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Alexandria, VA 22314

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Fax: (703) 836-4875
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You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions. You further agree that it is the complete and exclusive statement of the agreement between us which supersedes any proposal or prior agreement, oral or written, and any other communications between us relating to the subject matter of this agreement.

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SUGGESTED INSTRUCTIONS TO BIDDERS FOR CONSTRUCTION CONTRACTS

Prepared by

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and

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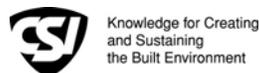
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Introduction

This Suggested Instructions to Bidders for Construction Contracts (“Instructions”) has been prepared for use with the Suggested Forms of Owner-Contractor Agreements (“Agreements”) (Nos. C-520 or C-525, 2002 Editions) and with the Standard General Conditions of the Construction Contract (“General Conditions”) (No. C-700, 2002 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the others. For guidance in the preparation of Supplementary Conditions and the relationship to Instructions to Bidders, see Guide to the Preparation of Supplementary Conditions (“Supplementary Conditions”) (No. C-800, 2002 Edition). See also the Suggested Bid Form (“Bid Form”) (No. C-400, 2002 Edition). The EJCDC has not prepared a suggested form of Advertisement or Invitation to Bid because such documents will vary widely in response to statutory requirements. For examples, see Construction Specifications Institute (CSI) *Manual of Practice*.

The suggestions in this and other documents prepared and issued by the EJCDC assume acceptance of the Project Manual concept, which is explained in the CSI *Manual of Practice*. This provides for an organizational format for location of all bound documentary information for a construction project, namely: Bidding Requirements (which include the Advertisement or Invitation to Bid, the Instructions, and any Bid form that may be suggested or prescribed, all of which provide information and guidance for all Bidders) and the Contract Documents (defined in Article 1 of the General Conditions), which include the Agreement, Bonds, the General Conditions, the Supplementary Conditions, the Drawings, and the Specifications. The Bidding Requirements are not considered part of the Contract Documents because much of their substance pertains to the relationships prior to the award of the Contract, has little effect or impact thereafter, and because many contracts are awarded without going through the bidding process. In some cases, however, the actual Bid may be attached as an exhibit to the Agreement to avoid extensive retyping. (The terms “Bidding Documents” and “Bidding Requirements” are defined in Article 1 of the General Conditions).

Suggested Instructions are accompanied by “Notes to User” to assist in selecting and preparing the Instructions. Much of the language should be usable on most projects, but modifications and additional provisions will often be necessary. The suggested language has been coordinated with the other standard forms produced by the EJCDC. When modifying the suggested language or writing additional provisions, the user must check the other documents thoroughly for conflicts and coordination of language usage and make appropriate revisions in all affected documents.

Refer to the discussions in EJCDC’s Recommended Competitive Bidding Procedures for Construction Projects (“Bidding Procedures,” No. N-119, 2001 Edition) by Robert J. Smith, P.E., Esq., on the particular paragraphs of which frequent reference is made below.

For brevity, paragraphs of the General Conditions are referred to in the Notes to User with prefix “GC,” those of the Supplementary Conditions with the prefix “SC,” those of the Agreement with the prefix “A,” and those of these Suggested Instructions with the prefix “I.”

NOTES:

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2. CSI publications may be obtained from:

CSI
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Alexandria, VA 22314
703.684.0300
www.csinet.org

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SUGGESTED INSTRUCTIONS TO BIDDERS

NOTES TO USER

1. *CSI has designated Section 00200 for Instructions to Bidders. Thus, if the CSI MasterFormat concept is used, the first page of the Instructions would be numbered 00200-1.*
2. *It may be helpful to prepare and include a Table of Contents and a Table of Articles.*

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ARTICLE 1 - DEFINED TERMS

1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:

A. *Issuing Office*--The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.

NOTES TO USER

1. *In addition to terms specifically defined, terms with initial capital letters in the Bidding Requirements include references to identified articles and paragraphs, and the titles of other documents or forms.*
2. *Additional defined terms applicable to the Bidding Requirements should be included here and should be used uniformly throughout the Bidding Requirements with initial capitals. Additional defined terms applicable to the Contract Documents should be included in the Supplementary Conditions. Note the difference in the meanings of the terms "Bidding Requirements" and "Bidding Documents," as defined in GC-1.01.A.7 and 8.*
3. *If the Issuing Office has not been identified in the Invitation to Bid or Advertisement, it should be identified in the Instructions.*

ARTICLE 2 - COPIES OF BIDDING DOCUMENTS

2.01 Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the Advertisement or Invitation to Bid may be obtained from the Issuing Office. The deposit will be refunded to each document holder of record who returns a complete set of Bidding Documents in good condition within 30 days after opening of Bids.

