

1. BIDDING DEFINITIONS

Addendum: Written or graphic instruments issued prior to the opening of Proposals that make changes, additions, or deletions to the Bid Documents, or Contract Documents.

Best Value: Valley Water Board of Directors adopted Resolution No. 20-70 Approving Best Value Contractor Selection for the Anderson Dam Tunnel Project on August 25, 2020. A “value” will be established for each bid submitted, determined by evaluation of objective criteria based on price (cost), and qualification (competency, capability, capacity to complete a project of similar size, scope, complexity, recently performed similar projects, references to verify past performance, history of regulatory compliance, bonding capacity, and ability to meet insurance requirements).

The “value” is established by a number, which is calculated by dividing each bidder’s price (P) by its qualification (Q) score. When the calculated individual numbers (for each bid) are arranged in ascending order, from lowest to highest, the lowest number becomes or is ranked as the “Best Value” bid, followed by the next highest number and so on. The formula as detailed in the Prequalification Application, Revision 2, Appendix D Calculating a Bidder’s Best Value Score, will be used to calculate the qualifications score to weigh quality at 40% and price at 60%.

Bid: The completed Proposal and all associated Bid Forms, including Bidder’s Bond or other Bidder’s security. Bids not accompanied by the required documents are considered incomplete bids and are nonresponsive.

Bid Documents: All documents to be considered when preparing a Bid. The Notice to Bidders, Instructions to Bidders, Proposal and all accompanying Bid Forms, Bidder’s Bond or other Bidder’s security, and Contract Documents.

Bidder: Any individual, firm, partnership, corporation, or combination thereof, submitting a proposal for the Work contemplated, acting directly or through a duly authorized representative.

Proposal: The Proposal states the price for which the Bidder proposes and agrees to perform the Work. See Proposal and Bid Items, Bid Form No.1.

Total Bid Price: The sum stated in the Bid for which the Bidder offers to perform the Work described in the Bid Documents. The Total Bid Price shall include the entire cost of all Work necessary for a complete and fully operational structure or facility in accordance with the requirements of the Contract Documents.

2. COMPETENCE OF BIDDERS

- A. Bidders must meet all qualification requirements contained in the Bid Documents.
- B. Any Bidder may be required to furnish evidence satisfactory to the District that the Bidder and its proposed Subcontractors have sufficient means and experience in the type of Work required to assure satisfactory completion of all the requirements of the Contract Documents.

3. INELIGIBLE CONTRACTORS AND SUBCONTRACTORS

- A. The District shall not accept a Bid from a Bidder who is ineligible to Bid or work on, or be awarded, a public works project pursuant to California Labor Code Section 1777.1 or 1777.7. Bidders and the contractor who is awarded the project contract shall not utilize, or allow work by any subcontractor who is ineligible to Bid or work on, or be awarded, a public works project pursuant to California Labor Code Section 1777.1 or 1777.7. (See California Public Contract Code Section 6109.) The California Division of Labor Standards Enforcement publishes a list of debarred contractors and subcontractors on the Internet at www.dir.ca.gov/DLSE/debar.html.

4. COMPLIANCE WITH CONTRACTOR'S LICENSE LAWS

- A. Bidder's attention is directed to the provisions of Chapter 9 of Division 3 of the California Business and Professions Code ("Contractors"), and §3300 of the California Public Contract Code. The Contractor must possess the required classification of Contractor's License at the time the Bid is submitted (per Business and Professions Code §7028.15). If federal funds are involved in this Project, the Contractor must possess the required classification of Contractor's License at the time of the Contract Award (per Public Contract Code §20103.5).
- B. If a Bidder does not possess the required Contractor's License at the time a Bid is submitted, in accordance with Business and Professions Code § 7028.15, the Bid will be considered nonresponsive and will be rejected by the District. The District may require forfeiture of the Bidder's Bond.

5. EXAMINATION OF CONTRACT DOCUMENTS AND PROJECT SITE

- A. The Bidder shall examine carefully the site of the Work contemplated and the Contract Documents. The submission of a Proposal will be conclusive evidence that the Bidder has investigated and is fully aware of the conditions and difficulties to be encountered, of the character, quality, and quantities of work to be performed and materials to be furnished, and requirements of the Contract Documents.
- B. Where investigation of subsurface conditions has been made by the District in respect to foundation, characterization of soils, groundwater, or other documents, Bidders may inspect District's records of such investigation, including examination of samples and drill cores, if any. When such records are made available, said records represent only the authors' opinion as to the character of material encountered in the investigations and are made available only for the convenience of Bidders.
- C. Investigation of subsurface soil or groundwater conditions is made for the purpose of Project design. The District assumes no responsibility, whatsoever, in respect to the sufficiency of test borings, accuracy of the log of test borings, or other preliminary investigations, or in the interpretation thereof. There is no guarantee, expressed or implied, that the conditions indicated are representative of those existing throughout the Work, or any part of it, or that unforeseen

conditions may not be encountered.

