**APPROVED DOCUMENT—**This document is approved by the Office of the President and Office of the General Counsel for use by the Facility.

**Supplementary Conditions**

**Cover Sheet and Instructions**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| PURPOSE OF DOCUMENT: | Provides a means of specifying varying project conditions without revising the text of the General Conditions. | | | | | |
| CROSS-REFERENCES TO FACILITIES MANUAL (FM): | FM4[I]:4.6.3 | | | | | |
| CONTENTS: | Supplementary Conditions | | | | | |
| FOR USE WITH: *(check if applicable)* |  | Long Form  (LF) |  | Brief Form  (BF) |  | Multiple Prime  (MP) |
|  | Design Build  (BDB) |  | CM at Risk  (CM) |  | Job Order Contract  (JOC) |
|  | Mini Form  (MF) |  | Brief Design Build  (BDB) | √ | Energy Savings Brief Design Build (ESBDB) |
| COMPLETED BY: | √ | Filling In | √ | Adding Text |  | No Data Required |
| ITS USE IS: | √ | Required |  | Optional | | |

**NOTE:** To use the electronic file of this document, you must go to the “Tools” pull down menu in Microsoft Word, select “Options,” select the “View” tab, and then put a check in the box “Hidden text.” Most instructions and alternate language is displayed in hidden text. Do not print the hidden text for the final document.

**Completion Instructions:**

1. Notes, suggested text, instructions and other information is formatted using the following methods:

* Hidden text within brackets. {This is an example of the format.} Read the material within the brackets and take the appropriate action (usually inserting text or selecting from a choice of texts.) When printing this document, the default print property will not print the hidden text.
* Coded instruction within brackets. The instructions and shading will disappear when the required information is typed.
* Suggested text is shaded in gray without brackets (see Modifications and Additions below.)

**Modifications and Additions:**

1. Changes to the General Conditions by the Supplementary Conditions require review and approval by the Office of the President before the document is issued to Bidders.

2. Areas shaded in gray, without brackets, represent suggested text that may be modified by the Facility to meet the needs of the Project. This is an example of the format. Ensure that any modified or added text is consistent with the Contract Documents.

3. Areas not highlighted in gray, without brackets, shall not be altered without approval of the Office of the President.

4. ***Articles, New***. Adding a new condition to the General Conditions requires that a new article be added to the Supplementary Conditions. The new article must reference the appropriate General Conditions article and describe the change.

5. ***Contract requirements for Federal Funding***. These articles apply specifically to projects in which UC seeks federal funds to pay or reimburse expenses for labor, materials, equipment or services. Consult with your campus counsel or campus Federal Program representative if you are unsure about inclusion.

**Comments:**

None

**END OF COVERSHEET AND INSTRUCTIONS**

**SUPPLEMENTARY CONDITIONS**

1. **MODIFICATION OF GENERAL CONDITIONS, ARTICLE 1 – GENERAL PROVISIONS**

The “Architect of Record” as referred to in the General Conditions is: ,

**2. MODIFICATION OF GENERAL CONDITIONS, ARTICLE 11 – INSURANCE AND BONDS**

1. Design Builder shall furnish and maintain insurance in the amounts below.

|  |  |  |  |
| --- | --- | --- | --- |
| The insurance required by 11.1.2.1, 11.1.2.2 and 11.1.2.4 shall be (i) issued by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's) or (ii) guaranteed, under terms consented to by the University (such consent to not be unreasonably withheld), by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's). Such insurance shall be written for not less than the following: | | | Minimum Requirement |
| 11.1.2.1 | Commercial General Liability Insurance-Limits of Liability | |  |
| Each Occurrence-Combined Single Limit for Bodily Injury and Property | | $ AMOUNT |
| Products-Completed Operations Aggregate | | $ AMOUNT |
| Personal and Advertising Injury | | $ AMOUNT |
| General Aggregate- | | $ AMOUNT |
| 11.1.2.2 | Business Automobile Liability Insurance-Limits of Liability | |  |
| Each Accident-Combined Single Limit for Bodily Injury and Property Damage | | $ AMOUNT |
| 11.1.2.4 | Professional Liability – Limits of Liability | |  |
|  | Each Occurrence | | $ AMOUNT |
|  | General Aggregate | | $ AMOUNT |
| The insurance required by 11.1.2.1 and 11.1.2.2 shall provide as follows: University, University’s officers, agents, employees, consultants, University's Representative, and University's Representative's consultants, regardless of whether or not identified in the Contract Documents or to Design Builder in writing, will be included as additional insureds for and relating to the Work to be performed by Design Builder and Subcontractors. This requirement shall apply to claims, costs, injuries, or damages, but only in proportion to and to the extent such claims, costs, injuries, or damages are caused by or result from the negligent acts or omissions of Design Builder and Subcontractors. This requirement shall not apply to Worker’s Compensation and Employer’s Liability Insurance or to Professional Liability Insurance.  Insurance required by Paragraph 11.1.2.3 shall be issued by companies (i) that have a Best rating of B+ or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's); or (ii) that are acceptable to the University.  Such insurance shall be written for not less than the following: | | | |
| 11.1.2.3 | WORKER’S COMPENSATION AND EMPLOYER’S LIABILITY –  Worker’s Compensation: | (as required by Federal and State of California law). | |

Employer’s Liability:

Each Employee $1,000,000

Each Accident $1,000,000

Policy Limit $1,000,000

**6. MODIFICATION OF GENERAL CONDITIONS ARTICLE 15 – MISCELLANEOUS PROVISIONS**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement may be executed via a University approved digital signature process and shall have the same force and effect as the use of a manual signature. The University reserves the right to reject any digital signature that cannot be positively verified by the University system as an authentic digital signature.

