



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PUBLIC WORKS

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April 26, 2012

**FAX & EMAIL ONLY AND
ATTACH TO CONTRACT**

**ADDENDUM NO. 1 TO
LOS OSOS WASTEWATER PROJECT
COLLECTION SYSTEM AREAS A & D
LOS OSOS, CA
CONTRACT NO. 300448.08.01.AD**

**The final day, time and location for submittal of Bid remain unchanged:
Date / Time: Thursday, May 10, 2012 at 3:00 p.m.**

At: Office of the County Clerk
1055 Monterey Street, Room D-120
San Luis Obispo, California 93408

Certain revisions are hereby incorporated into the Bidding Documents for the subject project. These revisions are as follows:

Section 00200, Instructions to Bidders, is hereby amended as follows:

- 1) On page 00200-2 delete the words "as provided" in the second to last sentence of Paragraph 4.01.B and insert the words "is described" in their place.
- 2) On page 00200-2 delete the words "as provided" in the second to last sentence of Paragraph 4.03.B and insert the words "is described" in their place.
- 3) On page 00200-3, delete Paragraph 4.07.D in its entirety and insert the following in its place:
 - D. Carefully study all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site, if any, and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph 4.02 of the General Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph 4.06 of the General Conditions as containing reliable "technical data";

Section 00410, Bid Form, is hereby amended as follows:

- 1) On page 00410-2, delete Paragraph 3.01.D in its entirety and insert the following in its place:
 - D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site, if any, and all drawings of physical conditions relating to existing

surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph 4.02 of the General Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph 4.06 of the General Conditions as containing reliable "technical data."

Section 00500, Agreement, is hereby amended as follows:

- 1) Replace pages 00500-5 through 00500-9 with new pages 00500-5 through 00500-9 attached to this Addendum No. 1.

Section 00700, General Conditions, is hereby amended as follows:

- 1) On page 00700-14, delete the second paragraph of Paragraph 4.02.A.1 in its entirety and insert the following in its place:

The reports itemized in this Paragraph 4.02.A are not part of the Contract Documents, but may be examined at the Department of Public Works and Transportation at 1050 Monterey Street, Room 207, County Government Center, San Luis Obispo, CA 93408, during regular business hours. Other than the limited reliance on "technical data" as provided in Paragraphs 4.02.B and 4.02.C below, Contractor is not entitled to rely upon any information in said reports, or any other information or data utilized by Designer in the preparation of the Drawings and Specifications.

- 2) On page 00700-15, delete the second to last paragraph in Paragraph 4.02.A.1 in its entirety.
- 3) On page 00700-15, delete the words "or Designer" in Paragraph 4.02.A.2.
- 4) On page 00700-15, delete the first two sentences in Paragraph 4.02.B and insert the following in their place:

Contractor may rely on the "technical data" contained in such reports, but such reliance shall be limited to the accuracy of such data as of the date each respective soil boring identified in the report was made.

- 5) On page 00700-16, immediately following Paragraph 4.02.B.3, insert the following new Paragraph 4.02.C:

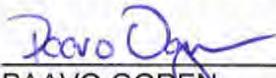
C. *Variability of Groundwater Levels:* No data relating to groundwater levels is intended to provide an indication as to what the groundwater levels will be at the Site when any Work is being performed. Any such data relating to any groundwater level is simply that which existed on the date when soil boring data was determined. No groundwater level data can be relied upon as an indication of what the level will be at any Site at any time the Work would be performed under the Contract. It is commonly understood that groundwater levels are affected by a wide array of factors, including but not limited to, rainfall amounts, storm water runoff, the weather, irrigation schedules, the amount of groundwater being pumped by groundwater users, tidal influence, and many other factors. Since these factors vary over time, it is Contractor's responsibility to determine and allow for the groundwater level that exists on the date(s) the Contractor is performing any Work related thereto. Contractor shall be responsible for furnishing all labor, materials, equipment and incidentals required to remove and dispose of all surface water and groundwater entering any excavations. For purposes of this paragraph, the word "data" is intended to include "technical data", and any other type of data.

- 6) On page 00700-53, delete Paragraph 8.05.A in its entirety and insert the following in its place:
 - A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 4.01. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of certain reports of explorations and tests of subsurface conditions at or contiguous to the Site, if any, and drawings of physical conditions relating to existing surface or subsurface structures (other than Underground Facilities) at the Site.

Section 01060, Regulatory Agency and Utility Requirements, is hereby amended as follows:

- 7) On page 01060-3, delete Paragraph 1.04.H.5 in its entirety and insert the following in its place:
 - 5. All diesel construction equipment operated regularly on the Site by the Contractor and Subcontractors shall meet ARB's Tier 3 standard for off-road heavy duty diesel engines.
- 8) On page 01060-3, delete Paragraph 1.04.H.6 in its entirety and insert the following in its place:
 - 6. All on-road heavy-duty trucks operated regularly on the Site by the Contractor and Subcontractors shall meet ARB's 2007 or newer certification standard for on-road heavy duty diesel engines. This condition would not apply to deliveries and/or hauling to or from the Site by outside material suppliers or trucking companies.