- D. Making information available to Bidders is not to be construed in any way as a waiver of the provisions herein and Bidders must satisfy themselves through their own investigations, analysis, and interpretations, as to conditions to be encountered.
- E. No information derived from such inspection of records or preliminary investigations made by the District, from maps, or Contract Documents, will relieve in any way the Bidder from any risk or from properly fulfilling all the terms of the Contract. Records of such preliminary investigations as may have been made by the District may be viewed on the District's web site at:
<https://www.valleywater.org/construction> .

6. ESTIMATED QUANTITIES

- A. The quantities stated in the Bid Documents are approximate only, provided as a basis for the comparison of Proposals. The District does not, expressly or by implication, agree that the actual amount of Work will correspond therewith, but reserves the right to increase or decrease the amount of any class or portion of the Work, or to omit portions of the Work, as may be deemed necessary or advisable by the Engineer. The adjustment for quantities, if any, shall comply with Measurement and Payment provisions of the Specifications.

7. QUESTIONS DURING BIDDING

- A. Questions regarding the Contract Documents, or any addendum thereto, shall be submitted in writing and directed to the Santa Clara Valley Water District Plan Room at scvwdplanroom@valleywater.org as identified in the Notice to Bidders. No interpretation of the meaning of the Contract Documents or other pre-bid documents will be made to any Bidder verbally. Any written questions received later than nine (9) calendar days before the Bid acceptance date and time may not be answered.

8. SUBSTITUTIONS OF ALTERNATIVE MATERIALS, ARTICLES, OR EQUIPMENT

- A. Requests for substitutions of alternative materials, articles, or equipment will not be considered prior to Contract award, see Standard Provisions, Article 7.07. Substitutions.

9. ADDENDA

- A. Addenda may be issued prior to opening Bids and are a part of the Contract Documents. All Addenda shall be considered by the Bidder in preparing its Bid. Addenda notification(s) will be sent to each planholder at the e-mail address provided for the planholders' list and Addenda will be posted on the District's website at: <https://www.valleywater.org/construction>

10. JOINT PROPOSALS

- A. If two or more firms desire to Bid jointly on a project, they shall file an Affidavit of Joint Venture (see Attachment 1) with the District, or provide sufficient documentation of joint venture license status. The submitted Affidavit of Joint Venture will be valid only for the specified project for which it is filed. If such Affidavit of Joint Venture is not filed, and approved by the District, prior to the time for opening Bids on the specific project for which it is submitted, a joint Proposal submitted by two firms will be considered nonresponsive.
- B. **[NOT USED]**

11. SMALL BUSINESS OUTREACH PROGRAM – [NOT USED]**12. PROPOSAL**

- A. The Proposal, when filled out by the Bidder and executed, shall be submitted as the Bidder's proposal. All Proposals shall state the prices proposed in figures in the spaces provided. The Proposal must be signed by an authorized representative of the Bidder, with the authority to bind the Bidder. The Bidder shall fill out all blanks in the Proposal as therein required.
- B. Payment for the various items listed in the Proposal shall constitute full compensation for furnishing all plant, labor, equipment, appliances, and materials, and performing all operations required to complete all work in conformity with the Contract Documents. All costs for Work not specifically mentioned in the Proposal or within payment clauses shall be included in the Contract prices for the items listed in the Proposal and Bid Items, Bid Form No. 1.
- C. In the case of unit price items, the amount set forth under the "Total" column shall be the extension of the item unit price Bid on the basis of the estimated quantity for the item.
- D. In case of discrepancy between the item unit price and the total price set forth for the item, the item unit price shall prevail. If the amount set forth as an item unit price is ambiguous, unintelligible, or uncertain for any cause, or is omitted, or in the case of unit basis items, is the same amount as the entry in the "Total" column, then the amount set forth in the "Total" column for the item shall prevail in accordance with the following:
1. As to lump sum items, the amount set forth in the "Total" column shall be the item price.
 2. As to unit basis items, the amount set forth in the "Total" column shall be divided by the estimated quantity for the item and the price thus obtained shall be the item unit price.

