

SECTION 3 CONTROL OF WORK

3.01 AUTHORITY OF ENGINEER

- A. The Engineer is the representative of the City and has full authority to interpret the Contract Documents, to conduct the construction review and inspection of the Contractor's performance, and to decide questions, which arise during the course of the Work and his decisions on these matters, shall be final and conclusive. The Engineer has the authority to reject all work and materials, which do not conform to the Contract Documents, and has the authority to stop the Work whenever such stoppage may be necessary to insure the proper execution of the Contract. The Engineer's failure to stop the Work shall not obligate the City to accept defective or otherwise unacceptable work or otherwise affect the Engineer's or City's authority to reject work for any reason set forth in the Contract Documents.
- B. If at any time the Contractor's work force, tools, plant or equipment appear to the Engineer to be insufficient or inappropriate to secure the required quality of work or the proper rate of progress, the Engineer may order the Contractor to increase their efficiency, improve their character, to augment their number or to substitute other personnel, new or additional tools, plant or equipment, as the case may be, and the Contractor shall comply with such order. Neither the failure of the Engineer to demand such increase of efficiency, number, or improvement, nor the compliance by the Contractor with the demand, shall relieve the Contractor of his obligation to provide quality work at the rate of progress necessary to complete the Work within the specified time.
- C. The Engineer shall have the authority to make minor changes in the Work, not involving extra costs, and not inconsistent with the purposes of the Work.
- D. Any order given by the Engineer, not otherwise required by the Contract Documents to be in writing shall, on request of the Contractor, be given or confirmed by the Engineer in writing.
- E. Whenever work, methods of procedure, or any other matters are made subject to direction or approval, such direction or approval will be given by the Engineer.

3.02 DRAWINGS

- A. Drawings furnished herewith are for bidding purposes. The Engineer will furnish the Contractor, free of charge, copies of full size Drawings which are reasonably necessary for the execution of the Work. The Contractor shall have no claim for excusable delay on account of the failure of the Engineer to deliver such Drawings, unless the Engineer shall have failed to deliver the same within two weeks after receipt of written demand therefore from the Contractor. The Contractor shall keep one copy of said Drawings, in good order, available to the Engineer and the Engineer's representatives, and convenient to the working site.
- B. If the Contractor, in the course of the Work, finds any discrepancy between the Drawings and the physical condition of the locality, or any errors or omissions in the Drawings, or in the layout as given by points and instructions, it shall be the Contractor's duty to inform the Engineer in writing, and the Engineer will promptly verify the same. Any work done after such discovery, until authorized, will be done at the Contractor's risk. All Drawings, Specifications, and copies thereof furnished by the Engineer are the property of the Engineer and shall not be reused on other work and, with the exception of the signed Contract sets, are to be returned to the Engineer, on request, at the completion of the Work. All models are the property of the City.
- C. The Drawings shall be supplemented by such Shop Drawings prepared by the fabricator and/or supplier and Working Drawings prepared by the Contractor as are necessary to adequately control the Work. No changes shall be made by the Contractor in any Shop or Working Drawings after they have been reviewed by the Engineer, if the Engineer deems that no further submittals are necessary. The Contractor shall not commence the layout, purchase, fabrication, or construction of any work for which Shop or Working Drawings are required until Engineer has reviewed the specifications and drawings and has indicated in writing no further submittals are required for compliance with the Contract Documents.
- D. Shop and Working Drawings for any structure shall include, but not be limited to, detail design calculations, fabrication and installation drawings, lists, graphs, operating instructions, etc., which shall be reviewed and accepted by the Engineer before any such work is performed.