2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

2.03 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

NOTES TO USER

1. *Practices vary in the manner of issuing Bidding Documents, recording the names of document holders, requiring deposits, charges and refunding of deposits. If a change is desired in the manner of handling deposits or the office where additional sets of Bidding Documents may be obtained, I-2.01 should be modified.*
2. *The duties of Engineer during the Bidding Phase should coincide with those assigned to Engineer in the Owner-Engineer Agreement (see EJCDC Owner-Engineer Agreement, No. E-500 Exhibit A).*
3. *See Bidding Procedures for general comments regarding issuing Bidding Documents.*

ARTICLE 3 - QUALIFICATIONS OF BIDDERS

3.01 To demonstrate Bidder's qualifications to perform the Work, within five days of Owner's request, Bidder shall submit written evidence such as financial data, previous experience, present commitments, and such other data as may be called for below.

[A. ____]

[B. ____]

NOTES TO USER

1. *It is desirable to itemize the data that all Bidders will be required to submit in order to demonstrate their qualifications for an award. Also, standards or criteria that will be applied in Bidder evaluation should be stated. These data should appear in I-3 in their entirety and may include specific language required by Laws or Regulations.*
2. *It is a good practice to review with Owner the Bidder qualifications appropriate to each Project. If a bidder's qualification form is to be completed and submitted by bidders, it should be included with the Project Manual. Governmental bodies frequently have prescribed qualification forms. EJCDC recommends AGC's "Construction Contractor's Qualification Statement for Engineered Construction," AGC Document No. 220.*
3. *Bidders are usually asked to make certain representations as to genuineness of their Bids, the lack of collusion in connection therewith, and other related matters (see Bid Form). Reference to any such requirements should be made in I-3.*
4. *Nothing indicated in I-3 should prejudice the right of Owner to seek additional pertinent information as provided in I-19.05.*
5. *Owner may wish to prequalify Bidders. The mechanical procedures and intricacies involved in the prequalification of Bidders require careful consideration before appropriate language is drafted. Also, many governmental bodies have specific requirements with respect to the prequalification of Bidders.*
6. *See comments in Bidding Procedures, Chapter II.*

ARTICLE 4 - EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE

4.01 *Subsurface and Physical Conditions*

A. The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Bidding Documents.
2. Those drawings of physical conditions in or relating to existing surface and subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Bidding Documents.

B. Copies of reports and drawings referenced in Paragraph 4.01.A will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in Paragraph 4.02 of the General Conditions has been identified and established in Paragraph 4.02 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions or information contained in such reports or shown or indicated in such drawings.

NOTES TO USER

1. *Any cost associated with making available copies of reports and drawings in I-4.01.B should be addressed here.*

4.02 *Underground Facilities*

A. Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or others.

4.03 *Hazardous Environmental Condition*

A. The Supplementary Conditions identify those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that Engineer has used in preparing the Bidding Documents.

B. Copies of reports and drawings referenced in Paragraph 4.03.A will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the “technical data” contained therein upon which Bidder is entitled to rely as provided in Paragraph 4.06 of the General Conditions has been identified and established in Paragraph 4.06 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any “technical data” or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

NOTES TO USER

1. *Any cost associated with making available copies of reports and drawings in I-4.03.B should be addressed here.*

4.04 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated conditions appear in Paragraphs 4.02, 4.03, and 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work appear in Paragraph 4.06 of the General Conditions.

NOTES TO USER

1. *It is essential that the “technical data” upon which Bidder may rely be identified and established in the Supplementary Conditions (see discussion in SC-4.02 and SC-4.06).*
2. *In the event there are no data of the types referred to in I-4.01 or I-4.03, it may be appropriate to delete or revise I-4.01 through I-4.04, inclusive.*

4.05 On request, Owner will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to excavation and utility locates.

NOTES TO USER

1. *Any limitations on the time, area, or other conditions of access should be stated.*

4.06 Reference is made to Article 7 of the Supplementary Conditions for the identification of the general nature of other work that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) that relates to the Work contemplated by these Bidding Documents. On request, Owner will provide to each Bidder for examination access to or copies of Contract Documents (other than portions thereof related to price) for such other work.