All bidders shall acknowledge acceptance of this correction notice. **PLEASE FAX TO US, TODAY, A SIGNED COPY OF THIS SHEET INDICATING CONFIRMATION OF RECEIPT OF THIS ADDENDUM (FAX (805) 781-1229).** If you are unable to read the fax, please call Jeff Werst in the Public Works Department at (805) 781-5252.

JRW


 PAAVO OGREN
 Director of Public Works

Enclosure:

File: Contract No. 300448.08.01.AD

ACKNOWLEDGMENT

| | | | |
|--------------|--------------|-----------|------|
| Company Name | Printed Name | Signature | Date |
|--------------|--------------|-----------|------|

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The Bid prices for Unit Price Work set forth as of the Effective Date of the Agreement are based on estimated quantities. As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions.

All other Work required by the Contract Documents shall be considered incidental to the Work and considered as included in the Contract Price.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 Progress Payments; Retainage

- A. Within thirty (30) days of Engineer's receipt of a proper Application for Payment under Article 14 of the General Conditions, Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.
 - a. 95 percent of Work completed (with the balance being retainage); and
 - b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Within 60 days of Substantial Completion of all Work under the Contract Documents, Owner shall pay to Contractor an amount sufficient to reduce the retainage withheld on Work properly completed to zero percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 150 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion. In the event of any disputes between the Owner and Contractor, the Owner may also withhold an additional amount not to exceed 150 percent of the disputed amount. Nothing in this paragraph shall require the Owner to pay any amounts which the Owner refuses to pay pursuant to Paragraph 14.02.D. of the General Conditions (or any other provision in the Contract Documents authorizing the withholding or reduction of any payment to the Contractor).

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as provided in said Paragraph 14.07.

ARTICLE 7 – INTEREST

- 7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest, if applicable, as provided in the Contract Documents.

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site, if any, and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph 4.02 of the General Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph 4.06 of the General Conditions as containing reliable "technical data."
- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, if any, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor’s safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Owner is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement.
 - 2. General Conditions.
 - 3. Specifications as listed in the table of contents of the Project Manual.
 - 4. Drawings as listed in the table of contents of the Project Manual
 - 5. Addenda (numbers _____ to _____, inclusive).
 - 6. Exhibits to this Agreement (enumerated as follows):
 - a. *List of Subcontractors;*
 - b. *Compliance Statement;*
 - c. *Certification Regarding Debarment;*
 - d. *Contractor’s Certification Regarding Worker’s Compensation Insurance;*
 - e. *Certification for Contracts, Grants, and Loans;*
 - f. *Good Faith Effort Documentation Summary Form;*
 - g. *Disadvantaged Business Enterprise Contactor - Subcontractor Certification*
 - 7. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed (pages _____ to _____, inclusive).
 - b. Work Change Directives.
 - c. Change Orders.

- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.
- E. Contractor agrees that the Payment Bond and Performance Bond attached to this Agreement are for reference purposes only, and shall not be considered a part of this Agreement or any other Contract Document. Contractor further agrees that said bonds are separate obligations of the Contractor and its surety, and that any attorney's fee provision contained in any payment bond or performance bond shall not apply to any legal action between Contractor and Owner to enforce any provision of the Contract Documents.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions.

10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Attorneys Fees*

- A. No provisions of the Contract Documents provide either the Contractor or the Owner the right to be awarded any attorney's fees and/or costs under Civil Code section 1717 in any legal action brought by either party to enforce any provision of the Contract Documents against the other party. The parties agree that any references to attorney's fees in language describing indemnification obligations do not constitute a contractual provision that would provide either the Contractor or the Owner the right to be awarded any attorney's fees and/or costs under Civil Code section 1717 in any legal action brought by either party to enforce any provision of the Contract Documents against the other party. Any other language in the Contract Documents providing for a recovery of attorney's fees shall be strictly construed as not including the recovery of any attorney's fees incurred by either Contractor or Owner in any legal action brought by either party to enforce any provision of the Contract Documents against the other party.
- B. The parties agree that the Contract Documents contain no provisions that would allow either the Contractor or the Owner to be awarded attorney's fees and/or costs under Civil Code section 1717. Nothing in this Paragraph 10.06. affects any right by Contractor or Owner to recover attorney's fees or costs by operation of any law other than Civil Code section 1717.
- C. In the event of any conflict between language in this Paragraph 10.06 and any other language in the Contract Documents, the language in Paragraph 10.06 shall prevail.