- E. Shop and Working Drawings will be required for cribs, cofferdams, falsework, centering and form work and for other temporary work and methods of construction the Contractor proposes to use. Such Drawings shall be subject to the review and acceptance of the Engineer insofar as the details affect the character of the finished work, but details of design will be left to the Contractor who shall be responsible for the successful construction of the Work.
- F. Contractor agrees that Shop and/or Working Drawings processed by the Engineer are not Contract Change Orders; that the purpose of these Drawings submitted by the Contractor is to demonstrate to the Engineer that the Contractor understands the design concept, that the Contractor demonstrates its understanding by indicating which equipment and material the Contractor intends to furnish and by detailing the fabrication methods it intends to use. It is expressly understood, however, that favorable review of the Contractor's Shop and Working Drawings shall not relieve the Contractor of any responsibility for accuracy of dimensions and details, or for mutual agreements of dimensions and details. It is mutually agreed that the Contractor shall be responsible for agreement and conformity of its Drawings with the Specifications. Contractor further agrees that if deviations, discrepancies or conflicts between Shop and/or Working Drawings and Specifications are discovered either prior to or after the Drawings are processed by the Engineer, the Specifications shall control and shall be followed.
- G. Unless otherwise stated, the Engineer shall have thirty (30) days from the date of receipt of Shop and/or Working Drawings for review.
- H. Full compensation for furnishing all Shop and/or Working Drawings shall be considered as included in the prices paid for the Contract items of work to which such drawings relate and no additional compensation will be allowed therefore. Any cost related to the Engineer's review of any particular set of Shop and/or Working Drawings more than twice, due to incompleteness or unacceptability, shall be borne by the Contractor, and the City reserves the right to withhold such costs from payments due the Contractor.
- I. All reasonable effort has been made to locate and delineate all known structures and facilities on the plans. Except as otherwise provided herein, the City of West Sacramento shall assume no responsibility for the completeness or accuracy of its delineation of underground utilities nor the existence of other buried objects which may be encountered, or which are not shown on the plans.

- J. The Contractor shall keep and maintain a clean set of plans for the project and shall record in red ink all changes, revisions, etc. made during the course of construction. These plans shall include all changes, revisions, etc. from the original plan complete with the exact sizes, locations, dimensions, elevations, etc. These plans shall be kept and maintained in a neat, clean and legible condition and shall be available for inspection at all times by the Engineer. The Contractor shall deliver these completed plans to the Engineer and the Engineer shall approve these plans prior to final acceptance of the project by the City.

3.03 CONSTRUCTION STAKING AND SURVEYS

The City will provide one set of construction stakes and benchmarks as it deems necessary to establish lines and grades required for the completion of the site work specified in the Contract. The Contractor shall notify the Engineer a minimum of seven (7) days in advance of the time work is to begin on any portion of the project that may require construction staking to be provided by the City. The Contractor shall make all other surveys necessary for the completion of the Work.

Alternatively, the Engineer may provide the Contractor with drawings showing benchmarks and reference points as it deems necessary to establish lines and grades required for the completion of the site work specified in the Contract Documents. The Contractor shall make or furnish all surveys and set all construction stakes necessary for the completion of the work.

Stakes and marks set by the City or Engineer shall be carefully preserved by the Contractor. The Contractor shall be charged for the cost of replacing or restoring the stakes and marks, which are destroyed or damaged by his operation. This charge will be deducted from any monies due or to become due to the Contractor under the Contract.

3.04 PERMITS AND REGULATIONS

Permits and licenses, of a temporary nature, necessary for the prosecution of the Work shall be secured and paid for by the Contractor. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the City unless otherwise specified.

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the Work as shown on the plans and described in the Specifications. Contractor shall promptly notify the Engineer in writing of any specification at variance therewith. In such instances, any necessary changes shall be adjusted as provided in the Contract for changes in the Work. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules, and regulations and without such notice to the Engineer, Contractor shall bear all costs arising therefrom.

3.05 CONFORMITY WITH CONTRACT DOCUMENTS AND ALLOWABLE DEVIATIONS

Work and materials shall conform to the lines, grades, cross sections, dimensions and material requirements, including tolerances, shown on Contract Documents. Although measurement, sampling, and testing may be considered evidence as to such conformity, the Engineer shall be the sole judge as to whether the Work or materials deviate from the Contract Documents. The Engineer's decision as to any allowable deviations therefrom shall be final and conclusive.