NOTES TO USER

1. GC-7.02 indicates that if such other work is to be performed, it will be noted in the Supplementary Conditions.

4.07 It is the responsibility of each Bidder before submitting a Bid to:

A. examine and carefully study the Bidding Documents, the other related data identified in the Bidding Documents, and any Addenda;

B. visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;

NOTES TO USER

1. Bidder is expected to visit the Site and conduct an alert, heads-up, eyes-open, reasonable examination of the area and the conditions under which the Work is to be performed, and that is the intent of I-4.07.B. Any special requirements for such examination are to be set forth in the Instructions (I-4.07 is the preferable location for such requirements) or elsewhere in the Contract Documents if the Contract is to be awarded on the basis of negotiation rather than after receipt of Bids. The extent of such an examination will depend to a great extent on the peculiarities of the job and the Site as well as Owner's preference. Any such explanation should be made with sufficient precision and care to preclude misunderstandings. The requirements for any such pre-Bid Site examination should be realistic and clearly stated, and detailed Site and subsurface investigation ordinarily should not be required of Bidder because of the constraints of time and other practical considerations.

C. become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work;

D. carefully study all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions, and (2) reports and drawings of Hazardous Environmental Conditions at the Site which have been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions;

NOTES TO USER

1. If some or all of the reports and drawings referred to in I-4.07.D. do not exist, either modify or delete the paragraph.

E. obtain and carefully study (or accept consequences of not doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto;

NOTES TO USER

1. On projects where compliance with the provisions of I-4.07.E will require extensive investigations and tests, reasonable time must be allowed in the bidding period to permit Bidders to carry out these efforts.
2. If some or all of the reports and drawings referred to in I-4.07.D. do not exist, delete the phrase "additional or supplementary" in the first line of I-4.07.E.

F. agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents;

G. become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;

H. correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;

I. promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and

J. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.

4.08 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

NOTES TO USER

1. *The representations by Bidder in EJCDC's Bid Form and in both of its Owner-Contractor Agreements are closely coordinated with the wording of I-4.07 and I-4.08 so that a change in one would necessitate changes in the others.*

ARTICLE 5 - PRE-BID CONFERENCE

5.01 A pre-Bid conference will be held at [_____] [a.m.][p.m.] local time on [_____] at [_____]. Representatives of Owner and Engineer will be present to discuss the Project. Bidders are [required] [encouraged] to attend and participate in the conference. Engineer will transmit to all prospective Bidders of record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

NOTES TO USER

1. *Engineer is advised to record the prospective Bidders in attendance and to keep a record of the proceedings. See comments in Bidding Procedures.*
2. *If Owner wishes to make it mandatory that Bidders attend the pre-Bid conference, this should be made clear, as should the consequences of failure to attend.*

ARTICLE 6 - SITE AND OTHER AREAS

6.01 The Site is identified in the Bidding Documents. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor.

NOTES TO USER

1. Any conditions set forth in easements obtained by Owner, including their availability to Contractor when Notice to Proceed is given, which may affect performance of the Work should be disclosed to Bidder. If the information is available at the time Bidding Documents are prepared, it should be added to I-6.01, and the exact language and anticipated availability of the easement or right-of-way should be included in the Contract Documents (usually the Supplementary Conditions). If important information is not yet available, appropriate statements should be made concerning assumptions to be made by Bidder and upon which Bidder may rely.

ARTICLE 7 - INTERPRETATIONS AND ADDENDA

7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Engineer as having received the Bidding Documents. Questions received less than ten days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

7.02 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner or Engineer.

NOTES TO USER

1. Addenda are not to be issued after Bid opening. If the Issuing Office is other than the office of Engineer, it may be appropriate to amend I-7.
2. See Bidding Procedures for comments regarding issuing Addenda.

ARTICLE 8 - BID SECURITY

8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of _____ percent of Bidder's maximum Bid price and in the form of a certified check or bank money order or a Bid bond (on the form attached) issued by a surety meeting the requirements of Paragraphs 5.01 and 5.02 of the General Conditions.