13. ESCROW BID DOCUMENTS

- A. When required by the Special Provisions, Escrow Bid Documents shall be prepared and submitted as specified herein and the Standard Provisions 3.14. Escrow Bid Documents.
- B. Escrow Bid Documents must be submitted by the Bidders submitting the apparent three top-ranked Best Value Bids. The Escrow Bid Documents must be submitted in a sealed container, separate from the Bidder's Bid Proposal, no later than 5 p.m. on the third business day following the Bid opening. Each container shall be clearly marked on the outside with the Bidder's name, date of submittal, Project name, and the words "Escrow Bid Documents." Timely submission of these Documents is considered material by the District. The pre-qualified Bidders with the apparent top three Best Value scores must coordinate and schedule delivery by emailing directly with the District's Contract Administrator at scvwdplanroom@valleywater.org, for the review of their Escrow Bid Documents
- C. The Escrow Bid Documents shall be accompanied by a separate certification, "Bid Form 10 – Escrow Bid Documents Certification of Completeness," signed by an individual authorized by the Bidder to execute the Bid Proposal. The Bidder certifies that the material in the Escrow Bid Documents constitutes all of the documentary information used in preparation of this Bid, and that the Bidder's authorized individual has personally examined the contents of the Escrow Bid Documents container and has determined that the Documents in the container are complete.
- D. The Escrow Bid Documents of the apparent successful Bidder will be opened and reviewed by an appointed member of the District in the presence of the Bidder before the Contract is awarded. The apparent successful Bidder must attend this review.
- E. This review is to ensure that the Escrow Bid Documents are legible and sufficient. It will not include a review of, or constitute approval of, proposed construction methods, estimating assumptions, or interpretations of the Contract Documents. The review will not alter any condition or term of the Contract. Should the review indicate that any data is incomplete or missing, the Bidder shall supply the missing information within 24 hours or at such other time as is mutually agreeable.
- F. If the Contract is not awarded to the apparent successful top-ranked Best Value Bidder, the Escrow Bid Documents of the Bidder submitting the apparent second ranked Best Value Bid shall be processed as described above. The Escrow Bid Documents of unsuccessful Best Value Bidders will be held unopened until such time that they are returned after execution of the Contract by the successful Best Value Bidder.

14. REJECTION OF BIDS

- A. Bids may be rejected if they show any alterations of the Form, additions not called for, conditional Bids, incomplete Bids, erasures, or irregularities of any

kind. Proposals in which the prices, in the opinion of the District, are unbalanced, may be rejected.

- B. When Proposals are signed by an agent, other than an officer of the Bidder, a written authorization or Power of Attorney, as appropriate, should be on file with or prior to the District opening Bids; otherwise, the Bid may be rejected.

15. PROPOSAL GUARANTEE

- A. All Bids shall be presented under sealed cover and accompanied by one of the following forms of Bidder's security: cash, a cashier's check, certified check, or an original Bidder's Bond executed by an admitted surety, made payable to the District. The security shall be in an amount equal to at least ten percent (10) of the total Bid price in the Proposal. The District will reject as nonresponsive any Bid submitted without the required Bidder's security.
- B. A Bidder's Bond will not be accepted unless it substantially conforms to the Bidder's Bid Bond form included with the Bid Documents; is properly filled out; and executed.

16. RETURN OF BIDDER'S SECURITY

- A. No later than sixty days (60) after the award of the Contract to the responsible Bidder, submitting the Best Value Bid, the security of the unsuccessful Bidder(s) will be returned, except for Bidder's Bonds and any guarantees which have been forfeited.

17. WITHDRAWAL OF BIDS

- A. Prior to the deadline for Bid opening, a submitted Bid may be revised or withdrawn by submitting a written request. The request shall be executed by the Bidder or duly authorized representative.
- B. Withdrawal of a Bid does not prejudice the right of the Bidder to file a new or revised Bid at any time prior to the time fixed for receiving Bids in the Notice to Bidders.
- C. Whether or not Bids are opened exactly at the time stated in the Notice to Bidders, a Bid will not be accepted after the time stated.

18. DISQUALIFICATION OF BIDDERS

- A. Submittal of more than one Bid from an individual, firm, partnership, corporation, or a combination thereof under the same or different names, will not be considered. If there is reason for believing that collusion exists among the bidders, none of the participants in such collusion will be considered for award of this Contract.

19. RELIEF OF BIDDERS

- A. Attention is directed to the provisions of California Public Contract Code Sections 5100-5107 that set forth the criteria and procedures for relief of Bidders, and for authorizing Contract Award to another Bidder.

20. BID PROTEST

- A. Any Bid protest relating to the form or content of the Bid Documents must be submitted in writing to the Engineer as identified in the Special Provisions, Engineer, Article 14.01. The protest must be received before 5 p.m. three (3) business days in advance of the Bid opening. Any Bidder who fails to submit a protest before the Bid opening deadline will be deemed to have waived any protest to the form or content of the Bid Documents.
- B. Any Bid protest unrelated to Paragraph A. must be submitted in writing to the Engineer identified in the Special Provisions, Engineer, Article 14.01. The protest must be received before 5 p.m. on the third business day following the Bid opening.
- C. The protest document must contain a complete statement of the basis for the protest. The protest must refer to the specific portion(s) of the Bid Documents that form the basis for the protest. The protest must include the name, address, and telephone number of the person representing the protesting party.
- D. The Engineer's final decision on a protest will be issued in writing no later than ten (10) calendar days following receipt of the protest.

21. AWARD OF CONTRACT

- A. The District Board of Directors reserves the right to reject any and all Bid Proposals and to waive minor defects or irregularities in any submitted Bid Form(s).
- B. The Contract, if awarded, will be to the top-ranked Best Value Bidder. The award, if made, will be within **60 calendar days** after the opening of the Bid Proposals and determining of the Best Value score.

If the top-ranked Best Value Bidder refuses or fails to execute the Contract, the award may be made to the second ranked Best Value Bidder. The award, if made, will be within 90 calendar days after the opening of the proposals. If the second ranked Best Value Bidder refuses or fails to execute the Contract, the Contract may be awarded to the third ranked Best Value Bidder. The award, if made, will be made within 120 calendar days after the opening the proposals.

- C. The periods of time specified above within which the award of Contract may be made shall be subject to extension for such further period as may be agreed upon in writing between the District and the Bidder concerned.

22. CONTRACT BONDS

- A. The Contractor shall furnish on the forms provided by the District, a performance bond and a payment bond executed by both the Contractor and the sureties, each equal to 100 percent (100%) of the Contract Sum.
- B. All bonds must be issued by California-admitted sureties.
- C. Should any surety or sureties be deemed unsatisfactory at any time by the District, notice will be given to the Contractor to that effect, who shall promptly substitute a new surety or sureties satisfactory to the District. No further payment shall be deemed due or will be made pursuant to the Contract until the new sureties shall qualify and be accepted by the District.
- D. In its sole discretion, the District may allow the Contractor to provide Contract Bonds from multiple sureties in order to meet the Contract Bonds requirements.

23. EXECUTION OF CONTRACT

- A. The successful Bidder will sign and return the Agreement prior to Contract award by the District.
- B. The Contractor must submit the required bonds and insurance documents within ten (10) days of District's Notice of Contract Award letter, not including Saturday, Sundays and legal holidays.
- C. Formation of a contract between the District and the Contractor requires accomplishment of the following: (1) execution of the Agreement by Contractor; (2) submission by Contractor, and acceptance by District of the required Contract Bonds, and insurance coverages and documents; and (3) execution of the Agreement by District. No Contract is formed until these three elements have been accomplished to the satisfaction of the District.

24. FAILURE TO EXECUTE CONTRACT

- A. Failure to execute the Agreement after Contract award and to file acceptable bonds and insurance documents as provided herein, within ten (10) days, not including Saturday, Sundays and legal holidays, shall be just cause for the District's annulment of the award and forfeiture of the Bidder's security.

25. NO VERBAL AGREEMENTS

- A. No conversation with any officer, employee, agent or District's Consultant(s), either before, during, or after the execution of the Agreement, affects or modifies any terms or obligations contained in the Contract Documents, nor entitle Contractor to any adjustment in the Contract Time(s) or Contract Sum whatsoever.

26. NON-DISCLOSURE AGREEMENT

- A. Some projects will require prospective bidders and other parties to execute a Non-Disclosure Agreement (NDA) prior to receiving Bid Documents. The NDA will be provided by completing the "Request for Non-Disclosure Agreement (NDA) form to obtain a copy of the Plans and Specs" form on the District's website at: <https://www.valleywater.org/construction>.
- B. The Notice to Bidders will identify whether a project requires an NDA.



ATTACHMENT 1
Affidavit of Joint Venture

This form must be signed by authorized representatives of both firms

ATTACHMENT 1 - AFFIDAVIT OF JOINT VENTURE

- I _____, an authorized agent of _____
(NAME) (FIRM A)
and I _____, an authorized agent of _____
(NAME) (FIRM B)
desire to bid jointly on the Santa Clara Valley Water District's

(PROJECT NAME/ CONTRACT NUMBER)

- II. In accordance with the requirements of the Instructions to Bidders, Article 10 JOINT PROPOSALS, this Joint Venture Affidavit is submitted for approval by the District.
- III. We acknowledge that a joint venture license must be secured prior to the District awarding a contract to a joint venture (see California Business and Professions Code section 7029.1). If we are the successful bidder, we agree to secure a joint venture license within the timeframe established by the District for awarding a contract to construct the Project.
- IV. I declare under penalty of perjury in accordance with the laws of the State of California that the foregoing is true and correct.

SIGNATURE BLOCK FIRM A (Signature Block must be completed in *ink*.)

Contractor's Signature:

Date:

Contractor's Name and Title (Print):

Contractor's License Number:

SIGNATURE BLOCK FIRM B (Signature Block must be completed in *ink*.)

Contractor's Signature:

Date:

Contractor's Name and Title (Print):

Contractor's License Number: