normally extend only to defects in material and workmanship or failure to conform to specifications. When the District does not specify the design, the warranty extends also to the usefulness of the design and fitness for its intended purpose.
2. Cost. In determining whether use of a warranty is advantageous to the District, the benefits to be derived from the warranty must be related to the cost of the

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

warranty to the District. Warranty costs arise from the contractor's charge within the contract price for accepting the deferred liability created by the warranty and from the District's administration and enforcement of the warranty. A contractor may quote a higher price to provide the warranty.

3. Trade Practice. Another factor influencing the decision to include a warranty is whether or not the item is customarily warranted in the trade. In many instances, as a result of trade practice, the cost of an item to the District will be the same whether or not a warranty is included. In such instances, it would be in the District's interest to include such a warranty.
4. Preparation of Warranty Provisions. To facilitate both contract pricing and administrative enforcement of District rights, warranties shall clearly set forth the exact nature of the item and its components and characteristics that the contractor warrants, and the extent of the contractor's warranty including all of the contractor's obligations to the District for breach of the warranty.

In preparing such provisions the guidelines set forth below shall be considered.

- a. Extent of Contractor's Obligations. Generally, the contractor's obligations under warranties extend to all defects discovered during the warranty period. The term defects as used herein does not include damage caused by the District. When a warranty for the entire item is not advisable, a warranty may be required for a particular aspect of the item which may require special protection (e.g., installation, components, accessories, subassemblies, etc.). When the District specifies the design of the item and its measurements, tolerances, materials, tests, or inspection requirements, the contractor's obligations for deficiencies shall usually be limited

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

to defects in material and workmanship or failure to conform to specifications.

- b. Remedies. Normally, a warranty shall provide, as a minimum, that the District may obtain an equitable adjustment of the contract or direct the contractor to repair or replace defective items at the contractor's expense.
- c. Duration of the Warranty. In preparing warranty provisions, care must be taken to clearly specify the time period or duration of the warranty. Time periods shall be established after consideration of such factors as (a) estimated useful life of the item, (b) the nature of the item and (c) trade practice. The period specified shall not extend the contractor's liability for patent defects beyond a reasonable time after acceptance by the District.
- d. Notice. A provision shall be included in a warranty specifying a reasonable time for furnishing notice to the contractor regarding the discovery of defective items.

5. Sample Warranty

- a. Except where longer periods of warranty are specified in the Special Provisions, the Contractor warrants all equipment, materials, and labor furnished or performed under the Contract shall be satisfactory for their intended purposes and shall be free of all defects in the design, materials, and workmanship for a period of one year from and after final acceptance under the Contract, regardless of whether the same were furnished or performed by Contractor or by any of its subcontractors of any tier. Upon receipt of written notice from the District of any defect in any such equipment, materials, or labor during the applicable warranty period, due to defective design, equipment, materials, or workmanship, the affected item or

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

parts thereof shall be redesigned, repaired, or replaced within a time period and in a manner acceptable to the District. Should Contractor fail to promptly make the necessary redesign, repair, replacement, and test, the District may perform or cause to be performed the same at the Contractor's expense.

- b. The Contractor shall perform tests as the District may require to verify that redesign, repairs, and replacements comply with the requirements of the Contract. All costs associated with redesign, repair, replacement, and testing, including the removal, replacement and reinstallation of equipment and materials, and workmanship shall be borne by the Contractor. Contractor's warrantee for such re-work shall be for the remainder of the original warranty period or a period of one year from and after the date of acceptance thereof, which ever occurs later.
- c. District-owned spare parts will not be used for warranty purposes unless the contract specifically allows for this practice. The Contractor shall maintain a sufficient quantity of replacement parts on hand at or near the District repair facility to repair warrantable failures and defects. The security, control, shipping, and disposition of Contractor-owned parts shall be the responsibility of the Contractor.

Contractor personnel shall be entitled to use District facilities and special equipment to perform warranty work, provided that such work is conducted during normal hours, does not interfere with other District activities, and is performed in accordance with District policies and directions. Damages to District property caused by Contractor representatives shall be the sole responsibility of the Contractor, and shall be corrected at the Contractor's expense.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

- d. Contractor and its surety or sureties, shall be liable for the satisfaction and full performance of the warranties as set forth herein.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF

EXHIBIT 18

PROCUREMENT MANUAL
SECTION VII BUYING PROCEDURES—GENERAL
PARAGRAPH 3 NEGOTIATED PROCUREMENTS

The following revision is made to Section VII of the Procurement Manual.

3. Negotiated Procurements

- a. Negotiated procurements shall be avoided whenever possible in favor of informal or formal bids.
- b. When negotiated procurement is used, the Contracting Officer (CO) shall work with the internal auditors using standard accounting procedures to insure the fairness and reasonableness of the offered price.
- c. Negotiated procurement shall be used only in those cases when it is impossible to obtain a concise statement of work, where there is insufficient competition, procurement of services, or as provided for by law. The District utilizes two types of negotiated procurements.
 - (1) Competitive negotiation, where proposals are solicited from a number of proposers;
 - (2) Non-competitive negotiation, where a proposal is solicited from a single source, or where, after appropriate solicitation was made to a number of sources, CO makes a determination that appropriate solicitation was made and that the one proposal received is technically adequate and has a reasonable price.
- d. Procurements made through negotiation normally shall utilize a Request for Proposal (RFP) solicitation process. Informal methods of solicitation may be used at the discretion of the Contracting Officer in accordance with the provisions of the District Rules and Regulations.
- e. Negotiation of contracts, regardless of type, shall be conducted in accordance with the procedures set forth in the Procurement Manual.
- f. Contracts awarded pursuant to RFP solicitation shall be awarded in accordance with the District Rules and Regulations and the criteria set forth in the solicitation document. The Board of Directors may accept or reject the recommendation of staff, and may interview proposers.

EXHIBIT 19

PROCUREMENT MANUAL
SECTION V PRINCIPAL POLICIES
PARAGRAPH D.2.

The following has been incorporated as an amendment to the District Procurement Manual

- w. Sound procurement practice and standards for federal funded contracts require sufficient documentation of procurement processes, decisions, and actions to provide a detailed history of a procurement. All purchase and contract files shall contain records of significant events adequate to support a complete review of the procurement.

EXHIBIT 20



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE: Procurement Documentation

I. AUTHORITY:

- A. UMTA Circular 4220.1A, OMBA-102
- B. State and local law governing District procurements
- C. District Rules and Regulations, Board Policy, Administrative Policy

II. PURPOSE:

To provide standardized purchase and contract file documentation procedures which insure complete and auditable purchase or contract files.

III. POLICY:

All procurement files shall contain sufficient documentation to provide a detailed history of significant events from initiation to contract close-out.

III. PROCEDURE:

A. General

- 1. Procurement files shall contain all information, forms, and documents required by applicable law, regulation, and District policy.
- 2. File documents shall be fully legible and capable of being reproduced.
- 3. File documents shall be controlled, and shall not be removed for any purpose by persons other than those responsible for maintaining them.
- 4. Documents or sections of procurement files removed for any purpose shall be annotated in the appropriate file jacket.
- 5. Procurement files which contain proprietary information, which has been designated by the preparer, shall be

ISSUE DATE

2/3/86

REVISION DATE

PREPARED BY

OCPM

APPROVED BY

PAGE 1 OF 8



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

marked accordingly, and shall be handled so as to protect the proprietary content.

6. Procurement files shall be treated with appropriate security so as to preclude loss, compromise, damage, or pilferage.

B. Bid/Purchase Order File

1. Bid/Purchase Order files shall be identified by assigned solicitation and purchase order number.
2. Bid/Purchase Order files shall be established upon receipt of a properly executed purchase requisition, RTD form 37-19.
3. A check list of all items required for the Bid/Purchase Order file shall be contained in each file. The required documentation shall include, but not be limited to the following:
 - a. Requisition
 - b. Procurement planning information
 - c. Processing schedule
 - d. Solicitation document - drafts
 - e. Solicitation document - final
 - f. Bid list
 - g. Handwritten advertisement
 - h. Legal published advertisement
 - i. Pre-bid conference minutes/tape
 - j. Addenda
 - k. Original bid
 - l. No bid submission notice
 - m. Handwritten tabulation
 - n. Certified abstract
 - o. Board award documentation
 - p. Executed contract
 - q. Protest documentation
 - r. Cost/price analysis
 - s. Modifications/changes
 - t. Bonds, insurance documents

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE 2 OF 8

2

8



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

- u. Rejection notices
- v. Cure notices
- w. All related correspondence
- x. Power of execution/attorney when required
- y. All related correspondence
- z. Determination and Findings reports as required
- aa. Contract close-out certification

C. Request for Proposal (RFP) File

1. Items IV.B.1 shall be applicable to RFP files.
2. Upon receipt of a fully authorized requisition a determination shall be made regarding the procurement method to be utilized. When it has been determined that a formal RFP process is appropriate, labels shall be generated and an RFP file shall be created. A checklist of the required RFP file subdivisions will be placed in the file. Once a file has been established all documentation relating to the activities of the procurement shall be placed in the file as it becomes available throughout the procurement cycle. As documents are placed in the file, the checklist will be updated accordingly. The checklist will assist in guiding procurement activities as well as insuring that all actions are documented. Each RFP file will contain only those individual sections which are applicable to the procurement in question. This may vary as a result of the dollar value or the complexity of the project. An N/A will be placed on the checklist for those sections not applicable to the procurement.
3. The RFP file shall contain, but not be limited to, the following information:
 - a. RFP File Checklist list of all RFP file subdivisions
 - b. Procurement Plan schedule of all activities to be accomplished

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE 3 OF 8



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

- c. Requisition purchase requisition, justification and specifications from user department
- d. Working Papers rough drafts, working papers and research materials utilized in developing the RFP
- e. Review Drafts all drafts of RFP's and addenda which have been reviewed and marked up by District personnel prior to issuance
- f. Internal Approval Document signatures of Legal Dept., Equal Opportunity, OCPM and all other departments with an operative interest in the procurement
- g. Proposer List master list of recipients of RFP, and all requests for inclusion on proposer list
- h. RFP Original original, reproducible of request for proposal
- i. RFP Copies extra copies of RFP for distribution upon request
- j. Addendum additional information, corrections, etc., issued to proposers
- k. Legal Advertisement original text of notice of RFP availability or pre-invitation notice, copy



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

- of service bureau order form and certified copies of advertisements
- l. Pre-Proposal Conference pre-proposal conference agenda, tape recording, sign-in sheets and written questions from proposers
- m. No Submission letters from firms not wishing to propose but requesting to remain on proposer list
- n. Proposal Evaluation Committee (PEC) Appointment Memo memorandum approved by General Manager appointing PEC members
- o. PEC Findings and Recommendation memorandum summarizing PEC findings and recommendations for negotiation
- p. Contract Negotiating Committee (CNC) Appointment Memo memorandum approved by General Manager appointing CNC members
- q. Price/Cost Analysis Report includes price or cost analysis, desk audit or report on pre-award audit, and certificate of current cost or pricing data
- r. Negotiation Record invitations to firms selected for negotiations, and copies of contract discussion drafts
- s. Best and Final Offers Best and Final Offers (BAFO's) from firms subsequent to contract negotiation

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF

5 8



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

- t. Recommendations of Negotiating Committee memorandum recommending award
- u. Evaluator Rating Sheets all individual evaluator rating sheets and analysis documents leading to final rating and ranking of firms. (includes pre-award site survey, where applicable.)
- v. Board Report and Action Board agenda language, recommendation memorandum (includes procurement history) Board minutes
- w. Internal Correspondence in-house memoranda pertaining to procurement
- x. External Correspondence correspondence with outside entities pertaining to procurement
- y. Rejection Letters letters notifying unsuccessful proposers
- z. Resolution of Protests all materials, correspondence related to the resolution of protests
- aa. Proposals one copy of all proposals received

D. Contract (RFP) File

1. Upon selection and approval of a qualified firm to provide goods or services a contract file is established. The file is assigned a unique contract number for identification and payment purposes. Each contract file shall include a checklist which identified the specific documents included in the file. The following six part filing system will be utilized for all contracts which

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF

6 8



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

exceed or are expected to exceed \$10,000. The system is designed to group related documents in chronological order.

a. SECTION I

- (1) Attached to backboard, the distribution list.
- (2) Award Documents (contract, agreement, etc.)
- (3) Amendments/Modifications
- (4) Provisions (Guidelines)
- (5) Contract Control Card (Notification of Award), always on top.

b. SECTION II

- (1) Purchase Requisition, chronologically ordered, most current always on top, opposite most recent Control Card.
- (2) Budget Change Documents
- (3) Request for Accounting Memoranda
- (4) Invoices
- (5) Contract Completion Document

c. SECTION III

Incoming Interdepartmental Memoranda

d. SECTION IV

- (1) Outgoing Memoranda (Originating in Contracts Section)
- (2) Intradepartmental Memoranda/notes to file

e. SECTION V

- (1) Awardee Correspondence
- (2) Awardee Deliverables (i.e., reports, or evidence of delivery)

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE 7 OF 8



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

f. SECTION VI

- (1) Bid Documents
 - (2) Evaluation/Selection Documents
 - (3) Sole Source justification, if applicable
 - (4) District Correspondence to Awardee (includes letters of negotiation)
 - (5) Awardee Proposal
 - (6) Board of Director's minutes authorizing award of contract
 - (7) Verification of Insurance
2. All files not expected to exceed the \$10,000 threshold shall be maintained in a two part file. Section I of the file includes the contract and Contract Control Card. Section II contains the requisition, invoices, incoming and outgoing correspondence and any other documents related to activities under the contract.
3. From time to time papers which are not described above may need to be incorporated into the file. In these instances, the document will relate to the general categories described above, and will be filed accordingly.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF

8 OF 8

EXHIBIT 21



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE: Informal Purchase Procedures
(Small Purchases)

I. AUTHORITY:

- A. UMTA Circular 4220.1A
- B. State and local law
- C. District Rules and Regulations, Board Policy, Administrative Policy

II. OBJECTIVES:

To provide standard procedures for the purchase of material and supplies, equipment, construction, and services under \$10,000.

III. POLICY:

Procurement of items where the purchase or contract price is less than \$1,000 shall be made in accordance with the informal purchase procedure, and shall provide competition to the maximum extent practicable and consistent with the circumstances of each procurement.

IV. PROCEDURE:

A. General

1. Procurement of items under this procedure shall be initiated only upon receipt of a Purchase Requisition (RTD form 39-17) or a purchasing system machine generated Reorder Notice (RTD form 37-107).
2. Small purchase requisitions shall be logged into the purchasing system upon receipt and shall be assigned to appropriate buying or contracting personnel for processing.
3. Assigned buyer/contract administrator will insure requisitions have been properly signed in accordance with District policy, and shall secure review from appropriate departments.
4. Authorization for Expenditure shall be generated and secured prior to placing of orders where applicable.



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

5. Small purchases under \$5,000 shall not be reviewed by the Purchasing Panel.

B. COMPETITION AND PRICE REASONABLENESS

1. Purchases Under \$1,000

- a. Quotations shall not be required for purchases under \$1,000 unless the Contracting Officer (CO) or his representative considers the price to be unreasonable.
- b. Suppliers shall be rotated routinely to provide for equitable distribution provided pricing is comparable.
- c. If practical, a quotation should be solicited from other than the previous supplier before placing a repeat order.

2. Purchases \$1,000 and Over

- a. The CO shall solicit either oral or written quotations from a reasonable number of sources to promote competition and to insure that the purchase is advantageous to the District, price and other factors considered, including the administrative cost of the purchase.
- b. Written quotations shall be used for construction contracts over \$2,000, and when:
 - (1) A large number of items is included in a single purchase;
 - (2) Obtaining oral quotations is not considered economical or practical;
 - (3) Special specifications are involved (the item is different from that previously or normally purchased); or

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF

2 4



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

(4) Suppliers are located outside the local market area.

c. New qualified supply sources shall be added to the supplier list when identified.

d. Maximum practicable competition is considered to exist when three sources are solicited.

e. Factors which influence the number of quotations required are:

(1) The nature of the item or service to be purchased (highly competitive, available in numerous brands, non-competitive);

(2) Information obtained in recent purchases;

(3) Urgency of the proposed purchase;

(4) Past experience with specific dealer's prices.

f. Standing price quotations may be used in place of obtaining individual quotations for each purchase.

g. Notification shall not be provided unsuccessful quoters unless requested.

C. DOCUMENTATION FOR PURCHASES \$1,000 AND OVER

1. If only one quotation is received, a notation shall be included in the file reflecting the basis for determining the price to be fair and reasonable. The determination may be based on a comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items in a related industry value analysis, the CO's personal knowledge of the item being purchased, or any other reasonable basis.

2. Absence of competition shall be explained.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE 3 OF 4



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

3. District form RTD 37-63 shall be used as an abstract to record oral or written quotations.

4. Pertinent documentation having a bearing on the purchase shall be retained in the file when applicable.

D. SOLICITATIONS

1. Solicitations may be made by telephone or in writing, whichever is appropriate for the specific purchase.

2. Provisions and clauses which are required by Federal grantee contract, State or local law, or District policy shall be included in the solicitation.

3. Item or product description, fact sheet, or specification shall be provided to the supplier where applicable.

E. AWARD

1. Award of small purchases shall be made in accordance with Section 8 of the District Rules and Regulations.

2. The District standard purchase order, Form 37-1A, shall be used as the contract document. Manuscripted contracts may be used where special provisions are required or the form of contract is more appropriate to the item or service being acquired.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE DF

4 4

EXHIBIT 22

Office of Contracts
Procurement and Materiel

TRAINING PLAN

I. INTRODUCTION

This plan is prepared to assure that the Office of Contracts, Procurement and Materiel (OCPM) personnel receive the training necessary to perform their duties in accordance with sound procurement practices. It is intended to provide a flexible basis upon which to structure an organized approach to training of OCPM personnel. It identifies the process to be followed in identifying training needs, planning individual training courses, budgeting for training, scheduling attendance at training, and assessing the effectiveness of training. It also addresses specific areas requiring training emphasis.

II. IDENTIFYING TRAINING NEEDS

Supervisors will perform an annual review with each non-contract employee in accordance with District procedures to identify areas where additional training is needed or might be beneficial. This review will focus on any specific performance areas in which the employee has encountered problems or questions during the preceding period. In addition, the supervisor and the employee will attempt to identify other areas where the employee should focus attention in order to broaden his overall job knowledge and prepare himself for advancement within the District.

III. IDENTIFYING TRAINING COURSES

The supervisor and the employee will select specific courses aimed at providing training in the areas identified during the annual review. The Employee Development Department may provide assistance in this area upon request. A listing of the specific training desired for each employee will be maintained by each supervisor for use in the budgeting and scheduling process.

IV. BUDGETING FOR TRAINING

Supervisors shall develop cost estimates for their total training requirements for inclusion in the annual Departmental budgeting process. These cost estimates should include all relevant cost elements, including tuition, travel, per diem and other costs as appropriate. After completion of the budgetary process and approval of the final Department budget, supervisors shall adjust their training plans as necessary to satisfy overall budget requirements. This adjustment may include such actions as the addition, deletion or substitution of courses, identification of alternate training locations, or rescheduling of periods of attendance, as appropriate.

V. SCHEDULING TRAINING

Supervisors shall develop training schedules so as to minimize disruption of Departmental operations. Insofar as possible, training should be scheduled during periods of non-critical activities. Training schedules shall be closely monitored to insure compliance and to provide for adjustment if necessary and feasible.

VI. ASSESSING TRAINING

Employees who attend formal training classes shall submit a brief written assessment of the training to the Employee Development Department. In addition, they shall report their assessment of their training to their supervisor. Based on these reports, the supervisor, supported by the Employee Development Department, shall consider the value of the training for other employees and make any necessary adjustments in his training plans.

VII. SPECIFIC TRAINING NEEDS

During the UMTA Certification Review, two specific areas were identified in which Department personnel were judged to require additional training. These areas include competitive range determinations and cost/price analysis. These areas have received special attention by OCPM supervisors in discussions and briefings with employees to assure a full understanding of these topics. In addition, training courses focusing on these areas have been identified for attendance by appropriate employees.

EXHIBIT 23



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:
Contracting Officer Authority

I. AUTHORITY:

- A. UMTA Circular 4220.1A
- B. State and local law governing District procurements
- C. District Rules and Regulations, Board Policy, Administrative Policy

II. POLICY:

Duly designated Contracting Officer(s) is authorized to enter into and administer contracts on behalf of the District and make related findings and determinations within the limits of the authority delegated by the Board of Director and the General Manager.

III. PROCEDURE:

Policy

- A. The Contracting Officer is responsible for the legal, technical and administrative sufficiency of contracts and therefore shall secure necessary legal, engineering, technical or other appropriate advice within SCRID in fulfilling this responsibility. They are also responsible for administering the contracts they award including the assuring of contract performance on the part of contractors. See Chapter VI Contract Administration.

1. Primary Authority

As appointed by the SCRID Board of Directors, the authority of the Contracting Officer shall be vested in the positions of the General Manager (GM) and the Director of the Office of Contracts, Procurement and Materiel (OCPM). For the purposes of this regulation, references to the Contracting Officer (CO) shall mean the Director of OCPM.

2. Delegated Authority

Because of a need for flexibility to meet the needs of varying contracting functions, certain specified

ISSUE DATE 2-3-86	REVISION DATE	PREPARED BY OCPM/LM	APPROVED BY	PAGE 1 OF 4
----------------------	---------------	------------------------	-------------	-------------



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

activities may be delegated by the CO to other District organizations when appropriate. Such delegations shall be made pursuant to paragraph c. below. The CO shall maintain an oversight of these functions and duties and shall insure that performance is in strict accordance with the letter of delegation. If performance is found to be unacceptable, the CO shall issue directions for corrective measures and may, if considered necessary, withdraw the delegation.

a. In selecting individuals to serve as Contracting Officers, consideration shall be given to experience, training, education, business acumen, judgment, character, reputation, and ethics. In considering experience, training, and education, the following shall be evaluated:

- (1) Experience in the field of procurement involved (e.g., supply, construction, etc.) gained in a Government or non-Government procurement office, or otherwise;
- (2) Formal education or special training, including Government conducted or sponsored courses, in pertinent fields, such as business administration, law, accounting, engineering, architecture, or related fields and;
- (3) Knowledge of applicable laws and regulations.

b. Such delegations shall be in writing and define the scope and specify any limitations on the authority of the individual Contracting Officer. Copies of all such designations shall be provided to the Board of Directors. Unless otherwise provided in the designation, it shall remain effective until the Contracting Officer is reassigned, his or her employment terminated, or the delegation is terminated.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF

2 4



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

c. Authorized Representatives

The Contracting Officer is authorized to designate Authorized Representatives of the Contracting Officer (COR) who shall be properly qualified employees of the District, or firms or individuals under contract to SCRITD for this purpose. Such designations shall be in writing and shall define the scope of limitations of the "Authorized Representatives" authority.

Such designations may be made referring to particular contractual instruments or categories of instruments and may empower the authorized representative to take any or all actions thereunder which could lawfully be taken by the Contracting Officer to the extent not specifically prohibited by the terms of the contractual instrument involved or the designation. In no event, however, shall an "Authorized Representative" by virtue only of his designation as such, be empowered to execute or agree to any contract or modification thereof, unless such power is specifically included as part of, or supplemental to, the designation.

The Contracting Officer may empower his "Authorized Representative", in such expressly limited amounts within his authority as he deems proper, to issue change orders within the general scope of the contracts for which they may be responsible.

d. Contracting Officer's Technical Representatives.

Contracting Officers may, in their discretion, designate technical representatives (COTR) to assist the Contracting Officer in the administration and management of the technical aspects of the contract. Such designation shall be in writing and define the scope and limitations of the authority of the COTR. A copy of the designation shall be provided to the Contractor and a copy placed in the contract file. The COTR shall not be authorized to take any action which would result in changes in delivery schedule, contracts costs, or scope of work.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF

3

4



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

e. Contract Modifications

Contract Modifications are the primary responsibility of OCPM. The following activities may be delegated by the Contracting Officer to best serve the needs of a project:

- (1) Initiation of a change notice and or request for change.
- (2) Preparation of Change Order Estimates.
- (3) Negotiations of Changes and resolution of disputes/claims.
- (4) Issuance of emergency Change Orders. Such emergency changes shall be thoroughly documented and fully reported to the Contracting Officer as promptly as possible.
- (5) Evaluation of all proposed changes to the design.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE 4 OF 4

EXHIBIT 24



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:
CONTRACT CLAUSES

I. AUTHORITY

- A. UMTA Circular 4220.1A
- B. State and local law governing District procurements
- C. District Rules and Regulations, Board Policy, Administrative Policy

II. OBJECTIVES:

To insure inclusion of appropriate and required standard clauses in District contracts.

III. POLICY:

Standard clauses necessary to insure a sound and complete contract shall be used in every District contract and shall be selected from the Standard Clauses Index.

IV. PROCEDURE

A. Selection of Clauses

- 1. Personnel responsible for preparation of solicitation documents and contracts shall select the clauses appropriate for the specific procurement from those contained in the Standard Clauses Index, Appendix I and II.
- 2. Clauses which are not appropriate for a specific procurement shall not be used. Clauses required for federally funded procurements must be included in all such solicitation documents and contracts.

B. Changes

- 1. Unauthorized changes in the language of standard clauses shall not be permitted.
- 2. Deviations to the requirement for using required clauses shall not be permitted.



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE: CONTRACT CLAUSES

3. Additions or deletions to the Standard Clauses Index shall not be made until approved by the Legal Department and the Office of Contracts, Procurement and Materiel (OCPM).
4. Proposed changes to the Standard Clauses Index shall be submitted in writing to OCPM. Such changes may pertain to language, additions or deletions of a clause.
 - a. Requests shall not be implemented until approved.
 - b. OCPM shall secure approval from the Legal Department.
 - c. Requests for changes shall be acknowledged in writing specifying the outcome of the request.

C.. Required Clauses

1. Clauses required by the federal government for federally funded contracts are identified in Appendix IIIA.
2. Clauses required by the District for non-federally funded contracts are identified in Appendix IIIB.

APPENDIX I

STANDARD CLAUSES

Index for Materials, Supplies, Equipment and Services

1. FEDERAL FUNDING

The contract to be awarded will be subject to a financial assistance agreement between the District and the U.S. Department of Transportation.

2. NONRESTRICTIVE CLAUSES

Wherever brand, manufacturer or product names are indicated in these specifications, they are included for the purposes of establishing identification and a general description of the item. Wherever such names appear, the term "OR APPROVED EQUAL" is considered to follow. The decision on the approved equal will be rendered by the District.

It should be understood that specifying a brand name, components and/or equipment in this specification shall not relieve the supplier from his responsibility to produce the product in accordance with the performance warranty and contractual requirements. The supplier is responsible for notifying the District of any inappropriate brand name, component and/or equipment that may be called for in the specifications, and to propose a suitable substitute for consideration.

3. INTEREST OF MEMBERS OF OR DELEGATES TO CONGRESS

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising therefrom.

4. PROHIBITED INTERESTS

No member, officer or employee of the District, or of a local public body, during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

To the District's or Contractor's knowledge, no board member, officer or employee of the District has any interest, whether contractual, noncontractual, financial or otherwise in this transaction, or in the business of the Contractor; and if any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such information will be made in writing to the other party, even if such interest would not be considered a conflict under sections 1090 et. seq. and sections 87100 et. seq. of the Government Code of the State of California.

5. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the Contractor agrees as follows:

The Contractor will not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during their employment without regard to their race, religion, color, sex, or national origin. Such actions shall include, but not be limited to the following: employment upgrading, demotion, or transfer; recruitment, or recruitment advertising; layoff, or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship.

6. DISADVANTAGED AND WOMAN-OWNED BUSINESS ENTERPRISE

In connection with the performance of the contract, the vendor will cooperate with the District in meeting its commitments and goals with regard to the maximum utilization of disadvantaged and woman-owned enterprises, and will use its best efforts to insure that such enterprises shall have the maximum practicable opportunity to compete for subcontract work under this contract.

Disadvantaged Business Enterprise "Disadvantaged business" means a small business concern: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

"Small business concern" means a small business as defined pursuant thereto.

"Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8 (a) of the Small Business Act.

Upon approval of a DBE/WBE subcontract or joint venture by the District, the successful bidder shall enter into the approved subcontract and shall thereafter neither terminate the subcontract nor reduce the scope of the work to be performed by, or decrease the price to be paid to, the DBE/WBE or the joint venture thereunder without in each instance the prior written approval of the District.

Where District has approved termination of a DBE/WBE subcontract or joint venture, the successful bidder shall make every effort to propose and enter into an alternative subcontract for the same work to be performed with another qualified DBE/WBE for a contract price

totalling not less than the contract price of the terminated subcontract. Satisfactory evidence of reasonable efforts shall be furnished to District.

7. PAYMENTS

The Contract shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided.

8. AUDIT AND INSPECTION OF RECORDS

Contractor shall permit the authorized representatives of the District, the U.S. Department of Transportation and the Comptroller General of the United States to inspect and audit all records of the Contractor relating to his performance and his subcontractors' under the contract from date of contract through and until expiration of three years after completion of contract which federal funds are used.

The final authority for determining allowability of costs shall be the Federal Acquisition Regulation (FAR) Subpart 31.2 with supplemental reference to the Federal Procurement Regulation (FPR) Subpart 1-15.2.

9. REMEDIES FOR BREACH OF CONTRACT

The District may, by written notice of default to the Contractor, terminate the whole or any part of this contract if the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or if the Contractor fails to perform any of the other provisions of the contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

If the contract is terminated in whole or in part for default, the District may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated. The Contractor shall be liable to the District for any excess costs for such similar supplies or services, and shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of cause beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform,

unless the supplies or services to be furnished by the subcontractor were obtainable from other sources insufficient time to permit the Contractor to meet the required delivery schedule.

Payment of completed supplies delivered to and accepted by the District shall be at the contract price. The District may withhold from amounts otherwise due the Contractor for such completed supplies such sum as the Contracting Officer determines to be necessary to protect the District against loss because of outstanding liens or claims of former lien holders.

The rights and remedies of the District provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

10. TERMINATION

District may terminate this contract for default or convenience at any time by giving the Contractor written notice thereof. Upon termination for convenience, the District shall pay the contractor his allowable cost incurred to date of termination, and those costs deemed reasonably necessary by the District to affect such termination. In addition, the District shall pay the Contractor an amount which relates to contract work accomplished to date of termination.

In the event the Contractor breaches the terms or violates the conditions of the contract, and does not within ten days after notice of such breach, cure such breach or violation, the District may terminate the contract for default. The termination notice shall be effective immediately upon delivery and shall specify the nature of the termination. Contractor shall be liable, in the form of liquidated damages within the meaning of a clause of the contract entitled "LIQUIDATED DAMAGES", for any and all costs incurred by the District as a result of such default.

11. LIQUIDATED DAMAGES

TIME IS OF THE ESSENCE IN THIS CONTRACT

In case of the work called for under the Contract is not completed before or upon the time limit as set forth in the specifications, damage will be sustained by the District. It is, and will be, impracticable to determine the actual damage which the District will sustain in the event of and by the reason of such delays; and it is therefore agreed that pursuant to Government Code Section 53069.85 the Contractor will pay the District the sum of \$ _____ for each and every working day that the project is delayed beyond the _____ working days stipulated, subject to extensions granted thereto in writing. The Contractor agrees to pay such liquidated damages herein provided and, in case the same are not paid, agrees that the District may deduct the amount thereof from any money due or to become due the Contractor under the Contract.

The Contractor will be granted an extension of time and will not be assessed with liquidated damages or the cost of engineering and inspection for any portion of the delay in completion of the work beyond the time named in these specifications caused by acts of God, or of the public enemy, fire, floods, epidemics, quarantine, restrictions, strikes, labor disputes, shortage of materials and freight embargoes, or other causes beyond his reasonable control, provided that the Contractor shall notify the Engineer in writing of the causes of delay within 15 days from the beginning of any such delay. The Contract Administrator shall ascertain the facts and extent of the delay, and his findings thereon shall be final and conclusive. Contractor has the burden of proof that the delay was beyond his control.

12. OWNERSHIP OF REPORTS AND DOCUMENTS

Originals of all documents pertaining to the work performed under this agreement shall become the property of the District. Copies may be made for the consultant's records but shall not be furnished to others without written authorization from the District.

13. MAINTENANCE OF RECORDS

The Contractor agrees to keep and maintain records showing actual time devoted and all costs incurred in the execution of the agreement for a period of three (3) years from the accepted completion date.

14. ASSIGNMENT

Neither District nor Contractor shall assign its interest in this agreement without prior consent of the other party.

15. SUBCONTRACTOR APPROVAL

Unless prior written consent from District is obtained, only those people and subcontractor's proposal shall be used in the performance of this agreement.

16. INELEGIBLE CONTRACTORS

A contract cannot be awarded to any vendor that is on the United states Comptroller General's list of ineligible contractors.

17. CONTRACT CHANGES

Modification of this contract shall be accomplished only through written contract amendments executed by a duly authorized representative of the District.

The District's representative may, however, at any time, and by written order, without notice to the sureties, make changes, within the general scope of this contract, in any one or more of the following: (i) Drawings, designs, or specifications; (ii) method of shipment or packing; and (iii) place of delivery. If any such change

causes in increase or decrease in the cost of, or the time required for, the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change: Provided however, that the Contract Administrator, if he/she decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of a clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding within the contract as changed.

18. CONTRACT SECURITY

A bid guarantee from each bidder equivalent to ten percent of the bid price shall accompany any bid or proposal. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid or proposal execute such contractual documents as may be required within the time specified.

A performance bond on the part of the Contractor for 100 percent of the contract price shall be required as a condition to execution of a contract. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.

A payment bond on the part of the Contractor for 100 percent of the contract price shall be required as a condition to execution of a contract. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

19. INSURANCE

Contractor shall at its own expense, procure, and maintain during the term of this agreement liability insurance coverage of the following types and with not less than the following limits of liability.

Comprehensive Public Liability
and Property Damage, including
Automobile

\$ _____
Combined
Single Limit

Prior to the commencement of work, Contractor shall furnish the District with a Certificate of Insurance evidencing the above coverage requirements.

The Certificate shall make provisions for cross liability, and shall contain the following language:

- (1) "The Southern California Rapid Transit District is an additional insured."
- (2) "The liability assumed by Contractor under the provisions of the hold harmless and indemnity clause contained in the contract is covered by the terms of the policy."
- (3) "The Contractor's policy is primary over any other insurance carried by the District."
- (4) "The policy will not be cancelled or materially changed without thirty (30) days prior written notice to the District."

As required by Section 1860 of the California Labor Code, the Contractor shall secure the payment of Worker's Compensation to his employees in accordance with the provisions of Section 3700 of the California Labor Code.

20. COMPLIANCE WITH COPELAND REGULATIONS (29 CFR PART 3)

No contractor-employee, or other person, shall require or induce a person employed on a project subject to Federal wage standard statute, to give up or return any part of such employee's compensation to which he or she is entitled as provided in the Copeland "Anti-Kickback Act", 41 U.S.c. 51-54. (All violations will be reported to UMTA by the District.)

21. WARRANTY

- (1) The Contractor shall warrant the equipment furnished to be free from defects in design, material and workmanship for a period of one year from the date of final acceptance by the District or manufacturer's standard warranty, whichever is greater.
- (2) Any failure due to defective design, material or workmanship of any unit or assembly under warranty, shall be repaired or replaced by the Contractor at no cost to the District, including labor and material.

22. MOTOR VEHICLE SAFETY STANDARDS

- (1) Each vendor must submit a certification in writing that:
- (2) The horsepower of the vehicle is adequate for the speed range and terrain in which it will be required to operate and also to meet the demands of all auxiliary power equipment.
- (3) All gases and vapors emanating from the crankcase of an internal combustion engine are controlled to minimize their escape into the atmosphere.

- (4) Visible emission from the exhaust will not exceed #1 on the Ringlemann Scale when measured six inches from the tailpipe with the vehicle in steady operation.
- (5) When the vehicle has been idled for three minutes and then accelerated to 80 percent of rated speed under load, the capacity of the exhaust will not exceed #2 on the Ringlemann Scale for more than five seconds, and not more than #1 on the Ringlemann Scale thereafter.

23. BUY AMERICA

- (1) Contractor shall comply with Section 165 of the Surface Transportation Assistance Act of 1982 (Public Law 97-424), and implementing regulations (49 CFR Part 660-661). A Buy America Certificate, provided in the Forms for Submittal of Bids, must be completed and submitted with the bid. A bid which does not include the Certificate will be considered non-responsive. A waiver from the Buy America Provision may be sought by the District if the grounds for the waiver exist. Any exception to the Buy America requirements shall require a waiver from UMTA in whole or in part. A request for a waiver of the Buy America requirements may be submitted to the District if the grounds for a waiver exist.
- (2) The District may investigate the Contractor's, subcontractor's, and supplier's compliance with this provision. If an investigation is initiated, the Contractor, subcontractor or supplier shall document his compliance in accordance with 49 CFR Part 661.15 and cooperate with the investigation. The Contractor shall incorporate the Buy America requirement set forth in this Article in every subcontract or purchase order and shall enforce the provision.

24, CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

- (1) The Contractor agrees to utilize privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping equipment, materials, or commodities pursuant to this Contract, and to the Cargo Preference Act [46 USC 1241 (b)] to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels.
- (2) The Contractor agrees to furnish within 30 calendar days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described above to the District (through the Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400

Seventh Street, S.W. Washington, D.C. 20509, marked with appropriate identification of the Project.

- (3) The Contractor agrees to insert the substance of the provisions of this Article in subcontracts issued pursuant to this Contract.

25. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement to understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the District shall have the right to annul this contract without liability, or at its discretion, to deduct from the contract price of consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

26. COVENANT AGAINST GRATUITIES

The Contractor warrants that no official or employee of the District has been offered or been given gratuities (in the form of entertainment, gifts or otherwise) for the intent or purpose of securing favorable treatment in the award, amending, or evaluation performance of the contract.

27. PATENTS/COPYRIGHTS

Contractor agrees promptly to communicate to District full particulars with respect to any and all improvements (whether or not patentable) conceived by it as part of the work performed by it in this project. Such improvements shall become the property of District, or its funding agencies, if required by law, and Contractor upon the District's request, agrees to assign to District all of its rights, title, and interest in and to inventions and in any and all patents/copyrights and applications for patents/copyrights based thereon, including both United States and foreign patents and applications for patents. Contractor further agrees, upon District's request and expense, to execute such proper instruments and to perform such proper acts as may be deemed by District necessary to evidence District's or funding agency title to said improvements, and to enable District to obtain such patents/copyrights and any continuations, reissues, or extensions thereof.

28. DISPUTES

- (1) If a dispute arises, every effort shall be made to resolve the dispute through negotiation. However, in the absence of settlement, the District may, upon its own initiative or promptly upon the written request of the Contractor, make a determination thereof and such determination shall immediately be complied with the Contractor pending resolution pursuant to the provisions of Subarticle 40.B.

- (2) Each determination made by the District pursuant to subarticle 40.A shall be set forth in a written notice thereof to the Contractor and, within 30 days after the receipt of such notice, the Contractor shall respond to the District, in writing, either accepting the determination or stating in general terms the Contractor's factual or legal objections to the determination. If the response is an objection to the determination, the District shall respond, in writing, to the response within thirty days after the District receipt thereof. Contractor's failure to respond to the District's determination within the thirty day period shall be deemed an acceptance thereof. No further responses by either party shall be required. Thereafter, either party may seek a judicial determination of a dispute, except when the Contractor accepts the District's determination or fails to respond to the District determination within the 30 day time limit. Neither the District's determination, nor either party's response, nor the continued performance of the Contract shall constitute an admission as to any factual or legal position in connection with the dispute, or a waiver of rights under this Contract or at law.
- (3) Disputes subject to this Article shall be governed by California law. However, to ensure that the Contract is performed in all respects in compliance with the provisions of all capital grants between the District and the United States Government relating to this Contract, and with the laws and regulations governing such grants and the relationship between the District and the United States Government in all other respects, questions arising in connection therewith shall be governed by the applicable Federal law.

29. ENVIRONMENTAL COMPLIANCE

- (1) Requirements, Laws, Regulations and Orders - Contractor agrees to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. Sections 1857 et. seq.), the Clean Water Act (33 U.S.C. Sections 1251 et. seq.), Executive Order 11378, all applicable standards of the State of California, and all clarifications, mitigation measures and requirement approved by the District in accordance with State and Federal laws.
- (2) Motor Vehicle Pollution Requirements - When new motor vehicles are purchased with project funds, the Contractor shall comply with California state law regarding pollution controls.
- (3) Air Quality Control
 - (a) The Contractor shall comply with all rules, regulations, ordinances, including those of the South Coast Air Quality Management District and State statutes which apply to any Work performed pursuant to the Contract, including any air quality control rules, regulations, ordinances, and statutes specified in Section 11017 of the California Government

Code. Contractors and suppliers shall submit evidence to the District that the governing air quality control criteria are being met, and such evidence shall be retained by the District for onsite examination by UMTA.

- (b) In the absence of applicable air quality control rules, regulations, ordinances or statutes governing solvents, including but not limited to the solvent portions of paint, thinners, curing compounds and liquid asphalt used on the Contract, the Contractor shall comply with the applicable material requirements of the South Coast Air Quality Management District. Containers of paint, thinner, curing compound, or liquid asphalt shall be labeled to indicate that the contents fully comply with said requirements.
 - (c) Material to be disposed of shall not be burned, either inside or outside the site.
- (4) The Contractor shall comply with the applicable regulations of the Environmental Protection Agency (40 CFR Part 15) and, specifically, shall not use any facility in the performance of the Contract which is listed on the Environmental Protection Agency ("EPA") List of Violating Facilities unless and until the EPA eliminates the name of such facility from such listing. The Contractor shall promptly notify the District of the receipt of any communication from the Director, Office of Federal Activities, EPA; or any successor agency, indicating that a facility to be utilized by the Contractor is under consideration to be listed on the EPA List of Violating Facilities.
 - (5) Contractor shall report violations to the District, to UMTA and to the EPA Assistant Administrator for Enforcement (EN0329).
 - (6) The Contractor shall include the requirements of Subarticles 58.A through 58.E in every subcontract, the value of which is more than \$100,000 and shall take such action as the District directs to enforce the requirements.
 - (7) Contractor shall comply with additional air, water and noise pollution provisions set forth in the Specifications.

30. ENERGY POLICY AND CONSERVATION ACT

Contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

31. ROLLING STOCK

In accordance with Department of Transportation Appropriation Acts, the District may award contracts for rolling stock based on consideration of "Life Cycle Cost" factors including performance, standardization and such factors as deemed appropriate.

APPENDIX II

STANDARD CLAUSES

Index For Construction Contracts

Page
Number

GENERAL

1.	Abbreviations and Definitions	1
2.	Entire Agreement	9
3.	Interpretation	10
4.	Authorized Representatives of the District	12
5.	Contractor Participation	12
6.	Joint and Several Liability	12
7.	Subcontracts and Assignments	12
8.	Agent to Accept Service	13
9.	Independent Contractor	13
10.	Superintendence by Contractor	13
11.	Use of District's Name in Contractor Advertising or Public Relations	14
12.	No District Contracts With Subcontractors	14
13.	Gratuities and Conflicts of Interest	14
14.	Debarred Bidders	15
15.	Covenant Against Contingent Fees	15
16.	Conditions and Risks of Work	16
17.	Construction Safety, Security and Health Standards	17

QUALITY STANDARDS

18.	Workmanship and Unauthorized Work	17
19.	Warranty	18
20.	Inspection	19

PAYMENT

21.	Progress Payment Schedule	21
22.	Payment	21
23.	Payment to Subcontractors	22
24.	Contract Prices - Bid Form	23
25.	Audit and Inspection	23
26.	Final Payment	24

SCHEDULING

27.	Notice to Proceed	25
28.	Progress Schedule	25
29.	Liquidated Damages	26

NOTE: References to Metro Rail shall be construed to mean District where appropriate.

30.	Construction Staging	26
31.	Notice of Completion and Final Acceptance	27
32.	Extension of Time	27
33.	Suspension of Work	29
CHANGES		
34.	Changes	31
35.	Cost Reduction Incentive	32
36.	Differing Site Conditions	35
37.	Defective Cost and Pricing Data	35
38.	Increased or Decreased Quantities	37
CLAIMS AND DISPUTES		
39.	Claims	37
40.	Disputes	39
41.	Force Account	39
42.	California Stop Notice	44
TERMINATION AND DEFAULT		
43.	Termination for Convenience	45
44.	Termination for Default - Delay	49
45.	Termination for Default - Other	50
46.	Rights and Obligations in Termination for Default	51
MATERIALS AND EQUIPMENT		
47.	Materials	52
48.	Protection of Equipment, Materials, and Work	55
49.	Care, Custody, Control and Title to Materials	56
50.	Control of District Furnished Materials	56
51.	Contractor's Construction Equipment	56
52.	Use and Possession Prior to Completion	57
WORK CONDITIONS		
53.	Emergencies	57
54.	Protection of Existing Vegetation, Structures, Utilities and Improvements	57
55.	Patent Indemnity	59
56.	Cooperation, Access, and Community Relations	60
57.	Permits and Responsibilities	61
58.	Environmental Compliance	62
59.	Energy Conservation	63
60.	Historical, Scientific, and Archaeological Discoveries	63
61.	Buy America	63

62.	Rights in Land and Improvement	63
63.	Rights in Data	64
64.	Federal Participation Signs	65
65.	Cargo Preference - Use of United States Flag Vessels	65
66.	Operations and Storage Areas	65
67.	Cleaning Up	66
68.	Shop Drawings, Working Drawings, Samples and Contract Record Documents	66
69.	Payment of Taxes	66
70.	Motor Vehicle Safety Standards	66

LABOR AND WORK RULES

71.	Equal Employment Opportunity	67
72.	Affirmative Action Requirements - Equal Employment Opportunity	68
73.	Disadvantaged Business Enterprise/Women Business Enterprise (DBE/WBE)	76
74.	Labor Provisions	85
75.	Certified Payrolls - Construction Projects	90
76.	Continuation of Work Agreement	91

INDEMNIFICATION AND INSURANCE

77.	Indemnification	91
78.	Insurance	91

APPENDIX II

STANDARD CLAUSES

Index For Construction Contracts

Page
Number

GENERAL

1.	Abbreviations and Definitions	1
2.	Entire Agreement	9
3.	Interpretation	10
4.	Authorized Representatives of the District	12
5.	Contractor Participation	12
6.	Joint and Several Liability	12
7.	Subcontracts and Assignments	12
8.	Agent to Accept Service	13
9.	Independent Contractor	13
10.	Superintendence by Contractor	13
11.	Use of District's Name in Contractor Advertising or Public Relations	14
12.	No District Contracts With Subcontractors	14
13.	Gratuities and Conflicts of Interest	14
14.	Debarred Bidders	15
15.	Covenant Against Contingent Fees	15
16.	Conditions and Risks of Work	16
17.	Construction Safety, Security and Health Standards	17

QUALITY STANDARDS

18.	Workmanship and Unauthorized Work	17
19.	Warranty	18
20.	Inspection	19

PAYMENT

21.	Progress Payment Schedule	21
22.	Payment	21
23.	Payment to Subcontractors	22
24.	Contract Prices - Bid Form	23
25.	Audit and Inspection	23
26.	Final Payment	24

SCHEDULING

27.	Notice to Proceed	25
28.	Progress Schedule	25
29.	Liquidated Damages	26

NOTE: References to Metro Rail shall be construed to mean District where appropriate.

30.	Construction Staging	26
31.	Notice of Completion and Final Acceptance	27
32.	Extension of Time	27
33.	Suspension of Work	29

CHANGES

34.	Changes	31
35.	Cost Reduction Incentive	32
36.	Differing Site Conditions	35
37.	Defective Cost and Pricing Data	35
38.	Increased or Decreased Quantities	37

CLAIMS AND DISPUTES

39.	Claims	37
40.	Disputes	39
41.	Force Account	39
42.	California Stop Notice	44

TERMINATION AND DEFAULT

43.	Termination for Convenience	45
44.	Termination for Default - Delay	49
45.	Termination for Default - Other	50
46.	Rights and Obligations in Termination for Default	51

MATERIALS AND EQUIPMENT

47.	Materials	52
48.	Protection of Equipment, Materials, and Work	55
49.	Care, Custody, Control and Title to Materials	56
50.	Control of District Furnished Materials	56
51.	Contractor's Construction Equipment	56
52.	Use and Possession Prior to Completion	57

WORK CONDITIONS

53.	Emergencies	57
54.	Protection of Existing Vegetation, Structures, Utilities and Improvements	57
55.	Patent Indemnity	59
56.	Cooperation, Access, and Community Relations	60
57.	Permits and Responsibilities	61
58.	Environmental Compliance	62
59.	Energy Conservation	63
60.	Historical, Scientific, and Archaeological Discoveries	63
61.	Buy America	63

62.	Rights in Land and Improvement	63
63.	Rights in Data	64
64.	Federal Participation Signs	65
65.	Cargo Preference - Use of United States Flag Vessels	65
66.	Operations and Storage Areas	65
67.	Cleaning Up	66
68.	Shop Drawings, Working Drawings, Samples and Contract Record Documents	66
69.	Payment of Taxes	66
70.	Motor Vehicle Safety Standards	66

LABOR AND WORK RULES

71.	Equal Employment Opportunity	67
72.	Affirmative Action Requirements - Equal Employment Opportunity	68
73.	Disadvantaged Business Enterprise/Women Business Enterprise (DBE/WBE)	76
74.	Labor Provisions	85
75.	Certified Payrolls - Construction Projects	90
76.	Continuation of Work Agreement	91

INDEMNIFICATION AND INSURANCE

77.	Indemnification	91
78.	Insurance	91

APPENDIX II

STANDARD CLAUSES

Index For Construction Contracts

Page
Number

GENERAL

1.	Abbreviations and Definitions	1
2.	Entire Agreement	9
3.	Interpretation	10
4.	Authorized Representatives of the District	12
5.	Contractor Participation	12
6.	Joint and Several Liability	12
7.	Subcontracts and Assignments	12
8.	Agent to Accept Service	13
9.	Independent Contractor	13
10.	Superintendence by Contractor	13
11.	Use of District's Name in Contractor Advertising or Public Relations	14
12.	No District Contracts With Subcontractors	14
13.	Gratuities and Conflicts of Interest	14
14.	Debarred Bidders	15
15.	Covenant Against Contingent Fees	15
16.	Conditions and Risks of Work	16
17.	Construction Safety, Security and Health Standards	17

QUALITY STANDARDS

18.	Workmanship and Unauthorized Work	17
19.	Warranty	18
20.	Inspection	19

PAYMENT

21.	Progress Payment Schedule	21
22.	Payment	21
23.	Payment to Subcontractors	22
24.	Contract Prices - Bid Form	23
25.	Audit and Inspection	23
26.	Final Payment	24

SCHEDULING

27.	Notice to Proceed	25
28.	Progress Schedule	25
29.	Liquidated Damages	26

NOTE: References to Metro Rail shall be construed to mean District where appropriate.

30.	Construction Staging	26
31.	Notice of Completion and Final Acceptance	27
32.	Extension of Time	27
33.	Suspension of Work	29

CHANGES

34.	Changes	31
35.	Cost Reduction Incentive	32
36.	Differing Site Conditions	35
37.	Defective Cost and Pricing Data	35
38.	Increased or Decreased Quantities	37

CLAIMS AND DISPUTES

39.	Claims	37
40.	Disputes	39
41.	Force Account	39
42.	California Stop Notice	44

TERMINATION AND DEFAULT

43.	Termination for Convenience	45
44.	Termination for Default - Delay	49
45.	Termination for Default - Other	50
46.	Rights and Obligations in Termination for Default	51

MATERIALS AND EQUIPMENT

47.	Materials	52
48.	Protection of Equipment, Materials, and Work	55
49.	Care, Custody, Control and Title to Materials	56
50.	Control of District Furnished Materials	56
51.	Contractor's Construction Equipment	56
52.	Use and Possession Prior to Completion	57

WORK CONDITIONS

53.	Emergencies	57
54.	Protection of Existing Vegetation, Structures, Utilities and Improvements	57
55.	Patent Indemnity	59
56.	Cooperation, Access, and Community Relations	60
57.	Permits and Responsibilities	61
58.	Environmental Compliance	62
59.	Energy Conservation	63
60.	Historical, Scientific, and Archaeological Discoveries	63
61.	Buy America	63

62.	Rights in Land and Improvement	63
63.	Rights in Data	64
64.	Federal Participation Signs	65
65.	Cargo Preference - Use of United States Flag Vessels	65
66.	Operations and Storage Areas	65
67.	Cleaning Up	66
68.	Shop Drawings, Working Drawings, Samples and Contract Record Documents	66
69.	Payment of Taxes	66
70.	Motor Vehicle Safety Standards	66

LABOR AND WORK RULES

71.	Equal Employment Opportunity	67
72.	Affirmative Action Requirements - Equal Employment Opportunity	68
73.	Disadvantaged Business Enterprise/Women Business Enterprise (DBE/WBE)	76
74.	Labor Provisions	85
75.	Certified Payrolls - Construction Projects	90
76.	Continuation of Work Agreement	91

INDEMNIFICATION AND INSURANCE

77.	Indemnification	91
78.	Insurance	91

1. ABBREVIATIONS AND DEFINITIONS

1.A Abbreviations:

AA	Aluminum Association
AABC	Associated Air Balance Council
AAMA	Architectural Aluminum Manufacturers' Association
AAN	American Association of Nurserymen
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials (successor to AASHO)
AC	Air Conditioning, Alternating Current, or Asphalt Concrete
ACI	American Concrete Institute
AFBMA	Anti-Friction Bearing Manufacturer's Association
AIA	American Insurance Association (successor to NBFU)
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
AMCA	Air Movement and Control Association
ANSI	American National Standards Institute (successor to USASI and ASA)
APA	American Plywood Association
APTA	American Public Transit Association
AREA	American Railway Engineering Association
ARI	Air-Conditioning and Refrigeration Institute
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigerating, and Air Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASPE	American Society of Plumbing Engineering
ASTM	American Society for Testing and Materials
ATSF	Santa Fe Railway
AWG	American Wire Gauge
AWPA	American Wood Preservers' Association
AWPB	American Wood Preservers' Bureau
AWPI	American Wood Preservers' Institute
AWS	American Welding Society
AWWA	American Water Works Association
BTU	British Thermal Unit
C	Celsius, Channel, or Conduit
Cal-OSHA	California Occupational Safety and Health Administration
CALTRANS	California Department of Transportation
cfm	cubic feet per minute
CFR	Code of Federal Regulations
CFS	Cubic Feet per Second
CISPI	Cast Iron Soil Pipe Institute
CLF	Current-Limiting Fuse
CM	Construction Manager
CPSC	Consumer Products Safety Council

CRSI	Concrete Reinforcing Steel Institute
CS	Commercial Standards, United States Department of Commerce
CWA	Continuation of Work Agreement
CY	Cubic Yard
dB(n)	decibel (n=weighting infrequency response)
DB	Dry Bulb
dBA	Decibel on A-Scale (Noise Levels)
DC	Direct Current
dft	Dry Film Thickness
DOC	United States Department of Commerce
DOD	United States Department of defence
DOT or USDOT	United States Department of Transportation
DWPPS	Department of Water and Power, Power System
DWPWS	Department of Water and Power, Water System
EI	Edison Electric Institute
EEO	Equal Employment Opportunity
EIA	Electronic Industries Association
EPA	United States Environmental Protection Agency
Est.	Estimated
F	Fahrenheit
ft	foot, feet
FGMA	Flat Glass Marketing Association
FHWA	United States Department of Transportation Federal Highway Administration
FM	Factory Mutual
fpm	feet per minute
FPR	Federal Procurement Regulations
FRA	Federal Railroad Administration
FS	Federal Specifications
GC	General Architectural and Engineering Consultant
gpm	gallons per minute
GRS	Galvanized Rigid Steel
HP	Horsepower
HR	Hour
IACS	International Annealed Copper Standard
ICEA	Insulated Cable Engineers Association
IEEE	Institute of Electrical and Electronics Engineers (successor to AIEE)
IES	Illuminating Engineering Society
IMC	Intermediate Metallic Conduit
IMSA	International Municipal Signal Association
ISA	Instrument Society of America
ITE	Institute of Transportation Engineers
JIC	Joint Industrial Council
kV	Kilovolt
kVA	Kilovoltampere
kW	Kilowatt
LACFCD	Los Angeles County Flood Control District
LACOFD	Los Angeles County Fire Department
LADOT	Los Angeles Department of Transportation
LADPW	Los Angeles Department of Public Works
LAFD	Los Angeles Fire Department
MIL	Military Standardization Documents
MRB	Material Review Board

MRTC	Metro Rail Transit Consultants
MSS	Manufacturers' Standardization Society of the Valve and Fittings Industry
MUTCD	Manual on Uniform Traffic Control Devices
mVA	Millivoltampere
NAAMM	National Association of Architectural Metal Manufacturers
NBC	National Building Code
NBS	National Bureau of Standards
NEC	National Electrical Code
NEMA	National Electrical Manufacturer's Association
NESC	National Electrical Safety Code
NEPA	National Fire Protection Association
NLMA	National Lumber Manufacturers' Association
No.	Number
NTP	Notice to Proceed
NTSB	National Transportation Safety Board
OSHA	United States Department of Labor, Occupational Safety and Health Administration; and Occupational Safety and Health Act
PCA	Portland Cement Association
PCI	Prestressed Concrete Institute
PDCD	Parsons, Dillingham Construction, DeLeuw Cather
psi	pounds per square inch
psig	pounds per square inch, gauge
QA	Quality Assurance
QC	Quality Control
RMS	Root Mean Square
rpm	revolution per minute
RTD	Rapid Transit District
SAE	Society of Automotive Engineers
SCRTD	Southern California Rapid Transit District
SDI	Steel Deck Institute (Division 5) or Steel Door Institute (Division 8)
SJI	Steel Joist Institute
SMACNA	Sheet Metal and Air Conditioning Contractors National Association
SMAW	Shielded Metal Arc Welding
SS	Stainless Steel
SSPC	Steel Structures Painting Council
SSPWC	Standard Specifications for Public Works Construction
STA	Station
TCA	Tile Council of America
TIMA	Thermal Insulation Manufacturer's Association
UBC	Uniform Building Code of the International Conference of Building Officials
UL	Underwriters' Laboratories, Inc.
UMTA	United States Department of Transportation, Urban Mass Transportation Administration
USC	United States Code
USCE	United States Corps of Engineers
USG	United States Gypsum
USSG	United States Standard Gauge
WATCH	Work Area Traffic Control Hand Book

WB Wet Bulb
WCLIB West Coast Lumber Inspection Bureau

Additional abbreviations may be found on the Contract Drawings and in the Contract Specifications.

1.B DEFINITIONS

Addenda - Written errata, interpretations and revisions to the bid Documents issued by the District prior to opening of the Bids.

Alignment - Horizontal and vertical location of a track, street or highway as described by curves, tangents and elevations.

Award - The issuance of a Contract by the District.

Ballast - Material placed on the track bed to provide the required track stability.

Bid Documents - Invitation to Bid, Instructions to Bidders, Information Available to Bidders, unexecuted contract documents and forms for the submittal of bids.

Bid Form - The form indicating the estimated quantities, to be completed by the bidder with unit bid prices and extensions and submitted to the District indicating the Bidders total bid for the work indicated.

Bid Security - The cashier's check, certified check or bid Bond, accompanying the Bid submitted by the Bidder, as a guarantee that the Bidder will enter into a contract with the District for the performance of the Work and furnish acceptable bonds and insurance if the Contract is awarded to him.

Bidder - An individual, firm, partnership, corporation or combination thereof, submitting a Bid for the Work.

Change Proposal - A document issued by the District to the Contractor or the Contractor to the District specifying a proposed change to the Contract. Unless otherwise expressly stated on the face of the Change Proposal, a Change Proposal is a proposal which may result in a Change Order.

Change Order - A document issued to the Contractor by the District modifying the Contract.

Construction Agreement - A Contract form, executed by the Contractor and the District, wherein the Contractor agrees to perform the Work delineated within the Contract Documents for a stipulated sum (the Contract Price) and the District agrees to pay the Contractor said stipulated sum for such performance.

Construction Manager (CM) - The Joint Venture of the Ralph M. Parsons Company, Dillingham Construction, Inc. and DeLeuw, Cather and Company doing business as PDCD, engaged by the District as the Construction Manager, and its successors, if any, acting directly or through properly authorized agents within the scope of the particular duties delegated to them by the District. Delegation of authority to the CM shall be as provided in Article 4, Authorized Representative of the District.

Construction Safety and Security Manual - A document, applicable to construction contracts awarded by the District, containing the requirements and provisions of the construction safety and security program.

Construction Staging Area - Property available for use by the Contractor during the construction period for the purpose of storing products and construction equipment and for the purpose of staging the Work.

Contract - The completed and executed integrated agreement entered into between the Contractor and the District for the performance of the Work.

Contract Documents - The completed and executed Construction Agreement, Performance Bond, Payment Bond, General Conditions, Special Conditions, Continuation of Work Agreement, Contract Specifications, Contract Drawings, Insurance Specifications, Construction Safety Manual, and additional documents incorporated by reference into the Construction Agreement or any other Contract Document.

Contract Drawings - The plans, profiles, typical cross sections, general cross sections, elevations, schedules and details which show locations, character, dimensions, and details of the Work.

Contract Specifications - The directions, provisions, requirements, and descriptions of Work to be done by the Contractor on the Project.

Contractor - The individual, firm, partnership, corporation, or combination thereof, private, or public, including joint ventures, which, as an independent contractor, has entered into a contract with the District, who is referred to throughout the Contract Documents by singular number and masculine gender.

Data - As defined in Article 63, Rights in Data.

Datum - Elevations are based on the National Geodetic Vertical Datum of 1929 reobserved and adjusted by the City of Los Angeles in 1975.

Days - Unless otherwise designated, days mean calendar days.

District - The Southern California Rapid Transit District, or anyone designated to act on its behalf with respect to a particular subject matter, including its successors and assigns.

Engineer's Estimate of Quantities - The list of quantities of work estimated to be performed as contained in the Bid Form.

Extra Work - Work not provided for in the Contract as awarded but found to be essential to the satisfactory completion of the Contract, within its intended scope.

Final Acceptance - The formal written acceptance by the District of the completed work.

Force Account - A method of payment, other than lump sum or unit price, for work ordered by Change Order.

Forms for the Submittal of Bids - A document, specific to the bidding of an individual Contract, containing copies of the Proposal Letter, Bid Form, List of Proposed subcontractors, the Buy America Certificate and Bid Bond required to be completed and submitted by the Bidder.

Furnishing - Manufacturing, fabricating and delivering to the site of the Work materials, plant, power, tools, patterns, supplies, appliances, vehicles and conveyances necessary or required for the completion of the Work.

General Conditions - The general contractual provisions which describe the contractual relationship of the parties and their rights and responsibilities to each other.

General Consultant (GC) - Metro Rail Transit Consultants a joint venture composed of the firms of Daniel, Mann, Johnson & Mendenhall (DMJM); Parsons Brinckerhoff Quade & Douglas, Inc. (PBQD); Kaiser Engineers (California) Corporation (KE) and Harry Weese & Associates (HWA), doing business as "Metro Rail Transit Consultants", engaged by the District as the General Consultant, and its successors, if any, acting directly or through properly authorized agents within the scope of the particular duties delegated to them.

Government - The government of the United States of America.

Indicated - As shown on the Contract Drawings; as specified in the Contract Specifications; or as required in the Contract Documents.

Installation, Install or Installing - Completely assembling, erecting and connecting material, parts, components, appliances, supplies and related equipment specified or required for the completion of the Work.

Insurance Specifications - The document specifying the insurance coverage to be provided by the District and the insurance coverage to be provided by the Contractor.

Liner/Lining - The structural element lining a mined tunnel, either by Cast-in-Place concrete, prefabricated steel, or precast concrete.

Limit of Work - The boundary within which the Work, excepting utility and drainage work in local streets and on private property, is to be performed.

Material - Equipment, material, products, and articles incorporated into the Work.

Metro Rail System - The District Heavy Rail Rapid Transit System, including right-of-way, pavement, tracks, structures, equipment, appurtenances and other property and fixtures associated therewith.

Notice to Proceed - Written notice from the District to the Contractor to proceed with the Work.

Notice of Termination - Written notice from the District to the Contractor to stop work under, and to terminate, the Contract on the date and to the extent specified.

Permanent Drainage Easement - Area required to construct and maintain permanent drainage facilities for retention, release, and passage of surface water.

Permanent Needs Line - Boundary which describes the area certified for acquisition by the District, and within which the District's and other agencies' facilities will be located.

Permanent Subsurface Easement - Underground space required to construct and maintain permanent subsurface facilities.

Permanent Utility Easement - Area required to construct and maintain utility facilities.

Product Data - Manufacturer's standard drawings, shop drawings, and standard printed data which have been modified to reflect the project requirements, and supplemented with test reports, performance charts, and similar data.

Products - Materials, equipment, and fixtures to be incorporated into the Work.

Project - That portion of the Metro Rail System covered by this Contract.

Property Line - Boundry Line of any Real Property.

Provide - In reference to work to be performed by the Contractor, provide means furnish and install complete in place.

Provided by Others - Work including labor, materials, equipment, tools, and supervision furnished by other than the Contractor.

Purchasing Agent - Purchasing Agent for the Southern California Rapid Transit District.

Right-of-Way - Real property, and interests therein, acquired by the District, or other designated agencies.

Samples - Physical examples that illustrate materials, equipment, fixtures, workmanship and quality to establish standards by which the Work will be judged.

Shop Drawings - Documents furnished by the Contractor to illustrate specific portions of the Work. Shop Drawings include drawings, diagrams, illustrations, schedules, charts, brochures, tables and other data describing fabrication and installation of specific portions of the Work.

Specialty Item - A designated item of work that requires highly specialized knowledge, craftsmanship or equipment not ordinarily available in contracting organizations qualified to bid on the Construction Contract as a whole, and usually limited to minor components of the overall Contract.

Standard Drawings - Drawings part of or referenced in the Contract Documents, developed for use during construction of the Metro Rail System to attain uniformity in materials, geometrics, arrangements, equipment, details, and procedures and in some instances, to express prior approval thereof by affected governmental agencies, utilities and railroads.

State - The State of California

Subballast - Material placed on the finished subgrade below the ballast.

Subcontractor - Any person, firm or corporation, other than the employees of the Contractor, who contracts with the Contractor to furnish labor, material or labor and materials, under this contract.

Technical Provision - A provision which specifies the materials, execution of construction and method of payment for Project Work.

Temporary Construction Easement Line - Boundary which describes the area available for construction operations.

Temporary Slope Easement - Area within which temporary slopes may be constructed to facilitate the prosecution of the Work.

Temporary Subsurface Easement - Underground space required by the District to construct and maintain temporary subsurface facilities.

Ton - Two thousand pounds avoirdupois.

Trackway Envelope - A space extending the length of the Project and including, but not limited to, completed base slabs, walls, duct banks, bonding, ground rods and plates, bushings, pull boxes with cable racks, clean and dry manholes and vaults having cable racks, cable pulling rings and irons, and pull boxes.

Transit System - Same as Metro Rail System.

United States Department of Transportation (DOT or USDOT) - The Secretary of the United States Department of Transportation, and other persons who may at the time be acting in the capacity of the Secretary or authorized representative or any other person authorized to perform the functions to be performed hereunder by DOT or USDOT, including representatives of the Urban Mass Transportation Administration (UMTA).

Work - The construction labor, materials, equipment, and contractual requirements including all administrative requirements as indicated in the Contract Documents, including alterations, amendments, or extensions thereto made by authorized changes.

Working Drawings - Drawings prepared by the Contractor for temporary work which will not become a part of the permanent structure being constructed.

Work Site - The area enclosed by the Limit of Work indicated in the Project Drawings and boundaries of local streets and public easements in which the Contractor is to perform work under the Contract. It shall also include areas obtained by the Contractor for use in connection with the Contract, when contiguous to the Limit of Work.

2. ENTIRE AGREEMENT - The Contract, as defined herein, constitutes the entire agreement between the District and Contractor. The parties shall not be bound by or liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No changes, amendments or modifications of any of the terms or conditions of the Contract shall be valid unless reduced to writing and signed by both parties.

3. INTERPRETATION

- 3.A The documents comprising the Contract are complementary, and describe the construction and completion of the Work. Anything mentioned in the Specifications (including general and technical provisions) and not shown on the Contract Drawings, or shown on the Contract Drawings and not mentioned in the Specifications, shall be of like effect as if shown in both.
- 3.B Wherever in the Contract the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of the District is intended and similarly words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" the District, unless otherwise expressly stated.
- 3.C Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the Specifications or Contract Drawings, unless stated otherwise.
- 3.D References to Articles includes the Subarticles under the Article referenced. For example: a reference to Article 3 is also a reference to Subarticles 3.A through 3.L.
- 3.E Precedence of Contract Documents - Except as provided in Subarticle 3.A, in cases of express conflict between parts of the Contract, specifications or drawings, the order of precedence shall be as follows:
- Executed Construction Agreement
 - Completed Forms for Submittal of Bids
 - Special Conditions
 - General Conditions
 - Specifications
 - Drawings
- 3.F This Contract will be governed by the laws of the State of California; however, the District will finance the Work, in part, by means of a grant under the Urban Mass Transportation Act of 1964, as amended, administered by the U.S. Department of Transportation (DOT) under a capital grant between the District and the Government of the United States. The Contract shall be administered in all respects in conformity to the said grant and to the laws and regulations governing the same.
- 3.G Referenced Standards - Materials and workmanship specified by the number, symbol, or title of a referenced standard shall comply with the latest edition or revision thereof and amendments and supplements thereto in effect on the date of

the Invitation to Bid except where a particular issue is indicated. Municipality, utility and railroad standards shall govern except in case of conflict with the Specifications. In case of a conflict between the Specifications and the referenced standards, the most stringent requirements shall govern.

3.H Explanations - Should it appear that the Work to be performed or any of the matters relative thereto are not sufficiently detailed or explained in the Contract Documents, the Contractor shall apply to the District for such further written explanations as may be necessary and shall conform to the explanation provided as part of the Contract. If doubts or questions arise regarding the true meaning of the Contract Documents, reference shall be made to the District whose decision thereon shall be final, subject to remedies under the Article 40, Disputes.

3.I In case of differences between small and large scale drawings, the large scale drawings shall govern. In the event of discrepancy between any drawing scaled dimension and the figure written thereon, the figures shall govern over scaled dimensions.

3.J Omissions and Misdescriptions - The Contractor shall carefully study and compare all drawings, Contract Specifications and other instructions; shall verify all figures on the Contract Drawings before laying out the Work; shall notify the District of all errors, inconsistencies, or omissions which he may discover; and obtain specific instructions in writing before proceeding with the Work. The Contractor shall not take advantage of any apparent error or omission which may be found in the Contract Drawings or Contract Specifications, but the District shall be entitled to make such corrections therein and interpretations thereof as it may deem necessary for the fulfillment of their intent. The Contractor shall be responsible for all errors in construction which could have been reasonably avoided by such examination and notification, and shall correct at his own expense, Work improperly constructed through failure to notify the District and to request specific instructions. Omission from the Contract Drawings or Contract Specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the Contract Drawings or Contract Specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted work (no matter how extensive) or misdescribed details of the Work and they shall be performed as if fully and correctly set forth and described in the Contract Drawings and Contract Specifications.

3.K Severability - If any article, section, Subarticle, sentence, clause or phrase contained in the Contract Documents determined, declared, or adjudged invalid, illegal, unconstitutional or otherwise unenforceable, such determination,

declaration or adjudication shall in no manner affect the other articles, sections, Subarticles, sentences, clauses or phrases of the Contract Documents, which shall remain in full force and effect as if the article, section, subarticle, sentence, clause or phrase declared, determined or adjudged invalid, illegal, unconstitutional or otherwise unenforceable, was not originally a part thereof.

3.L Effect of Headings - The headings and titles to provisions in these Contract Documents are for convenience only and shall not affect the rights and duties of parties to this Contract.

4. AUTHORIZED REPRESENTATIVES OF THE DISTRICT - The District will authorize representatives to perform, on behalf of the District, certain functions in the administration of this Contract. A copy of the authorization will be furnished to the Contractor upon issuance of the Notice to Proceed, and revised as necessary. A list of District representatives authorized to act on behalf of the District will be furnished to the Contractor. The District will be bound by the acts of the District employee's and authorized representatives only with respect to matters delegated to them in writing.

5. CONTRACTOR PARTICIPATION - The Contractor shall perform with his own organization Contract Work amounting to not less than 50 percent of the total Contract price, except that any designated "Specialty Items" may be performed by subcontract and the amount of any such "Specialty Items" so performed may be deducted from the original total Contract price before computing the amount of work required to be performed by the Contractor with his own organization. When items of Work in the Bid Form are preceded by the letter (S), said items are designated "Specialty Items." Where an entire item is subcontracted, the value of Work subcontracted will be based on the Contract item bid price. When a portion of an item is subcontracted, the value of Work subcontracted will be based on the estimate percentage of the Contract item bid price, determined from information submitted by the Contractor, subject to approval from the District.

6. JOINT AND SEVERAL LIABILITY - If the Contractor is comprised of more than one legal entity, each entity shall be jointly and severally liable under this Contract.

7. SUBCONTRACTS AND ASSIGNMENTS

7.A The performance of the Work under the Contract may not be assigned or subcontracted except upon written consent of the District. Any unauthorized attempt to do so shall be void and unenforceable. Consent will not be given to a proposed assignment which would relieve the Contractor or his surety of their responsibilities under the Contract.

7.B The Contractor may assign monies due or to become due to him under the Contract to the extent permitted by law and the

assignment will be recognized by the District if it has received written notice of the assignment. Assignment of monies shall be subordinate to the District's rights under the Contract subject to proper set-offs in favor of the District and to deductions provided for in the Contract. Money withheld, whether assigned or not, shall be subject to being used by the District for the completion of the Work in the event that the Contractor is in default.

7.C Contractor shall insert into each and every subcontract, and ensure that there are inserted into each subcontract of any tier, each and every provision required to be in contracts or subcontracts by law, regulation, rule, or by this Contract.

8. AGENT TO ACCEPT SERVICE - The Contractor shall maintain, within the County of Los Angeles, California, an agent to accept service of legal process on his behalf, and shall keep the District advised of the agent's name and address, during the period commencing with the execution of the Contract and ending three years after final payment to the Contractor or when Contractor's warranty obligations under Article 19, Warranty, cease, whichever period terminates later.

9. INDEPENDENT CONTRACTOR - Contractor represents that it is fully experienced and properly qualified to perform the class of Work provided for in this Contract, and that it is properly licensed, equipped, organized, and financed to perform the Work. Contractor is an independent contractor and is not an agent of the District in the performance of the Contract, and maintains complete control over its employees and its subcontractors. Nothing contained in this Contract or any subcontract awarded by Contractor shall create any contractual relationship between any subcontractor and the District. Contractor shall perform the Work in accordance with its own methods in compliance with the terms of the Contract.

10. SUPERINTENDENCE BY CONTRACTOR

10.A The Contractor shall have a competent manager, or superintendent designated as his authorized representative, satisfactory to the District, on the Work site during progress of the Work with authority to act for the Contractor.

10.B Before starting Work, the Contractor shall designate, in writing, the name, title, qualifications, and experience of his proposed representative and scope of his authority for approval by the District. A facsimile of the authorized representative's signature and initials shall be furnished to the District. The authorized representative or his designated substitute, acceptable to the District, shall be present at the site of the Work when Work is actually in progress on the Contract. Arrangements for responsible supervision, acceptable to the District, shall be made for

emergency work which may be required during periods when the Work is suspended.

10.C The Contractor shall notify the District, in writing, when the Contractor desires to change its representative, and shall provide information, specified in the previous sub-articles of this Article regarding the new proposed representative.

11. USE OF DISTRICT'S NAME IN CONTRACTOR ADVERTISING OR PUBLIC RELATIONS - The District reserves the right to review and approve District related copy prior to publication. Contractor agrees not to allow District related copy to be published in Contractor's advertisement or public relations programs until submitting the District related copy and receiving prior written approval from the District's department of Communications and Marketing. Contractor agrees that published information on the District or the District's program shall be factual and in no way imply that the District endorses Contractor's firm, service, or product. The Contractor shall insert the substance of this Article, including this sentence, in each subcontract and supply contract or purchase order.

12. NO DISTRICT CONTRACTS WITH SUBCONTRACTORS - No contractual relationship shall exist between the District or anyone acting on behalf of the District and the subcontractors or suppliers of the Contractor or any of their lower-tier subcontractors or suppliers with respect to the Work described in this Contract.

13. GRATUITIES AND CONFLICTS OF INTEREST

13.A The District may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Contract if it is found that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor to any director, officer or employee of the District or of the District's designee with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of such contract. The District's determination shall be final subject only to judicial review.

13.B If this Contract is terminated as provided in Subarticle 13.A the District shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor.

13.C No member, officer or employee of the District or of a local public body during his tenure or for one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit. A full and complete

disclosure of any such interest will be made in writing, to the other parties even if such interest would not be considered a conflict under Section 1090 et seq. or Section 87100 et seq. of the Government Code of the State of California. "Local public body" means the State, any political subdivision of the State, or any agency of the State or any political subdivision thereof.

13.D No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this Contract or to any benefit arising therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

13.E The Contractor or his employees shall not enter into any Contract involving services or property with a person or business prohibited from transacting such business with the District pursuant to Sections 1090 et seq. and 87100 et seq. of the government Code of the State of California. To the District's or the Contractor's knowledge, no Board member, officer nor employee of the District has any interest, whether contractual, noncontractual, financial or otherwise, in this transaction, or in the business of the Contractor and if any such transaction comes to the knowledge of either party at any time, a full and complete disclosure of such information shall be made in writing to the other party, even if such interest would not be considered a conflict under Sections 1090 et seq. or Sections 87100 et seq. of the Government Code of the State of California.

13.F If the Contractor, or any of its officers, partners, principals or employees are convicted of a crime arising out of, or in connection with, the Work to be done or payment to be made under this Contract, this Contract, in whole or any part thereof may, at the discretion of the District, be terminated.

13.G The rights and remedies of the District provided in this article are not exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

14. DEBARRED BIDDERS - Neither Contractor, nor any officer or controlling interest holder of Contractor, is currently, or has been previously, on any debarred bidders list maintained by the United States Government or the District.

15. COVENANT AGAINST CONTINGENT FEES

15.A The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bonafide employee or agency. For breach or violation of this warranty, the District may annul this contract without liability or, in its discretion, deduct from the contract

price or consideration, or otherwise recover, the full amount of the contingent fee.

- 15.B "Bonafide agency," as used in this article, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain District contracts nor holds itself out as being able to obtain any District contract or contracts through improper influence.
- 15.C "Bonafide employee", as used in this article, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain District contracts nor holds out as being able to obtain any District contract or contracts through improper influence.
- 15.D "Contingent fee," as used in this article, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a District contract.
- 15.E "Improper influence," as used in this article, means any influence that induces or tends to induce a District employee or officer to give consideration or to act regarding a District contract on any basis other than the merits of the matter.

16. CONDITIONS AND RISKS OF WORK

- 16.A The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which may affect the Work or its cost including but not limited to:
- 16.A.1 conditions bearing upon transportation, disposal, handling, and storage of materials;
- 16.A.2 the availability of labor, water, electric power, and roads;
- 16.A.3 uncertainties of weather, river stages or similar physical conditions at the site;
- 16.A.4 the conformation and conditions of the ground; and
- 16.A.5 the character of equipment and facilities needed preliminary to and during Work performance.
- 16.A.6 conditions bearing upon security and protection of material, equipment and work in progress.

16.B The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including exploratory work done by the District as well as from the drawings and specifications made a part of this Contract. Contractor shall be responsible for any failure to take the actions described and is responsible for conditions acknowledged in this sub-article, will not be relieved from responsibility for failure to estimate properly the difficulty and cost of successfully performing the Work, or of proceeding to successfully perform the Work without additional expense to the District.

16.C The District assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the District nor does the District assume responsibility for any understanding reached or representation made concerning conditions which may affect the Work by any of its officers or agents before the execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

17. CONSTRUCTION SAFETY, SECURITY AND HEALTH STANDARDS

17.A The safety requirements for this contract are specified in the Construction Safety and Security Manual. A copy of the Construction Safety and Security Manual is incorporated herein by this reference.

17.B It shall be a condition of the Contract and shall be made a condition of each subcontract entered into pursuant to this Contract, that the Contractor and any subcontractor shall not require any laborer or mechanic employed in performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health or safety, as determined under the California Occupational Safety and Health Act of 1973 (Chapter 993, Statutes of 1973).

17.C Contractor shall hold the District and its authorized representatives harmless from any liability, claims, or charges by reason of Contractor's or any of its subcontractor's failure to comply with the above acts or any regulations adopted pursuant thereto and shall reimburse the District for any fines, damages or expenses of any kind incurred by it by reason thereof.

18. WORKMANSHIP, AND UNAUTHORIZED WORK

18.A Workmanship - Work under this contract shall be performed in a skillful and workmanlike manner. The District may, in writing, require the Contractor to remove from the work any

employee the District determines incompetent, careless or otherwise objectionable.

18.B Unauthorized Work - Work performed beyond the lines and grades shown on the Contract Drawings, approved Working and Shop Drawings or established by the District and Extra Work done without written authorization, will be considered as unauthorized work and the Contractor will receive no compensation therefor. If required by the District unauthorized work shall be remedied, removed, or replaced by the Contractor at the Contractor's expense. Upon failure of the Contractor to remedy, remove or replace unauthorized work, the District may proceed in accordance with Subarticle 20.C, of Article 20, INSPECTION.

19. WARRANTY

19.A Except where longer periods of warranty are specified elsewhere in the Contract, Contractor warrants Work furnished or performed under this Contract against defects in design, materials and workmanship (unless furnished by the District) for a period of one year from and after final written acceptance regardless of whether they were furnished or performed by Contractor or by any of its subcontractors of any tier. Upon receipt of written notice from the District of any defect in any Work during the applicable warranty period, due to defective design, materials, or workmanship, the affected item or parts thereof shall be redesigned, repaired or replaced by Contractor at a time acceptable to the District.

19.B The Contractor shall perform tests the District requires to verify that redesign, repairs, and replacements comply with the requirements of this Contract. Costs incidental to redesign, repair, replacement and testing, including the removal, replacement and reinstallation of equipment and materials necessary to gain access, shall be borne by Contractor. Contractor warrants redesigned, repaired or replaced Work against defective design, materials, and workmanship for a period of one year from and after the date of its acceptance. Should Contractor fail to promptly make the necessary redesign, repair, replacement and test, the District may perform or cause it to be performed at Contractor's expense.

19.C Contractor and its surety or sureties shall be liable for the satisfaction and full performance of the warranties as set forth herein.

19.D The contractor, at no additional expense to the District shall remedy damage to equipment, the site, or the buildings or the contents thereof which is the result of any failure or defect in the Work, and restore any Work damaged in fulfilling the requirements of the Contract. Should the Contractor fail to remedy any such failure or defect within a

reasonable time after receipt of notice thereof, the District may replace, repair, or otherwise remedy such failure or defect at the Contractor's expense.

19.E Express or implied warranties of Subcontractors, manufacturers, and suppliers respecting any part of the Work and any material used therein shall inure to the benefit of the District and shall be enforced by the Contractor for the benefit of the District whether or not there has been a separate transfer or assignment thereof. If directed by the District, the Contractor shall require subcontractors, manufacturers and suppliers to execute such warranties and guaranties, in writing, directly to the District.

19.F The rights and remedies of the District provided in this Article are in addition to and do not limit any other rights and remedies provided in this Contract or by law.

20. INSPECTION

20.A Work shall be subject to inspection and test by the District or the District's duly authorized representatives, at reasonable times and places prior to acceptance. Such inspection and test is for the sole benefit of the District and shall not relieve the Contractor of the responsibility of providing quality control measures to assure that the Work complies with the Contract requirements. The performance of any inspection or test by the District shall not constitute an acceptance unless or until the District specifically states in writing that as a result of a successful inspection or test the Work is accepted. An inspection or test shall not relieve the Contractor of responsibility for damage to, or loss of, the material prior to acceptance, nor in any way affect the continuing rights of the District after acceptance of the completed Work.

20.B The Contractor shall, without additional charge, replace material or correct workmanship found by the District not to conform to the Contract requirements, unless in its best interest the District consents to accept such material or workmanship with an appropriate adjustment in the Contract price. Such adjustment shall be accomplished by Change Order in accordance with Article 34, CHANGES. The Contractor shall promptly segregate and remove rejected material from the premises.

20.C If the Contractor does not promptly replace rejected material or correct rejected workmanship the District may:

20.C.1 By separate contract or otherwise, replace the rejected material or correct the rejected work and charge the cost thereof to the Contractor; and/or

20.C.2 Terminate the Contractor's right to proceed in whole or in part in accordance with Article 44, Termination for Default - Delay.

- 20.D The Contractor shall furnish promptly, without additional charge, facilities, labor, and material needed for performing safe and convenient inspection and tests required by the District. Inspection and tests by the District will be performed so as to not unnecessarily delay the Work. Performance tests shall be accomplished as described in the Contract. The District reserves the right to charge to the Contractor additional cost of inspection or test when Work is not ready at the time specified by the Contractor for inspection or test, or when reinspection or retest is necessitated by prior rejection.
- 20.E At any time before acceptance of the entire Work, the District may make an examination of Work already completed, by ordering the Contractor to remove or tear out the work or portion thereof. If the Work is found to be defective or nonconforming in any material respect, due to the fault of the Contractor or its subcontractors, it shall pay the expenses of the examination and of satisfactory reconstruction. If, however, the Work is found to meet the requirements of the Contract, an equitable adjustment will be made in the Contract Price to compensate the Contractor for the additional services involved in the examination and reconstruction and, if completion of the Work has been unreasonably delayed and the delay affects the completion of the Work on time, the Contractor will be granted a suitable extension of time. The equitable adjustment or extension of time will be done by Change Order.
- 20.F So that the District will have access to the Work for inspection during periods of construction, when Work is to be performed during hours outside of its normal schedule, the Contractor shall advise the District no less than 24 hours in advance of performance of the Work.
- 20.G The District's inspection and approval of Work shall not relieve the Contractor of its obligation to fulfill the requirements of the Contract. Work not meeting the requirements of the Contract is subject to rejection. Unsuitable Work may be rejected by the District, notwithstanding that the Work may have been previously inspected by the District or that payment for the Work has been included in a progress payment.
- 20.H The Contractor shall allow access to the Work to authorized representatives of the United States Department of Transportation, Urban Mass Transportation Administration and California State Department of Transportation (Caltrans) for the purpose of inspecting work associated with their respective interests and to authorized representatives of the municipalities, counties, railroads, and utilities for the purpose

of observing the Work associated with their respective interests.

20.I Plant Inspection - The District may inspect the production of material and the manufacture of products at the source of supply. Plant inspection will not be undertaken until the District is assured of the cooperation and assistance of both the Contractor and the material producer or manufacturer. The District shall have free entry to parts of the plant involved in the manufacture or production of the materials to be used or integrated into the Work. Adequate facilities shall be furnished to make the inspections at no additional cost to the District. The District, however, assumes no obligation to inspect materials at the source of supply. The responsibility of incorporating materials in the Work which meet the requirements of the Contract rests entirely with the Contractor, notwithstanding prior inspections or tests by the District.

21. PROGRESS PAYMENT SCHEDULE - The Contractor shall submit to the District for approval not more than fifteen working days after award of Contract, a detailed schedule of values to be used as a basis for determining progress payments on the Contract for any designated lump sum bid item. This schedule shall provide for payments equal in total for each lump sum bid item and be in such form and in sufficient detail to satisfy the District that it reasonably apportions payment of the lump sum amount.

22. PAYMENT

22.A Contractor shall submit to the District a progress payment request, based on the estimated percentage of completion of each item of Work, as of a mutually agreed upon cut-off date each month. The District will make partial payment to the Contractor 30 days after receipt of and based on the progress payment request as approved by the District. The District shall retain ten percent of the value of the Work done and materials installed as part security for the fulfillment of the Contract by the Contractor, unless otherwise specified by applicable law; however, the total retention shall not exceed five percent of the Total Contract Price. Once five percent of the Total Contract Price has been retained, it shall continue to be retained until final acceptance.

22.B Funds retained by the District as security for Contractor's full and faithful performance of this contract may be released to the Contractor upon the District's acceptance of a substituted security offered by the Contractor pursuant to and in accordance with the provisions of Government Code Section 4590.

22.C Whenever the Work is substantially complete, the District, at its sole discretion if it considers the amount retained to be in excess of the amount adequate for the protection of

the District, may release to the Contractor all, or a portion of, such excess amount:

- 22.D Material and Work covered by progress payments made shall thereupon become the sole property of the District but this provision shall not be construed as relieving the Contractor from the sole responsibility for material and Work upon which payments have been made or the restoration of damaged Work, or as waiving the right of the District to require the fulfillment of any other terms of the Contract.
- 22.E Progress payments will be made as indicated in Article 22.A except that progress payments will not be made when the total value of work covered by the invoice is less than \$5,000.00, and will not be made for Work not meeting the requirements of the Contract.
- 22.F Invoices for progress payments shall be on forms supplied by the District. The invoice shall be supported as required by the Specifications and by this Article. The Contractor shall certify that the Work invoiced has been done and that the materials listed are stored where indicated.
- 22.G The District, at its discretion, may authorize payment for material not yet incorporated in the Work, whether or not delivered to the worksite if:

22.G.1 A list of material for which the Contractor will request payment under these provisions is provided to the District or its designee for approval during the first 90 days of the Contract; and

22.G.2 The material is delivered on the worksite, or delivered to the Contractor and promptly stored by him in a warehouse, storage yard, or similar suitable place within 25 miles of the worksite or at a reasonable distance in excess of 25 miles which has been approved by the District. Before payment is made for delivered material on the worksite, the Contractor shall furnish the District evidence of ownership and properly executed certified bills of sale to the District for the delivered material upon which payment is being made.

23. PAYMENT TO SUBCONTRACTORS

- 23.A The Contractor shall pay subcontractors for and on account of Work performed by such subcontractors in accordance with the terms of their respective subcontracts.
- 23.B Before the Contractor receives any payment, except the first payment, for monies due him as a result of a percentage of the work completed, he must provide the District with duly executed release of stop notice from subcontractors who have performed any work on the project as of the date, stating that said subcontractors have been paid their proportionate

share of all previous payments. The failure of the Contractor to provide the foregoing release of stop notice shall result in District placing the amount in dispute in an escrow account until the dispute is resolved.

24. CONTRACT PRICES - BID FORM

24.A Payment for the various Bid Items listed in the Bid Form shall constitute full compensation for the Work described in the Contract. Costs of Work shown or indicated in the Contract not separately stated as a Bid Item in the Bid Form, shall be included in the most appropriate Bid Item price. The Contractor will not be entitled to additional compensation for providing an activity or material necessary for the completion of the Work in accordance with the Contract even though the activity or material is not included in a specific Bid Item or indicated in Contract Documents, unless the activity or material is covered by a Change Order.

24.B Payments for the various Bid Items listed in the Bid Form will constitute full compensation for restoring loss and repairing damage arising from the nature of the Work, from the action of the elements, from any unforeseen difficulties which may be encountered during the prosecution of the Work or from risks of every description, except as otherwise provided in this Contract.

24.C Payments for the various Bid Items listed in the Bid Form will constitute full compensation, for expense incurred in consequence of discontinuance of all or any portion of the Work except as otherwise provided in this Contract. In no event will compensation be made for anticipatory profits or consequential damages as a result of a discontinuance of all or any portion of the Work.

24.D In the case of any Bid Item for which a fixed amount is predetermined by District, such fixed amount shall be conclusive upon the Contractor and the amount so entered will constitute full compensation for the Work covered by the Bid Item.

25. AUDIT AND INSPECTION

25.A Cost or Pricing Data - If the Contractor has submitted cost or pricing data in connection with the pricing of any modification to this contract, unless the pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, each agency listed in Subarticle 25.B shall have the right to examine and audit books, records, documents, and other data of the Contractor (including computations and projections) related to negotiating, pricing or performing the modification in order to evaluate the accuracy, completeness, and currency of the cost or pricing data.

25.B Availability - The Contractor shall permit and make available to authorized representatives of the City of Los Angeles, the County of Los Angeles, Southern California Rapid Transit District, the California Department of Transportation, the U.S. Department of Transportation and the Comptroller General of the United States at its office at all reasonable times to inspect, audit or reproduce the materials described in Subarticle 25.A until three years after the final payment or if the Contract is terminated in whole or in part until three years after final termination settlement. Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this Contract shall be made available until disposition of the appeals, litigation, or claims. Contractor shall insert a clause substantially similar to this clause in all subcontracts of any tier.

26. FINAL PAYMENT

26.A After the Work has been accepted by District, subject to the provisions of Article 19, Warranty and Article 31, Notice of Completion and Final Acceptance of these General Conditions, a final payment will be made as follows:

26.A.1 The Contractor shall prepare and submit a proposed final Application for Payment to the District showing the proposed total amount due the Contractor, segregated as to Contract Item quantities, force account work, and other bases for payments; deductions made or to be made for prior payment; amounts retained; any claims the Contractor intends to file at that time or a statement that no claims will be filed; and any unsettled claims, stating amounts. Prior applications and payments may be corrected in the proposed final Application for Payment. Claims filed with the final Application for Payment must be otherwise timely.

26.A.2 The District will review the Contractor's proposed final Application for Payment and necessary changes or corrections will be forwarded to the Contractor. Within 10 days thereafter, the Contractor shall submit a final Application for Payment incorporating changes or corrections made by the District together with additional claims resulting therefrom. Upon approval by the District, the corrected proposed final Application for Payment will become the approved final Application for Payment.

26.A.3 If the Contractor files no claims with the final Application for Payment and no claims remain unsettled within 35 days after Final Acceptance of the Work by the District, and agreements are reached on all questions regarding the final Application for Payment, District, at the expiration of the 35 day period, in exchange for an executed release, will pay the entire sum found due on the approved final Application for Payment.

26.A.4 Upon final determination of any and all claims, District in exchange for an executed release, will pay the entire sum found due on the approved final Application for Payment, including the amount, if any, allowed on claims.

26.A.5 The release from the Contractor will be from any claims arising from the Work under the Contract and will inure to the benefit of the District. If the Contractor's claim to amounts payable under the contract has been assigned, a release may be required of the assignee.

26.A.6 If a final Application for Payment has not been approved within 60 days after Final Acceptance of the Work, District may elect to make payment of sums not in dispute without prejudice to the rights of either District or the Contractor in connection with any disputed items.

26.A.7 Except where inspection of records retained by Contractor pursuant to the terms of this Contract shows that final payment was incorrectly determined, final payment made in accordance with this Article will be conclusive and binding against both parties to the Contract on all questions relating to the amount of work done and the compensation paid therefor.

27. NOTICE TO PROCEED - The District will issue a Notice to Proceed to the Contractor within 30 days after the Contractor has executed the Contract and has delivered the specified bonds and Certificates of Insurance if any are required by District. Except as specifically authorized in writing by District, the Contractor is not authorized to perform work under the Contract until the effective date of the Notice to Proceed. Within 10 days after the effective date of such Notice to Proceed, the Contractor shall commence work and shall diligently prosecute the Work to completion within the time limits specified.

28. PROGRESS SCHEDULE

28.A The Contractor shall submit a progress schedule as indicated, to the District for approval.

28.B If the Contractor fails to submit the schedule within the time prescribed, or the updated schedule at the required monthly intervals, the District may withhold approval of progress payments until such time as the Contractor submits the required schedules.

28.C If the Contractor falls behind the approved progress schedule, the Contractor shall take appropriate and necessary steps to improve his progress. The District, in this instance, may withhold progress payments until scheduled progress is regained, or may require the Contractor to increase the number of shifts, initiate or increase overtime operations or increase days of work in the work week. The District may also require the Contractor to submit for approval

supplemental progress schedules detailing the specific changes to be instituted to meet the approved schedule. Steps taken by the District to require Contractor to meet its schedule shall not constitute a change and shall be at no additional cost to the District, except as otherwise provided in this Contract.

28.D Failure of the Contractor to comply with these requirements shall be grounds for determination by the District that the Contractor is not prosecuting the Work with the Diligence necessary to complete the Work within the time specified. Upon such determination, the District may terminate the Contractor's Right to Proceed with the Work, or any separate part thereof, in accordance with Article 44, Termination for Default - Delay.

29. LIQUIDATED DAMAGES

29.A Time is of the essence in this Contract. If the Work, and specified portions of the Work, are not completed within the number of calendar days set forth in Special Conditions of this Contract as may be revised by Change Order, damage will be sustained by the District, and it is and will be impracticable or extremely difficult to ascertain the actual damage which the District will sustain. Damage to the District in the case of failure by the Contractor to complete specified portions of Work within the time as required therefor by the terms of this Contract will include, but not be limited to, the following:

29.A.1 increased costs of Contract administration and financing;

29.A.2 delays and cost increases to other Contractors, resulting in damages to the District; and

29.A.3 loss of revenue.

29.B If there is a delay, the Contractor shall pay to the District the amount set forth in the Special Conditions of this Contract as liquidated damages, and not as a penalty, for each day's delay or fraction thereof in completion of the Work and specified portions of the Work, in excess of the number of days specified. The District may deduct the sum of liquidated damages from monies due or which become due the Contractor, or, if such monies are insufficient, the Contractor shall pay to the District the deficiency. The remedies provided herein are not exclusive and are in addition to other rights and remedies provided by law or under this Contract.

30. CONSTRUCTION STAGING

30.A Work under this Contract shall be performed in accordance with requirements of the Contract and in accordance with a

detailed plan of the Work in a logical sequence developed by the Contractor and approved by the District or its authorized representative. This plan shall be used in developing the Progress Schedule required in Article 28.

- 30.B The Contractor shall schedule its operations to minimize interference with other contractors and with the District operations.
- 30.C Contractor shall comply with all scheduling requirements, contained in the Specifications and in any other provision of this Contract.

31. NOTICE OF COMPLETION AND FINAL ACCEPTANCE

- 31.A When Contractor determines that the Work is fully completed, including satisfactory completion of inspections, tests and documentation specified in this Contract, Contractor shall, within ten working days thereafter, give a written Notice of Completion specifying the work completed and the date it was completed. Within thirty calendar days after receipt of the Notice of Completion, District shall inspect the Work and shall either reject the Notice of Completion and specify defective or uncompleted portions of the Work, or shall issue and file with the County Recorder a Notice of Completion of the Work either for the purpose of final payment only, or for the purposes of final payment and final acceptance.
- 31.B If the District rejects the Notice of Completion and specifies defective or uncompleted portions of the Work, Contractor shall promptly remedy the defective and uncompleted portions of the Work. Thereafter, Contractor shall again give District a written Notice of Completion of the Work, specifying a new date for the completion of the Work based upon the date the defective or uncompleted portions of the Work were corrected. The foregoing procedure shall apply again and successively thereafter until District has given Contractor written Final Acceptance for purposes of final payment, final acceptance, and the commencing of the warranty period.
- 31.C Any failure by District to inspect or to reject the Work or to reject Contractor's Notice of Completion as set forth above, shall not be deemed to be acceptance of the Work for any purpose by District nor imply acceptance of, or agreement with, Contractor's Notice of Completion.

32. EXTENSION OF TIME

- 32.A The Contractor will be granted an extension of time by Change Order and will not be assessed liquidated damages for any portion of a delay in completion of the Work performed within the time constraints of the latest approved progress schedule arising from acts of God, acts of the public enemy,

fires, floods, earthquakes, epidemics, quarantine restrictions, strikes and labor disputes (provided, however, this provision does not supersede Article 76, Continuation of Work Agreement), freight embargoes, or weather substantially more severe than the norm, provided that the aforesaid causes were not foreseeable and did not result from the fault or negligence of the Contractor, and provided further that the Contractor has taken reasonable precautions to prevent further delays arising from such causes, and has notified the District in writing of the cause or causes of delay within five days from the beginning of any such delay. Within 30 days after the end of the delay, the Contractor shall furnish the District with detailed information concerning the causes and circumstances of the delay, the number of days actually delayed, the appropriate Contract references, and the measures taken to prevent or minimize the delay. Failure to submit all such information within the 30 day period will be sufficient cause for denying the delay claims. The District will ascertain the facts and the extent of the delay and its findings thereon will be final and conclusive subject to provisions of Article 40, Disputes. Neither a delay nor an extension of time granted pursuant to this Article shall be the basis of a claim for additional compensation or damages and no damages or costs of any kind or nature will be paid for any delay or extension of time. Time extensions must be approved by the District prior to the interim or final completion date being extended.

32.A.1 Weather substantially more severe than the norm shall apply only as it affects particular portions of the Work and operations of the Contractor, as determined by the District. The basis used to define normal weather will be data showing high and low temperatures, rainfall, and the number of days of severe weather in the Los Angeles area for the previous 20 years, as compiled by the United States Department of Commerce National Weather Service. The effects of weather less severe than the norm shall be taken into account in granting time extensions due to weather more severe than normal.

32.A.2 An extension of time will not be granted for a delay caused by a shortage of materials, except District furnished materials, unless the Contractor furnishes to the District documentary proof that he has diligently made every effort to obtain such materials from every known source within reasonable reach of the Work. The Contractor shall also submit proof, that the inability to obtain such materials when originally planned, did in fact cause a delay in final completion of the Work which could not be avoided by revising his schedule. Only the physical shortage of material will be considered under these provisions as a cause for extension of time. No consideration will be given to any claim that material could not be obtained at a reasonable, practical, or economical cost, unless it is shown to the satisfaction of the District that the material could

have been obtained only at exorbitant prices, entirely inconsistent with current rates taking into account the quantities involved and the usual practices in obtaining such quantities.

32.B In addition to the delays in the Work specified in this Article, delays in the Work directly caused by an act or omission of an owner of adjoining property will be considered a District controlled delay. An owner of adjoining property is a person, firm, corporation, partnership, or other organization who either owns or occupies, or both, structures or parcels or both, immediately adjacent to the Work site. Extension of time for those delays will be determined in accordance with this Article, provided that:

32.B.1 The Contractor has notified the District in writing, of the delay within five days after the beginning of the delay; and

32.B.2 The Contractor establishes, to the satisfaction of the District that:

32.B.2.a the delay was caused directly by an act or omission by the owner of the adjoining property; and

32.B.2.b the Contractor has taken reasonable precautions and has made substantial effort to minimize the delay; or

32.B.2.c the act of the adjoining property owner was not caused or precipitated by an unreasonable, negligent or intentional act of the Contractor which would give rise to liability of the Contractor to the adjoining property owner.

33. SUSPENSION OF WORK

33.A The District may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for a period of time as it may determine to be appropriate for the convenience of the District.

33.B If the performance of all or any part of the Work is suspended, delayed or interrupted for a period of time which has a substantial effect on the schedule, or on the costs, of the Contractor, and the suspension was for the convenience of the District, or arising out of the District's failure to act within the time specified in this Contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any change in schedule and any increase in the cost of performance of this Contract (excluding profit) necessarily caused by the suspension, delay, or interruption and the Contract modified accordingly by Change Order.

- 33.C No adjustment shall be made under this Article for any suspension, delay, or interruption to the extent:
- 33.C.1 that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or
- 33.C.2 for which an equitable adjustment is provided for or excluded under any other provision of this Contract.
- 33.D No claim under this Article shall be allowed:
- 33.D.1 for any costs incurred more than 20 days before the Contractor shall have notified the District in writing of the act or failure to act involved (but this requirement shall not apply to a claim resulting from a suspension order); or
- 33.D.2 unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of a suspension, delay, or interruption, but not later than the date of final payment under the Contract.
- 33.E Only the actual delay and additional costs incurred necessarily resulting from the suspension of Work pursuant to this Article shall be a ground for extension of time or payment of additional costs. If delay or additional cost arises out of two or more causes the Contractor shall not be entitled to separate extensions or cost reimbursements for each one of the causes.
- 33.F If the Contractor is actually and necessarily delayed in the completion of the Work arising out of a suspension of the Work pursuant to this Article, the extension of time to be granted to the Contractor shall be only for the portion of the Work so delayed. The Contractor shall not be entitled by reason of the delay to an extension of time for the completion of the remainder of the Work. If the Contractor is delayed as to a portion of the Work, he shall nevertheless proceed continuously and diligently with the prosecution of the remainder of the Work.
- 33.G The determination of the District, as provided in this Article, shall be binding and conclusive upon the Contractor, subject to the terms of Article 40, Disputes.
- 33.H Permitting the Contractor to finish the Work or any part thereof after the time fixed for completion or after the date to which the time for completion may have been extended or the making of payments to the Contractor after any such periods shall not operate as a waiver by the District of any rights or remedies under this Contract.
- 33.I The Contractor shall insert in each subcontract a provision that the subcontractor shall comply immediately with a

written order of the District to the Contractor to suspend the Work, and that they shall further insert the same provision in each subcontract of any tier.

34. CHANGES

34.A The District may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a Change Order, make any change in the Work within the general scope of the Contract, including but not limited to changes:

34.A.1 in the specifications (including drawings and designs);

34.A.2 in the method or manner of performance of the Work;

34.A.3 in the District furnished facilities, equipment, materials, services, or site; or

34.A.4 directing acceleration in the performance of the work.

34.A.5 approved cost reduction incentive proposals submitted by the Contractor.

34.B Any other written or oral order from the District that is intended to cause any change shall be treated as a Change Notice under this Article. Contractor shall notify the District in writing when it receives such an order, which shall include any direction, instruction, interpretation or determination from any source, which it considers to be a Change Notice. Such notification shall be given to the District or the Districts designee, and District or its designee shall issue a Change Order, before the Contractor acts on said order.

34.C Except as herein provided, no order, statement, or conduct of the District shall be treated as a Change Order under this article or entitle the Contractor to an equitable adjustment hereunder, except where a Change Order is implemented pursuant to the procedures set forth in this Article.

34.D If any Change Order under this article causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work under this Contract an equitable adjustment in compensation and/or time shall be made and the Contract modified in writing accordingly.

34.D.1 Except for claims based on defective specifications, no claim for any change shall be allowed for any costs or delays incurred more than 20 days before the Contractor gives written notice as herein required. In the case of defective specifications for which the District is

responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective specifications, except there will be no equitable adjustment for attempts made after Contractor knew or should have known the specifications were defective.

34.D.2 If the Contractor intends to assert a claim for an equitable adjustment under this Article, he shall, within 30 days after receipt of a written Change Order submit to the District a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the District.

34.E If the Contractor requests an equitable adjustment, the Contractor shall be allowed to add the following maximum percentages for overhead and profit to his costs for labor, materials and equipment for Work performed by his own forces, and for subcontracted Work:

34.E.1 the amount of 20 percent for labor, 15 percent for materials and 15 percent for equipment for Work performed by his own forces;

34.E.2 for subcontracted Work, the percentages as indicated for the Contractor may be added by the subcontractor for overhead and profit for labor, materials and equipment provided by the subcontractor; the Contractor may add an additional five percent markup which shall be calculated on the amount prior to subcontractor's labor, material and equipment, mark-ups; and

34.E.3 the terms "labor", "equipment" and "materials" as used herein are the same as defined in Article 41, Force Account.

34.F No request by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

35. COST REDUCTION INCENTIVE

35.A The Contractor may submit to the District or its designee, in writing, proposals for modifying the plans, specifications or other requirements of the Contract for the sole purpose of reducing the total cost of construction. The cost reduction proposal shall not impair, in any manner, the essential functions or characteristics of the project, including but not limited to service life, quality, economy of operation, ease of maintenance, desired appearance, or design and safety standards.

35.B Cost reduction proposals shall contain the following information:

35.B.1 A description of both the existing Contract requirements for performing the Work and the proposed changes.

35.B.2 An itemization of the Contract requirements that must be changed if the proposal is adopted.

35.B.3 A detailed estimate of the cost of performing the Work under the existing Contract and under the proposed change. These estimates of cost shall be determined in the same manner as if the Work were to be paid for as a Change pursuant to the provisions of this Article.

35.B.4 A statement of the time within which the District must make a decision thereon.

35.B.5 The Contract items of Work affected by the proposed changes, including any quantity variation attributable thereto.

35.C The provisions of this Subarticle shall not be construed to require the District to consider any cost reduction proposal which may be submitted hereunder; proposed changes in basic design of an element will not be considered as an acceptable cost reduction proposal; the District will not be liable to the Contractor for failure to accept or act upon any cost reduction proposal submitted pursuant to this Subarticle nor for any delays to the Work attributable to any such proposal. If a cost reduction proposal is similar to a change in the plans or specifications under consideration by the District for the project at the time said proposal is submitted or if such a proposal is based upon or similar to Contract Specifications, standard special provisions, Standard Plans or a Change Order adopted by the District, after the advertisement for the contract, the District will not accept such proposal and the District reserves the right to make such changes without compensation to the Contractor under the provisions of this section.

35.D The Contractor shall continue to perform the Work in accordance with the requirements of the Contract until an executed Change Order, incorporating the cost reduction proposal has been issued. If an executed Change Order has not been issued by the date upon which the Contractor's cost reduction proposal specifies that a decision thereon should be made, or such other data as the Contractor may subsequently have specified in writing, such cost reduction proposal shall be deemed rejected.

35.E The District shall be the sole judge of the acceptability of a cost reduction proposal and of the estimated net savings in construction costs from the adoption of all or any part of such proposal. In determining the estimated net savings,

the right is reserved to disregard the Contract bid prices if in the judgment of the District, such prices do not represent a fair measure of the value of Work to be performed or to be deleted.

35.F The District reserves the right where it deems such action appropriate, to require the Contractor to share in the District's costs of investigating a cost reduction proposal submitted by the Contractor as a condition of considering such proposal. Where such a condition is imposed the Contractor shall indicate his acceptance thereof in writing, and such acceptance shall constitute full authority for the District to deduct amount payable to the District from any monies due or that may become due to the Contractor under the Contract.

35.G If the Contractor's cost reduction proposal is accepted in whole or in part such acceptance will be by a Contract Change Order, which shall specifically state that it is executed pursuant to this Subarticle. Such Change Order shall incorporate the changes in the plans and specifications which are necessary to permit the cost reduction proposal or such part of it as has been accepted to be put into effect, and shall include any conditions upon which the District's approval thereof is based if the approval of the District is conditional. The Change Order shall also set forth the estimated net savings in construction costs attributable to the cost reduction proposal effectuated by the Change Order and shall further provide that the Contractor be paid 50 percent of said estimated net savings amount. The Contractor's cost of preparing the cost reduction incentive proposal and the District's costs of investigating a cost reduction incentive proposal, including any portion thereof paid by the Contractor, shall be excluded from consideration in determining the estimated net savings in construction costs.

35.H Acceptance of the cost reduction proposal and performance of the Work thereunder shall not extend the time of completion of the Contract unless specifically provided for in the Contract Change Order authorizing the use of the cost reduction proposal.

35.I The amount specified to be paid to the Contractor in the Change Order which effectuates a cost reduction proposal shall constitute full compensation to the Contractor for the cost reduction proposal and the performance of the Work thereof pursuant to the said Change Order.

35.J The District expressly reserves the right to adopt a cost reduction proposal for general use on the contracts administered by the District when it determines that said proposal is suitable for application to other contracts. When an accepted cost reduction proposal is adopted for general use, only the Contractor who first submitted such proposal will

be eligible for compensation pursuant to this section, and in that case, only as to those contracts awarded to him prior to submission of the accepted cost reduction proposal and as to which such cost reduction proposal is also submitted and accepted. Cost reduction proposals identical or similar to previously submitted proposals will be eligible for consideration and compensation under the provisions of this Subarticle if the identical or similar previously submitted proposals were not adopted for general application to other contracts administered by the District. Subject to the provisions contained herein, the District or any other public agency shall have the right to use all or any part of any submitted cost reduction proposal without obligation or compensation of any kind to the Contractor.

36. DIFFERING SITE CONDITIONS

36.A The Contractor shall promptly, and before such conditions are disturbed, notify the District in writing of: subsurface or latent physical conditions at the site differing materially from those indicated in the Contract; or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. The District will promptly investigate the conditions, and if such conditions materially differ and cause an increase or decrease in the Contractor's cost of, or the time required for performance of any part of the work under the Contract, whether or not changed as a result of such conditions, an equitable adjustment will be made and the Contract modified by Change Order.

36.B No claim of the Contractor under this Article will be allowed unless the Contractor has given the notice required in this Article and Subarticle 39.A, Notice of Potential Claim.

36.C No claim by the Contractor for an equitable adjustment hereunder will be allowed if asserted after final payment under this Contract.

36.D If District is not given written notice prior to the conditions being disturbed, the Contractor shall be deemed to have waived his right to assert a claim for additional time and compensation arising out of such changed conditions.

37. DEFECTIVE COST AND PRICING DATA

37.A Contractor

37.A.1 This Subarticle applies to any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits of more than \$100,000 except any modification for which the price is:

37.A.1.a based on adequate price competition;

37.A.1.b based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

37.A.1.c set by law or regulation.

37.A.2 If any price, including profit, negotiated in connection with any modification under this article, was increased by any significant amount because:

37.A.2.a the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data,

37.A.2.b a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or

37.A.2.c any of these parties furnished data of any description that were not accurate, the price shall be reduced accordingly and the contract shall be modified to reflect the reduction.

37.A.3 Any reduction in the contract price under subarticle 37.A.1 above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which the actual subcontract, or the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

37.B Subcontractor

37.B.1 The requirements of Subarticles 37.B.2 and 37.B.3 of this Subarticle shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed \$100,000 and shall be limited to such modifications.

37.B.2 Before awarding any subcontract expected to exceed \$100,000 when entered into, or pricing any subcontract modification involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed \$100,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is:

37.B.2.a Based on adequate competition;

37.B.2.b Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

37.B.2.c Set by law or regulation.

37.B.3 The Contractor shall require the subcontractor to certify in substantially the form prescribed in subsection 15.804-4 of the Federal Acquisition Regulation that to the best of its knowledge and belief, the data submitted under Subarticle 37.B.2 above were accurate, complete and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

37.B.4 The Contractor shall insert the substance of this Subarticle 37.B including this Subarticle, in each subcontract that exceeds \$100,000 when entered into.

38. INCREASED OR DECREASED QUANTITIES

38.A This Article only applies to unit prices contained in this Contract as shown on the Bid Form and controls payments or credits for variations between estimated quantities and actual quantities required to complete the Work. Increases or decreases will be determined by comparing the actual quantity required to the GC's Estimated Quantities in the Bid Form.

38.B Where the quantity of a pay item in this Contract is an estimated quantity and where the actual quantity of such pay item varies more than 25 percent above or below the estimated quantity stated in this Contract, an equitable adjustment in the Contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in cost due only to the variation above 125 percent or below 75 percent of the estimated quantity.

38.C No compensation will be made in any case for loss of anticipatory profits or consequential damages.

38.D This Article will apply to the District initiated additions to or deletions from the Work: even though the additions or deletions may be distinct, or separate structures, or activities; and regardless of the fact that the addition or deletion is a result of field adjustments, site conditions, a design change, or any other cause.

39. CLAIMS

39.A Notice of Potential Claim

39.A.1 The Contractor shall not be entitled to additional compensation otherwise payable for any act or failure to act by District, the occurrence of any event or any other cause, unless it shall have given the District a written notice of

potential claim within five working days after the occurrence of the act or event.

39.A.2 The written notice of potential claim shall set forth the reasons the Contractor believes additional compensation is or will be due, the nature of the costs involved, and insofar as possible, the amount of the potential claim. If based on an act or failure to act by District, the written notice shall be given to the District prior to the time that the Contractor has started performance of Work giving rise to the potential claim for additional compensation.

39.B Submittal of Claims

39.B.1 Claims shall be filed by the Contractor within 30 days after the occurrence of the event and shall be in sufficient detail to enable the District to ascertain the basis and amount of the claims. The Contractor shall furnish, when requested by the District further information and details required to determine the facts or contentions involved in the claims. Failure to submit the information and details will be sufficient cause for denying the Contractor's claims.

39.B.2 Each claim the Contractor makes for equitable adjustment on account of delay for any cause shall be accompanied by a revised progress schedule, in such detail as is required by the District, reflecting the effects of the delay and proposals to minimize the effects. If no analysis of the progress schedule has been previously submitted to the District reflecting conditions prior to and after the delay for which relief is sought, then such an analysis reflecting those conditions shall be prepared and submitted with the claim. Failure to submit the analysis will be sufficient cause for denying the Contractor's claim.

39.B.3 Contractor shall comply with all applicable additional submittal requirements and conditions which are required elsewhere in the Contract.

39.B.4 In no event shall claims be made after final payment is made.

39.B.5 Contractor shall continue to perform the Work during the pendency of the claim.

39.B.6 No claim for which a notice of potential claim is required will be considered unless the Contractor has complied with the notice requirement or the contractor submits with its claim a showing that District has not been prejudiced by Contractor's failure to so comply. In the event District has been prejudiced by the Contractor's failure to submit a timely notice of potential claim, District may reduce any equitable adjustment claimed by the Contractor to the extent of the damage. A claim not filed within the 30

day time limit will not be considered unless Contractor obtained an extension of time in writing from the District to file a late claim.

39.B.7 Adjustment in the Contract Price or Schedule arising out of a claim shall be effective only if expressly agreed to by the District by the issuance of a Change Order.

40. DISPUTES

40.A If a dispute arises, every effort shall be made to resolve the dispute through negotiation. However, in the absence of settlement, the District may, upon its own initiative or promptly upon the written request of the Contractor, make a determination thereof and such determination shall immediately be complied with by the Contractor pending resolution pursuant to the provisions of Subarticle 40.B.

40.B Each determination made by the District pursuant to subarticle 40.A shall be set forth in a written notice thereof to the Contractor and, within 30 days after the receipt of such notice, the Contractor shall respond to the District, in writing, either accepting the determination or stating in general terms the Contractor's factual or legal objections to the determination. If the response is an objection to the determination, the District shall respond, in writing, to the response within thirty days after the District receipt thereof. Contractor's failure to respond to the District's determination within the thirty day period shall be deemed an acceptance thereof. No further responses by either party shall be required. Thereafter, either party may seek a judicial determination of a dispute, except when the Contractor accepts the District's determination or fails to respond to the District's determination within the 30 day time limit. Neither the District's determination, nor either party's response, nor the continued performance of the Contract shall constitute an admission as to any factual or legal position in connection with the dispute, or a waiver of rights under this Contract or at law.

40.C Disputes subject to this Article shall be governed by California law. However, to ensure that the Contract is performed in all respects in compliance with the provisions of all capital grants between the District and the United States Government relating to this Contract, and with the laws and regulations governing such grants and the relationship between the District and the United States Government in all other respects, questions arising in connection therewith shall be governed by the applicable Federal law.

41. FORCE ACCOUNT

41.A This Article shall become operative at the option of the District and upon failure of the Contractor and District to arrive at an amount of compensation under Article 34,

Changes. If no equitable adjustment is determined either by mutual agreement or pursuant to Article 40, Disputes, the compensation paid hereunder will be the total compensation.

41.B Work Performed by or for Contractor - The Contractor will be paid for labor, materials, and equipment as hereinafter provided, except where agreement has been reached to pay in accordance with Subarticle 41.C. The following maximum percentages, as full compensation for profit, overhead and small tools, will be added to the totals computed as provided in subarticles 41.B.1, 41.B.2 and 41.B.3:

Labor	Not to exceed	20 percent
Materials	Not to exceed	15 percent
Equipment	Not to exceed	15 percent

Labor, materials and equipment shall be furnished by the Contractor or by a subcontractor. When work paid on a force account basis is performed by a subcontractor, the subcontractor may add the percentages indicated for the Contractor for overhead and profit and the Contractor may add an additional five percent markup which shall be calculated on the amount prior to subcontractor's labor, equipment and materials markups. The cost of subcontracted work will be the actual cost to the Contractor for work performed by a subcontractor as computed in accordance with this Subarticle 41.B and its Subarticles 41.B.1, 41.B.2 and 41.B.3.

41.B.1 Labor - The cost of labor used in performing the Work, whether the employer is the Contractor or a subcontractor, will be the sum as determined on the basis of the following three Subarticles:

41.B.1.a The gross actual wages paid including income tax withholdings but not including employer payments to or on behalf of workmen for health and welfare, pension, vacation, insurance, and similar purposes.

41.B.1.b To the gross actual wages, as defined in the previous Subarticle, 41.B.1.a, will be added a percentage based upon current State and Federal Laws and applicable labor contracts concerning payments made to or on behalf of workmen other than actual wages, which percentage will constitute full compensation for all payments imposed by State and Federal Laws and for all other payments made to or on behalf of the workmen, other than actual wages as defined in the previous Subarticle 41.B.1.a and the subsistence and travel allowance as specified in the following Subarticle 41.B.1.c. The Contractor shall compute a separate percentage for each craft, or a composite percentage for all crafts if so approved by District. Computed percentages shall be submitted to the District or its designee for approval.

41.B.1.c Subsistence and travel allowance paid to workmen as required by established agreements.

41.B.1.d The charges for labor shall include all classifications up to but not including general foremen, engaged in the actual and direct performance of the Work. Labor charges shall not include charges for assistant superintendents, office personnel, timekeepers, and maintenance mechanics, unless authorized by the District in advance of the start of work.

41.B.2 Materials - The cost of materials required for the accomplishment of the work will be the delivered cost to the purchaser, whether Contractor or subcontractor, from the supplier thereof, except as the following are applicable:

41.B.2.a If a cash or trade discount by the actual supplier is offered or available to the Contractor or subcontractor, it shall be credited to District notwithstanding the fact that such discount may not have been taken.

41.B.2.b If materials are procured by the Contractor or subcontractor by a method which is not a direct purchase from and a direct billing by the actual supplier, the cost of such materials will be deemed to be the price paid to the actual supplier, as determined by the District. No additional markup for supplier work will be allowed except to the extent of actual cost to the Contractor in handling the material, not to exceed five percent of the price paid to actual supplier.

41.B.2.c If the materials are obtained from a supply or source owned wholly or in part by the Contractor, payment therefor will not exceed the price paid for similar materials furnished from said source on Contract Items or the current wholesale price for such materials delivered to the Work site, whichever price is lower.

41.B.2.d If the cost of the materials is, in the opinion of the District, excessive, then the cost of such materials will be deemed to be the lowest current wholesale price at which such materials are available in the quantities concerned, delivered to the Work site, less discounts as provided in Subarticle 41.B.2.a.

41.B.2.e If the Contractor does not furnish satisfactory evidence of the cost of such materials from the actual supplier thereof, the cost will be determined in accordance with Subarticle 41.B.2.d.

41.B.2.f The Contractor shall have no claims for costs and profit on District furnished materials.

41.B.3 Equipment - The Contractor will be paid for the use of Contractor-owned equipment at the suggested rates listed for such equipment in the latest edition of the United States Army, Corps of Engineers, "Construction Equipment Ownership and Operating Expense Schedule, (EP 1110-1-8, Volume 7)". Two copies per written request can be obtained free of charge by writing to the United States Army, Corps of Engineers, Publication Depot, 2803 52nd Avenue, Hyattsville, Maryland 20781. For the purpose of determination of the hourly rates to be applied under this Contract, working conditions shall be considered to be average unless otherwise determined by the District. Rates for equipment not in the schedule will be computed by the District using the formulas in the schedule. Where applicable, rates in the schedule may be used for unlisted equipment of comparable horsepower and auxiliary features. If it is deemed necessary by the Contractor to use rental equipment the Contractor shall furnish the necessary cost data and paid invoices to the District for use in verification of such rental costs. Rates for equipment rented from an organization under common control, lease-purchase or sale-leaseback arrangements will be determined in accordance with the schedule.

41.B.3.a The rates paid as above provided will include the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs and maintenance, depreciation, storage, insurance, and incidentals.

41.B.3.b Equipment operators will be paid for as stipulated in Subarticle 41.B.1.

41.B.3.c Equipment shall be in good working condition and suitable for the purpose for which the equipment is to be used.

41.B.3.d Unless otherwise specified, manufacturer-approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment that has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer of that equipment.

41.B.3.e Individual pieces of equipment or tools having a net individual value of \$1,000 or less, whether or not consumed by use, will be considered to be small tools, and no payment will be made therefor.

41.B.3.f Compensation will not be allowed while equipment is inoperative due to breakdown. Except as specified in Subarticle 41.B.3.g, time will be computed in half and full hours. In computing the time for use of equipment, less than 30 minutes shall be considered one-half hour.

41.B.3.g Equipment at the Work Site - The time to be paid for use of equipment on the Work site will be the time the equipment is in operation on the force account work being performed. The time will include the time required to move the equipment to location of the force account work and return it to the original location or to another location requiring no more time than that required to return it to its original location. Moving time will not be paid if the equipment is used at the site of the force account work on other than such force account work. Loading and transporting costs will be allowed in lieu of moving time, when the equipment is moved by means other than its own power. No payment for loading and transporting will be made if the equipment is used at the site of the force account work on other than such force account work.

41.C Special Items of Work - If District and the Contractor, by agreement, determine that (a) an item of force account work does not represent a significant portion of the total Contract price, and (b) such item of work cannot be performed by the forces of the Contractor or the forces of any of his subcontractors, and (c) it is not in accordance with the established practice of the industry involved to keep the records which the procedure outlined in Subarticle 41.B would require, charges for such special force account work items may be made on the basis of invoices for such work without complete itemization of labor, materials, and equipment rental costs. To such invoiced price, less a credit to District for any cash or trade discount offered or available, will be added five percent of the discounted price, in lieu of the percentages provided in Subarticle 41.B. In no event will the price paid exceed the current fair market value of such work plus five percent.

41.D Records - The Contractor shall maintain his records to provide a clear distinction between the direct costs of work paid for on a force account basis and the costs of other operations.

41.D.1 The contractor shall prepare and furnish to the District, on District furnished force account forms, on the following workday, report sheets in duplicate of each day's work paid for on a force account basis. The daily report sheets shall itemize the materials used and shall cover the direct cost of labor and the charges for equipment, whether furnished by the Contractor, subcontractor, or other forces, except for charges described in Subarticle 41.C. The daily report sheets shall provide names or identifications and classifications of workmen and the hourly rate of pay and hours worked. In addition, a report of the size, type, and identification number of equipment and hours operated shall be furnished to the District or its designee. Daily report sheets shall be signed by the Contractor or his authorized agent and the District or its designee.

41.D.2 Material charges shall be substantiated by valid copies of vendor's invoices or conformed copies, certified true by the Contractor. Such invoices shall be submitted with the daily report sheets. Should the vendor's invoices not be submitted within 20 days after the date of delivery of the material or 15 days after acceptance of the work, whichever comes first, District may establish the cost of such materials at the lowest current wholesale prices at which such materials are available in the quantities concerned delivered to the Work site, less any discounts provided in Subarticle 41.B.2.a.

41.D.3 The Contractor's original cost records pertaining to work paid for on a force account basis shall be retained and shall be open to inspection and audit.

41.E If the Contractor or any of its subcontractors, in performing Force Account work, is not making efficient use of labor, material or equipment or is proceeding in a manner which makes Force Account work unnecessarily more expensive to District, the District may, in whole or part, direct the Contractor in the deployment of labor, material and equipment. By way of illustration, inefficiency may arise in the following ways:

41.E.1 the timing of the work,

41.E.2 the use of unnecessary labor or equipment,

41.E.3 the use of a higher percentage of apprentices than in non-force account work,

41.E.4 failure to procure materials at lowest price, or

41.E.5 using materials of quality higher than necessary.

42. CALIFORNIA STOP NOTICE

42.A California Preliminary Notices in accordance with Section 3098 of the California Civil Code shall be filed with the Assistant General Manager, Transit Systems Development Department, Southern California Rapid Transit District, 425 South Main Street, Los Angeles, California 90013.

42.B Stop Notices in accordance with Section 3103 of the California Civil Code shall be filed with the Office of the Secretary of the Southern California Rapid Transit District.

42.C If a stop notice is filed against the project in accordance with Section 3103 of the California Civil code, the District may retain from payments otherwise due the Contractor, in addition to any other amounts property withheld under the provisions of this Contract, an amount equal to the amount or amounts claimed in the stop notice. The District may, in the alternative, where applicable, accept a surety bond

filed in accordance with Section 3196 of the California Civil Code.

43. TERMINATION FOR CONVENIENCE

43.A The performance of Work under this contract may be terminated by the District in accordance with this Article in whole or, from time to time in part, whenever such termination is in the best interest of the District. Such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination is effective.

43.B After receipt of a Notice of Termination, and except as otherwise directed by the District, the Contractor shall:

43.B.1. Stop work under the Contract on the date and to the extent specified in the Notice of Termination;

43.B.2 Place no further orders or subcontracts for materials, equipment, services, or facilities, except that which is necessary to complete the portion of the work under the Contract which is not terminated;

43.B.3 Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.

43.B.4 Assign to the District in the manner, at the times, and to the extent directed by it, all of the right, title, and interest of the Contractor in the orders and subcontracts affected by the termination. District may, in its discretion, settle or pay any or all claims arising out of the termination of such orders and subcontracts;

43.B.5 Settle outstanding liabilities and claims arising out of the termination of orders and subcontracts with the approval or ratification of the District, to the extent it requires, which approval or ratification shall be final for the purposes of this Article;

43.B.6 Transfer title and deliver to the District in the manner, at the times, and to the extent, if any, directed by it,

43.B.6.a the fabricated or unfabricated parts, work in process, completed work, supplies and other material procured as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and

43.B.6.b the completed or partially completed plans, drawings, information, and other property, which, if the

contract had been completed, would have been required to be furnished to the District.

43.B.7 Use best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the District property of the types referred to in 43.B.6; provided, however, that the Contractor

43.B.7.a shall not be required to extend credit to any purchaser, and

43.B.7.b may acquire any such property under the conditions prescribed by and at a price or prices approved by The District.

43.B.8 The proceeds of any transfer or disposition of property of the types referred to in 43.B.6 shall be applied in reduction of any payments to be made by the District to the Contractor under this Contract or will otherwise be credited to the price or cost of the work covered by this Contract or paid in such other manner as the District may direct;

43.B.9 Complete performance of each part of the work which is not terminated by the Notice of Termination; and

43.B.10 Take action necessary, or as the District directs to protect and preserve the property related to this Contract which is in the possession of the Contractor and in which it has or may acquire an interest.

43.C After receipt of a Notice of Termination, the Contractor shall submit to the District his termination claim, in the form and with certification prescribed by the District. Such claim shall be submitted promptly but in no event later than one year after the effective date of termination, unless one or more extensions in writing are granted by the District, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the District determines that the facts justify such action, it may receive and act upon any such termination claim at any time after the one year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the District may determine, on the basis of information available, the amount, if any, due the Contractor by reason of the termination and may thereupon pay the Contractor the amount so determined.

43.D Subject to the provisions of Subarticle 43.C, the Contractor and the District may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this Article, which amount or amounts may include an allowance for profit on work done; provided, that such agreed amount

or amounts, exclusive of settlement costs, shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract will be amended accordingly, and the Contractor will be paid the agreed amount. Nothing in Subarticle 43.E, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the District to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Article shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this Subarticle.

43.E If the Contractor and the District fail to agree, as provided in Subarticle 43.D, upon the whole amount to be paid the Contractor by reason of the termination of work pursuant to this Article, the District will pay the Contractor the amounts determined by the District as follows, but without duplication of any amounts agreed upon in accordance with Subarticle 43.D:

43.E.1 With respect to Contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:

43.E.1.a The cost of such work;

43.E.1.b The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in Subarticle 43.B.5, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under this Contract, which amounts shall be included in the cost on account of which payment is made under Subarticle 43.E.1.a;

43.E.1.c A sum, as profit on the cost of such work, determined by the District to be fair and reasonable; provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this Subarticle and an appropriate adjustment shall be made by reducing the amount of the settlement to reflect the loss.

43.E.2 The reasonable cost incurred to preserve and protect property pursuant to Subarticle 43.B.10 and any other reasonable cost incidental to termination of work under this Contract, including expense incurred to determine the amount due to the Contractor as the result of the termination of work under this Contract.

- 43.E.3 The total sum to be paid to the Contractor under article 43.E.1 will not exceed the Total Contract Price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work terminated. Except for normal spoilage, and except to the extent that the District has expressly assumed the risk of loss, there will be excluded from the amounts payable to the Contractor under Subarticle 43.E.1, the fair value, as determined by the District, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the District or to a buyer pursuant to Subarticle 43.B.7.
- 43.F In arriving at the amount due the Contractor under this Article, there will be deducted:
- 43.F.1 The amount of any claim which the District has against the Contractor in connection with this Contract; and
- 43.F.2 The agreed price for, or the proceeds of sale, of materials, supplies or other things acquired by the Contractor or sold, pursuant to the provisions of this Article, and not otherwise recovered by or credited to the District.
- 43.G If the termination hereunder is partial, prior to the settlement of the terminated portion of this Contract, the Contractor may file with the District a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and an equitable adjustment may be made in the price or prices.
- 43.H The District may from time to time, under terms and conditions it prescribes, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Contract whenever in the opinion of the District the aggregate of payments does not exceed the amount to which the Contractor is entitled. If the total of the payments is in excess of the amount finally agreed or determined to be due under this Article, the excess shall be paid by the Contractor to the District upon demand together with interest at the rate of ten percent per annum for the period from the date the excess payment is received by the Contractor to the date on which the excess payment is repaid to the District.
- 43.I The Contractor, from the effective date of termination and for a period of three years after final settlement under this Contract, shall preserve and make available to the District at all reasonable times at the office of the Contractor without direct charge to the District all his books, records, documents, and other evidence related to the costs and expenses of the Contractor under this Contract and to the Work terminated hereunder. To the extent approved by the District, Contractor may preserve the record in the form

of photographs, micro-photographs, or other authentic reproductions thereof.

- 43.J Claims for elimination of items of work by the District for which an equitable adjustment is not available under Article 38, Increased or Decreased Quantities, shall be considered pursuant to the terms of this Article. The elimination of items of Work shall not invalidate the Contract or any part of it.
- 43.K The Contractor shall insert in all subcontracts that the subcontractor shall stop work on the date of and to the extent specified in a Notice of Termination from the District and shall require subcontractor of any tier to insert the same provision in any lower tier subcontracts.
- 43.L The Contractor shall communicate any Notice of Termination issued by the District to the affected subcontractors of any tier immediately upon its receipt.
- 43.M For the purposes of Subarticle 43.D and 43.E when subcontracted work or purchases which would have entitled the subcontractor (hereinafter designated "large subcontractor") to gross proceeds of \$100,000 or more or would have entitled the supplier (hereinafter designated "large supplier") to sales proceeds of \$100,000 or more, are terminated pursuant to Subarticle 43.B.3, the Contractor is not entitled to reimbursement for that part of the termination settlement with a large subcontractor or large supplier, which is an anticipatory or unearned profit on work or orders terminated or partly terminated, or which are consequential damages on account of the termination or partial termination. The terms "Subcontractor" and "Supplier" refer to subcontractors and suppliers at all tiers.
- 43.N Under no circumstances is the Contractor entitled to anticipatory or unearned profits or consequential damages as a result of a termination or partial termination under this Article.

44. TERMINATION FOR DEFAULT - DELAY

- 44.A If the Contractor refuses or fails to prosecute Work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Contract, or any extension thereof, or refuses or fails to complete said Work within such time, the District may, by written notice to the Contractor, demand that Contractor remedy the default within five days, or, if the default cannot be remedied within five days, demand that Contractor commence the remedy within five days and proceed with diligence to complete the remedy on a schedule to be set by the District, or if no schedule is set by the District, within a reasonable time. If the Contractor fails to remedy, or commence the remedy or diligently proceed to complete the remedy, as

provided herein, the District may Terminate for Default Contractor's right to proceed with the Work or the part of the Work which is in default. In that event the District may take over the Work and prosecute it to completion, by contract or otherwise, and may take possession of and utilize in completing the Work the materials, equipment and plant which are on the Work site. Whether or not the Contractor's right to proceed with the Work is terminated, he and his sureties shall be liable for any damage to the District resulting from his refusal or failure to complete the Work in the specified time.

- 44.B If the District terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages from delay for the time required to finally complete the work together with any increased costs incurred by the District in completing the Work.
- 44.C The Contractor's right to proceed may not be terminated for default and the Contractor may not be charged with resulting damages if the delay qualifies for an extension of time in accordance with Article 32, Extension of Time.
- 44.D If, after Notice of Termination of the Contractor's right to proceed under the provisions of this Article, it is determined for any reason that the Contractor was not in default under the provisions of this Article, or that the Contractor was entitled to an extension of time under Article 32, Extension of Time, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued pursuant to Article 43, Termination for Convenience.
- 44.E The right to terminate for default and any other rights and remedies of the District provided in this Article are in addition to any other rights and remedies provided by law or under this Contract.

45. TERMINATION FOR DEFAULT - OTHER

45.A In addition to the District's right to terminate for default under other provisions of this Contract, the District may terminate the Contractor's performance of Work in whole or in part for default for any of the following reasons:

45.A.1 The Contractor's or subcontractor's performance of work is in breach of any term of the Contract, including any Change Order or Amendment of any term of the Contract.

45.A.2 The Contractor or subcontractor has violated or has not followed an authorized order or requirement of the District which is valid under the terms of this Contract or any Change Order or Amendment thereof.

45.A.3 Abandonment of the Contract.

45.A.4 Assignment or subcontracting of the Contract or any work under the Contract without written approval of the District.

45.A.5 Bankruptcy or appointment of a receiver for the Contractor's property.

45.A.6 Performance by the Contractor in bad faith.

45.A.7 Termination provided for in any other provision of this Contract.

45.B If after providing written Notice of Termination of Contractor's right to proceed, it is determined for any reason that Contractor was not in default, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued pursuant to Article 43, Termination for Convenience.

46. RIGHTS AND OBLIGATIONS IN TERMINATION FOR DEFAULT

46.A This Article shall apply to terminations for default.

46.B On receipt of a Notice of Termination from the District, the Contractor shall:

46.B.1 Stop all work under the Contract on the date of and to the extent specified in the Notice of Termination;

46.B.2 Place no further orders or subcontracts for materials, equipment, services or facilities except that which is necessary to complete the portion of the work under the Contract which is not terminated;

46.B.3 Terminate all orders or subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.

46.B.4 Comply with all other requirements of the District specified in the Notice of Termination.

46.C Upon the District's termination of the Contractor's right to proceed with the Work because of the Contractor's default under the Contract, the District may complete the Work by whatever means and method it deems advisable. District may take possession of and use any or all the Contractor's materials, plant, tools, equipment and property of any kind provided by or on behalf of the Contractor for the purpose of the Work, or a portion of them, without being responsible to the Contractor for wear and tear. The Contractor shall have no rights in such property during its use by the District. District will not be required to obtain the lowest prices for completing the Work but shall make such expenditures as, in its sole judgement, best complete the Work.

- 46.D The expense of completing the Work, together with a reasonable charge for engineering, 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 monies due or at any time thereafter become due to the Contractor. In case the expense is in excess of the sum which otherwise would have been payable to the Contractor under the Contract, then the Contractor or his surety shall promptly pay the amount of the excess to the District upon notice from the District of the excess so due. The District may, in its sole discretion, continue to withhold all retentions and may withhold all or any part of any progress payments otherwise due the Contractor until completion and final settlement of the Work covered by the Notice of Termination of Contractor's right to proceed.
- 46.E The Contractor shall insert in all subcontracts that the subcontractor shall stop work on the date of or to the extent specified in a Notice of Termination from the District and shall require the subcontractors to insert the same provision in all lower tier subcontracts.
- 46.F The Contractor shall immediately upon receipt communicate any Notice of Termination issued by the District to the affected subcontractors and suppliers at any tier.
- 46.G Rights of Surety - The Surety on the Performance Bond provided for in this Contract shall not be entitled to take over the Contractor's performance of Work in case of termination under this Article, except with the written consent of the District.

47. MATERIALS

- 47.A Unless otherwise specifically provided in this Contract, material shall be new and of the grade specified for the purpose intended. Reference to material 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 the Contractor may, at his option, use any equipment, material, article, or process which is equal to that named in the specifications, subject to the requirements of Subarticle 47.C.
- 47.B The Contractor shall obtain the District's approval of the machinery and mechanical and other equipment to be incorporated into the Work. When requesting approval, the Contractor shall furnish to the District the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this Contract or by the District, the Contractor shall also obtain the District's approval of the material or articles which the Contractor contemplates incorporating into the Work. When requesting approval, the Contractor shall

provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples to the District for approval, at the Contractor's expense, with all shipping charges prepaid. If Contractor installs or uses material that is not approved by District, it shall be at the risk of subsequent rejection by District.

47.C Approval of alternate Material: Within the scope of its authority, the District shall be the sole judge of the quality and suitability of any proposed alternative material. The burden of proving the quality and suitability of an alternative shall be upon the Contractor. Information required by the District in judging an alternative shall be supplied by the Contractor at the Contractor's expense.

47.C.1 Where use of an alternative involves redesign of or changes to other parts of the Work, the cost and the time required to accomplish the redesign or change will be considered in evaluating the suitability of the alternative. Redesign and changes to other parts of the Work shall be at the Contractor's expense unless they are approved pursuant to Article 35.

47.C.2 No action relating to the approval of an alternative will be taken by the District until the request for substitution is made in writing by the Contractor accompanied by complete data as to the quality and suitability of the alternative proposed. The request shall be made in ample time to permit approval without delaying the Work.

47.C.3 Where classification, rating, or other certification by a body such as, but not limited to, UL, NEMA, or AREA is a part of the specification for any material, proposals for use of an alternative shall be accompanied by reports from the listed body, or equivalent independent testing laboratory, indicating compliance with Contract Specifications. Testing required to prove equality of the alternative proposed shall be at the Contractor's expense.

47.C.4 Approval of an alternative will be only for the characteristics and use specifically stated in the approval, and shall not change or modify any Contract requirement, or establish approval for the alternative to be used on any other Work.

47.C.5 Contractor shall also comply with all additional provisions for approval of any alternative which appear in any other section of this Contract.

47.D Source of Supply and Quality of Materials - The Contractor shall furnish all materials required to complete the Work except those designated to be furnished by the District.

47.D.1 Notwithstanding prior inspection and approval by the District, only materials conforming to the requirements of the Contract shall be incorporated in the Work.

47.D.2 The materials shall be manufactured, handled, and incorporated so as to ensure completed work in accordance with the Contract.

47.E Defective Materials - Contractor furnished materials not conforming to the requirements of the Contract will be rejected, whether in place or not. Rejected material shall be removed immediately from the site of the Work unless otherwise permitted in writing by the District. No rejected material, the defects of which have been subsequently corrected, shall be used in the Work unless approved in writing by the District. If the Contractor fails to comply promptly with a request by the District, made under the provisions of this Article, District may cause the removal and replacement of rejected material by separate contract or otherwise, and the cost thereof will be deducted from any monies due or to become due the Contractor.

47.F Handling of Material - Materials shall be transported, handled, and stored by the Contractor in a manner which will ensure the preservation of their quality, appearance, and fitness for the Work. Materials shall be stored in a manner to facilitate inspection.

47.G District will have no responsibility to the Contractor concerning local sources of material other than the responsibility involved in the designations of suitability for intended use.

47.G.1 The Contractor shall make all necessary arrangements with sources. The Contractor shall pay all costs in connection with making such arrangements, exploring, developing and using material sources, whether or not indicated, except costs which District expressly agrees in writing to assume.

47.H District Furnished Materials - District furnished material shall be stored and transported to the place of use by the Contractor at his expense, including necessary loading and unloading. The Contractor's costs for storing, transporting, handling, protecting, and installing District furnished material are included in the Contract price. The Contractor shall be responsible for materials furnished to it and shall pay for demurrage and storage charges incurred as a result of its failure to take delivery of District furnished material on the assigned date. The Contractor shall be liable to District for the cost of replacing or repairing furnished material lost or damaged from any cause whatsoever after receipt by the Contractor. The costs will be deducted from any monies due or to become due the Contractor, except those

amounts constituting claims payments made under insurance policies furnished by District.

47.I Disposal of Material Outside the Work Site - Unless otherwise specified in the Contract, the Contractor shall make its own arrangements for disposing of waste and excess materials outside the Work site and shall pay all costs therefor. Prior to disposing of material outside the Work site, the Contractor shall obtain written permission from the owner on whose property the disposal is to be made. The Contractor shall file the permit, or a certified copy thereof, with the District, together with a written release from the property owner absolving District from any and all liability in connection with the disposal of material on said property.

48. PROTECTION OF EQUIPMENT, MATERIALS AND WORK

48.A Contractor shall, in accordance with the manufacturers recommendations or industry standards and at no additional cost to District, preserve and protect:

48.A.1 Equipment used by Contractor in the execution of the Work from damage or loss due to Contractor's operations, weather, fire, theft, unexplained disappearance, or other similar casualty.

48.A.2 Materials delivered and Work performed until completion and Final Acceptance of the Work, except the Work which has been accepted under Subarticle 48.B.

48.A.3 And shall bear the risk of injury, loss or damage to any and all parts of the Work for whatever cause, whether arising from the execution or from the non-execution of Work, except as provided for in Subarticle 48.B. The Contractor shall replace, rebuild, repair, or restore Work and materials that have been damaged or destroyed from any causes before completion and final acceptance of the Work and shall bear the expense thereof. The Contractor shall provide security and drainage and erect temporary structures as necessary to protect the Work and materials from damage.

48.A.4 Materials not delivered to the site for which any progress payment has been made to the same extent as if the materials were so delivered.

48.A.5 District furnished materials.

48.B Relief from Maintenance and Responsibility: District may, in writing, upon written request from the Contractor, relieve the Contractor of the duty of maintaining and protecting certain portions of the Work, as described in this Subarticle, which have been completed in all respects in accordance with the requirements of the Contract. In

addition, such action by District will relieve the Contractor from responsibility for injury or damage to the portions of the Work covered by this provision arising out of use by District or the public from any cause, except from injury or damage resulting from the Contractor's own operations or negligence. This Subarticle does not relieve the Contractor of responsibility for repairing or replacing defective work, materials and equipment in accordance with the Contract requirements.

49. CARE, CUSTODY, CONTROL AND TITLE TO MATERIALS - Good and clear title to all materials furnished by Contractor under this Contract for the Work shall, except as otherwise provided elsewhere in this Contract, pass to District upon incorporation into the completed and accepted Work, unless District notifies Contractor in writing that care, custody, and control is assumed by District at an earlier date. Contractor shall ensure that vendors and suppliers from whom Contractor obtains materials and equipment do not retain, encumber, or reserve title to such items.

50. CONTROL OF DISTRICT FURNISHED MATERIALS

50.A Materials furnished by District shall be received by Contractor in the presence of District's authorized representative and quantities thereof shall be verified jointly by Contractor and District. The delivery and acceptance of all such materials shall be recorded in writing, and Contractor shall evidence receipt and acceptance of such materials by signing forms satisfactory to District.

50.B Contractor shall carefully note any visible damage to District furnished materials prior to Contractor's acceptance of delivery. After Contractor has accepted delivery of such materials, Contractor shall have full responsibility for any loss of or damage to such materials. Contractor shall notify District of any materials supplied to Contractor by District which are surplus and, without additional compensation, shall cooperate with District in the disposition of such surplus as directed by District.

50.C Contractor shall notify District of any lack of, or requirement for, materials to be supplied by District in sufficient time for District to furnish said materials in advance of Contractor's need. In the event of misfit of District furnished materials, Contractor shall promptly notify District of such misfit. Contractor shall take all reasonable steps to avoid standby time due to such misfit or lack of District furnished materials and to continue progress of other portions of Work pending correction of such misfit and/or the furnishing of materials.

51. CONTRACTOR'S CONSTRUCTION EQUIPMENT - Construction equipment obtained or furnished by Contractor, which is to be used on the job site, shall conform to Cal-OSHA requirements and be fit for

uses for which it is intended. Equipment shall be subject to inspection and approval from time to time by the District. Any equipment of Contractor that is rejected by the District as not conforming with the foregoing shall be promptly removed by Contractor and replaced with equipment acceptable to the District without additional cost to the District and without delaying the schedule for performance of the Work by Contractor.

52. USE AND POSSESSION PRIOR TO COMPLETION

52.A The District may take possession of or use any completed or partially completed part of the Work. Before taking possession of or using any Work, the District shall furnish the Contractor a list of items of Work remaining to be performed or corrected on those portions of the Work that the District intends to take possession of, or use. However, failure of the District to list any item of Work shall not relieve the Contractor of responsibility for complying with the terms of the Contract. The possession or use shall not be deemed an acceptance of any Work under the Contract.

52.B While the District has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the Work resulting from the District's possession or use. If prior possession or use by the District delays the progress of the Work or causes additional expense to the Contractor, an equitable adjustment shall be made by Change Order the Contract price or the time of completion.

53. EMERGENCIES - In an emergency affecting the safety of life, the Work, or adjacent property, the Contractor shall notify the District as early as possible that an emergency exists. In the meantime, without special instruction from the District as to the manner of dealing with the emergency, the Contractor shall act at his own discretion to prevent threatened loss or injury. As emergency work proceeds, the District may issue instructions that the Contractor shall follow.

54. PROTECTION OF EXISTING VEGETATION, STRUCTURES, UTILITIES AND IMPROVEMENTS

54.A The Contractor shall preserve and protect existing vegetation such as trees, shrubs, and grass on or adjacent to the work site which are not indicated to be removed and which do not substantially interfere with the construction Work and shall replace at his own expense in kind damaged vegetation, shrubs and grass.

54.B The Contractor shall protect from damage existing improvements at or near the site of the Work and shall repair or restore any damage to such facilities, except utilities, resulting from failure to comply with the requirements of this contract, applicable laws or regulations, or the failure to exercise reasonable care in the performance of the Work. If the Contractor fails or refuses to repair any such

damage promptly, the District may have the necessary work performed and charge the cost thereof to the Contractor.

54.C At points where the Contractor's operations are adjacent to utility facilities, damage to which might result in expense, loss, disruption of service, or other undue inconvenience to the public or to the owners, work shall not commence until arrangements necessary for their protection have been made by the Contractor. The Contractor shall be solely and directly responsible to the owners and operator of the utilities for any damage, injury, expense, loss, inconvenience, or delay caused by the Contractor's operations.

54.C.1 Where public utilities or their appurtenances interfere with permanent construction, unless otherwise indicated on the Contract Drawings or in the contract documents, work involved in permanently relocating or otherwise altering such public utilities and their appurtenances will not be a part of this Contract but will be done by utility owners at no cost to Contractor. If Contractor wishes to have any utilities temporarily relocated, he shall make necessary arrangements with owners and reimburse them at his own expense for cost of the work. The Contractor shall keep the District or its designee advised of temporary relocation arrangements.

54.C.2 The Contractor shall not repair or attempt to repair utility damage but shall immediately contact the utility owner. The Contractor shall obtain the name, address, and telephone number of each utility company that the work will affect and the person in such utility company to contact. He shall submit to the District or its designee said names, addresses, and telephone numbers.

54.D The Contractor shall comply with all applicable laws and regulations regarding precautions to be taken in the protection of existing vegetation, structures, utilities, and improvements.

54.E In order to safeguard the owners and tenants of abutting property and, at the same time, prevent unjust or fraudulent claims against the Contractor, the District or any other person or agency, the District shall cause a detailed examination of abutting property to be made before construction is begun. The owner or tenant of each parcel or structure or his or their duly authorized representative will be invited to be present during the examination by a notice in writing delivered by the District or its designee to a person in charge of the premises or structure, or by the mailing of the notice to the owner at the premises. A complete record of the existing conditions of each parcel or structure shall be made in triplicate, signed by the owner, and the District, and one copy will be delivered to the owner, one to the Contractor, and one will be retained by the District. After construction has begun the District may direct

or upon the filing of a verified statement by the owner, tenant, lessee, operator, or occupant of any building or structure, and, in any event, upon the completion of any work that in the opinion of the District might affect the abutting property, the District will make another detailed examination of such abutting property. A complete record of the then existing conditions of said property will be made in triplicate, and signed by the District, and one copy will be delivered to the owner, one to the Contractor and one will be retained by the District. In any action, that may be brought by any owner, tenant, lessee, operator or occupant of adjacent property to recover for alleged damages arising out of the Work, the record of the existing conditions of each parcel will be prima facie evidence of the conditions thereof at the time of the making of the examination.

55. PATENT INDEMNITY

55.A The Contractor shall warrant that the materials, equipment or devices used on or incorporated in the Work shall be delivered free of any rightful claim of any third party for infringement of any United States patent or copyright. If notified promptly in writing and given authority, information and assistance, the Contractor shall defend, or may settle, at his expense, any suit or proceeding against the District, the GC, or the District's designee so far as based on a claimed patent or copyright infringement which would result in a breach of this warranty, and the Contractor shall pay damages and costs awarded therein against the District, the GC, or the District's designee due to such breach. The Contractor shall report to the District, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge. In the event of any claim or suit against the District on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of supplies furnished or work or services performed hereunder, the Contractor shall furnish to the District, when requested by the District, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Contractor.

55.B The Contractor shall bear all costs arising from the use of patented materials, equipment, devices or processes used on or incorporated in the Work. In such case materials, equipment, devices or processes are held to constitute an infringement and their use enjoined, the Contractor, at his expense shall:

55.B.1 Secure for the District the right to continue using said materials, equipment, devices or processes by suspen-

sion of the injunction or by procuring a license or licenses; or

55.B.2 Replace such materials, equipment, devices or processes with noninfringing materials, equipment, devices or processes; or

55.B.3 Modify them so that they become noninfringing or remove the enjoined materials, equipment, devices or processes and refund the sum paid therefor without prejudice to any other rights of the District.

55.C The preceding Subarticle shall not apply to any materials, equipment or devices, specified by the District or manufactured to the design of the District or in accordance with the details contained in the Contract Documents; and as to any such materials, equipment or devices the Contractor assumes no liability whatsoever for patent or copyright infringement and the District will hold the Contractor harmless against any infringement claims arising therefrom.

55.D Patent rights to patentable results arising out of the Work, as well as information, designs, specifications, knowhow, data and findings shall be made available to other public agencies for public use, unless the District shall, in specific cases where it is legally permissible, determine that it is in the public interest that it not be so made available.

55.E The provisions of this Article shall be included in all subcontracts. The foregoing states the entire liability of the Contractor for patent or copy infringement by use of said materials, equipment or devices.

56. COOPERATION, ACCESS, AND COMMUNITY RELATIONS

56.A Other Contracts - The District may undertake or award other contracts for additional Work within the worksite of this Contract. The Contractor shall fully cooperate with other contractors and the District and carefully fit his own Work to additional Work directed by the District. Upon written notice, the District will review and resolve conflicts between Contracts. The Contractor shall not perform any act which will interfere with the performance of Work by any other contractor or by the District.

56.B Work indicated to be performed on private property shall be accomplished in a manner which will minimize inconvenience to the property owner and property tenant. The Contractor shall not enter upon private property to accomplish the Work without prior written permission to do so from the District.

56.C Utility companies, railroads, and municipal agencies having facilities within the limits of the Work shall have access to their facilities for inspection and repair.

56.D The Contractor shall appoint a Community Relations Representative, acceptable to the District. The representative shall coordinate with the District or its designee, to address and answer valid requests and complaints. Contractor shall correct conditions giving rise to valid complaints to the extent that they arise from Work under the Contract. These requests and complaints together with information as to the disposition thereof by the Contractor, shall be furnished to the District. The name and telephone number of the Community Relations Representative shall be furnished to residents and businessmen in the immediate area of the work-site who might reasonably be expected to be affected by the Work.

56.E Cal-OSHA shall have access to the work site as indicated in the Construction Safety Manual.

56.F The Contractor shall maintain access to fire hydrants and fire alarm boxes throughout the prosecution of the Work. Hydrants, alarm boxes, and standpipe connections shall be kept clear and visible at all times unless approved otherwise by the District or the District's designee. If visibility cannot be maintained, the Contractor shall provide clearly visible signs showing the location of the fire hydrant, fire alarm box, or standpipe connection.

57. PERMITS AND RESPONSIBILITIES - The District is not required to obtain certain permits, such as building permits from governing agencies, except when construction is on the property of the permitting agency. Nevertheless, unless specifically exempted by the District, Contractor shall comply with municipal, county and state laws, rules and regulations governing or related to any portion of this Work and they are hereby incorporated into and made a part of this Contract. Questions regarding whether any permit or other agency action is necessary shall be referred to the District for resolution. Permits, licenses and inspections determined to be required by municipal, county or state authorities shall be obtained, maintained in force and paid for by the Contractor. Applications for permits required by local authorities and variances of District obtained permits shall be submitted to the District for review and acceptance before submittal to the issuing authority. All permits shall be submitted for information after issuance. Variances allowed by local authorities that reduce the requirements and costs of this Contract shall accrue to the District and shall not be considered under Article 35, Cost Reduction Incentive. Contractor initiated variances that increase the costs of this Contract shall be borne by the Contractor. Any tests required by any authority shall be conducted in the presence of the authority or its authorized representative. Contractor shall indemnify and hold harmless the District, and all persons and entities acting on its behalf against claim and liabilities deriving from or based upon the violation of the requirements of the law or permits whether by the Contractor, its subcontractors, or any person or entity acting on its behalf.

58. ENVIRONMENTAL COMPLIANCE

58.A Requirements, Laws, Regulations and Orders - Contractor agrees to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. Sections 1857 et. seq.), the Clean Water Act (33 U.S.C. Sections 1251 et. seq.), Executive Order 11378, all applicable standards of the State of California, and all clarification, mitigation measures and requirements approved by the District in accordance with State and Federal laws.

58.B Motor Vehicle Pollution Requirements - When new motor vehicles are purchased with project funds, the Contractor shall comply with California state law regarding pollution controls.

58.C Air Quality Control

58.C.1 The Contractor shall comply with all rules, regulations, ordinances, including those of the South Coast Air Quality Management District and State statutes which apply to any Work performed pursuant to the Contract, including any air quality control rules, regulations, ordinances, and statutes specified in Section 11017 of the California Government Code. Contractors and suppliers shall submit evidence to the District that the governing air quality control criteria are being met, and such evidence shall be retained by the District for onsite examination by UMTA.

58.C.2 In the absence of applicable air quality control rules, regulations, ordinances or statutes governing solvents, including but not limited to the solvent portions of paint, thinners, curing compounds and liquid asphalt used on the Contract, the Contractor shall comply with the applicable material requirements of the South Coast Air Quality Management District. Containers of paint, thinner, curing compound, or liquid asphalt shall be labeled to indicate that the contents fully comply with said requirements.

58.C.3 Material to be disposed of shall not be burned, either inside or outside the site.

58.D The Contractor shall comply with the applicable regulations of the Environmental Protection Agency (40 CFR Part 15) and, specifically, shall not use any facility in the performance of the Contract which is listed on the Environmental Protection Agency ("EPA") List of Violating Facilities unless and until the EPA eliminates the name of such facility from such listing. The Contractor shall promptly notify the District of the receipt of any communication from the Director, Office of Federal Activities, EPA; or any successor agency, indicating that a facility to be utilized by the Contractor is under consideration to be listed on the EPA List of Violating Facilities.

Contractor shall report violations to the District, to UMTA, and to the EPA Assistant Administrator for Enforcement (ENO329).

58.E The Contractor shall include the requirements of Subarticles 58.A through 58.E in every subcontract, the value of which is more than \$100,000 and shall take such action as the District directs to enforce the requirements.

58.F Contractor shall comply with additional air, water and noise pollution provisions set forth in the Specifications.

59. ENERGY CONSERVATION - The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §§6321 et seq.).

60. HISTORICAL, SCIENTIFIC AND ARCHAEOLOGICAL DISCOVERIES - Articles of historical, scientific or archaeological interest uncovered by the Contractor during progress of the Work shall be preserved and reported immediately to the District. The further operations of the Contractor with respect to the find, including disposition of the articles, will be decided by the District.

61. BUY AMERICA

61.A Contractor shall comply with Section 165 of the Surface Transportation Assistance Act of 1982 (Public Law 97-424), and implementing regulations (49 CFR Part 660-661). A Buy America Certificate, provided in the Forms for Submittal of Bids, must be completed and submitted with the bid. A bid which does not include the Certificate will be considered non-responsive. A waiver from the Buy America Provision may be sought by the District if the grounds for the waiver exist. Any exception to the Buy America requirements shall require a waiver from UMTA in whole or in part. A request for a waiver of the Buy America requirements may be submitted to the District if the grounds for a waiver exist.

61.B The District may investigate the Contractor's, subcontractor's, and supplier's compliance with this provision. If an investigation is initiated, the Contractor, subcontractor or supplier shall document his compliance in accordance with 49 CFR Part 661.15 and cooperate with the investigation. The Contractor shall incorporate the Buy America requirement set forth in this Article in every subcontract or purchase order and shall enforce the provision.

62. RIGHTS IN LAND AND IMPROVEMENTS - The Contractor shall make no arrangements with any person to permit occupancy or use of land, structures or building within the worksite for any purpose whatsoever, with or without compensation. The Contractor shall not occupy District-owned property outside the worksite without obtaining prior written approval from the District, nor will the

contractor place any permanent structures including concrete overpours outside of the permanent right of way areas.

63. RIGHTS IN DATA

- 63.A The term "subject data" as used herein means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Contract. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.
- 63.B All "subject data" first produced in the performance of this Contract shall be the sole property of the District. The Contractor agrees not to assert any rights at common law or equity and not to establish any claim to statutory copyright in such data. Except for its own internal use, the Contractor shall not publish or reproduce such data in whole or in part, or in any manner or form, nor authorize others to do so, without the written consent of the District until such time as the District may have released such data to the public; this restriction, however, does not apply to Contracts with Academic Institutions.
- 63.C The Contractor agrees to grant and does hereby grant to the District and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive, and irrevocable license throughout the world:
- 63.C.1 To publish, translate, reproduce, deliver, perform, use, and dispose of, in any manner, any and all data not first produced or composed in the performance of this Contract but which is incorporated in the Work furnished under this Contract; and
- 63.C.2 To authorize others so to do.
- 63.D The Contractor shall indemnify and save and hold harmless the District, the District's authorized representatives and their officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any data furnished under this Contract.

63.E Nothing contained in this Article shall imply a license to the District under any patent or be construed as affecting the scope of any license or other right otherwise granted to the District under any patent.

63.F Subarticles 63.C and 63.D are not applicable to material furnished to the Contractor by the District and incorporated in the Work furnished under the Contract; provided that such incorporated material is identified by the Contractor at the time of delivery of such Work.

63.G In the event that the project, which is the subject of this Contract, is not completed, for any reason whatsoever, all data generated under this Contract shall become data as defined in Article 63.A and shall be delivered as the District may direct.

64. FEDERAL PARTICIPATION SIGNS - The Contractor will erect and maintain signs on the job site as indicated, satisfactory to the District and UMTA, identifying the project and indicating federal participation.

65. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

65.A The Contractor agrees to utilize privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping equipment, materials, or commodities pursuant to this Contract, and to the Cargo Preference Act [46 USC 1241 (b)] to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels.

65.B The Contractor agrees to furnish within 30 calendar days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described above to the District (through the Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W. Washington, D.C. 20590, marked with appropriate identification of the Project.

65.C The Contractor agrees to insert the substance of the provisions of this Article in subcontracts issued pursuant to this Contract.

66. OPERATIONS AND STORAGE AREAS

66.A All operations of the Contractor, including storage of materials, shall be confined to areas authorized or approved by the District.

66.B Temporary buildings such as storage sheds, shops and offices, may be erected by the Contractor only with the approval of the District and shall be built with labor and materials furnished by the Contractor without expense to the District. Such temporary buildings and utilities shall remain the property of the Contractor and shall be removed by him at his expense upon the completion of the Work. With the written consent of the District, such buildings and utilities may be abandoned and need not be removed.

66.C The Contractor shall, under regulations prescribed by the District, use only established roadways or construct and use such temporary roadways as may be authorized by the District. Where materials are transported in the prosecution of the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state or local law or regulation. When it is necessary to cross curbs or sidewalks, protection against damage shall be provided by the Contractor and any damaged roads, curbing, or sidewalks shall be repaired by or at the expense of the Contractor.

67. CLEANING UP

67.A The Contractor shall keep the construction area, including storage areas used by him, free from accumulations of waste material or rubbish and prior to completion of the Work shall remove any rubbish from the premises and all tools, scaffolding, equipment and materials not the property of the District.

67.B Upon completion of construction the Contractor shall leave the Work and premises in a clean, neat and workmanlike condition satisfactory to the District.

68. SHOP DRAWINGS, WORKING DRAWINGS, SAMPLES, AND CONTRACT RECORD DOCUMENTS - Shop Drawings, Working Drawings, samples and contract record documents shall be submitted in accordance with their applicable specification requirements.

69. PAYMENT OF TAXES

69.A The price or prices for the Work include full compensation for taxes that the Contractor is or may be required to pay. The Contractor shall bear the risk of any added or increased taxes occurring during the prosecution of the Work. A change in taxes under any circumstance shall not entitle the Contractor to an adjustment under the Contract.

69.B The Contractor acknowledges that materials and supplies necessary for the completion of this contract are subject to the California Sales and Use Tax.

70. MOTOR VEHICLE SAFETY STANDARDS - The motor vehicles purchased with project funds will comply with the Motor Vehicle

Safety Standards as established by the Department of Transportation.

71. EQUAL EMPLOYMENT OPPORTUNITY

71.A The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, age, sex or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during their employment, without regard to race, religion, color, age, sex, or national origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

71.B The Contractor agrees to abide by the provision of California Labor Code Section 1777.5 with respect to the employment of indentured apprentices.

71.C The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, age, sex, or national origin.

71.D The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this Article, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

71.E The Contractor will comply with all provisions of Executive Order 11246, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

71.F The Contractor will furnish information and reports required by Executive Order 11246, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

71.G In the event of the Contractor's noncompliance with nondiscrimination clauses of this Contract or with any of the said

rules, regulations or orders, this Contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

71.H The Contractor will include the provisions of Subarticles 71.A through 71.G in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided however, that if a Contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

72. AFFIRMATIVE ACTION REQUIREMENTS - EQUAL EMPLOYMENT OPPORTUNITY

72.A Requirements for Affirmative Action to Ensure Equal Employment Opportunity pursuant to Executive Order 11246, as amended, apply to this Contract.

72.A.1 The Contractor shall comply with the Standard Federal Equal Employment Opportunity Construction Contract Specifications set forth herein.

72.A.2 The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate work force in each trade on all construction work in the Los Angeles County Area are as follows:

72.A.2.a Goals and Timetables for Female Participation.

<u>TIMETABLE</u>	<u>TRADE</u>	<u>GOAL</u>
From April 1, 1980 until current date	All	6.9%

72.A.2.b Goals and Timetables for Minority Participation.

TIMETABLE

TRADE

GOAL

Until further notice by the Office of Federal Contract Compliance Programs (OFCCP)

All

28.3%

72.A.2.c These goals are applicable to all the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside the covered area, it shall apply the goals established for such geographical area where the work is generally performed. With regard to this second area, the Contractor is also subject to the goals for both its federally involved and non-federally involved construction.

72.A.3 The Contractor's compliance with Executive Order 11246, the regulations in 41 CFR Part 60-4, and the District's Equal Employment Opportunity Policy shall be based on its implementation of this Article, specific affirmative action obligations set forth in 41 CFR 60-4.3 (a) and its efforts to meet the goals established for the Los Angeles County geographical area where the Work is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minority persons and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goal shall be a violation of the contract, Executive Order 11246, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

72.A.4 The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten working days after award of any construction subcontract in excess of \$10,000 at any tier for construction work under the Contract. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

72.A.5 As used in the Contract, the "covered area" is the area of jurisdiction of the Los Angeles Building and Construction Trades Council.

72.B Standard Federal Equal Employment Opportunity Construction Contract Specifications Pursuant to 41 CFR 60-4.3 (a) and the Southern California Rapid Transit District policy are as follows.

72.B.1 As used in this Contract:

72.B.1.a "Covered area" means the area of jurisdiction of the Los Angeles Building and Construction Trades Council.

72.B.1.b "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, and any person to whom the Director delegates authority.

72.B.1.c "Employer Identification Number" means the Federal Social Security Number used on the Employer's Quarterly Federal Tax Return, United States Treasury Department Form 941.

72.B.1.d "Minority" includes:

Black (all persons having origins in any of the Black African racial groups not of Hispanic origins);

Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race);

Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

72.B.2 Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the Work involving any construction trade, it shall include in each subcontract in excess of \$10,000 the provisions of these specifications and the notice which contains the applicable goals for minority and female participation and which is set forth in this Contract.

72.B.3 If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan Area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations

under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to Make good faith efforts to achieve the Plan goals and timetables.

72.B.4 The Contractor shall implement the specific affirmative action standards provided in Subarticles 72.B.7.a through 72.B.7.p herein. The goals set forth in this Contract are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress towards its goals in each craft during the period specified.

72.B.5 Neither the provisions of any collective bargaining agreement, nor the failure by a union, with whom the Contractor has a collective bargaining agreement, to refer either minority persons or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

72.B.6 In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

72.B.7 The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these actions fully and implement affirmative action steps at least as extensive as the following:

72.B.7.a Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with

specific attention to minority or female individuals working at such sites or in such facilities.

72.B.7.b Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

72.B.7.c Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

72.B.7.d Provide immediate written notification to the District's Manager of Contract Compliance and OFCCP'S Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

72.B.7.e Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minority persons and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 72.B.7.b above.

72.B.7.f Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

72.B.7.g Review, at least annually, the Contractor's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on site supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

72.B.7.h Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

72.B.7.i Direct its recruitment efforts both oral and written, to minority, female and community organizations, to schools with minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment sources, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

72.B.7.j Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

72.B.7.k Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

72.B.7.l Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for such opportunities, through appropriate training, etc.

72.B.7.m Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

72.B.7.n Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

72.B.7.o Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

72.B.7.p Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.

72.B.8 Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (Subarticles 72.B.7.a through 72.B.7.p). The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Subarticles 72.B.7.a through 72.B.7.p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minority persons and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and a failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

72.B.9 A single goal for minority persons and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is under-utilized).

72.B.10 The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, age, sex, or national origin.

72.B.11 The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246, as amended by Executive Order 11375.

72.B.12 The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Article, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

72.B.13 The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in Subarticle 72.B.7 of these specifications, so as to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

72.B.14 The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

72.B.15 Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program),

72.B.16 The Contractor shall provide the District, by the fifth day of each month following the preceding month's construction activity, the Monthly Construction Manpower Utilization Report, Department of Labor Form CC 257. This report shall contain information on all personnel on each District contract. Subcontractors, also, shall provide the

same reports, through the Contractor, by the fifth day of each month. If the Contractor or a subcontractor is unable to submit its report on time, it shall notify the District's Manager of Contract Compliance, and request additional time to submit its report. Failure of the Contractor to report in a timely manner shall result in a penalty of \$10.00 per day per report.

73. DISADVANTAGED BUSINESS ENTERPRISE/WOMEN BUSINESS ENTERPRISE (DBE/WBE)

73.A Policy and Obligation

73.A.1 Policy - It is the policy of the Southern California Rapid Transit District (District) and the United States Department of Transportation that Disadvantaged and Women's Business Enterprises (DBEs and WBEs), as defined in the federal regulations published at 49 CFR Part 23, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently, the DBE/WBE requirements of 49 CFR Part 23 apply to this Contract.

73.A.2 DBE/WBE Obligation - Contractor agrees to ensure that DBE/WBEs as defined herein have the maximum opportunity to participate in the performance of the District's contracts and subcontracts. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that DBE/WBEs have the maximum opportunity to compete for and perform contracts. Contractor shall not discriminate on the basis of race, color, national origin, sex, or handicapped status, in the award or performance of DOT-assisted Contracts.

73.B Goals

73.B.1 In each Metro Rail construction Contract, a goal for DBE/WBE participation shall be specified. DBE/WBE goals for this Contract have been established as indicated in the Special Conditions.

73.B.2 Bidders are to refer to Subarticle 73.H for guidance in calculating DBE/WBE participation.

73.C Responsive Bidder

73.C.1 To be responsive, a Bidder must meet the DBE/WBE goals set forth in the Special Conditions of this Contract, or, if the goals are not met, full documentation evidencing good faith efforts to meet the goal must be submitted with the bid as stated in Subarticle 73.E below.

73.C.2 If a Bidder submits a bid containing DBE/WBE subcontractors or joint venture partners which are certified as DBE or WBE by the District, and which meets all other

DBE/WBE participation requirements as discussed in Sub-article 73.J below, the Bidder need not submit evidence of good faith efforts to meet the goal.

73.C.3 The Bidder shall furnish the form listed in subarticle 73.D.1 below (List of Proposed Subcontractors) as part of the bid.

73.C.4 The Bidder shall furnish the form listed in subarticle 73.D.2 below (Good Faith Efforts Certificate) if the DBE or WBE goal is not met, or if any of the firms reflected on the List of Proposed Subcontractors being credited toward meeting the DBE or WBE goal are not certified as such by the District.

73.D DBE/WBE - Related Bidding Form

73.D.1 The Bidder's commitment to DBE/WBE participation shall be clearly reflected in the following bidding form:

73.D.1.a List of Proposed Subcontractors - All DBE/WBE subcontractors and suppliers which the Bidder intends to use to meet the goal, including those whose participation in the contract is less than one-half of one percent, shall be listed. This form shall include the following information for each DBE/WBE subcontractor and supplier listed:

73.D.1.a.1) Name of Subcontractor or Supplier

73.D.1.a.2) Location

73.D.1.a.3) Type of Work to be Performed

73.D.1.a.4) Percentage of Participation in the Contract expressed as a percentage of the total bid price.

73.D.1.a.5) Check whether DBE or WBE

73.D.1.b Bidders may be DBE/WBEs or enter into joint venture agreements with DBE/WBEs, and in that event, the DBE/WBE or DBE/WBE joint venture partners shall comply as follows:

73.D.1.b.1) DBE/WBE Prime Bidder's Statement. If the Bidder is a DBE or WBE (including joint venture partners), the Bidder shall attach to the List of Proposed Subcontractors a statement describing the scope of work and percentage of total bid price which the Bidder intends to do with its own workforce.

73.D.2 The Bidder shall submit the Good Faith Efforts Certificate bid form with the bid if the List of Proposed Subcontractors reflects:

73.D.2.a That the total DBE participation is less than the DBE goal set forth in the Special Conditions;

73.D.2.b That the total WBE participation is less than the WBE goal set forth in the Special Conditions;

73.D.2.c That one or more of the firms credited toward the DBE or WBE goal are not currently certified as such by the District.

73.E Good Faith Efforts

73.E.1 The following are minimum required good faith efforts and the types of documentation necessary to evidence such efforts:

73.E.1.a Advertisements in newspapers of general circulation, trade association publications and minority focus media. The advertisements shall be placed in the business, classified, or request for sub-bid section and appear at least 20 calendar days before bid opening. If 20 calendar days are not available, publication for the shorter available time is acceptable.

73.E.1.a.1) Advertisements shall include the following information:

- o Project Name and Location;
- o Indication of SCR TD as Owner;
- o Location where Plans and Specifications may be obtained or viewed;
- o Sub-Bid Due Date;
- o Trades or Scopes of Work for which Sub-Bids are being solicited;
- o Statement that Bid solicitation is in response to SCR TD DBE/WBE Program; and
- o Statement that Bidder intends to seriously negotiate with DBE/WBE firms for participation on the project.

73.E.1.a.2) Documentation - Proof of publication in newspapers of general circulation, minority focus media and trade publications or copies of tear sheets showing date and name of publication.

73.E.1.b Selection of portions of the work for which interest from DBE/WBE potential joint venture partners, subcontractors, or suppliers will be solicited in a manner to increase the likelihood of achieving the stated

goal. When economically feasible, dividing work into small tasks or quantities to permit maximum participation of DBE/WBE businesses.

73.E.1.b.1) Documentation - Include a narrative stating the work that the Bidder intends to perform with its own workforce and areas of work which the Bidder has identified for DBE/WBE joint venture partnership or subcontracting. Include a statement of whether the bidder gave consideration to dividing the contract into small portions (e.g., paving, electrical, landscaping, etc.). If this was not done, explain why it could not be done.

73.E.1.c Extension of written invitations to DBE/WBE firms for at least the number of trades, subcontractors, or material quotations identified on the Bid Form of this solicitation, including trades or areas selected by the Bidder for joint venturing or subcontracting as specified in response to good faith effort 73.E.1.b, above. Written invitations shall be such that receipt by DBE/WBE firms can be confirmed (e.g., Registered Mail, Certified/Return Receipt Requested, self-addressed stamped postcards or letters requesting interest.) A listing of DBE/WBE certified contractors is available in the District's Equal Opportunity Department.

73.E.1.c.1) Documentation - A list of DBE/WBE firms which the Bidder identified to solicit interest in the contract, including those that might have been referred to the Bidder by the associations referenced in good faith effort 73.E.1.e below. Copies of letters, mail receipts or postcards sent to DBEs/WBEs.

73.E.1.d Oral or written follow-up of initial solicitation to DBE/WBE firms by contacting them to determine with certainty whether they were interested in submitting a sub-bid, quotation, or participating as a joint venture partner, and the response by the DBE/WBE firms. A written record of any oral follow-up is required.

73.E.1.d.1) Documentation - Records which can be verified to document contact with these DBE/WBE firms (e.g., letters; minutes or notes of meetings held with DBE/WBE firms; copies of responses from DBEs/WBEs; solicitation call sheets or telephone logs).

73.E.1.e Notification of minority and women contractor, trade and professional associations at least 20 calendar days prior to bid opening. If 20 calendar days are not available, notification for a shorter time is acceptable. This contact must be verified.

73.E.1.e.1) Documentation - Records or correspondence which confirm notification of the associations,

contact persons, telephone numbers, dates and times contacted. Information provided to these associations and other organizations that provide assistance in the recruitment and outreach of DBEs and WBEs, record of associations' response to the Bidder's contact. Evidence of the use of information provided by the associations in the Bidder's solicitation of DBE/WBE firms. Take reasonable steps to ascertain that purported DBE/WBE subcontractors who are not currently certified with RTD apply for certification.

73.E.2.f Encouraging DBE/WBEs not currently certified, with whom the Bidder might subcontract, to apply for certification with the District.

73.E.2.f.1) Documentation - Include names of DBE/WBE subcontractors not certified which Bidder queried about the ownership and control of their business and prior certification by any other public agency; persons to whom Bidder spoke, dates contacted, questions asked, responses given and any encouragement and assistance provided by the Bidder to the prospective subcontractor to apply to the District for certification.

73.E.2.g Assistance to DBE/WBEs who request assistance in obtaining bonding or lines of credit, if required by the Bidder.

73.E.2.g.1) Documentation - Names of DBE/WBEs who requested assistance from the Bidder, and evidence of any assistance provided by the Bidder. The Bidder may assist DBE/WBEs by: (1) Arranging for incremental or phased bonding from the DBE/WBE; (2) Waiving bonding requirements; (3) Referring the DBE/WBE to resource agencies referenced in good faith effort; 73.E.1.e above and/or (4) Advising firms about RTD's bond guarantee program.

73.F Evaluation of Good Faith Efforts

73.F.1 If the Bidder does not meet the DBE and/or goal, or if any of the subcontractors identified in the List of Proposed Subcontractors are uncertifiable and therefore cause the Bidder to drop below the goal, the District will request that the Bidder submit within 48 hours documentation to support undertaking of good faith efforts.

73.F.2 The District's DBE/WBE Officer will review the documentation submitted by the Bidder in support of its claim of good faith efforts. Verification of the information with third parties will be conducted if needed.

73.F.3 After all information has been evaluated, the District shall notify the Bidder of the District's decision

concerning its responsiveness to the DBE/WBE requirements of the bid. If it is determined that the Bidder is not responsive, the District will inform the Bidder that its bid will not be accepted, the reasons therefore, and its right to petition the Board of Directors when the contract is scheduled to be acted upon.

73.G Definitions

73.G.1 The following definitions apply to the terms as used in this Contract.

73.G.2 "Disadvantaged Business Enterprise (DBE)" means a small business concern: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

73.G.3 "Owned and controlled" means a business: (a) which is at least 51 percent owned by one or more minorities or women or, in the case of a publicly owned business at least 51 percent of the stock of which is owned by one or more minorities or women; and (b) whose management and daily business operations are controlled by one or more such individuals.

73.G.4 "Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

73.G.5 "Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific American, or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, or by the District pursuant to 49 CFR 23.62. Member of the following groups are presumed to be socially and economically disadvantaged:

73.G.5.a "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

73.G.5.b "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;

73.G.5.c "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

73.G.5.d "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; and

73.G.5.e "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh.

73.G.6 "Other Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who, on a case-by-case basis, are determined by Small Business Administration or the District to meet the social and economic disadvantage criteria described below.

73.G.6.a Social Disadvantage

73.G.6.a.1) The individual's social disadvantage stems from his/her color, national origin, gender, physical handicap, long term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control.

73.G.6.a.2) The individual must demonstrate that he/she has personally suffered social disadvantage.

73.G.6.a.3) The individual's social disadvantage must be rooted in treatment which he/she has experienced in American society, not in other countries.

73.G.6.a.4) The individual's social disadvantage must have negatively affected his/her entry into, and/or advancement in, the business world.

73.G.6.a.5) A determination of social disadvantage must be made before proceeding to make a determination of economic disadvantage.

73.G.6.b Economic Disadvantage

73.G.6.b.1) The individual's ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area who are not socially disadvantaged.

73.G.6.b.2) The following criteria will be considered when determining the degree of diminished credit and capital opportunities of a person claiming social and economic disadvantage:

73.G.6.b.2)a) With respect to the individual:

- o availability of financing
- o bonding capability
- o availability of outside equity capital
- o available markets

73.G.6.b.2)b) With respect to the individual and the business concern:

- o personal and business assets
- o personal and business net worth
- o personal and business income and profits

73.G.7 "Women's Business Enterprise (WBE)" means: a small business concern that: (a) is at least 51 percent owned by one or more women or in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more women; and (b) the management and daily business operations of which are controlled by one or more of the women who own it.

73.H Method of DBE/WBE Goal Calculation - The Bidder shall be guided by the following criteria when calculating the DBE/WBE level of participation in its bid.

73.H.1 A DBE or WBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor or vendor of materials or supplies.

73.H.2 A DBE or WBE joint venture partner must be responsible for a clearly defined portion of the work to be performed, in addition to satisfying the requirements for ownership and control.

73.H.3 A DBE or WBE must perform a commercially useful function, that is, must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work;

73.H.4 Credit for the participation of DBE or WBE vendors of materials and supplies is limited to 20 percent of the price unless the vendor manufactures or substantially alters the goods before resale.

73.H.5 The total dollar value of a contract with a DBE/WBE owned and controlled by "Disadvantaged" women is counted toward either the DBE goal or the WBE goal, but not for both. The Bidder employing the firm may choose the goal to which the contract value is applied.

73.H.6 The total value of a contract with a WBE owned and controlled by "Non-disadvantaged" women is counted toward

the goal for WBE only and cannot be counted toward the DBE goal.

73.H.7 The total dollar value of a contract to a DBE/WBE owned and controlled by both "Non-disadvantaged" women and "Disadvantaged" men is counted toward the goals for DBE and WBE, respectively, in proportion to the percentage of ownership and control of each group in the business.

73.H.8 In calculating the total DBE and WBE utilization percentages, the Bidder shall include:

73.H.8.a The dollar value of all DBE and WBE sub-bids;

73.H.8.b The dollar value of all materials and supplies to be supplied by DBEs and WBEs (to be credited as noted in Subarticle 73.H.4, above).

73.H.8.c The dollar value of all work performed with Bidder's own forces if Bidder is a DBE or WBE. If the Bidder is a DBE or WBE joint venture, it shall include only DBE or WBE proportionate interest in the joint venture. Refer to Article 5 of the General Conditions for the minimum participation required by the prime contractor's own forces.

73.I DBE/WBE Certification

73.I.1 DBE/WBE firms need not be certified by the District prior to the bid date.

73.I.2 However, in order for the Bidder to be determined to meet the DBE/WBE goals of this solicitation, the DBE/WBE firms Bidder intends to credit toward the goal must be certified by the District prior to contract award. The District will review the Bidder's good faith efforts documentation referenced in Subarticle 73.E, if any of these DBE/WBE firms are not certified during the bid evaluation period.

73.I.3 If, during the consideration by the District of Bidder's good faith efforts to meet the DBE/WBE goal, a proposed DBE or WBE subcontractor becomes certified by the District, causing the Bidder to meet the DBE/WBE goals, the Bidder shall be deemed to be in compliance with the requirements of these General Conditions.

73.I.4 Bidders are urged to encourage their prospective DBE/WBE subcontractors, joint venture partners or suppliers, who do not have current certification from the District, to apply for certification prior to the bid date.

73.I.5 The District's List of Certified DBE and WBEs identifies firms which have been certified by the District. This directory may be obtained by contacting:

Southern California Rapid Transit District
Equal Opportunity Department, DBE Section
425 South Main Street
Los Angeles, CA 90013
(213) 972-6454

73.I.6 Application for certification by the District may be obtained by submitting Schedule A or Schedule B forms (attached hereto as Exhibit 1 and 2.)

73.I.7 Within five working days of date of request of the District, a Bidder who is requested to do so shall cause each of its subcontractor DBE and WBE firms to submit to the District information to confirm DBE or WBE status. Schedule A and Schedule B with supporting documentation shall be submitted for each DBE/WBE firm or DBE/WBE joint venture not already certified.

73.J Substitution of Subcontractors - If a Bidder requests a substitution of DBE or WBE subcontractors after the District has accepted the bid and pursuant to the provisions of the California Government Code, Section 4107, the Bidder shall use efforts in cooperation with the District's staff to replace a DBE or WBE subcontractor with another DBE or WBE subcontractor subject to the approval of the District. Article 73.C requirements will apply in this case.

73.K Contract Compliance Reporting Requirements - The Contractor shall submit quarterly progress reports to the District, reflecting its DBE/WBE participation. The Summary Subcontracts Award and Paid Report (attached hereto as Exhibit 3.) shall be submitted to comply with this reporting requirement.

73.L Noncompliance - Failure to carry out the requirements of this Article constitute a breach of contract and, after notification to the U.S. Department of Transportation, may result in termination of the Contract by the District or imposition of other appropriate sanctions. This notice is given pursuant to 49 CFR Section 23.43(c).

74. LABOR PROVISIONS

74.A Minimum Wages

74.A.1 Contractor shall comply with all applicable provisions of the California law applicable to prevailing wages (Labor Code Sections 1770 et. seq.) and apprenticeship standards (Labor Code Sections 3070 et. seq.). Mechanics and laborers employed or working on the site of the Work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by applicable federal or state laws and regulations, the full amounts due at time of payment computed at wage rates not less than

those contained in the wage determination applicable to the project, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics; and the applicable wage determination decision shall be posted by the Contractor at the site of the Work in a prominent place where it can be easily seen by the workers. In accordance with Section 1773.1 of the California Labor Code, all employer payments listed or provided for therein shall be deemed to be included in per diem wages. Also for the purpose of this Article, regular contributions made or costs incurred for more than a weekly period under plans, funds or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period. In accordance with Section 1773.2 of the California Labor Code, copies of the prevailing rate of per diem wages shall be on file at the District's principal office and in the office of _____, at _____.

74.A.2 Any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination and which is to be employed under the Contract, shall be classified conformably to the wage determination, and a report of the action taken shall be sent by the District to DOT for submittal to the Secretary of Labor. If the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers or mechanics, including apprentices and trainees, to be used, the question accompanied by the recommendation of the District shall be referred to the Secretary of Labor for final determination.

74.A.3 Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the Contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof shall be established. If the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the recommendation of the District, shall be referred to the Secretary of Labor for determination.

74.B Withholding - The District may withhold or cause to be withheld from the Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices and trainees, employed by the Contractor or any subcontractor on the Work the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice or trainee, employed or working on the site of the Work, all or part of wages required by the Contract, the District may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of

further payment, advance or guarantee of funds until such violations have ceased.

74.C Payrolls and Basic Records

74.C.1 The keeping of payroll and basic records relating thereto shall in all events comply with the requirements of Section 1776 of the California Labor Code and shall be maintained during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the Work, in the construction or development of the Project. Whenever it has been determined that the wages of any laborers or mechanics include the amount of costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b) (2) (B) of the Davis-Bacon Act or applicable California law, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible and has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

74.C.2 Each week the Contractor shall submit a copy of all payrolls to the District, meeting the requirements of Section 1776 of the California Labor Code. The copy shall be accompanied by a certification signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined as provided in paragraph 74.A.1 and that the classifications set forth for each laborer or mechanic conform with the work performed. The Contractor shall be responsible for the submission of copies of payrolls of any subcontractors. The Contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of DOT and the Department of Labor and the California Department of Industrial Relations, and will permit such representatives to interview employees during working hours on the job.

74.C.3 Contractors employing apprentices or trainees under an approved program shall include a notation on the first weekly certified payrolls submitted to the District, that their employment is pursuant to an approved program and shall identify the program.

74.D Apprentices and Trainees

74.D.1 Apprentices will be permitted to work at apprentices rates for the work they perform provided that they shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which they are employed and shall be employed only at the craft or trade for which they are registered, all in accordance with

Section 1777.5 of the California Labor Code. They shall be individually registered in a bonafide apprenticeship program complying in all respects with the requirements of Sections 3070 et. seq. and 1777.5 et. seq. of the California Labor Code. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor as to its entire work force under the registered program and in all events shall comply with the provisions of Section 1777.5 of the California Labor Code. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid the standard wage rate for apprentices determined for the classification of work he actually performed. The Contractor or subcontractor will be required to furnish to the District or to the state representative charged with enforcement of the laws relating to apprenticeship written evidence of the registration of its program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the Contract Work.

74.D.2 Trainees - Trainees will not be permitted to work at less than the predetermined rate for the Work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, of the joint apprenticeship committee administering the apprenticeship standards of the trade or craft in the area of the site of the Work, in accordance with Section 1777.5 of the California Labor Code.

74.D.3 Equal Employment Opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

74.E Compliance With Copeland Act and Regulations - The Contractor shall comply with the Copeland Act (18 U.S.C. § 874), and regulations (29 CFR Part 3) of the Secretary of Labor which are herein incorporated by reference.

74.F Contract Termination; Debarment - A breach of Subarticles 74.A through 74.E and 74.G may be grounds for termination of the Contract, and for debarment as provided in 29 CFR 5.6.

74.G Contract Work Hours and Safety Standards Act-Overtime Compensation - This Contract is subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), and to the applicable rules, regulations, and interpretations of the Secretary of Labor. No contractor or subcontractor contracting for any part of the Contract Work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any work-week in which he is employed on such Work to work in excess

of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate of pay not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, as the case may be.

74.H Violation; Liability for Unpaid Wages; Liquidated Damages - In the event of any violation of the requirements set forth in Subarticle 74.G, the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages.

74.I Final Labor Summary - The Contractor and each subcontractor shall furnish to the District, upon the completion of the Contract, a summary of all employment, indicating for the completed project, the total hours worked and the total amount earned.

74.J Final Certificate - Upon completion of the Contract, the Contractor shall submit to the District with a voucher for final payment for any work performed under the Contract a certificate concerning wages and classifications for laborers and mechanics, including apprentices and trainees employed on the project, in the following form:

The undersigned, Contractor on:

(Contract No. _____)

hereby certifies that all laborers, mechanics, apprentices and trainees employed by it or by any subcontractor performing work under the Contract on the Project have been paid wages at rates not less than those required by the Contract provisions, and that the work performed by each such laborer, mechanic, apprentice or trainee conformed to the classifications set forth in the Contract or training program provisions applicable to the wage rate paid.

Signature and Title

74.K Notice to the District of Labor Disputes - Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the District.

74.L Disputes Clause (Labor Regulations)

74.L.1 All disputes concerning the payment of prevailing wage rates or classifications shall be promptly reported to the District for its referral to The California Department

of Industrial Relations for decision. The decision of The California Department of Industrial Relations shall be final.

74.L.2 All questions relating to the application or interpretation of the Copeland Act (40 U.S.C. §276C), the Contract Work Hours Standards Act (40 U.S.C. §§327-333), the Davis-Bacon Act (40 U.S.C. §§276A), or Section 13 of the Urban Mass Transportation Act (49 U.S.C. §1609), shall be sent to UMTA for referral to the Secretary of Labor for ruling or interpretation, and such ruling or interpretation shall be final.

74.M Convict Labor - In connection with the performance of work under this Contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor. This does not include convicts who are on parole or probation.

74.N Insertion in Subcontracts - The Contractor shall insert in all construction subcontracts of any tier the clauses set forth in Subarticles 74.A through 74.P of this Article, and such other clauses as the District may by appropriate instructions require.

74.O Pursuant to Section 1770 of the California Labor Code, the District has ascertained the general prevailing rate of wages in the county in which the Work is to be done, and they are listed in this Contract under minimum Wage Rates (EXHIBIT 5).

75. CERTIFIED PAYROLLS - CONSTRUCTION PROJECTS

75.A Pursuant to Section 01776 of the California Labor Code The Contractor and each subcontractor on any tier shall furnish a certified copy of each weekly payroll of itself and each subcontractor on any tier within seven days after the regular payroll date. Following a review by the District for compliance with State and Federal labor laws, the payroll copy shall be retained by the District.

75.B Provided all information and certifications required by California law are included therein, the Contractor may use the Department of Labor Form WH-347, "Optional Payroll Form", which provides for all the necessary payroll information and certifications required by federal law. This Department of Labor form may be purchased at nominal cost from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Contractor may, in the alternative use any form approved by the California Department of Industrial Relations or use his own payroll form provided it includes the same information and certifications.

76. CONTINUATION OF WORK AGREEMENT

- 76.A The District has entered into a Continuation of Work Agreement with the Los Angeles County Building and Construction Trades Council, AFL-CIO and its affiliated local unions to insure that construction work and installation work on the Metro Rail Project shall proceed economically, efficiently and continuously without interruption.
- 76.B The Continuation of Work Agreement is incorporated into and is a part of the Contract, and a copy is included as a part of the Contract Documents. Contractor, upon award of the Contract agrees to the provisions of the Continuation of Work Agreement and is bound by them in the same manner as any other provision of this Contract.

77. INDEMNIFICATION

- 77.A Contractor shall indemnify, hold harmless and defend the District, the General Consultant (GC), GC members, the Construction Manager (CM), their officers, employees, agents, contractors, and subcontractors, individually, from and against all liability, claims, losses, actions and expenses (including attorney's fees), on account of bodily injury to or death of any person (including employees of the parties to be indemnified) or for damage to or loss of use of property (including property of District) arising out of or resulting from the acts or omissions to act of Contractor, its subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them are liable, in the performance of the Work, unless caused solely by the negligence of the parties to be indemnified.
- 77.B Claims against the parties to be indemnified by any employee of Contractor, its subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall not limit the Contractor's indemnification obligation set forth above in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or its subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts or insurances.

78. INSURANCE - The insurance requirements for this Contract are specified in the Insurance Specifications. A copy of the Insurance Specifications is incorporated herein by this reference.

END GENERAL CONDITIONS

APPENDIX III A

Contract Clauses

All Third Party Contracts other than small purchases shall include contract provisions to ensure contractor compliance in providing the services or delivering the items specified in the contract agreement.

Proposed changes in clauses prescribed by these procedures and/or UMTA Circular No. 4220.1A must be reviewed and approved by the Director of OCPM.

In accordance with the provisions set forth in UMTA Circular 4220.1A the following contract clauses must be included in those contracts so designated.

<u>Provision Title</u>	<u>Application</u>
Remedies for breach of contract	All contracts other than small purchases.
Termination	All contracts greater than \$10,000.
Equal Employment Opportunity	All contracts greater than \$10,000.
Copeland Anti-Kickback	All construction or repair contracts.
Davis-Bacon Act	All construction contracts greater than \$2,000.
Contract Work Hours and Safety	All construction contracts greater than \$2,000.
Standard Act	All other contracts greater than \$2,000 where mechanics or laborers are employed.
Discovery and Invention/Patent Rights	Any contract involving research, development, experimental, or demonstration efforts.
Access to Records	All negotiated contracts (except those made by small purchase procedures). All contracts awarded by other than competitive bidding for construction, reconstruction, or improvement of facilities and equipment.
Clean Air & Water Acts	All contracts greater than \$100,000.
Energy Efficiency	All contracts.
Minority Business Enterprise	All contracts.
Cargo Preference	All contracts involving ocean transportation.

Bonding

All construction contracts over \$100,000.

Buy America

All projects involving the use of steel, cement, and manufactured products.

Rolling Stock

All contracts involving the purchase of rolling stock.

APPENDIX III B

CONTRACT CLAUSES

All District-funded contracts of over \$10,000 shall include the following clauses:

Prohibited Interests

Equal Employment Opportunity

Disadvantaged and Woman-Owned Business Enterprise

Payments

Audit and Inspection of Records

Remedies for Breach of Contract

Termination

Ownership of Reports and Documents

Maintenance of Records

Assignment

Subcontractor Approval

Ineligible Contractors

Contract Changes

Insurance

Covenant Against Contingent Fees

Covenant Against Gratuities

Patent Rights

Disputes

EXHIBIT 25



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE: Responsibility of Sources and
Pre-Award Surveys

I. AUTHORITY:

- A. UMTA Circular 4220.1A
- B. State and local law governing District procurements
- C. District Rules and Regulations, Board Policy, Administrative Policy

II. OBJECTIVES

To ensure adherence to sound procurement practice, compliance with all applicable laws and regulations, and fairness to all potential sources by establishing responsibility criteria and providing for determination of source responsibility.

III. A. It is the District's policy that purchases shall be made only from, and contracts awarded only to responsible sources. A responsible source is one which has:

- 1. Adequate financial resources or the ability to obtain such resources as required during performance of the contract
- 2. The ability to comply with the required or proposed performance schedule
- 3. A satisfactory record of performance
- 4. A satisfactory record of integrity and business ethics
- 5. The necessary organization, experience, operational controls, and technical skills required for performance of the prospective contract of the ability to obtain them
- 6. Any other qualifications necessary to receive an award under applicable laws and regulations.

B. In establishing a source's responsibility, the District shall, where circumstances are appropriate, conduct pre-award surveys.

IV. PROCEDURE

A. Determination of Appropriateness of Pre-Award Survey

- 1. Depending upon the type of procurement, the District may conduct a pre-award survey in order to verify source

ISSUE DATE
2/3/86

REVISION DATE

PREPARED BY
OCPM

APPROVED BY

PAGE 1 OF 3



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

responsibility. The need for a pre-award survey shall be established and documented, considering:

- a. The likelihood of unsatisfactory performance, given the overall performance record of the particular industry or industries involved in the procurement.
- b. The complexity of the goods or services solicited, and complexity of the resources involved in its production.
- c. The amount of time required for performance.
- d. Ability to reject and replace nonconforming deliverables quickly and without serious inconvenience or financial loss to the District.
- e. The consequences to the District of unsatisfactory performance.
- f. Extent to which a pre-award survey is required by law.
- g. District's knowledge of sources, or source's general reputation.
- h. Any unique characteristics of the procurement which justify a pre-award survey.

B. Notification of Sources

Minimum responsibility criteria shall be expressly set forth in the solicitation document. Additionally, the document shall also state that a pre-award survey shall be conducted or may be conducted.

C. Conduct of Pre-Award Survey

1. The pre-award survey shall be conducted by appropriate procurement, technical and legal staff. The survey shall include:
 - a. An evaluation of data on hand.
 - b. An evaluation of data from another agency.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE 2 OF 3



OFFICE OF CONTRACTS, PROCUREMENT AND MATERIEL

TITLE:

- c. An onsite inspection of plant and facilities to be used in performance of the proposed contract.
 - d. Any combination of the above.
 2. The District shall consider any of the following sources as aids in determining the prospective contractor's responsibility:
 - a. Any list of debarred, suspended, or ineligible concerns or individuals which is mandatory on the purchaser;
 - b. Apparent successful bidder's financial data such as balance sheet, profit and loss statements, financial histories or the contract and affiliated concerns, current and past production records, personnel records, list of tools, equipment, and facilities; written statements of commitments concerning financial assistance and subcontracting arrangements, and analysis of operational control procedures;
 - c. Publications, including credit rating, trade and financial journals, and business directories and registers; and
 - d. Other sources, such as bank and financial institutions.
 3. Special consideration shall be given to financial responsibility when,
 - a. A newly organized or previously inactive source is being considered.
 - b. A history of past or current delinquencies is evident.
 - c. Indebtedness to the purchaser is outstanding.
 - d. Other reasonable doubts exist as to financial capacity.
 4. The Contracting Officer shall be responsible for preparing, or causing to be prepared, a report on the pre-award survey documenting the findings and making a determination of source responsibility.

ISSUE DATE

REVISION DATE

PREPARED BY

APPROVED BY

PAGE OF

3

3

EXHIBIT 26

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT

DO NOT INCLUDE MORE THAN ONE
SUBJECT IN THIS COMMUNICATION

DATE: REVISED
November 18, 1985

TO: Maynard Z. Walters
FROM: J. B. Scatchard
SUBJECT: Contract Audit Guidelines

In order to adhere to both the District's Administrative Procedures and OMB Circular A-102, we would like to promulgate standards for establishing consistency and uniformity in auditing cost-type and time and materials contracts, contract proposals and sole source procurements.

Proposal pre-award audits for contracts and contract amendments described below should be requested by memo to me accompanied by all pricing data available fifteen days in advance of the date it will be needed by the contract negotiator. Emergency requests by telephone will be handled as quickly as possible. Please confirm such requests in writing.

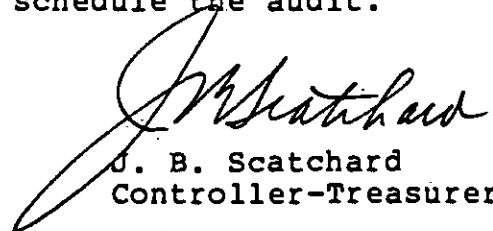
- a. Fixed-price proposals of \$100,000 or more wherein contracts were not bid competitively.
- b. Cost-plus-a-fixed fee or T & M contract proposals in excess of \$100,000.
- c. Sole source contract proposals regardless of amount with a value of \$50,000 or more.
- d. Amendments to contracts where \$100,000 or more is to be added.
- e. Change orders for all types of contracts including construction contracts with a value of \$100,000 or more.
- f. Claims submitted by vendors with a value of \$100,000 or more as considered necessary by Purchasing.

A pre-award audit will normally be in the form of a cost analysis. Comments will be made on proposed hourly rates or daily rates for direct labor, on indirect cost rates proposed and on amounts stated for other direct costs. The Contracting Officer should also get comments from project managers on the proposed values for other direct costs.

In appropriate cases, a price analysis will be conducted in lieu of a cost analysis.

Contract audits will be accomplished by the Office of Audit in a timely fashion. Interim audits on long-term contracts will generally be performed after the close of the contractor's fiscal year.

It would be helpful if the District's Contracting Officer would request the final audit sixty days before contract completion to permit the Office of Audit to schedule the audit.



J. B. Scatchard
Controller-Treasurer

JBS/lcr

EXHIBIT 27

LEGAL DEPARTMENT
SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT
INTER-DEPARTMENTAL MEMORANDUM

March 11, 1986

TO: Maynard Z. Walters
FROM: Jeffrey J. Lyon
SUBJECT: UMTA Certification Review Response

Pursuant to your request dated January 7, 1986, attached is our proposed response to the DBE responsibility v. responsiveness issue.

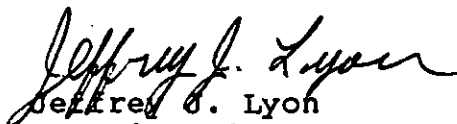
As far as the apparent conflict between federal and state law, the subject has been thoroughly reviewed. It was determined that there is no conflict. Under both federal and state law DBE compliance is an issue of responsiveness as determined by various federal courts. The position taken in the compliance review by UMTA cannot be sustained based upon current law.

The specifics of this provision are contained in the following paragraphs.

Pursuant to California law, as interpreted by the Federal District Court sitting in Alameda County, California in MGM Construction Company v. Alameda County, compliance with minority business enterprise regulations cannot be a condition of responsibility. The reason is that under California law, as interpreted by the federal court, only certain criteria are involved in ascertaining responsibility, and compliance with DBE requirements is not one of them. As a result of the MGM case a thorough research of the law was conducted to ascertain whether DBE requirements could be imposed on any other basis. A discussion of the cases researched and the conclusions reached are set forth in the attached memorandum dated July 22, 1985.

The cases cited therein, in addition to MGM, include federal cases in the 7th Circuit, 9th Circuit and Washington, D.C. and they all recognize the DBE issue as one of responsiveness. The analysis is therefore not unique to California. Each of the federal cases as a matter of law are superior authority to the Paul N. Howard case which is an administrative law case decided by the Controller General. It has no value as precedent in view of the conflicting federal court cases.

Since compliance with DBE requirements in California cannot be made a condition of responsibility, and federal law in any event makes it a condition of responsiveness, the District must continue to treat compliance with DBE requirements as an issue of responsiveness.



Jeffrey J. Lyon
Associate Counsel
Real Estate

LEGAL DEPARTMENT
SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT
INTER-DEPARTMENTAL MEMORANDUM

DATE: July 22, 1985

TO: Marvin Williams
John Richeson

FROM: Jeffrey J. Lyon

SUBJECT: Legal/Status DBE/WBE Requirements in California

For purposes of dealing with the establishment, implementation and administration of the DBE/WBE program of the District in light of the recent United States District Court case entitled MGM Construction Company v. Alameda County, I have researched the background of the case and development of the law in the federal courts in California which led to the decision. I have additionally researched the development of the law in other federal circuits, and have found that the law has developed quite differently and more logically in those circuits.

In the M.G.M. case, M.G.M. Construction Company submitted the lowest bid on a contract but the County rejected it because it pledged to subcontract less than 1% of the job to MBE's. The Court held that "to the extent that the County's affirmative action program purports to authorize the rejection of low bids on the basis of the bidder's failure to comply with the ten percent goal for minority subcontractor participation, the program is illegal under California Public Contract Code Section 20128." Section 20128 is substantially identical to Public Contracts Code Section 20231 which governs contracts let by the SCRTD. The decision therefore has a direct impact upon the District's DBE/WBE program.

The disconcerting thing about the facts in the M.G.M. case is that the bid documents called only for a 10% goal and required only "good-faith efforts". This was not a case requiring "set asides" or "quotas". The Court therefore could not base its decision on that ground. The Alameda County Board, in fact, had provided the bidder with a hearing where it heard evidence of the good faith efforts made by the bidder. It rejected the bid, based upon that evidence, as being "nonresponsive to the affirmative action requirement..." The Board, therefore, took all of the steps reasonably necessary to make its action

legitimate and there was no issue that the facts did not support its conclusion. The case must therefore stand as an outright rejection of DBE/WBE requirements in public bids where the public agency is required to contract with the "lowest responsible bidder".

When a case makes such a departure from what might be expected it is necessary, in addition to making a thorough legal analysis, to look for other reasons for the decision. One apparent reason is that the County "did not attempt to argue this state law claim on the merits." The only opposition made by the County was procedural, i.e. it contended that M.G.M did not comply with the "notice of claim" requirements. It is therefore not surprising that the County did not prevail. A district court is not set up to provide its own in depth response to a petition or complaint where the defendant does not respond on the merits. The result is that it relied upon the authority cited by, and the analysis of, plaintiff's counsel.

The court relied upon:

1. A California case which discussed the meaning of "responsible" in the state law requiring that contracts be awarded to the lowest responsible bidder; a case which did not involve affirmative action issues or issues of responsiveness (that is compliance with specification requirements) at all; and
2. A federal appellate court case which applied the holding of the California case in one having affirmative action issues involving "set asides."

The California case is City of Inglewood - Los Angeles County Civic Center Authority v. Superior Court (1972) 7 Cal.3d 861, 103 Cal.Rptr. 689, 500 P.2d 601. In Inglewood, Argo Construction Company (Argo), the actual plaintiff, had submitted the lowest bid. The contract was nevertheless awarded to Swinerton & Walberg Co. (Swinerton) on the basis that the contract was more in the nature of a "management contract" and therefore not subject to the "lowest responsible bidder" requirement. The California Supreme Court disagreed, and did not accept the distinction based upon the facts of that case.

The court then discussed the standards for determining who is the "lowest responsible bidder". It first clarified the notion of "responsibility" (103 Cal.Rptr. at P. 692);

"It bears emphasis that the word 'responsible' in the context of the statute is not necessarily employed in the sense of a bidder who is trustworthy so that a finding of nonresponsibility connotes untrustworthiness. Rather, while the term includes the attribute of trustworthiness, it also has reference to the quality, fitness and capacity of the low bidder to

satisfactorily perform the proposed work.
[citation omitted] . Thus, a contract must be
awarded to the lowest bidder unless it is
found that he is not responsible, i.e., not
qualified to do the particular work under
consideration. Whether or not an express
finding of nonresponsibility is required
[citation omitted], if a contract is awarded
to one other than the lowest bidder, the
ineluctable implication is that the latter is
not responsible."

The court then stated Argo's contention (at p. 693):
"Argo cogently argues : 'To permit a local
public works contracting agency to expressly
or impliedly reject the bid of a qualified
and responsible lowest monetary bidder in
favor of a higher bidder deemed to be more
qualified frustrates the very purpose of
competitive bidding laws and violates the
interest of the public in having public works
projects awarded without favoritism, without
excessive cost, and constructed at the lowest
price consistent with the reasonable quality
and expectation of completion'."

The court then held (at p. 693);

"We agree with these assertions, and we hold
that the contract for a public construction
project must be awarded to the lowest
monetary bidder as commanded by Section 25454
unless it is found that the lowest bidder is
not responsible, in the sense defined above.
There is no basis for the application of a
relative superiority concept under this
section, and if petitioners applied such a
standard in selecting Swinerton rather than
Argo as to the contractor, the award cannot
stand."

It should be noted that there was no issue in the case of whether the bids were "responsive", that is, "whether a bidder has unequivocally offered to provide a product or services in total conformance with the material terms and specifications of the solicitation." (Comptroller General of the United States Opinion in the matter of E. H. Hughes Company, Inc. 15-205556, 8/31/82).

Argo was assumed to have submitted a "responsive" bid because the issue was never discussed. The only holdings were to define "responsibility" and to reject the concept of "relative superiority".

The federal Ninth Circuit Court of Appeals applied the definition

of "responsibility" stated by the California Supreme Court in the Inglewood case to the facts in the case of Associated General Contractors v. San Francisco Unified School District (9th Circuit 1980) 616 F.2d 1381.

In the Associated General Contractors ("AGC") case the school district had adopted an MBE [now DBE/WBE] policy "to overcome the effects of past discrimination." The policy required that bidders be minority general contractors or must utilize minority subcontractors for 25% in dollar volume of the contract work. Relief from the policy was available only when the Board was satisfied that an ineligible contractor had "taken every possible measure to comply" with the policy, or that it was "not practicable in the best interests of the District to require compliance in the specific case". The Court of Appeals, 616 F. 2d at p. 1384, labeled this a "set aside".

The Court, in discussing this policy stated (at p. 1383,):

"The policy declared that noncomplying contractors were not 'responsible bidders' under California Education Code §15951 (now §39640). That statute requires school construction contracts to be awarded to the 'lowest responsible bidder'."

The federal District [trial] Court, at the time of the appeal had enjoined the school district from enforcing the policy (quoting the Court of Appeal at p. 1383):

"[O]n the ground that 'responsibility' under the state law referred only to a bidding contractor's financial and physical ability to do the work".

Another issue in the case, as stated by the Court of Appeal at p. 1383, was:

"At about the same time, the federal government granted the School District \$8,000,000 in public works funds under the Public Works Employment Act of 1977, Publ.L No. 9528, 42 U.S.C. §§6701-6710, which requires that the recipient entity give 'satisfactory assurance to the Secretary [of Commerce] that at least 10 per centum of the amount of each grant shall be expended for minority business enterprises,' 42 U.S.C. § 6705 (F)(2)."

The school board, while the injunction was in effect and based upon the federal requirement, adopted a second affirmative action policy nearly identical to the first, retaining the 25% set aside, but applied it only to PWEA funds. The AGC then applied for a contempt order in order to vindicate the injunction. The

district [trial] court dismissed the contempt action but upheld a 10% minority participation requirement.

That was the posture of the case when it was decided by the Ninth Circuit Court of Appeals. That is, all that the San Francisco Unified School District was trying to enforce was the 10% minority participation requirement mandated by the Public Works Employment Act. It was doing it, however, by means of a "set aside".

The Ninth Circuit Court of Appeals first recognized that a 10% minority participation requirement mandated by Congress was at that time before the United States Supreme Court in the case of Fullilove v. Klutznick 448 U.S. 448, 100 S.Ct. 2758, 65 L.Ed 2d 902 (1980), but held that it could deal with the state question [i.e. the "lowest responsible bidder" requirement] first, and if that resolved the issue the federal constitutional issue would not be reached.

It analyzed state law by first pointing out that under California Education Code §35160, the school board could adopt any program (within its purpose) which "is not in conflict with or inconsistent with, or preempted by, any law." The Court then held (at p. 1385):

"Because the Boards affirmative action program conflicts with California Education Code §39640, we hold that §35160 does not authorize it."

The holding was explained as follows:

"Section 39640, the 'low bid law', reads: 'The governing board of any school district shall let any contracts...to the lowest responsible bidder....' While no California court has considered the issue whether a school board may adopt a program such as the one at issue here consisted with §39640, the California Supreme Court has circumscribed the meaning of 'lowest responsible bidder' in another context."

The court cited as its authority the Inglewood case, discussed it, and concluded (at p. 1385):

"We do not think that the California Supreme Court would construe the term 'lowest responsible bidder' as used in Education Code §39640 differently from the construction it gave the same language in Inglewood; the statutes are virtually identical. Therefore, we hold that §39640 must be construed to prohibit

the Board from considering any factor other than the amount of the bid, the minimum qualifications of the bidder as to financial ability and skills to complete the job successfully, and the quality of the bidder's past work."

On the basis of the Inglewood case the federal Court of Appeals in the AGC case held that factors other than those included in the Inglewood case could not be considered. This precluded consideration of affirmative action as a condition of responsibility.

The court, at this point, however, added a footnote which opened up several other issues.

It said (at p. 1385):

"In Bakke v. Regents of the Univ. of Calif., 18 Cal.3d 34, 553 P.2d 1152, 132 Cal Rptr.680 (1976) aff'd in part and rev'd in part, 438 U.S. 265, 98 S.Ct. 2733, 57 L.Ed. 2d 750 (1978), the California Supreme Court showed itself unfriendly to quota-type affirmative action programs of state educational bodies. That court recently has narrowly upheld a governmental quota-type affirmative action program, where the minority underrepresentation was due to the government entities own past discrimination. Price v. Civil Service Comm'n [26] Cal.3d [257], 604 P.2d 1365, 161 Cal.Rptr. 475 (1980). Since the School District itself has not been guilty of past discrimination, we think the California Supreme Court would not be inclined to authorize the Board's affirmative action program; instead, we think the court would strictly construe the low bid law, forbidding the program".
[Emphasis added]

The issue that is raised is, what if the affirmative action is not a "quota type" program? The program in the A.G.C. case was a "set aside", which is a "quota type" program. The Bakke case involved quotas. The Court of Appeals in A.G.C. did not say that the California Supreme Court would not approve a "goals" oriented affirmative action program by strictly construing the low bid law. The issue was not involved in either case. Like the School District in A.G.C., the S.C.R.T.D. has not been guilty of past discrimination (it was organized in 1964) and although this does weaken our argument for a need for a DBE/WBE program, S.C.R.T.D. is not trying to impose a "quota type" program. The issue

therefore was undecided until the M.G.M. case (discussed above) where the District Court strictly construed the low bid law in a goals case.

The footnote in the A.G.C. case continued (at p. 1385):

"We would not deny that under California law a school board may require a bidder to agree not to violate antidiscrimination laws. See 42 Cal.Op. Atty. Gen. 169,171 (1963). The Board's affirmative action policy is not a state or federal statute, however, but merely represents the Board's beliefs on a controversial social question. Refusal to accede to such beliefs is not a ground, under California law, for exclusion from public contracts. See 57 Cal. Op. Atty.Gen. 574(1974)...."

It is true that the S.C.R.T.D. DBE/WBE program is not mandated per se by state or federal law, but under section 105(f) of the Surface Transportation Assistance Act not less than 10% of the amounts appropriated must be expended with "small business concerns owned and controlled by socially and economically disadvantaged individuals..." As a result of this provision, and provisions of the Urban Mass Transportation Act of 1964 (as amended), the S.C.R.T.D. must comply with the Urban Mass Transportation Administration DBE/WBE regulations (49 CFR Part 23) as a condition to the receipt of funding under the Act. -

However, this federal statutory scheme, at least in the federal courts, has not been held to constitute a sufficient mandate to overcome a strict construction of the California low bid law. The Court of Appeals in the A.G.C. case had an almost identical fact situation, as discussed above, with a 10% minority participation requirement under the Public Workers Employment Act yet refused to consider it and looked only to the Board's affirmative action policy and the state low bid law. It had the opportunity to decide that this was a sufficient mandate, but did not. The A.G.C. case must therefore be read to mean that statutory requirements which are prerequisites to funding, as opposed to statutes requiring mandatory compliance, are not sufficient.

If the issue was heard and decided in state court on the other hand, the decision might very well be different. In Lee v. Los Angeles County Civil Service Commission (1982) 129 Cal.App. 3d 9, 180 Cal.Rptr. 822 a civil service worker was discharged because his candidacy for public office was in violation of the Hatch Act (5 U.S.C. 1501 et seq.), a federal act, which limits the scope of permissible political activity of federal civil service workers, and state and local workers "whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States (§1501(4)).

Plaintiff Lee asserted that the firing was an abuse of discretion. The Court of Appeal, however, held that in following the requirements of the Hatch Act the County:

"[D]id no more than accept as a necessary restraint on the political activity of its employees which was imposed by the federal government under the terms of federal legislation already determined not to be offensive to the United States Constitution. [Citation omitted]. The only alternative available to it was to retain Lee as an employee, thereby subsidizing his efforts in running for public office at the expense of those it was intended to benefit. Under these circumstances, where Lee's political activities directly threatened the integrity of the department, the condition imposed on his employment was justified."

The same situation exists in the present case. If the District does not comply with the DBE/WBE requirements imposed by UMTA, the financial integrity of the District could be impaired if the compliance issue could not be resolved. It would therefore appear that the state courts would treat the UMTA DBE/WBE requirements more as a federal mandate, and not so strictly construe the low bid law.

It should also be pointed out that since the AGC case was decided the Supreme Court in Fullilove v. Klutznick, referred to above, has held that the 10% affirmative action requirements such as the one described in the AGC case are valid. This decision would not have affected the outcome of the AGC case because the Court expressed its awareness of the the pending Fullilove case in its opinion, and nevertheless would not deal with that federal issue until it had first decided the state law issue. Since AGC was decided on what was perceived to be state law, strictly construing the low bid law, it never had to consider the issue of the validity of the 10% requirement. The Fullilove case, therefore, would not have changed the result.

In state court the Fullilove case might have made a great difference. Note that in the above quotation from Lee the state Court of Appeal found it to be an important factor that the Hatch Act had been found to be constitutional. Fullilove found the DBE/WBE requirements to be constitutional, and it would be reasonable to anticipate that the state courts would treat that determination with equal deference.

The rule in federal court that the state law issue must be decided first was confirmed in a United States Supreme Court case decided since Fullilove, involving facts substantially similar to those in the AGC case. The case is entitled Schmidt v. Oakland

Unified School District (1982) 457 U.S. 594, 102 S.Ct. 2612, 73 L.Ed. 2d 245. In that case the 9th Circuit Court of Appeals in Schmidt v. Oakland Unified School District (1981) 662 F.2d 550 effectively reversed the stand it took in the AGC case and decided the Federal law question first, and found that the affirmative action program was valid, and held that they should not address the state law issue regarding the definition of "lowest responsible bidder". The Supreme Court reversed that decision stating:

"If the affirmative action plan is invalid under state law, the Court of Appeals need not have reached the federal constitutional issue. Nevertheless, the Court of Appeals declined to resolve the pendent state-law claim. Under Hagens v. Lavine, 415 U.S. 528, 546, 94 S.Ct. 1372, 1383, 39 L.Ed. 2d 577 (1974), and United Mine Workers Gibbs, 383 U.S. 715, 86 S.Ct. 1130, 16 L.Ed 2d 218 (1966), this was an abuse of discretion in the circumstances of this case."

The state of the law in federal court therefore is that it does not matter whether an affirmative action policy is valid under federal law. If it is not valid under state law, that decides the issue, and the question of whether it is valid under federal law never comes up. (Note: The Supreme Court did not look at the substantive affirmative action issue at all. It decided only the procedural issue, and cannot be read as either accepting or rejecting the analysis on the affirmative action issue either in the Schmidt or AGC cases.)

Therefore, the only approach that can be taken is to attempt to create a DBE/WBE program which can be validly enforced under state law. Since such a program cannot be a condition of responsibility, it must clearly be made a part of the bid specifications so that failure to comply with requirements would cause the bid to be nonresponsive; that is, the bid offering the product or service is not in total conformance with the material terms and specifications of the solicitation.

This issue has not been previously considered by the state courts. In the MGM case the federal district court stated that the bid had been rejected as being "nonresponsive to the affirmative action requirement". The analysis, such as it was in that case, however, was all in terms of "responsibility".

A case which is extremely helpful, is Rossetti Contracting Co., Inc. v. Brennan (7th Circuit 1974) 508 F. 2d 1039. It was, however, decided by the federal Seventh Circuit Court of Appeals in Chicago. The case involved a federally assisted construction contract, and one issue was whether the requirement that there be a commitment for minority hiring was a condition of responsiveness. The invitation for bids by a sanitary district

in the Chicago area required such a commitment as a "prerequisite to eligibility for a contract award". Plaintiff, Rossetti, received tentative award subject to approval by the Environmental Protection Agency (EPA). The E.P.A. notified the sanitary district that (at p. 1041):

"[D]ue to failure to comply with the Chicago Plan's [minority hiring] requirements, Rossetti's bid was considered to be unresponsive."

Rossetti protested stating that its error was clerical in nature and made in good faith. The EPA took it under consideration and after consultation with the Department of Labor, held (at p. 1042):

"[T]he Chicago Plan provided no authority or discretion to permit amendment of a nonresponsive Appendix A [the part of the specifications covering minority hiring] subsequent to bid opening. Accordingly, Rossetti's bid was found to be unresponsive."

The federal district [trial] court reversed the EPA holding that (at p. 1042):

"[T]he error in Rossetti's Appendix A was a good faith inadvertent misstatement which, since Rossetti was in fact in current compliance with the Chicago Plans utilization goals and since the error did not affect price, quality or quantity of goods or services provided, was minor and could be corrected or waived...."

The district court, clearly, was also looking at compliance in terms of responsiveness. Its only disagreement with the EPA was as to what constituted responsiveness.

The Seventh Circuit Court of Appeals reversed the district court, and upheld the position of the EPA. That is, properly addressing the affirmative action requirements in the bid was an issue of responsiveness, and it was not just an inadvertent misstatement that could be corrected. The Seventh Circuit Court of Appeal analyzed the issue as follows (at p. 1044):

"The lynchpin of this scheme is the ability of the government to enforce good faith compliance with the Plan objectives. To achieve this enforceability, a contractual obligation is obtained from the contractor by requiring, as a

condition precedent to the awarding of the contract the submission, prior to bid opening, of a properly completed Appendix A."

The Court of Appeal then stated (at p. 1044):

"The Plan (Appendix A) not only prohibits award of the contract 'unless the bidder completes and submits, prior to bid opening.' Appendix A, but also provides: 'A bidder who fails or refuses to complete or submit such goals shall not be deemed a responsive bidder and may not be awarded the contract or subcontract..... In no case shall there be any negotiations over the provisions of specific goals submitted by the bidder after the opening of bids and prior to the award of the contract.' "We think the specific provision above quoted is ample to exclude the defects in Rossetti's original Appendix A from the category of minor errors and defects which may be waived or corrected even though the defect does not go to the price, quantity or quality of the services."

The Seventh Circuit Court of Appeals, therefore, clearly made a requirement involving minority participation in public contracts a condition of responsiveness. The Court stated (at P. 1045):

"[W]hile admittedly Appendix A does not go to matters of price or quality of work, it has been made a matter of bid responsiveness. n18 Clearly, under either federal or state law, unresponsive bids may not be corrected after opening, in order to make them responsive." [citations omitted]

(California law is the same; i.e. unresponsive bids may not be corrected after opening).

Footnote 18 (see above quote) stated in relevant part:

"It is well established that the procurement process, once exclusively concerned with price and quality of goods and services, has been increasingly utilized to achieve social and economic objectives only indirectly related to conventional procurement considerations. The attenuated relationships to price, quantity and quality, however, does not

necessarily limit the power of Congress or the President to condition award of a contract on full and proper compliance [with minority hiring goals]". [Citations omitted].

The Rossetti case was decided in 1974, and was followed by the United States District Court in Washington, D.C. in a case involving WMATA.

The case is Otis Elevator Company v. Washington Metropolitan Transit Authority, 432 F. Supp. 1089 (D.C. 1976). In that case WMATA required that an Affirmative Action Plan be submitted with the bid. It was to be in accordance with the "Washington Plan" which required a minimum acceptable minority percentage for each included construction trade category and an express commitment to the goal. The bid invitation required the bidder to specify its minority employment goal "only for those trades to be used". Otis was only going to use "elevator construction trade personnel", and as to that trade it understood that the "Washington Plan" had been superceded by a nationwide plan. To clarify, before bid, it contacted WMATA, which confirmed that Otis could enter "not applicable" next to the "elevator construction trade category". Since that was the only applicable category there was nothing else entered. Otis was the low bidder, but the second low bidder (Intervenor) protested. The Intervenor questioned the "responsiveness" of the Otis bid. WMATA then declared the Otis bid "nonresponsive". Otis sued.

Discussing its approach to its decision the Court stated (at-p. 1094):

"[E]ach party urged the Court to decide the issue of whether Otis bid was responsive on the 'four corners' of the bid as submitted. The Court readily agrees with counsel that such is the most appropriate approach and notes also in this connection that the Court of Appeals for this Circuit has required a bidder's strict adherence to the clerical as well as the promissory requirements of Appendix A [the form to be filled out by bidders]."

The Court therefore confirmed the traditional approach to evaluating "responsiveness", which was to look only to what was submitted.

The Court in evaluating the Otis bid stated (p. 1094):

"Otis did not ... fail to make appropriate entries for any trade category pertinent to the contract".

Although there was an assertion that Otis would have to use the members of another construction trade, the Court rejected the allegations (pp 1094-1095):

"[S]uch evidence is simply not relevant to the responsiveness of Otis' bid at the time it was opened".

As to the bid, the Court stated (at p. 1095):

"[I]t is only appropriate to conclude - particularly in light of the parties' consensus that this Court should look only to the 'four corners' of Otis' bid as submitted - that Otis bid could not reasonably have been declared to be non-responsive by WMATA. . . ."

The final issue addressed by the Court was the propriety of the manner in which Otis completed Appendix A, and its seeking clarification from WMATA. The Court held (at P. 1096):

"The court finds that it was therefore entirely reasonable of Otis to seek clarification and guidance covering the proper manner in which this situation [Washington Plan being superceded] should be reflected in its Appendix A submission".

The Court, however, added (at p. 1096):

"Of course, the fact that Otis submitted its bid precisely as instructed does not itself make the bid necessarily responsive. The determinative point is that Otis' notation that Appendix A is 'not applicable' was both an accurate and pertinent statement of fact...."

The Court here is clearly confirming the traditional method of evaluating responsiveness, i.e. is the response an accurate and pertinent statement in response to the specification or the question asked?

The ultimate holding of the court in Otis v. WMATA is that whether or not a bid complies with affirmative action (in our case DBE/WBE) requirements is an issue of responsiveness which is to be evaluated in the same manner as any other issue of responsiveness.

The Rossetti case has also been followed in its own circuit (the 7th) by a District Court in Wisconsin in a very recent case, decided in 1984, entitled James Luterbach Construction Co., Inc. V. Adamkus, 577 F.Supp. 869 (D.C.E.D. Wisc. 1984).

In Luterbach the bidders were directed to comply with EPA Minority Business Enterprise (MBE) Policy. The Court stated the instructions to the bidders as follows (at p. 870):

"The instructions directed the bidders to exercise positive efforts to comply with the 10% MBE goal, to state in the bid whether the goal would be met, and, if the goal could not be met, to document any efforts which had been taken by the bidder to encourage minority participation and reasons for failing to meet the goal".

The requirements it should be noted are very similar to the requirements set forth in the District's specifications.

The Village of East Troy (in the Luterbach case) which issued the request for bids, however, included the following statement in the request (at p. 870):

"Failure to submit such information may cause rejection of the bid as nonresponsive".

There were two bidders, Luterbach and Lorenz. Neither certified that it could meet the 10% goal, but Luterbach submitted a narrative documenting its efforts. Lorenz, the low bidder, provided no documentation. The Village "reviewed the bid proposals for completeness and responsiveness" (at p. 871), and rejected the Lorenz bid (at p. 871):

"It declared the Lorenz bid non-responsive because it failed to comply with MBE requirements".

Lorenz, within the week, requested to amend the bid to show 10% minority participation. The request was denied. The EPA reversed (at p. 871):

"Adamkus [EPA Administrator] ruled that the Village, by stating that 'Failure to submit such information may cause rejection' (emphasis added), had failed to make compliance with MBE documentation requirements a matter of bid responsiveness. Therefore, he decided, it was improper to reject the Lorenz bid for being non-responsive to the MBE requirements".

It is extremely important to note that the EPA Administrator did not reverse on the basis that Lorenz later met the 10% goal. That did not even enter in to his decision. He held, on the basis of the specifications, as written, that meeting the MBE requirements had not been made a condition of responsiveness, and therefore a bid could not be rejected on that ground. Clearly,

had the MBE requirement been mandatory, it would have been found to have been a condition of responsiveness. This is confirmed by the Court's citation of the relevant section of the EPA regulations, 40 CFR 35.938 - 4(h)(6) at p. 871-872.

"The grantee shall not reject a bid as non-responsive for failure to list or otherwise indicate the selection of subcontractor(s) or equipment, unless the grantee unambiguously stated in its solicitation documents that such failure to list shall render a bid non-responsive and shall cause a rejection of the bid."

The court, applying the regulations stated:

"Because the Village had qualified its documentation request with the caution that failure to respond 'may' render the bid non-responsive, it did not 'unambiguously' state that such bids 'shall' be held non-responsive."

As in the Rossetti and the WATA cases, the Luterbach case confirmed that it is appropriate to make the meeting of MBE requirements a condition of responsiveness. It, however, also confirmed that responsiveness is to be evaluated strictly in terms of precisely what is stated in the request for bids and what is stated in the bid.

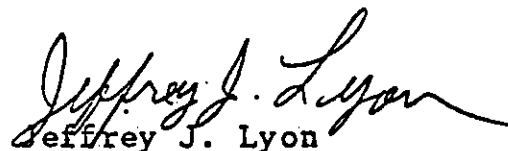
It is difficult to understand why the earlier cases which are cited above were not considered by the Ninth Circuit Court of Appeals in the AGC case, which was decided in 1980, or by the District court in the MGM case decided in 1985. The only answer seems to be that they were overlooked in the briefing because they were from different Circuits. The California Supreme Court never purported to even address the issue of responsiveness, and clearly the AGC and MGM cases could have been decided differently if the MBE issues had been viewed in terms of responsiveness rather than responsibility as they were in the 7th Circuit and in Washington D.C.

There is obviously no certainty, in the event of a challenge to SCRTD DBE/WBE requirements, that the federal district court in Los Angeles, or the Ninth Circuit Court of Appeals would decide that DBE/WBE compliance is an issue of "responsiveness". The reason, of course, is that even though the argument is strongly supported by the Rossetti, WATA and Adamkus cases, it would be dealing with substantially the same facts as the cases already decided (A.G.C. and M.G.M. cases) in the 9th Circuit, and asked to decide the "state law" issue differently because the SCRTD made DBE/WBE compliance an issue of "responsiveness" rather than of "responsibility".

In state court, on the other hand, the whole issue could be considered for the first time. The reason is that the state courts have never considered either the issue of responsibility or responsiveness in the context of an affirmative action or DBE/WBE plan. The only case decided in state court, the Inglewood case, did not involve an affirmative action plan at all. It is therefore much more likely that the "responsiveness" approach would get a much more sympathetic hearing, especially since it is an accepted approach in other federal circuits, and has not even been considered in the 9th circuit.

It is therefore recommended that we proceed with the DBE/WBE program, basing its validity upon the right of the District to make it a condition of responsiveness. If the program is challenged in federal court, the District should petition the federal court to abstain from exercising its pendent jurisdiction over the state law claims, and have those issues transferred to state court for resolution. It is difficult to predict the chances of obtaining such a transfer but it should definitely be attempted. If that is not successful; the District should vigorously argue the "responsiveness" issue in federal court.

If the action was filed by the protestor in state court, the District would simply present its case substantially as stated above. The "state law" issue, in that event, could then be finally decided in state court. It is my opinion that the District's chances of prevailing in state court would be excellent.



Jeffrey J. Lyon
Associate Counsel-Real Estate

cc: John A. Dyer
Angelica Chatham
Maynard Walters
Johnny Johnson

8:24
of

EXHIBIT 28

XVI. CODE OF CONDUCT

- 16.1 This Code of Conduct shall govern the conduct of all employees, consultants, and members of the Board of Directors of the Southern California Rapid Transit District.
- 16.2 There are numerous laws and regulations which govern the conduct of public officers and employees and which are applicable to the SCRTD. Because they are contained in various California Code sections and District policy statements, it is desirable to set them forth in one document for ready reference so that all persons affected can more easily become familiar with them.
- 16.3 The complete texts of the foregoing laws and regulations are attached hereto as Appendix A. When in doubt as to the applicability of any law or regulation to any particular situation, the potentially affected officer or employee should request an advisory opinion from the District's Legal Department.

Comment: The comments and examples which follow do not have the force and effect of the sections of the Code to which they pertain, but are intended as an aid in interpreting the Code.

- 16.4 The following sections, which summarize laws and regulations pertaining to conduct of public officers and employees, govern the conduct of District Board members, officers, employees, and

consultants. All Board members, District officers and employees and consultants shall be familiar with the provisions of this Code of Conduct.

A. Board members, and District officers and employees shall not be financially interested in any contract made by them in their official capacity. Board members, District officers, or employees shall not be purchasers at any sale or vendors at any purchase made by them in their official capacity.

A contract made in violation of these sections may be voided by the Board of Directors. (Government Code §1090 et seq.).

Comment: Board members, officers, and employees (hereinafter called officers) are prohibited from having any interest in a contract "made by them in their official capacity". Cases applying this language have not confined it to the narrow and technical interpretation of the word "made". Rather if an officer was in any way involved with the contract through planning, preliminary discussions, compromises, drawing of plans and specifications, solicitation of bids or award of the contract, that officer has "made"

the contract under Section 1090. In such circumstances the District cannot enter into the contract. Should the contract be executed it would be void and the officer would be subject to a fine of up to \$1,000 or imprisonment and would be forever disqualified from holding any office in this state. (Section 1097). If a Director is involved, the mere fact that he/she is a member of the Board constitutes participation in the award of a contract, irrespective of whether the Director abstains from discussion or voting. An officer is not deemed to be "interested" in a District contract if his/her interest is remote. These remote interests are set forth in Section 1091 in the appendix.

Similarly, an officer is viewed as having no interest whatsoever if he/she falls within one of the categories set forth in Section 1091.5 in the appendix.

Examples:

1. An officer of the District is a

member of a staff committee which will recommend 5 medical clinics to give physical examinations for District employees. The officer's wife, a physician, is part owner of one of the clinics. The District is prohibited from contracting with that clinic.

2. A member of the Board of Directors is a partner in a real estate venture which buys and sells commercial property. The District is accepting bids for the sale of an abandoned division site. Bids from the firm in which the Board member has an interest cannot be accepted.

B. District Board members or employees shall not engage in any employment or activity for compensation which is inconsistent or incompatible or in conflict with his or her duties as a District Board member or employee or with the duties of his appointing power or agency by which he is employed.

Comment: The purpose of this section is to insure that District personnel do not accept other employment that will impair their ability to exercise an independent,

objective judgment in their official roles and is based on the fundamental theory that a person cannot serve equally two masters. Incompatible employment may exist by virtue of a physical inability to execute diligently the functions of both jobs or because the duties and functions of each are inherently inconsistent or repugnant. The inherent inconsistency which makes employment incompatible lies in a potential conflict of interests or duties, as where one job is subject in some degree to the supervisory control of the other or where one activity will require a person to disclose confidential information which he has gained by reason of his other position or employment with the District.

Examples:

1. An Assistant Counsel of the District is retained by a homeowners' group to advise it in how to proceed in opposing a proposed Metro Rail station. The

attorney must terminate one of the relationships because he/she could not possibly give undivided loyalty to both employers.

2. A senior planner is asked to provide consultant services in his spare time to cities forming a transportation zone. The planner must abandon one of his occupations because they are incompatible.

For District employees, the General Manager may determine through written regulations or delegate to Department Heads the authority to determine outside activities which are incompatible with their duties as District employees. Employees may appeal the determination of incompatible activities through the Non-Contract Grievance Procedure or through the particular grievance procedure applicable to them. (Government Code §§1126 and 1128)

C. Board members, and all employees and consultants required to file Disclosure statements pursuant to the District's Conflict of Interest Code, shall disqualify themselves from making, or participating in the making of, or in any way attempting to use their official position to influence, a governmental decision in which they know or have reason to know they have a financial interest. (Government Code §87100).

All persons holding designated positions shall comply

with the District's Conflict of Interest Code.

Comment: This section of the Code of Conduct as well as the District's Conflict of Interest Code, is derived from Government Code Section 87100 et seq., which is the Initiative Measure approved in the primary election of June 1974. An officer is deemed to have a financial interest if the decision to be made will have a material financial effect on:

- (a) Any business entity in which the public official has a direct or indirect investment worth \$1,000 or more.
- (b) Any real property in which the public official has a direct or indirect interest worth \$1,000 or more.
- (c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating \$250 or more in value

provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$250 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

As provided in Section 87103, "indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a

10-percent interest or greater".

It should be noted that, by virtue of Section 87101, an officer is not prohibited from making a decision if his participation is legally required in order for the decision to be made. In such case, the officer must disclose the nature of the financial interest before he/she participates in the making of the decision. However, the fact that the officer's vote is needed to break a tie does not make his participation "legally required". This section applies primarily to the need of a body to have a quorum present. The regulations defining the terms used in these sections are attached.

Examples: The above disclosure and non-participation requirements would apply to the following individuals:

1. A Board member owns shares valued at \$2,500 in General Motors who has submitted a low bid of \$1,700,000 in a District bus

procurement. The Board member must disclose the interest and disqualify him/herself from voting because the effect of the award would increase General Motors' gross revenue by over \$100,000. (See Appendix B, Page 3).

2. A member of a staff committee selecting possible sites for a new division owns land valued at \$10,000 adjacent to one of the sites. To have the division next door would increase the fair market value of the staff member's property by over 1/2 of one percent. (See Appendix B, Page 3).

- D. No Board member or employee shall participate in the award or selection of a contract supported by federal funds if a real, or apparent, conflict of interest would be involved, as conflict is defined in §10, UMTA C4220.1A. (UMTA Circular 4220.1A)
- E. No Board member, employee or agent of the District shall solicit or accept gratuities, favors or anything of monetary value from contractors/consultants, potential contractors/consultants or subcontractors/consultants. (§10 UMTA Circular 4220.1A). An unsolicited gift of a value less than twenty-five dollars shall be considered to be of

nominal intrinsic value and not in violation of this section, provided, however, that each District department shall set more restrictive requirements regarding unsolicited gifts as directed by the General Manager.

Examples:

1. A Board member or officer is invited by a District consultant to attend a \$100 a plate dinner for an elected official. Assuming the value of the dinner is less than twenty-five dollars, the District representative may attend since the balance constitutes the consultant's contribution to the elected official's campaign fund.

2. A Board member running for office may not solicit or knowingly accept campaign donations from a person doing business with the District. There is, obviously, no violation if the Board member neither solicits nor is aware of the contribution; however, once it is discovered, it should be returned.

F. All inquiries from any proposer, bidder, or prospective bidder or proposer to any Board member or employee to discuss any RFP, specification, bid or proposal shall be

referred to the Office of Contracts, Procurement and Materiel. No actions shall be taken, or information provided, for or on behalf of any prospective contractor or vendor which interferes with free and open competition for District contracts. No Board member or employee shall disclose or otherwise use confidential information acquired by virtue of his/her position or employment with the District for his/her or another person's private gain.

16.5 In addition to the above requirements of Section 16.4c, Board members, employees and consultants shall conduct themselves as follows whenever the member, employee or consultant has, or may have, a financial interest in making or participating in the making of any governmental decision.

- A. Directors: Unless his/her participation is legally required, when the matter comes up on the agenda, the Director shall:
1. Disclose his/her interest
 2. refrain from participating in any way in the decision making process
 3. withdraw from the room if the subject is being discussed in closed session.
- B. Employees: The employee shall immediately report the nature of the matter and the existence of a conflict to his/her superior so that the work may be assigned to another.
- C. Consultants: The consultant shall immediately report the nature of the matter and the existence of the conflict to

the General Manager.

16.6 No Board member, officer, or employee shall by his conduct give reasonable basis for the impression that any person improperly can influence him or unduly enjoy his favor in the performance of his official acts or actions, or that he is affected unduly by the kinship, rank, position of, or association with, any person.

16.7 A. An employee who violates any of the standards of conduct set forth herein is subject to discipline, up to and including discharge, in addition to any penalties provided by law.

B. If a Board member or consultant violates any of the standards of conduct set forth herein, the matter shall be referred to the Administration, Efficiency and Economy Committee of the Board which shall, following investigation and review, make a recommendation to the full Board for action to be taken, in addition to any penalties provided by law.

APPENDIX A

GOVERNMENT CODE

§1090 Conflicts of Interest; Contracts, Sales and Purchases

Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

As used in this article, "district" means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

§1090.1 Acceptance of Commissions for Placement of Insurance

No officer or employee of the State nor any Member of the Legislature shall accept any commission for the placement of insurance on behalf of the State.

§1091 Remote Interest of Officer or Member

(a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of such interest is disclosed to the body of the board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

(b) As used in this article, "remote interest" means any of the following:

(1) That of a nonsalaried officer of a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5.

(2) That of an employee or agent of the contracting party, if such contracting party has 10 or more other employees and if the officer was an employee or agent of such contracting party for at least three years prior to the officer initially accepting his or her office.

For the purpose of this paragraph, time of employment with the contracting party by the officer shall be counted in computing the three-year period specified in this paragraph even though such contracting party has been converted from one form of business organization to a different form of business organization within three years of the initial taking of office by such officer. Time of employment in such case shall be counted only if, after the transfer or change in organization, the real or ultimate ownership of the contracting party is the same or substantially similar to that which existed before such transfer or change in organization. For the purposes of this paragraph, stockholders, bondholders, partners or other persons holding an interest in the contracting party are regarded as having the "real or ultimate ownership" of such contracting party.

(3) That of a parent in the earnings of his or her minor child for personal services.

(4) That of a landlord or tenant of the contracting party.

(5) That of an attorney of the contracting party.

(6) That of a member of a nonprofit corporation formed under the Food and Agricultural Code or a nonprofit corporation formed under the Corporations Code for the sole purpose of engaging in the merchandising of agricultural products or the supplying of water.

(7) That of a supplier of goods or services when such goods or services had been supplied to the contracting party by the officer for at least five years prior to his or her election or appointment to office.

(8) That of a person subject to the provisions of Section 1090 in any contract or agreement entered into pursuant to the provisions of the California Land Conservation Act of 1965.

(9) That of an officer, director or employee of a bank, bank holding company, or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor.

(10) That of an engineer, geologist, or architect employed by a consulting engineering or architectural firm. This paragraph applies only to an employee of a consulting firm who does not serve in a primary management capacity, and does not apply to an officer or director of a consulting firm.

(c) The provisions of this section shall not be applicable

to any officer interested in a contract who influences or attempts to influence another member of the body or board of which he or she is a member to enter into the contract.

(d) The willful failure of an officer to disclose the fact of his or her interest in a contract pursuant to this section shall be punishable as provided in Section 1097. Such violation shall not void the contract, however, unless the contracting party had knowledge of the fact of the remote interest of the officer at the time the contract was executed.

1091.1 Interest in Contracts; Subdivided Lands

The prohibition against an interest in contracts provided by this article or any other provision of law shall not be deemed to prohibit any public officer or member of any public board or commission from subdividing lands owned by him or in which he has an interest and which subdivision of lands is effected under the provisions of Division 2 (commencing with Section 66410) of Title 7 of the Government Code or any local ordinance concerning subdivisions; provided, that (a) said officer or member of such board or commission shall first fully disclose the nature of his interest in any such lands to the legislative body having jurisdiction over the subdivision thereof, and (b) said officer or member of such board or commission shall not cast his vote upon any matter or contract concerning said subdivision in any manner whatever.

1091.5 Ownership of Corporate Shares; Reimbursement for Expenses; Recipient of Public Services; Landlord or Tenant Contracting with Federal or State Agencies; Employment of Spouse; Officer, Director, or Employee of Bank or Savings and Loan Association

(a) An officer or employee shall not be deemed to be interested in a contract if his or her interest is any of the following:

(1) The ownership of less than 3 percent of the shares of a corporation for profit, provided the total annual income to him or her from dividends, including the value of stock dividends, from the corporation does not exceed 5 percent of his or her total annual income, and any other payments made to him or her by the corporation do not exceed 5 percent of his or her total annual income.

(2) That of an officer in being reimbursed for his or her actual and necessary expenses incurred in the performance of official duty.

(3) That of a recipient of public services generally provided by the public body or board of which he or she

is a member, on the same terms and conditions as if he or she were not a member of the board.

(4) That of a landlord or tenant of the contracting party if such contracting party is the federal government or any federal department or agency, this state or an adjoining state, any department or agency of this state or an adjoining state, any county or city of this state or an adjoining state, or any public corporation or special, judicial, or other public district of this state or an adjoining state unless the subject matter of such contract is the property in which such officer or employee has such interest as landlord or tenant in which event his or her interest shall be deemed a remote interest within the meaning of, and subject to, the provisions of Section 1091.

(5) That of a tenant in a public housing authority created pursuant to Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code in which he or she serves as a member of the board of commissioners of the authority or of a community development commission created pursuant to Part 1.7 (commencing with Section 34100) of Division 24 of the Health and Safety Code.

(6) That of a spouse of an officer or employee of a public agency in his or her spouse's employment or officeholding if his or her spouse's employment or officeholding has existed for at least one year prior to his or her election or appointment.

(7) That of a nonsalaried member of a nonprofit corporation, provided that such interest is disclosed to the body or board at the time of the first consideration of the contract, and provided further that such interest is noted in its official records.

(8) That of a noncompensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that such interest is noted in its official records.

For purposes of this paragraph an officer is "noncompensated" even though he or she receives reimbursement from the nonprofit, tax-exempt corporation for necessary travel and other actual expenses incurred in performing duties of his or her office.

(b) An officer or employee shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if his or her sole

interest is that of an officer, director, or employee of a bank or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor.

§1092 Avoidance of Contracts

Every contract made in violation of any of the provisions of Section 1090 may be avoided at the instance of any party except the officer interested therein. No such contract may be avoided because of the interest of an officer therein unless such contract is made in the official capacity of such officer, or by a board or body of which he is a member.

§1092.5 Lease, Purchase or Encumbrance of Real Property; Avoidance

Notwithstanding Section 1092, no lease or purchase of, or encumbrance on, real property may be avoided, under the terms of Section 1092, in derogation of the interest of a good faith lessee, purchaser, or encumbrancer where the lessee, purchaser, or encumbrancer paid value and acquired the interest without actual knowledge of a violation of any of the provisions of Section 1090.

§1093 Warrants and Other Evidences of Indebtedness, Private Use or Benefit

The State Treasurer and Controller, county and city officers, and their deputies and clerks shall not purchase or sell, or in any manner receive for their own or any other person's use or benefit any State, county or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the State, or any county or city thereof. This section does not apply to evidences of indebtedness issued to or held by such an officer, deputy or clerk for services rendered by them, nor to evidences of the funded indebtedness of the State, county, or city.

§1094 Accounts; Certificate as Prerequisite to Allowance

Every officer whose duty it is to audit and allow the accounts of other state, county, or city officers shall, before allowing such accounts, require each of such offices to make and file with him an affidavit or certificate under penalty of perjury that he has not violated any of the provisions of this article, and any individual who willfully makes and subscribes such certificate to an account which he knows to be false as to any material matter shall be guilty of a felony and upon conviction thereof shall be subject to the penalties prescribed for perjury by the Penal Code of this State.

§1095 Warrants and Other Evidences of Indebtedness; Restrictions on Payment

Officers charged with the disbursement of public moneys shall not pay any warrant or other evidence of indebtedness against the State, county, or city when it has been purchased, sold, received, or transferred contrary to any of the provisions of this article.

§1096 Accounts; Suspension of Settlement or Payment; Prosecutions

Upon the officer charged with the disbursement of public moneys being informed by affidavit that any officer, whose account is about to be settled, audited, or paid by him, has violated any of the provisions of this article, the disbursing officer shall suspend such settlement or payment, and cause the district attorney to prosecute the officer for such violation. If judgment is rendered for the defendant upon such prosecution, the disbursing officer may proceed to settle, audit, or pay the account as if no affidavit had been filed.

§1097 Penalty for Violations

Every officer or person prohibited by the laws of this state from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing scrip, or other evidences of indebtedness, including any member of the governing board of a school district, who willfully violates any of the provisions of such laws, is punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the state prison, and is forever disqualified from holding any office in this state.

§1126 Inconsistent, Incompatible or Conflicting Employment, Activity or Enterprise by Local Agency Officer or Employee

(a) Except as provided in Section 1128, a local agency officer or employee shall not engage in any employment activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed. Such officer or employee shall not perform any work, service, or counsel for compensation outside of his or her local agency employment where any part of his or her efforts will be subject to approval by any other officer, employee, board, or commission of his or her employing body, unless otherwise approved in the manner described by subdivision (b).

(b) Each appointing power may determine, subject to approval of the local agency, and consistent with the provisions of Section 1128 where applicable, those outside activities which, for employees under its jurisdiction, are inconsistent with, incompatible to, or in conflict with their duties as

local agency officers or employees. An employee's outside employment, activity, or enterprise may be prohibited if it: (1) involves the use for private gain or advantage of his or her local agency time, facilities, equipment and supplies; or the badge, uniform, prestige, or influence of his or her local agency office or employment or, (2) involved receipt or acceptance by the officer or employee of any money or other consideration from anyone other than his or her local agency for the performance of an act which the officer or employee, of not performing such act, would be required or expected to render in the regular course or hours of his or her local agency employment or as a part of his or her duties as a local agency officer or employee or, (3) involves the performance of an act in other than his or her capacity as a local agency officer or employee which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement of any other officer or employee or the agency by which he or she is employed, or (4) involves such time demands as would render performance of his or her duties as a local agency officer or employee less efficient.

The local agency may adopt rules governing the application of this section. Such rules shall include provision for notice to employees of the determination of prohibited activities, of disciplinary action to be taken against employees for engaging in prohibited activities, and for appeal by employees from such a determination and from its application to an employee.

§1128

Agency Employed Attorneys; Service on Boards, etc.

Service on an appointed or elected governmental board, commission, committee, or other body by an attorney employed by a local agency in a non-elective position shall not, by itself, be deemed to be inconsistent, incompatible, in conflict with, or inimical to the duties of the attorney as an officer or employee of the local agency and shall not result in the automatic vacation of either such office.

§87100

Public Officials; State and Local; Financial Interest

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

CHAPTER 7. CONFLICTS OF INTEREST

Article 1. Conflicts of Interest; General Prohibition

15700. Public Official Making, Participating in Making, or Using His Official Position to Influence a Governmental Decision (87100).

The provisions herein define terms as used in Chapter 7 of the Political Reform Act of 1974, as amended, Government Code Sections 87100-87312.

(a) "Public official at any level of state or local government" means every natural person who is a member, officer, employee or consultant of a state or local government agency.

(1) "Member" shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decision-making authority. A board or commission possesses decision-making authority whenever:

(A) It may make a final governmental decision;

(B) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

(C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official of governmental agency.

(2) "Consultant" shall include any natural person who provides, under contract, information, advice, recommendation or counsel to a state or local government agency, provided, however, that "consultant" shall not include a person who:

(A) Conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the agency or of any agency official, other than normal contract monitoring; and

(B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

(b) A public official "makes a governmental decision," except as provided in subsection (d) of this section, when he or she, acting within the authority of his or her office:

(1) Votes on a matter;

(2) Appoints a person;

(3) Obligates or commits his or her agency to any course of action;

(4) Enters into any contractual agreement on behalf of his or her agency;

(5) Determines not to act, within the meaning of sub-paragraphs (1), (2), (3) or (4), unless such determination is made because of his or her financial interest. When the determination not to act occurs because of his or her financial interest, the official's determination must be accompanied by disclosure of the financial interest, made part of the agency's official record or made in writing to the official's supervisor, appointing power or any other person specified in a conflict of interest code adopted pursuant to Government Code Section 87300.

(c) A public official or designated employee "participates in the making of a governmental decision" when, acting within the authority of his or her position, he or she:

(1) Negotiates, without significant substantive review, with a governmental entity or private person regarding the decision; or

(2) Advises or makes recommendations to the decision-maker, either directly or without significant intervening substantive review, by:

(A) Conducting research or making any investigation which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision; or

(B) Preparing or presenting any report, analysis or opinion, orally or in writing, which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision.

(d) Making or participating in the making of a governmental decision shall not include:

(1) Actions of public officials which are solely ministerial, secretarial, manual or clerical;

(2) Appearances by a public official as a member of the general public before an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to his or her personal interests; or

(3) Actions by public officials, employees, or employee representatives relating to their compensation or the terms or conditions of their employment or contract.

(e) "In any way attempting to use his or her official position to influence a governmental decision" shall include furthering or attempting to affect in any manner any decision:

(1) Within or before his or her agency; or

(2) Before any agency which is appointed by or subject to the budgetary control of his or her agency.

(f) "In any way attempting to use his or her official position to influence a governmental decision" shall not include:

(1) Appearances by a public official as a member of the general public before an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to his or her personal interest;

(2) Actions by public officials, employees or employee representatives relating to their compensation or the terms or conditions of their employment or contract.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87100, Government Code.

History: 1. Repealer and new section filed 12-17-76, as an emergency; effective upon filing (Register 76, No. 51). For prior history, see Register 76, No. 40.

2. Certificate of Compliance filed 3-31-77 (Register 77, No. 14).

18702 Material Financial Effect.

(a) The financial effect of a governmental decision on a financial interest of a public official is material if the decision will have a significant effect on the business entity, real property or source of income in question.

(b) In determining whether it is reasonably foreseeable that the effects of a governmental decision will be significant within the meaning of the general standard set forth in paragraph (a), consideration should be given to the following factors:

(1) Whether, in the case of a business entity in which the public official holds a direct or indirect investment of one thousand dollars (\$1,000) or more or in the case of a business entity in which the public official is a director, officer, partner, employee, trustee or holds any position of management, the effect of the decision will be to increase or decrease:

(A) The annualized gross revenues by the lesser of:

1. One hundred thousand dollars (\$100,000); or
2. One percent if the effect is one thousand dollars (\$1,000) or more; or

(B) Annual net income by the lesser of:

1. Fifty thousand dollars (\$50,000); or
2. One half of one percent if the effect is one thousand dollars (\$1,000) or more; or

(C) Current assets or liabilities by the lesser of:

1. One hundred thousand dollars (\$100,000); or
2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

Current assets are deemed to be decreased by the amount of any expenses incurred as a result of a governmental decision.

(2) Whether, in the case of a direct or indirect interest in real property of one thousand dollars (\$1,000) or more held by a public official, the effect of the decision will be to increase or decrease:

(A) The income producing potential of the property by the lesser of:

1. One thousand dollars (\$1,000) per month; or
2. Five percent per month if the effect is fifty dollars (\$50) or more per month; or

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000); or
2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

(3) Whether, in the case of a source of income, as defined in Government Code Section 87103 (c), of two hundred fifty dollars (\$250) or more received by or promised to a public official within 12 months prior to the time the decision is made:

(A) The effect of the decision will be to directly increase or decrease the amount of income (other than rents) to be received by the official, or to confer a financial benefit or detriment upon the official or a member of the official's immediate family, in an amount of one hundred dollars (\$100) or more; or

(B) There is a nexus between the governmental decision and the purpose for which the official receives income; or

(C) In the case of a source of income which is a business entity, the business entity will be affected in a manner described in subsection (b) (1) above; or

(D) If the source of income is not a business entity, the decision will have a significant effect on the source.

(c) Subsections (a) and (b) of this section notwithstanding, the making or participation in the making of a governmental decision by a contract consultant, or by a person retained to provide information, advice, recommendation or counsel has no material financial effect on a business entity or source of income in which such consultant or person retained is an officer, employee, sole proprietor or partner, if the only financial effects of the decision are the modification, perpetuation or renewal of the contractual or retainer agreement and/or the opportunity to bid competitively on a project or contract.