NOTES TO USER

1. Bid security is not universally used or required. When used, it is typically in the range of 5-10 percent. See comments in Bidding Procedures.
2. Reference should be made to statutory requirements and applicable governmental regulations in respect of Bid security required on public projects. Owner should also be consulted. It may be necessary to delete Article 8 in its entirety and replace it with specific language required by Laws and Regulations. In the event such language does not provide for the release of Bid security to Bidders who decline to substitute Subcontractors, Suppliers, or other individuals or entities as provided in I-12, it may be necessary to amend I-12.
3. For recommended bid bond form see EJCDC documents Nos. C-430 and C-435.

4. *If a specific bid bond form is required, the form should be included in the Bidding Documents, along with the consequences of non-compliance.*

8.02 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, Owner may annul the Notice of Award and the Bid security of that Bidder will be forfeited. The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the Effective Date of the Agreement or 61 days after the Bid opening, whereupon Bid security furnished by such Bidders will be returned.

NOTES TO USER

1. *The "61 days" is based on the fact that, as provided in BF-2.01 (EJCDC No. C-400), Bids will remain subject to acceptance "for 60 days after the Bid opening." Therefore, on the sixty-first day the remaining Bids are no longer effective. Also see SC-2.03 regarding suggested schedule of events between opening of Bids and starting of Contract Times.*
2. *The remedy provided Owner by I-8.02 for Bidder default presumes that a certified check, money order, or a Penal Sum Form Bid Bond, such as EJCDC No.C-430, will be required.*
3. *If EJCDC's Damages Form Bid Bond (No. C-435) or similar damages form is specified or permitted, the second sentence of I-8.02 should be revised to be consistent with the remedy measure provided by such Bond form.*
4. *Retaining the Bid bond of those other Bidders who may be in line for contract award in the event of default by the successful bidder is a standard practice which provides Owner with similar security if award to such other Bidder becomes necessary.*

8.03 Bid security of other Bidders whom Owner believes do not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.

ARTICLE 9 - CONTRACT TIMES

9.01 The number of days within which, or the dates by which, [Milestones are to be achieved and] the Work is to be substantially completed and ready for final payment are set forth in the Agreement.

[or]

9.01 The times [by which Milestones are to be achieved and] for Substantial Completion and readiness for final payment are to be set forth by Bidder in the Bid and will be entered into the Agreement (or incorporated therein by reference to the specific language of the Bid). Substantial Completion is desired [within ____ days] [on or before ____]. The times will be taken into consideration by Owner during the evaluation of Bids, and it will be necessary for the apparent Successful Bidder to satisfy Owner that it will be able to achieve Substantial Completion and be ready for final payment within the times designated in the Bid.

NOTES TO USER

1. *The first alternative anticipates that the times for Milestones, if any, Substantial Completion, and final completion will be specified. The second alternative may be used to permit Bidder to designate such times in the Bid. Select one.*
2. *See Note 2 of I-14.03.*

ARTICLE 10 - LIQUIDATED DAMAGES

10.01 Provisions for liquidated damages, if any, are set forth in the Agreement.

NOTES TO USER

1. *If liquidated damages are to be assessed for failure to timely attain a Milestone, this should be included in A-4.*

ARTICLE 11 - SUBSTITUTE AND "OR-EQUAL" ITEMS

11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or "or-equal" items. Whenever it is specified or described in the Bidding Documents that a substitute or "or-equal" item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement.

[or]

11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, or those substitute or "or-equal" materials and equipment approved by Engineer and identified by Addendum. The materials and equipment described in the Bidding Documents establish a standard of required type, function and quality to be met by any proposed substitute or "or-equal" item. No item of material or equipment will be considered by Engineer as a substitute or "or-equal" unless written request for approval has been submitted by Bidder and has been received by Engineer at least 15 days prior to the date for receipt of Bids. Each such request shall conform to the requirements of Paragraph 6.05 of the General Conditions. The burden of proof of the merit of the proposed item is upon Bidder. Engineer's decision of approval or disapproval of a proposed item will be final. If Engineer approves any proposed item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

NOTES TO USER

1. *Note that in GC-6.05 a distinction is drawn between substitute and "or-equal" items of materials and equipment. See also SC-6.05 and comments regarding restrictive specifications in Bidding Procedures.*
2. *The EJCDC presumptive practice is that no substitute or "or-equal" materials or equipment will be considered until after the Effective Date of the Agreement. However, some practitioners do consider, and some Laws and Regulations require, evaluations of substitutions during the bidding period and issuance of Addenda when a substitute is accepted. In such cases, use the second alternative above. If I-11 is changed in this manner, it will also be necessary to amend GC-6.05 by Supplementary Condition.*

ARTICLE 12 - SUBCONTRACTORS, SUPPLIERS, AND OTHERS

12.01 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, individuals, or entities to be submitted to Owner in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid opening, submit to Owner a list of all such Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, individual, or entity if requested by Owner. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute.

[in which case apparent Successful Bidder shall submit an acceptable substitute, Bidder's Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and Owner may consider such price adjustment in evaluating Bids and making the Contract award.]

[or]

[without an increase in the Bid.]

12.02 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 6.06 of the General Conditions.

12.03 Contractor shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom Contractor has reasonable objection.

NOTES TO USER

- 1. The matter of Owner and Engineer retaining the right to disapprove of or reject certain Subcontractors, Suppliers, individuals, or entities (including those who are to furnish the principal items of material and equipment) which apparent Successful Bidder proposes for the Work has not been approached uniformly nor with unanimous endorsement by various interested organizations. Prequalification of certain Subcontractors, Suppliers, individuals, or entities prior to the submission of Bids is one approach, but the effort, mechanical procedures and intricacies involved require careful consideration, and this approach may not be permitted in public works projects. Provisions dealing with this matter after the Effective Date of the Agreement are contained in GC-6.06. The EJCDC believes that, as a general principle, Contractors should be entitled to employ Subcontractors, Suppliers, individuals, or entities of their own choosing, that occasions when Owner and Engineer will wish to disapprove or reject will arise infrequently, and that the right to reject should be exercised only with appropriate supporting data. It is recognized, however, that there will be situations in which, because of the peculiarities of a given project, it will be important for Owner and Engineer to have the right to reject certain Subcontractors, Suppliers, individuals, or entities who are proposed for the Work.*
- 2. Provisions dealing with the prequalification of Subcontractors, Suppliers, individuals, or entities prior to the opening of Bids should be set forth in I-12, as should provisions dealing with Owner's and Engineer's right to disapprove between the time of the opening of Bids and the giving of the Notice of Award. Coordination of the language with I-3 and I-19 should not be overlooked. It is important to remember that Owner's and Engineer's right to reject will apply only to those Subcontractors, Suppliers, individuals, or entities whose identity is to be submitted to Owner and as required by the Supplementary Conditions and Bid Form; accordingly, unless a particular trade, manufacturer, etc., has been so singled out, the right to reject would not exist (except as generally provided in GC-6.06).*
- 3. Set forth above is language that may be used in I-12 to address some of these conditions. Requiring the apparent Successful Bidder to employ a substitute Subcontractor, Supplier, individual, or entity that is acceptable to Owner and Engineer may have a serious effect on the Bid price first submitted, and there are various ways of dealing with the situation should it arise. Accordingly, alternative language is furnished. Some owners may favor the first approach as being more equitable to contractors and for its tendency to produce a*

lower initial Bid. Others may prefer the second approach because of legal constraints applicable to public works projects or because of the desire to hold firm the initial Bid even though this may result generally in higher Bids. There are other sound ways to address these problems. The entire matter should be reviewed with Owner and its attorney prior to finalizing the Instructions.

4. *Any restrictions or limitations on subcontracting should appear in SC-6.06, and cross references to that location should appear in I-12.*
5. *See discussion regarding Subcontractor listing in Bidding Procedures.*
6. *Reference should be made to applicable Laws and Regulations with respect to Subcontractors, Suppliers, individuals or entities. Specific provisions may be required by Laws or Regulations, in which case I-12 may require amending or deletion and replacement with the required language. Note also that I-12 as written contemplates that Subcontractors, Suppliers individuals, or entities required to be identified by apparent Successful Bidder prior to award of the Contract will be listed in the Supplementary Conditions and Bid form. In the event Subcontractors, Suppliers, individuals, or entities are not required to be identified, it may be appropriate to delete I-12.*

ARTICLE 13 - PREPARATION OF BID

13.01 The Bid Form is included with the Bidding Documents. Additional copies may be obtained from [Engineer or] [_____].

13.02 All blanks on the Bid Form shall be completed by printing in ink or by typewriter and the Bid signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each [section, Bid item, alternative, adjustment unit price item, and unit price item] listed therein, or the words “No Bid,” “No Change,” or “Not Applicable” entered.

NOTES TO USER

1. *Coordinate this paragraph carefully with the Bid Form and edit the above paragraph as required. See generally, Suggested Bid Form (EJCDC Doc. No.C-400, 2002 Edition).*
2. *In that Bid Forms can be reproduced and made part of the Contract Documents, it is important that the Bid Form be completed in a product (black ink) that is readable on reproduced copies of the Bid Form.*

13.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.

13.04 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown below the signature.

13.05 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown below the signature.

13.06 A Bid by an individual shall show the Bidder's name and official address.

13.07 A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be shown below the signature.

13.08 All names shall be typed or printed in ink below the signatures.

13.09 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.

13.10 The address and telephone number for communications regarding the Bid shall be shown.

13.11 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located or covenant to obtain such qualification prior to award of the Contract. Bidder's state contractor license number, if any, shall also be shown on the Bid Form.

ARTICLE 14 - BASIS OF BID; COMPARISON OF BIDS

14.01 *Lump Sum*

A. Bidders shall submit a Bid on a lump sum basis as set forth in the Bid Form.

[or]

A. Bidders shall submit a Bid on a lump sum basis for the base Bid and include a separate price for each alternate described in the Bidding Documents as provided for in the Bid Form. The price for each alternate will be the amount [added to] *[or]* [deleted from] the base Bid if Owner selects the alternate. In the comparison of Bids, alternates will be applied in the same order as listed in the Bid form.

[or]

A. Bidders shall submit a Bid on individual sections or any combination of sections as set forth in the Bid Form.

1. Bidders may submit a Bid for any of the separate sections or any combination of sections as provided in the Bid Form. Submission of a Bid on any section signifies Bidder's willingness to enter into a Contract for that section alone at the price offered.

2. Bidders offering a Bid on one or more sections shall be capable of completing the Work within the time period stated in the Agreement.

[or]

14.01 *Unit Price*

A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the Bid schedule.

B. The total of all estimated prices will be the sum of the products of the estimated quantity of each item and the corresponding unit price. The final quantities and Contract Price will be determined in accordance with Paragraph 11.03 of the General Conditions.

C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

NOTES TO USER

1. I-14.01 gives several frequently used alternatives for defining the basis and determination of bid prices for purposes of comparison of Bids. For a particular project, a unique set of paragraphs may be necessary, following the concept shown above. The user should carefully review I-14.01 and compare to the final Bid Form for clarity and consistency.

14.02 The Bid price shall include such amounts as the Bidder deems proper for overhead and profit on account of cash allowances, if any, named in the Contract Documents as provided in Paragraph 11.02 of the General Conditions.

14.03 Bid prices will be compared after adjusting for differences in the time designated by Bidders for Substantial Completion. The adjusting amount will be determined at the rate set forth in the Contract Documents for liquidated damages for failing to achieve Substantial Completion for each day before or after the desired date appearing in Article 9.

NOTES TO USER

- 1. Many factors not included in I-14 as written may be important to consider in comparing Bids for any particular project, and it will often be necessary to amend or supplement I-14. When factors in addition to price will be significant in comparing Bids and determining the successful Bid, the manner in which comparisons will be made should be fully described in I-14.*
- 2. When Bidder is permitted to designate the Contract Times and it is necessary to explain the manner in which differences in time will be compared, use a paragraph similar to I-14.03. In such a case, minimum and maximum Contract Times are normally specified. If no liquidated damages are specified, it will be necessary to specify an adjusting amount or formula for comparing Bids.*

ARTICLE 15 - SUBMITTAL OF BID

15.01 With each copy of the Bidding Documents, a Bidder is furnished one separate unbound copy of the Bid Form, and, if required, the Bid Bond Form. The unbound copy of the Bid Form is to be completed and submitted with the Bid security and the following data:

- [A. ____]
- [B. ____.]
- [C. ____.]
- [D. ____.]

NOTES TO USER

- 1. The language of I-15.01 may be modified to require submittal of a bound copy of the Bidding Documents intact with the Bid. This is not recommended by EJCDC, but may be required by Laws and Regulations.*

15.02 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the Advertisement or Invitation to Bid and shall be enclosed in an opaque sealed envelope plainly marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate envelope plainly marked on the outside with the notation "BID ENCLOSED." A mailed Bid shall be addressed to [____.]

NOTES TO USER

- Bids are usually submitted to and opened at the Owner's office, and this is frequently different from the Issuing Office.*
- 2. Practices vary with respect of the documentation required to be submitted with Bids. It is usually necessary to supplement I-15.*

ARTICLE 16 - MODIFICATION AND WITHDRAWAL OF BID

16.01 A Bid may be modified or withdrawn by an appropriate document duly executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.

16.02 If within 24 hours after Bids are opened, any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

NOTES TO USER

1. *Withdrawal of any Bid which is demonstrated to contain a substantial mistake is permitted under I-16.02. This practice is in accordance with written policies of various professional societies and governmental agencies. However, it is recognized that some Laws and Regulations or Owners' standards or policies may differ and that it may be necessary to modify or delete I-16.02.*
2. *See discussions concerning modification and withdrawal of Bids in Chapter III of Bidding Procedures.*

ARTICLE 17 - OPENING OF BIDS

17.01 Bids will be opened at the time and place indicated in the Advertisement or Invitation to Bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

[or]

17.01 Bids will be opened privately. An abstract of the Bids will be made available to Bidders after the opening of Bids.

NOTES TO USER

1. *See Bidding Procedures concerning Bid opening.*
2. *Two paragraphs are provided, one for public opening and one for private opening.*

ARTICLE 18 - BIDS TO REMAIN SUBJECT TO ACCEPTANCE

18.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

NOTES TO USER

1. *Provisions on the commencement of Contract Times appear in GC-2.03. Note that the period of time during which Bids are to remain open and by which a Notice of Award is to be given is interrelated with the date when the Contract Times commence to run. The EJCDC suggested schedule of events between the opening of bids and the starting of the Contract Times is discussed in SC-2.03. Any changes must be carefully coordinated among all of the Bidding Documents.*
2. *See Bidding Procedures concerning procedures after Bid opening.*

ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT

19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to not be responsible. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder. Owner also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Bidder.

19.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.

19.03 In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.

19.04 In evaluating Bidders, Owner will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Supplementary Conditions.

19.05 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities to perform the Work in accordance with the Contract Documents.

19.06 If the Contract is to be awarded, Owner will award the Contract to the Bidder whose Bid is in the best interests of the Project.

NOTES TO USER

- 1. Certain rights of Owner stated in I-19, such as those listed in the last two sentences of I-19.01 or pertaining to qualifications and experience of Subcontractors, Suppliers, individuals and entities in I-19.04, may not be available in public bidding.*
- 2. Note particularly the relationship of I-19.04 to Notes to User accompanying I-12.*
- 3. Many factors not included in I-19 as written may be important to consider in evaluating Bids for any particular project, and it will often be necessary to amend or supplement I-19. When factors in addition to price will be significant in evaluating Bids, the manner in which evaluations will be made should be fully described in I-19. See I-14 for discussion of the determination of the Bid price.*
- 4. In the event major equipment is included in the Work, it may be appropriate to consider differences in operating efficiency and service support facilities. For example, criteria may be stated such as:*

“The evaluation of manufacturer’s data on [_____] submitted upon request prior to the Notice of Award will include consideration of the efficiency and related operating expense during the anticipated useful life of the equipment and the availability of service support facilities. Costs related to efficiency will be calculated as follows:

Anticipated useful life 15 years.

Annual service 4,000 hours.

*Average energy costs 8¢/kwh.
Capitalization at 10% interest.”*

5. *See Bidding Procedures concerning recommended award procedures.*
6. *Note the time within which Notice of Award may be issued is governed by I-18.*
7. *EJCDC Notice of Award, No. C-510, is recommended for use in preparing the award.*

ARTICLE 20 - CONTRACT SECURITY AND INSURANCE

20.01 Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it shall be accompanied by such bonds.

NOTES TO USER

1. *In the event bonds are not required, it would be appropriate to modify I-20. For recommended Performance and Payment Bond Forms, see EJCDC Nos. C-610 and C-615.*

ARTICLE 21 - SIGNING OF AGREEMENT

21.01 When Owner gives a Notice of Award to the Successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Agreement with the other Contract Documents which are identified in the Agreement as attached thereto. Within 15 days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner. Within ten days thereafter, Owner shall deliver one fully signed counterpart to Successful Bidder with a complete set of the Drawings with appropriate identification.

NOTES TO USER

1. *Practices vary widely, and it is recognized that the procedures described in I-21 may often require amending. See SC-2.03 for discussion of EJCDC suggested scheduling of events prior to starting of the Contract Times.*
2. *It is customary for Owner to fill in the date on the signature page of the Agreement in order to indicate when it is to become effective (the Effective Date of the Agreement).*

ADDITIONAL ARTICLES

1. Articles 1 through 21 of this Suggested Instructions to Bidders for Construction Contracts, when used as intended with the other EJCDC construction related documents, address the basic subject matter required for Instructions to Bidders on most projects. However, it is often necessary to supplement the Instructions to Bidders with additional articles addressing:

- prevailing wage rates statements required by Laws or Regulations, funding agencies, or appropriate reference thereto (for example, some states require provisions concerning Contractor's license);
- prepurchasing by Owner and subsequent assignment of procurement contracts to Contractor;
- Owner's special tax exemption; or
- intended use of partnering.

2. Examples of such supplementary articles are presented in I-22 through I-25.

ARTICLE 22 - SALES AND USE TAXES

22.01 Owner is exempt from [_____] state sales and use taxes on materials and equipment to be incorporated in the Work. Exemption No. [_____]. Said taxes shall not be included in the Bid. Refer to Paragraph SC-6.10 of the Supplementary Conditions for additional information.

NOTES TO USER

1. Note GC-6.10 and SC-6.10 for conflicts and modify this Article if necessary. Advice of Owner's counsel is essential since statutory exemptions vary extensively.

ARTICLE 23 - RETAINAGE

23.01 Provisions concerning Contractor's rights to deposit securities in lieu of retainage are set forth in the Agreement.

NOTES TO USER

1. Reference should be made to statutory requirements on retainage for public projects.

ARTICLE 24 - CONTRACTS TO BE ASSIGNED

24.01 Owner as "buyer" [has executed] [will execute] a contract with [_____] as "seller" for the procurement of goods and special services for [_____]. The materials and equipment provided for in the procurement contract are to be furnished and delivered to the Site [or other location] for installation by Contractor. The said procurement contract will be assigned by Owner to Contractor as set forth in the Agreement. Contractor will accept the assignment and assume responsibility for the "seller", who will become a Subcontractor to Contractor.

24.02 Bidders may examine the contract documents for the procurement of goods and special services for [_____] at [_____].

NOTES TO USER

1. *For procurement contract assignments, refer to Article 24 of Suggested Instructions to Bidders for Procurement Contracts (P-200, 2000 Edition)*

ARTICLE 25 - PARTNERING

25.01 Owner intends to participate in a partnering process with Contractor. The process is intended to help develop better and more effective communication and mutual understanding of common goals. The objectives of the process will be to achieve effective and efficient performance of the Work and completion of the Work within the Contract Price and Contract Times, all in accordance with the Contract Documents.

25.02 Participation in the partnering process will be voluntary. To initiate the process, within [] days after the Notice to Proceed the key personnel of Owner, Engineer, Contractor, and Contractor's major Subcontractors will be invited to attend a one-day seminar followed by a one-day team building workshop to develop a partnering statement. The seminar and the workshop will be conducted by a neutral facilitator at a time and location agreed to by Owner and Contractor in the general vicinity of the Site.

25.03 The facilitator will be selected by Owner, subject to approval by Contractor. Costs of the facilitator and facilities for the initial seminar and workshop will be paid by Owner. Thereafter, all facilitator-related and facilities costs will be shared equally by Owner and Contractor with no change in the Contract Price. Each party will pay all costs associated with the participation of its own personnel.

25.04 It is intended that the initial seminar and workshop sessions be followed by periodic half-day evaluation sessions approximately every 90 days as agreed to by Owner and Contractor.

25.05 A primary objective of the partnering process is to maximize the potential for resolution of disputes in a timely and non-adversarial manner. The use of alternative dispute resolution (ADR) methods will be encouraged in order to promote and maintain amicable working relationships among the parties. In the event that ADR procedures are unsuccessful, the dispute resolution provisions set forth in the Contract Documents will be employed.

25.06 These provisions express the intent and spirit of the partnering process, and nothing stated herein or in the partnering statement shall change in any way the rights, responsibilities, and obligations of the parties as set forth in the Contract Documents. The partnering statement will not be a part of the Contract Documents and will not modify any defense, claim, obligation, or right that otherwise exists.