3.06 COORDINATION AND INTERPRETATION OF CONTRACT DOCUMENTS

- A. Should it appear that the Work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Specifications and Plans, the Contractor shall apply to the Engineer for such further explanations as may be necessary and shall conform to them as part of the Contract. In the event of any doubt or question arising respecting the true meaning of the Specifications and Plans, reference shall be made to the Engineer, whose decision thereon shall be final and conclusive.
- B. Any reference made in the Specifications and Plans to any specification, standard, method, or publication of any scientific or technical society or other organization shall, in the absence of a specific designation to the contrary, be understood to refer to the specification, standard, method, or publication in effect as of the date that the Work is advertised for Bids.

3.07 SUBCONTRACTORS

- A. The attention of the Contractor is directed to the provisions of California Public Contract Code sections 4100-4113 regarding subcontracting and said provisions are by this reference incorporated herein and made a part hereof.
- B. Each subcontract shall contain a suitable provision for the suspension or termination thereof should the Work be suspended or terminated or should the Subcontractor neglect or fail to conform to every provision of the Contract Documents insofar as such provisions are relevant. The Contractor shall be fully responsible to the City for the acts or omissions of his Subcontractors and of the persons either directly or indirectly employed by him. Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the City. If a legal action, including arbitration and litigation, against the City is initiated by a Subcontractor or Supplier, the Contractor shall reimburse the City for the amount of legal, engineering and all other expenses incurred by the City in defending itself in said action.

- C. The City and the Engineer reserve the right to approve all Subcontractors. Such approval shall be a consideration to the awarding of the Contract and unless notification to the contrary is given to the Contractor prior to the signing of the Contract, the list of subcontractors which is submitted with his proposal will be deemed to be acceptable. Contractor shall not, without the written consent of the City, subcontract the whole of the Work.

3.08 COOPERATION OF CONTRACTORS

- A. Should construction be under way by other forces or by other contractors within or adjacent to the limits of the Work specified or should work of any other nature be under way by other forces within or adjacent to said limits, the Contractor shall cooperate with all such other contractors or other forces to the end that any delay or hindrance to their work will be avoided. The right is reserved to perform other or additional work at or near the site (including material sources) at any time, by the use of other forces.
- B. When two or more contractors are employed on related or adjacent work, each shall conduct his operation in such a manner as not to cause any unnecessary delay or hindrance to the other. Each contractor shall be responsible to the other for all damage to work, to persons or property caused to the other by his operations, and for loss caused the other due to his unnecessary delays or failure to finish the work within the time specified for completion.

3.09 SUPERINTENDENCE

- A. The Contractor shall designate in writing, before starting work, an individual as authorized representative who shall have the authority to represent and act for the Contractor. This authorized representative shall be present at the Site of the Work at all times while work is actually in progress on the Contract. When the Work is not in progress and during periods when the Work is suspended, arrangements acceptable to the Engineer shall be made for any emergency work, which may be required.
- B. The Contractor is solely responsible, at all times, for the superintendence of the Work and for its safety and progress.
- C. Whenever the Contractor or his authorized representative is not present on any particular part of the Work where it may be desired to give direction, orders will be given by the Engineer, which shall be received and obeyed by the superintendent or foreman who may have charge of the particular work in reference to which the orders are given.
- D. Any order given by the Engineer, not otherwise required by the Specifications to be in writing, will on request of the Contractor, be given or confirmed by the Engineer in writing.

3.10 INSPECTION OF WORK

- A. Unless otherwise provided, all equipment, materials, and work shall be subject to inspection and testing by the Engineer. The Engineer will observe the progress and quality of the Work and determine, in general, if the Work is proceeding in accordance with the intent of the Contract Documents. The Engineer shall not be required to make comprehensive or continuous inspections to check the quality of the Work. The Engineer shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work. Visits and observations made by the Engineer shall not relieve the Contractor of Contractor's obligation to conduct comprehensive inspections of the Work and to furnish proper materials, labor, equipment and tools, and perform acceptable work, and to provide adequate safety precautions, in conformance with the intent of the Contract.
- B. Whenever the Contractor varies the period during which work is carried on each day, the Contractor shall give due notice to the Engineer so that proper inspection may be provided. Any work done in the absence of the Engineer shall be subject to rejection. Proper facilities for safe access for inspection to all parts of the Work shall at all times be maintained for the necessary use of the Engineer and other agents of the City, and agents of the Federal, State, or local governments at all reasonable hours for inspection by such agencies to ascertain compliance with laws and regulations.
- C. One or more inspectors may be assigned to observe the Work by the Engineer and to act in matters of construction under this Contract. It is understood that inspectors shall have the power to issue instructions and make decisions within the limitations of the authority of the Engineer. Such inspection shall not relieve the Contractor of the Contractor's obligation to conduct comprehensive inspections of the Work, to furnish proper materials, labor, equipment and tools, and perform acceptable work, and to provide adequate safety precautions in conformance with the intent of the Contract.
- D. The Engineer and the Engineer's representatives shall at all times have access to the Work wherever it is in preparation or progress, and the Contractor shall provide safe and convenient facilities for such access and for inspection. If the Specifications, the Engineer's instructions, laws, ordinances, or any public authority require any material, equipment or work to be specifically tested or approved, the Contractor shall give the Engineer timely notice of its readiness for inspection, and if the inspection is by an authority other than the City, of the time fixed for inspection. Inspections by the Engineer will be made promptly and, where practicable, at the source of supply.

- E. Work performed without inspection may be required to be removed and replaced under proper inspection. In such instances, the entire cost of removal and replacing, including the cost of City-furnished materials used in the Work, shall be borne by the Contractor, regardless of whether or not the Work exposed is found to be defective. Examination of questioned work, other than that installed without inspection, may be ordered by the Engineer and, if so ordered, the Work must be uncovered by the Contractor. If such work is found to be in accordance with the Contract Documents, the City will pay the cost of re-examination and replacement. If such work is found to be not in accordance with the Contract Documents, the Contractor shall pay such cost, unless the Contractor can show that the defect in the Work was caused by another contractor, and in that event the City will pay such costs.
- F. The inspection of the Work shall not relieve the Contractor of the Contractor's obligation to fulfill the Contract as herein prescribed, or in any way alter the standard of performance provided by the Contractor, and defective work shall be made good and unusable materials may be rejected, notwithstanding that such work and materials have been previously overlooked by the Engineer and accepted or estimated for payment. If the Work or any part thereof shall be found defective, the Contractor shall, within ten (10) calendar days, make good such defect in a manner satisfactory to the Engineer. If the Contractor fails to make ordered repairs of defective work or to remove the condemned materials from the Work within ten (10) calendar days after written direction by the Engineer, the City may make the ordered repairs, or remove the condemned materials, and deduct the cost thereof from any monies due the Contractor.
- G. The Contractor shall furnish promptly, without additional charge, all facilities, labor and materials reasonably needed by the Engineer for performing all inspection and tests. Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready at the time specified by the Contractor for its inspection.
- H. Where any part of the Work is being done under an encroachment permit or building permit, or is subject to Federal, State, County or City codes, laws, ordinances, rules or regulations, representatives of the government agency shall have full access to the Work and shall be allowed to make any inspection or tests in accordance with such permits, codes, laws, ordinances, rules, or regulations. If advance notice of the readiness of the Work for inspection by the governing agency is required, the Contractor shall furnish such notice to the appropriate agency.

- I. The Engineer may inspect the production of material, or the manufacture of products at the source of supply. Plant inspection, however, will not be undertaken until the Engineer is assured of the cooperation and assistance of both the Contractor and the material producer. The Engineer or the Engineer's authorized representative shall have free entry at all times to such parts of the plant as concerns the manufacture or production of the materials. Adequate facilities shall be furnished free of charge to make the necessary inspection. The City assumes no obligation to inspect materials at the source of supply.

3.11 TESTS

The Contractor shall perform, at the Contractor's own expense, all tests specified or required by the Specifications. The Engineer may perform such tests as the Engineer deems necessary to determine the quality of work or compliance with Contract Documents. The Contractor shall furnish promptly without additional charge all facilities, labor, and material reasonably required for performing safe and convenient tests as may be required by the Engineer. All tests by the Engineer will be performed in such a manner as will not unnecessarily delay the Work. The Contractor shall not be required to reimburse the City for tests performed by the City or Engineer. If samples of materials are submitted which fail to pass the specified tests, the Contractor shall pay for all subsequent tests.

