



Camino Real Regional Mobility Authority

El Paso Streetcar Infrastructure Project

EXHIBIT A

GENERAL CONDITIONS

Addendum No. ~~34~~³¹

**El Paso Streetcar Infrastructure Project - General Conditions
Request for Proposals
Addendum No. ~~34~~³¹ - July 24, 31, 2015**

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ARTICLE 5 - CONTROL OF MATERIALS

1. SOURCE CONTROL

The materials used on the work shall meet all quality requirements of the Contract Documents. Unless otherwise specified or approved, use new materials for the work. To expedite the inspection and testing of materials, the Contractor shall submit to the CRRMA a list of the proposed sources of materials at the preconstruction conference. Secure the CRRMA's approval of the proposed source of materials to be used before their delivery.

Materials can be approved at a supply source or staging area but may be reinspected in accordance with Article 5.4, "Sampling, Testing, and Inspection."

1.1. **Buy Texas.** Buy materials produced in Texas when the materials are available at a comparable price and in a comparable period of time. Provide documentation of purchases or a description of good-faith efforts on request.

1.2. **No-Change Order for Unavailable Materials.** The Contractor shall not be entitled to a Change Order for additional time or money due to the unavailability of materials that meet all requirements of the Contract Documents; provided that Contractor may be entitled to additional time (but not additional money) if the Contractor can establish to the reasonable satisfaction of the CRRMA that a certain specified material is not available as a result of circumstances that are beyond the control of Contractor. Materials will not be considered unavailable because the price of the materials exceeds the Contractor's budget or the amount the Contractor believes is reasonable.

2. MATERIAL QUALITY

The Contractor shall provide and maintain a quality control system that conforms to all requirements of the Technical Specifications. The Contractor is responsible for establishing, implementing and maintaining a quality control plan to manage, control, document, and ensure that work complies with the requirements of the Contract Documents. The Contractor shall maintain equipment and qualified personnel to perform all sampling and testing to determine the magnitude of the various properties of the materials during manufacturing and placement as governed by the Technical Specifications and shall maintain these properties within the limits of the Technical Specifications.

2.1. **Quality Control Plan.** The Contractor shall design a quality control plan detailing the methods by which the quality program will be conducted in conformance with the applicable Technical Specifications and DMS procedures for each specified item.

The Contractor's quality control plan should address the following elements for each contract item:

- Management control to ensure that both onsite and offsite work complies with the requirements of the Contract Documents, including the work of subcontractors, suppliers, and testing laboratories.
- Submittal management. A listing of submittals includes but is not limited to supplemental quality control plans, qualification and certification documents for laboratories and testing personnel, certificates of compliance, shop drawings and proposed methods for fabrication and construction activities, mix designs, inspection reports and test results.

16. RESPONSIBILITY FOR DAMAGE CLAIMS

Indemnify and save harmless the CRRMA and its agents and employees from all suits, actions, or claims and from all liability and damages for any injury or damage to any person or property due to the Contractor's negligence in the performance of the work and from any claims arising or amounts recovered under any laws, including workers' compensation and the Texas Tort Claims Act. Indemnify and save harmless the CRRMA and assume responsibility for all damages and injury to property of any character occurring during the prosecution of the work resulting from any act, omission, neglect, or misconduct on the Contractor's part in the manner or method of executing the work; from failure to properly execute the work; or from defective work or material.

Pipelines and other underground installations that may or may not be shown on the plans may be located within the right of way. Indemnify and save harmless the CRRMA from any suits or claims resulting from damage by the Contractor's operations to any pipeline or underground installation. At the pre-construction conference, make available the scheduled sequence of work to the respective utility owners so that they may coordinate and schedule adjustments of their utilities that conflict with the proposed work.

If the Contractor asserts any claim or brings any type of legal action (including an original action, third-party action, or cross-claim) against any member of the Board or individual employee of the CRRMA for any cause of action or claim for alleged negligence arising from the Contract, the Contractor will be ineligible to bid on any proposed Contract with the CRRMA during the pendency of the claim or legal action.

Except as provided in Article 6.21.7 or otherwise specified in the Contract, neither Contractor or the CRRMA shall be liable to the other for any indirect, special or consequential damages (including without limitation, loss of use, cost of capital, debt service, loss of profit on this or related contracts, administrative costs, or other indirect damage) resulting from or relating to the Contract or the performance of the work.