**7. CONTRACT REQUIREMENTS FOR FEDERAL FUNDING**

*This article applies in the event UC seeks federal funds to pay or reimburse expenses for labor, materials, equipment or services – DELETE THIS NOTE PRIOR TO ISSUING DOCUMENTS*

1. Equal Employment Opportunity *Add the following provision as Article 14.1.4 of the General Conditions of the Design Build form:*

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

a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action 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.

b) 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, color, religion, sex, sexual orientation, gender identity, or national origin.

c) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

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 section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

e) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

f) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, 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.

g) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

h) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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 of September 24, 1965, 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 in the event 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.

The University further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the University so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.

The University agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The University further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the University agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the University under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

**2. Compliance with the Contract Work Hours and Safety Standards Act.**. *Add the following as Article 14.7 of the General Conditions of the Design Build form if the total contract amount is in excess of $100,000:*

a) *Overtime requirements.* 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 such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

b) *Violation; liability for unpaid wages; liquidated damages*. In the event of any violation of the clause set forth in paragraph (a) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of $26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

c) *Withholding for unpaid wages and liquidated damages.* UC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

d) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

**3.** **Clean Air Act and Federal Water Pollution Act.**

*(Add the following as Article 3.7.4 of the General Conditions of the Design Build form if the total contract amount is in excess of $150,000)*

Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the University. Contractor understands and agrees that the University will report such violation as required to the Federal agency providing funding and the appropriate Regional Office of the Environmental Protection Agency (EPA). The Contractor agrees to include these requirements in each subcontract exceeding $150,000.

**4. Suspension and Debarment.**

*(Add the following as Article 15.12 of the General Conditions of the Design Build form*)

a) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

b) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

c) This certification is a material representation of fact relied upon by (insert name of recipient/subrecipient/applicant). If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to University, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

d) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**5. Byrd Anti-Lobbying Amendment.**

*(Add the following (including Required Certification) as Article 15.13 of the General Conditions of the Design Build form)*

Contractors of any tier who apply or bid for an award of $100,000 or more shall file the required certification set forth in Appendix A to 44 C.F.R. Part 18. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Required Certification. If the Contractor meets the monetary criteria above, Contractor must sign and submit to the University the following certification.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Contractor, [ ], certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

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Signature of Contractor’s Authorized Official

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name and Title of Contractor’s Authorized Official

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

**6. Procurement of Recovered Materials**

*(Add the following as Article 3.19.10.7 of the General Conditions of the Design Build form)*

a) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired

• Competitively within a timeframe providing for compliance with the contract performance schedule;

• Meeting contract performance requirements; or

• At a reasonable price.

b) Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive- procurement-guideline-cpg-program.

c) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

**7. Access to Records.**

*(Add the following as Article 15.7.2 of the General Conditions of the Design Build form with the following)*

The Contract, and any pertinent records involving transactions relating to this Contract, is subject to the examination and audit of the Auditor General of the State of California or Comptroller General of the United States or designated Federal authority for a period of up to five (5) years after final payment under the Contract. University, and if the underlying grant, cooperative agreement or federal contract so provides, the other contracting Party or grantor (and if that be the United States or an instrumentality thereof, then the Comptroller General of the United States) will have access to and the right to examine Contractor’s pertinent books, documents, papers, and records involving transactions and work related to the Contract until the expiration of five (5) years after final payment under the Contract. The examination and audit will be confined to those matters connected with the performance of the Contract, including the costs of administering the Contract.

**8. DHS Seal, Logo, and Flags.**

*(Add the following as Article 15.14 of the General Conditions of the Design Build form)*

The Contractor shall not use any federal seal(s), logos, crests, or reproductions of flags or likenesses of any federal agency officials, including but not limited to the Department of Homeland Security (DHS), without specific request to University for federal pre-approval.

**9. Compliance with Federal Law, Regulations, and Executive Orders.**

*(Add the following as Article 3.7.5 of the General Conditions of the Design Build form)*

Contractor acknowledges that federal financial assistance will be used to fund all or a portion of the Contract. Contractor will comply with all applicable Federal law, regulations, executive orders, policies, procedures, and directives.

**10. No Obligation by Federal Government.**

*(Add the following as Article 15.15 of the General Conditions of the Design Build form)*

The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the University, Contractor, or any other party pertaining to any matter resulting from the Contract.

**11. Program Fraud and False or Fraudulent Statements or Related Acts.**

*(Add the following as Article 3.7.6 of the General Conditions of the Design Build form)*

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this Contract.

[END]