3.12 REMOVAL OF REJECTED AND UNAUTHORIZED WORK AND MATERIALS

- A. All work or materials, which have been rejected, shall be remedied, or removed and replaced by the Contractor in an acceptable manner and no compensation shall be allowed the Contractor for such removal, replacement, or remedial work.
- B. Any work done beyond the lines and grades shown on the plans or established by the Engineer or any Extra Work done without written authority will be considered as unauthorized work and will not be paid for. Upon order of the Engineer, unauthorized work shall be remedied, removed, or replaced at the Contractor's expense.
- C. Upon failure of the Contractor to comply with any order of the Engineer made under this Section, the City may cause rejected or unauthorized work to be remedied, removed, or replaced, and may deduct the costs therefore from any monies due or to become due the Contractor.

3.13 DEDUCTIONS FOR UNCORRECTED WORK

If the Engineer deems it inexpedient to correct work damaged or not done in accordance with the Contract, an equitable deduction from the Contract price shall be made therefore, and such sum may be withheld by the City from Contractor's payment.

3.14 EQUIPMENT AND PLANTS

- A. Only equipment and plants suitable to produce the quality of work and materials required will be permitted to operate on the Project.
- B. Plants will be designed and constructed in accordance with general practice for such equipment and shall be of sufficient capacity to insure the production of sufficient material to carry the Work to completion within the time limit.
- C. The Contractor shall provide adequate and suitable equipment and plants to meet the above requirements, and when ordered by the Engineer, shall remove unsuitable equipment from the Work and discontinue the operation of unsatisfactory plants.
- D. In the case of termination of this Contract before its completion for any cause whatsoever, the Contractor, if notified to do so by the City, shall promptly remove any part or all of his equipment and supplies from the property of the City. If the Contractor fails to do so, the City shall have the right to remove such equipment and supplies at the expense of the Contractor.

3.15 CHARACTER OF WORKER

If any Subcontractor, or person employed by the Contractor or any Subcontractor fails or refuses to carry out the directions of the Engineer or appears to the Engineer to be incompetent or to act in a disorderly or improper manner, he shall be removed from the Project immediately on the requisition of the Engineer. That person shall not again be employed on the Work. Such discharge shall not be the basis for any claim for compensation or damages against the City, or any of its officers or agents.

3.16 SEPARATE CONTRACTS

- A. The City reserves the right to let other contracts in connection with this Work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with the other contractor's work.
- B. If any part of the Contractor's work depends on proper execution or results upon the Work of any other contractor, the Contractor shall inspect and promptly report to the Engineer any defects in such work that render it unsuitable for such proper execution and results. The Contractor's failure to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of his work, except as to defects which may develop in the other contractor's work after the execution of his work.

- C. To insure the proper execution of his subsequent work, the Contractor shall measure work already in place and shall at once report to the Engineer any discrepancy between the executed work and the Drawings.

3.17 MATERIALS

- A. Unless otherwise specifically stated in the Specifications, the Contractor shall furnish all materials necessary for the execution and completion of the Work. Unless otherwise specified, all materials shall be new and shall be manufactured, handled, and installed in a workmanlike manner to insure completion of the Work in accordance with the Contract Documents. The Contractor shall, upon request of the Engineer, furnish satisfactory evidence as to the kind and quality of materials.
- B. Where materials are to be furnished by the City, the type, size, quantity and location at which they are available will be stated in the Contract Documents.
- C. Manufacturers' warranties, guarantees, instruction sheets and parts listed, which are furnished with certain articles or materials incorporated in the Work, shall be delivered to the Engineer before acceptance of the Contract.

3.18 STORAGE OF MATERIALS

Articles or materials to be incorporated in the Work shall be stored in such a manner as to insure the preservation of their quality and fitness for the Work, and to facilitate inspection.

3.19 TRADE NAMES AND ALTERNATIVES

Whenever a material, article, system or sub-system is specified or described by using the name and/or model of a proprietary product or trademark or the name of the manufacturer or vendor, the specified item shall establish the type, function, and quality required. It shall be understood that the words "or approved equivalent" are implied whether or not they follow the proprietary enumeration.

The City reserves the right to determine when proprietary items have no equivalency, and when uniformity of operations, interchangeability of parts, standard parts inventory, etc., are in the City's best interest.

Requests for review of equivalency will be considered upon submission of sufficient information as described herein, to allow complete review. Such requests shall not be accepted from anyone other than the Contractor. Such submission must be made prior to purchase, fabrication, manufacture or use of the equivalent items under consideration.

- A. Contractor's Risk. If the Contractor includes in its bid or later proposes any material, product or equipment that the Contractor considers equivalent to that specified, the Contractor assumes all risk of any sort associated with acceptance or rejection of proposed equivalent items. The Contractor shall have no right to make claim based upon his bid that includes a proposed equivalent item(s) of work which resulted in a lower bid amount for said item(s) or lower total bid.
- B. Submission Requirements. Each submission for equivalency review shall include:
1. Justification for use of the proposed equivalent item(s), including evidence, as applicable, that Contract specified material, product or equipment is unobtainable or unobtainable within an acceptable time for contract completion;
 2. A description of the difference between specified item(s) and proposed equivalent item(s) and the comparative advantages and disadvantages of each;
 3. All relevant data addressing each specified parameter to show equivalency;
 4. A prediction of any effects the proposed change will have on operation and maintenance costs where applicable.
- C. Equivalency. An item will be considered equivalent to the item specified if it is equal to or better in:
1. Design and strength in all sub-parts, quality, reliability and durability, operation, maintenance and serviceability, as applicable; and
 2. Specified parameters in performance in all respects for the specific function(s) indicated in the contract.
- D. Supplemental Requirements. Any tests required by the City to establish quality and performance standards shall be promptly conducted by or through the Contractor at no additional cost to the City. In addition, the Contractor shall:
1. Submit any additional data requested by the Engineer for the equivalency review; and
 2. Satisfactorily accomplish all changes, including any Engineering associated with use of equivalent items, at no additional cost to the City.

E. Equivalency Determinations. The Engineer shall be the sole judge as to equivalency determinations. The Engineer's decision shall be final. The Contractor shall have no right of appeal to any decision rejecting the equivalency of any item.

F. Procedure.

1. Data substantiating a request for a substitution of "an equal" item shall be submitted prior to the Award of the Contract pursuant to Section 3400 of the latest edition of the Public Contract Code.
2. After the bid opening, the apparent three low bidders shall have seven (7) calendar days to provide complete substantiating data for all product, material or system substitution requests. After this seven (7) day period, the City may award the Contract to the apparent low bidder. In no event will product, material or system substitution requests submitted after the Award of Contract be considered. Failure to submit such substantiating data will result in the automatic rejection of the proposed substitution request. The City will have thirty (30) days to review the first ten (10) proposed substitution requests. For each additional five (5) product, material or system substitution requests over and above the initial ten (10), the City will have ten (10) additional days to review the proposed substitution requests.
3. Each substitution request may include one alternate substitution. All alternate substitutions shall be submitted concurrently with substitution requests. Upon review by the City, proposed substitutions shall be returned to the bidder marked either "accepted" or "rejected". The City shall only review alternative substitution requests if the primary substitution request is rejected. If a substitution request, and its alternative, is returned "rejected", no further substitution requests for that product, material or system will be allowed and the bidder will provide the specified product, material or system.

4. If, after all substitution requests have been processed, substitution requests by the apparent low bidder are rejected by the City, the apparent low bidder may elect not to execute the Contract. Under no circumstances, will bidders be allowed to alter their Bid Price as originally submitted. This election shall be made in writing no later than five (5) days following the receipt of the reviewed substitution requests. An election by the bidder not to execute the Contract will result in the forfeiture of the bidder's bid bond. If the apparent low bidder elects not to continue, and the second low bidder is awarded the Contract, the second low bidder may then elect not to execute the Contract for the contract price shown on its Bid Form. Subsequent bidders shall have five (5) days following the receipt of the reviewed substitution requests and the Notice of Award in which to make their election. This process shall continue until one bidder decides to continue with the Award of Contract process.
5. The City may award the Contract at any time after the time for submitting substitution requests expires pursuant to Section 3.19F2, above. In the event the Contract is awarded prior to acceptance/rejection of substitution requests, all outstanding substitution requests shall be reviewed by the City as provided in Sections 3.19F2 and 3.19F3 above. If the apparent low bidder elects not to execute the Contract, the Award of Contract to the apparent low bidder shall be rescinded and the Contract awarded to the next apparent low bidder. All bidders electing not to execute the Contract expressly agree that the City shall incur no liability for such rescissions. As provided herein, "apparent low bidder" means the lowest responsive and responsible bidder.

3.20 CERTIFICATES OF COMPLIANCE

- A. A Certificate of Compliance shall be furnished prior to the use of any materials for which the Technical Specifications require that such a certificate be furnished. In addition, when so authorized in the Specifications, the Engineer may permit the use of certain materials or assemblies prior to sampling and testing if accompanied by a Certificate of Compliance. The Certificate of Compliance shall be signed by the manufacturer of the material or the manufacturer of assembled materials and shall state that the materials involved comply in all respects with the requirements of the Contract. A Certificate of Compliance shall be furnished with each lot of material delivered to the Work and the lot so certified shall be clearly identified in the Certificate.

- B. All materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The fact that material is used on the basis of a Certificate of Compliance shall not relieve the Contractor of responsibility for incorporating material in the Work which conforms to the requirements of the Contract Documents and any such material not conforming to such requirements will be subject to rejection whether in place or not.
- C. The City reserves the right to refuse to permit the use of material on the basis of a Certificate of Compliance.
- D. The form of the Certificate of Compliance and its disposition shall be as directed by the Engineer.

3.21 ASSIGNMENT

The Contractor shall not assign the Contract or sublet it as a whole or in part without the written consent of the City, nor shall the Contractor assign any monies due, or to become due to the Contractor hereafter without the prior written consent of the City.

3.22 USE OF COMPLETED PORTIONS, RIGHT TO OPERATE UNSATISFACTORY EQUIPMENT OR FACILITIES

- A. The City may, at any time, and from time to time, during the performance of the Work, enter the Work Site for the purpose of installing any necessary work by City labor or other contracts, and for other purpose in connection with the installation of facilities. In doing so, the City shall endeavor not to interfere with the Contractor and the Contractor shall not interfere with other work being done by or on behalf of the City.
- B. If, prior to completion and final acceptance of all the Work, the City takes possession of any structure or facility (whether completed or otherwise) comprising a portion of the Work with the intent to retain possession thereof (as distinguished from temporary possession contemplating the return to the Contractor), then, while the City is in possession of the same, the Contractor shall be relieved of liability for loss or damage to such structure other than that resulting from the Contractor's fault or negligence. Such taking of possession by the City shall not relieve the Contractor from any provisions of this Contract regarding such structure, other than to the extent specified in the preceding sentence, nor shall such taking constitute a final acceptance of such structure or facility.
- C. If, following installation of any equipment or facilities furnished by the Contractor, defects requiring correction by the Contractor are found, the City shall have the right to operate such unsatisfactory equipment or facilities and make reasonable use thereof until the equipment or facilities can be shut down for correction of defects without injury to the City.

3.23 LANDS FOR WORK, RIGHT-OF-WAY CONSTRUCTION ROADS

- A. The City will provide the lands, easements, right-of-way, and/or encroachment permits necessary or other rights to enter and work on lands necessary for the performance of the Work. Other permits and licenses are addressed by sections 5.01 and 5.10. Should the Contractor find it advantageous to use any additional land for any purpose whatever, the Contractor shall provide for the use of such land at its expense. The Engineer shall be furnished with a copy of written agreements or otherwise be notified in writing of additional working space which is acquired. Nothing herein contained and nothing marked on the Plans shall be interpreted as giving the Contractor exclusive occupancy of the territory provided by the City. When two or more contracts are being executed at one time on the same or adjacent land in such a manner that work on one contract may interfere with that on another, the Engineer shall decide which contractor shall cease work, and which shall continue, or whether the work on both contracts shall progress at the same time and in what manner, and the decision of the Engineer shall be final and binding. When the territory of one contract is the necessary or convenient means of access for the performance of another contract, such privilege of access or any other reasonable privilege may be granted by the Engineer to the contractor so desiring, to the extent, amount, in the manner, and at the time permitted. No such decision as to the method or time of conducting the Work or the use of territory shall be the basis of any claim for delay or damage.
- B. Lands, easements or rights-of-way to be furnished by the City for construction operations will be specifically shown on the Plans.
- C. The Contractor shall construct and maintain all roads necessary to reach the various parts of the Work and for the transportation thereto of construction material and personnel. The cost of constructing and maintaining such roads shall be borne by the Contractor.

3.24 CITY'S RIGHT TO AUDIT AND PRESERVATION OF RECORDS

- A. The Contractor shall maintain books, records and accounts of all costs in accordance with generally accepted accounting principles and practices. The City and its authorized representatives shall have the right to audit the books, records and accounts of the Contractor under any of the following conditions:
 - 1. The Contract is terminated for any reason in accordance with the provisions of the Contract Documents in order to arrive at equitable termination costs;
 - 2. In the event of a disagreement between the Contractor and the City over the amount due the Contractor under the terms of the Contract;

3. To check or substantiate any amounts invoiced or paid which are required to reflect the costs of the Contractor, or the Contractor's efficiency or effectiveness under this Contract or in connection with extras, changes, claims, additions, backcharges, or others, as may be provided for in this Contract;
 4. If it becomes necessary to determine the City's rights and the Contractor's obligations under the Contract or to ascertain facts relative to any claim against the Contractor which may result in a charge against the City;
 5. To determine any difference in cost occasioned by a permissible substitution;
 6. And/or for any other reason in the City's sole judgment.
- B. Contractor shall provide the City (or its representatives), unlimited, reasonable access during working hours to the Contractor's books and records. The City's audit rights shall be liberally construed in the City's favor.
- C. The Contractor, from the effective date of final payment or termination hereunder, shall preserve and make available to the City for a period of three (3) years thereafter, at all reasonable times at the office of the Contractor (but without any charge to the City), all its books, records, documents, photographs, micro-photographs, and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the Work hereunder.
- D. The City will make all payments required of it under this Contract subject to audit, under circumstances stated above, which audit may be performed at the City's option, either during the Contract time period or during the record retention time period. Regardless of authorization, approval or acceptance, signatures or letters which are given by the City and are part of the City's control systems or are requested by the Contractor, the payments made under this Contract shall not constitute a waiver or agreement by the City that it accepts as correct the billings, invoices or other charges on which the payments are based. If the City's audit produces a claim against the Contractor, the City may pursue all its legal remedies even though it has made all or part of the payments required by this Contract.

- E. If any audit by the City or its representative discloses an underpayment by the City pursuant to the terms of the Contract Documents, the City shall have the duty to pay any amount found by the audit to be owed to the Contractor. If such audit discloses an overpayment, the Contractor shall have the obligation to reimburse the City for the amount of the overpayment. The City's right to claim reimbursement from the Contractor of any overpayment shall not be terminated or waived until three years after the completion of the City's audit or upon the termination of audit rights under subparagraph 3.24F, below, whichever date is later. The obligation of the Contractor to make reimbursements hereunder shall not terminate except as provided by law.

- F. The City's right to audit and the preservation of records shall terminate at the end of three (3) years after the date final payment is made or termination of the Contract. The Contractor shall include this "Right to Audit and Preservation of Records" clause in all subcontracts issued by it and it shall require the same to be inserted by all lower tier Subcontractors in their subcontracts, for any portion of the work. Should Contractor fail to include this clause in any such contract or lower tier contract, or otherwise fail to insure the City's rights hereunder, Contractor shall be liable to the City for all costs, expenses and attorney's fees which the City may have to incur obtaining or attempting to obtain an audit or inspection of or the restoration of records which otherwise would have been available to the City from said persons under this clause. Such audit may be conducted by the City or it's authorized representative.