17. HAULING AND LOADS ON ROADWAYS AND STRUCTURES

Comply with federal and state laws concerning legal gross and axle weights. Except for the designated Interstate system, vehicles with a valid yearly overweight tolerance permit may haul materials to the work locations at the permitted load. Provide copies of the yearly overweight tolerance permits to the CRRMA upon request. Construction equipment is not exempt from oversize or overweight permitting requirements on roadways open to the traveling public.

Protect existing bridges and other structures that will remain in use by the traveling public during and after the completion of the Contract. Construction traffic on roadways, bridges, and culverts within the limits of the work, including any structures under construction that will remain in service during and after completion of the Contract is subject to legal size and weight limitations.

Additional temporary fill may be required by the CRRMA for hauling purposes for the protection of certain structures. This additional fill will not be paid for directly but will be subsidiary to pertinent Items.

Replace or restore to original condition any structure damaged by the Contractor's operations.

Maintain payroll and related records during the course of the Contract and preserve these records for a period of 3 years following the completion of the Contract or as required by law.

20.1. **Minimum Wage Requirements for State Funded Contracts.** Comply with the requirements of 29 USC 206 unless otherwise shown in the Contract Documents.

Upon request, submit payroll records to the CRRMA in the manner prescribed by the CRRMA.

21. WARRANTY

21.1. **Description of Warranty.** In addition to any manufacturer's warranties transferred to CRRMA pursuant to Article 5.3 hereof and any warranties of certain items of the Contract work required by various sections of the Technical Specifications, the Contractor warrants that: (a) all work furnished pursuant to the Contract Documents shall conform to Good Industry Practice, (b) the Project shall be free of defects, (c) ~~the Project shall be fit for use for the intended function,~~ (d) materials and equipment furnished under the Contract Documents shall be of good quality and new, and (e) the work shall meet all of the requirements of the Contract Documents (collectively, the "Warranty" or "Warranties").

21.2. **Warranty Term.** The Warranty Term for the Project shall commence upon Substantial Completion and remain in effect until one year after Final Acceptance. If CRRMA determines that any of the work has not met the standards set forth in this Article 6.21 at any time within the applicable Warranty Term, then Contractor shall correct such work as specified in this Article 6.21, even if the performance of such corrective work extends beyond the applicable Warranty Term. CRRMA and Contractor shall conduct a walkthrough of the Project prior to expiration of the Warranty Term and shall produce a punch list of those items requiring corrective work.

21.3. **Remedy.** Within 7 days of receipt by Contractor of notice from CRRMA specifying a failure of any of the work to satisfy the Warranties, Contractor and CRRMA shall mutually agree when and how Contractor shall remedy such failure; provided, however, that in case of an emergency requiring immediate curative action or a situation which poses a significant safety risk, Contractor shall implement such action as it deems necessary and shall notify CRRMA in writing of the remedy. If Contractor does not use its best efforts to proceed to effectuate such remedy within the agreed time, or should Contractor and CRRMA fail to reach such an agreement within such 7 day period (or immediately in the case of emergency conditions), CRRMA shall have the right, but not the obligation, to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by Contractor. Reimbursement therefor shall be payable to CRRMA within 10 days after Contractor's receipt of an invoice therefor. Alternatively, CRRMA may deduct the amount of such costs and expenses from any sums owed by CRRMA to Contractor pursuant to the Contract Documents.

21.4. **Applicability of Warranties to Re-Done Work.** The Warranties shall apply to all work re-done, repaired, corrected or replaced pursuant to the terms of the Contract Documents. Following acceptance by CRRMA of re-done, repaired, corrected or replaced work, the Warranties as to each re-done, repaired, corrected or replaced element of the work shall extend beyond the original Warranty Term in order that each element of the Project shall have at least a one-year warranty period (but not to exceed two years from Project Final Acceptance).

21.5. **Effect of TxDOT or Maintenance Contractor Activities on Warranties.** Contractor acknowledges and agrees that CRRMA and any maintenance contractor of CRRMA and their respective agents may perform certain maintenance work during the period in which the Warranties are in effect and

ADDENDUM 4 - JULY 31, 2015

agrees that the Warranties shall apply notwithstanding such activities; provided however that Contractor does not hereby waive any rights, claims or remedies to which it may be entitled as a result of such activities.

21.6 No Limitation of Liability. The Warranties are in addition to all rights and remedies available under the Contract Documents or applicable law or in equity, and shall not limit Contractor's liability or responsibility imposed by the Contract Documents or applicable law or in equity with respect to the work, including liability for latent construction defects, strict liability, breach, negligence, intentional misconduct or fraud.

21.7 Damages for Breach of Warranty. In addition to CRRMA's other rights and remedies hereunder, at law or in equity, Contractor shall be liable for actual damages resulting from any breach of an express or implied warranty or any defect in the work, including the cost of performance of such obligations by others. Actual damages shall include any lost revenues from the Project that result from Contractor's breach of warranty or defect in the work subject to an aggregate cap on lost revenues of \$100,000.

21.8 Transfer of Warranties. All warranties provided by Contractor to CRRMA under the Contract Documents may be transferred by CRRMA to the City of El Paso, Sun Metro or any other entity that assumes ownership and/or operations of the Project.

in liquidated damages for each calendar day charged over the number of calendar days specified in the Contract. The dollar amount specified in the Contract will be deducted from any money due or to become due the Contractor for each calendar day the Project remains incomplete. This amount will be assessed not as a penalty but as liquidated damages.

6.2. **Failure to Timely Complete Interim Milestone Work.** If the Contractor fails to complete the Interim Milestone Work, as defined in Article 1.3.56, within 809 calendar days of the issuance of notice to proceed, then the Contractor shall pay to the CRRMA, as liquidated damages, the amount of ~~\$5,000~~1,500 per calendar day until Substantial Completion of the Interim Milestone Work is achieved, subject to a cap of ~~\$1,500,000~~150,000 on liquidated damages for failure to timely achieve Substantial Completion of the Interim Milestone Work.

6.3. **Failure to Timely Completion of Complete the Project.** The Contractor shall achieve Substantial Completion of the Project, as defined in Article 1.3.123, within 1,105 calendar days of the issuance of notice to proceed. Failure to meet the deadline for Substantial Completion of the Project shall result in liquidated damages of \$5,000 per day, subject to a cap of \$1,000,000 on liquidated damages for failure to timely achieve Substantial Completion of the Project.

6.4. **Payment of Liquidated Damages.** The Contractor shall pay to CRRMA any liquidated damages owed on a monthly basis, or at the option of CRRMA, CRRMA may deduct any accrued and unpaid liquidated damages from Contractor's monthly draw request.

7. DEFAULT OF THE CONTRACT

7.1. **Declaration of Default.** The CRRMA may declare the Contractor to be in default of the Contract if the Contractor:

- fails to begin the work within the number of days specified,
- fails to prosecute the work to assure completion within the number of days specified,
- is uncooperative, disruptive or threatening,
- fails to perform the work in accordance with the Contract Documents requirements,
- neglects or refuses to remove and replace rejected materials or unacceptable work,
- discontinues the prosecution of the work without the CRRMA's approval,
- makes an unauthorized assignment,
- fails to resume work that has been discontinued within a reasonable number of days after notice to do so,
- fails to conduct the work in an acceptable manner, or
- commits fraud or other unfixable conduct as determined by the CRRMA,

If any of these conditions occur, the CRRMA will give notice in writing to the Contractor and the Surety of the intent to declare the Contractor in default. If the Contractor does not proceed as directed within 10 days after the notice, the CRRMA will provide written notice to the Contractor and the Surety to declare the Contractor to be in default of the Contract. If the Contractor provides the CRRMA written notice of voluntary default of the Contract, the CRRMA may waive the 10 day notice of intent to declare the Contractor in default and immediately provide written notice of default to the Contractor and the Surety. Calendar day charges will continue until completion of the Contract. The CRRMA may suspend work in accordance with Section 7.4., "Temporary Suspension of Work or Calendar Day Charges," to investigate apparent fraud or other unfixable conduct before defaulting the Contractor.

The CRRMA will determine the method used for the completion of the remaining work as follows: