

UC Business and Finance Bulletin BUS-43, Materiel Management Exhibit C, Supplement 2, Special Terms and Conditions for Maintenance

August 15, 1998

Supplement 2

University of California

SPECIAL TERMS AND CONDITIONS FOR MAINTENANCE

1. LICENSE REQUIREMENTS.

1.1 The State of California Business and Professions Code, Division 3, Chapter 9, known as the "Contractor's License Law," establishes licensing requirements for contractors. Seller and all Subcontractors shall comply with the requirements of the Contractor's License Law and at all times in the performance of any work under the Purchase Order that is the subject of this solicitation, shall have the appropriate current licenses issued by the State of California Contractor's State License Board for the work to be performed. In addition to the foregoing, and without limitation, at the time of submission of any Bid for the Purchase Order that is the subject of this solicitation, Seller and all Subcontractors, regardless of tier, shall have the appropriate current licenses. Additionally, if Seller is a joint venture, at the time of submission of the Bid, the Seller shall have a joint venture license appropriate for the performance of the work, and each member of the joint venture shall likewise have the appropriate license. If a Seller, that is a specialty contractor, submits a Bid involving 3 or more specialized building trades, the work of which is more than incidental and supplemental to the performance of the Work for which Seller holds a specialty contractor license, Seller must also hold either (1) a specialty contractor "C" license in each such trade, (2) a General Engineering contractor "A" license, or (3) a General Building contractor "B" license.

2. STATUTORY REQUIREMENTS.

2.1 Not Used

2.2 Nondiscrimination

2.2.1 For purposes of this Paragraph 2, the term Subcontractor shall not include suppliers, manufacturers, or distributors.

2.2.2 Seller shall comply and shall ensure that all Subcontractors comply with Section 12900, and the applicable sections that follow, of the State of California Government Code.

2.2.3 Seller agrees as follows during the performance of the Work:

2.2.3.1 Seller shall not willfully discriminate against any employee or applicant for employment because of race, color, religion, sex, age, ancestry, national origin, local custom, habit, sexual orientation, handicap, veteran's status, medical condition (as defined in Section 12926 of the State of California Government Code), marital status, or citizenship (within the limits imposed by law or University's policy). All applicants for employment and employees are to be treated without regard to their race, color, religion, sex, age, ancestry, national origin, local custom, habit, sexual orientation, handicap, veteran's status, medical condition (as defined in Section 12926 of the State of California Government Code), marital status, or citizenship (within the limits imposed by law or University's policy). Such equal treatment shall apply, but not be limited to, employment, upgrading, demotion, or transfer; recruitment or

recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

2.2.3.2 Not used.

2.2.3.3 Seller and all Subcontractors will permit access to their records of employment, employment advertisements, application forms, and other pertinent data and records by University or any appropriate agency of the State of California designated by University for the purposes of investigation to ascertain compliance with this Paragraph 2. The outcome of the investigation may result in the following:

2.2.3.3.1 A finding of willful violation of the provisions of this Contract or of the Fair Employment Practices Act may be regarded by University as (1) a basis for determining that Seller is not a "responsible bidder" as to future contracts or purchase orders for which such Seller may submit bids or (2) a basis for refusing to accept or consider the bids of Seller for future contracts or purchase orders.

2.2.3.3.2 University may deem a finding of willful violation of the Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has (1) investigated and determined that Seller has violated the Fair Employment Practices Act and (2) issued an order under the State of California Government Code Section 12970 or obtained an injunction under Government Code Section 12973.

2.2.3.3.3 Upon receipt of such written notice from the Fair Employment Practices Commission, University may notify Seller that, unless it demonstrates to the satisfaction of University within a stated period that the violation has been corrected, Seller's bids on future contracts and purchase orders will not be considered.

2.2.3.3.4 Seller agrees that, should University determine that Seller has not complied with this Paragraph 2, Seller shall forfeit to University, as a penalty, for each day or portion thereof, for each person who was denied employment as a result of such noncompliance, the penalties provided in Paragraph 3 for violation of prevailing wage rates. Such penalty amounts may be recovered from Seller; and University may deduct any such penalty amounts from the Contract Sum.

2.2.3.3.5 Nothing contained in this Paragraph 2 shall be construed in any manner so as to prevent University from pursuing any other remedies that may be available at law.

2.2.3.3.6 Seller shall meet the following standards for compliance and provide University with satisfactory evidence of such compliance upon University's request, which shall be evaluated in each case by University:

(a) Seller shall notify its Superintendent and other supervisory personnel of the nondiscrimination requirements of the Contract Documents and their responsibilities thereto.

(b) Seller or its representative shall, through all unions with whom it may have agreements, develop agreements that (1) define responsibilities for nondiscrimination in hiring, referrals, upgrading, and training and (2) implement an affirmative nondiscrimination program, in terms of the unions' specific areas of skill and geography, such that qualified minority women, non-minority women, and minority men shall be available and given an equal opportunity for employment.

(c) Seller shall notify University of opposition to the nondiscrimination requirements of the Contract Documents by individuals, firms, or organizations during the term of the Contract.

(d) Seller shall include the provisions of the foregoing Subparagraphs 2.2.3.3.1 through 2.2.3.3.6 in all subcontracts with Subcontractors, so that such provisions will be binding upon each such Subcontractor.

3. PREVAILING WAGE RATES

3.1 For purposes of this Paragraph 3, the term Subcontractor shall not include suppliers, manufacturers, or distributors.

3.2 Seller shall comply and shall ensure that all Subcontractors comply with Section 1770, and the applicable sections that follow, including Section 1775 of the State of California Labor Code.

3.3 The State of California Department of Industrial Relations has ascertained the general prevailing per diem wage rates in the locality in which the Work is to be performed for each craft, classification, or type of worker required to perform the Work. A schedule of the general prevailing per diem wage rates will be on file at University's principal facility office and will be made available to any interested party upon request. By reference, such schedule is made part of the Contract Documents. Seller shall pay not less than the prevailing wage rates, as specified in the schedule and any amendments thereto, to all workers employed by Seller in the execution of the Work. Seller shall cause all subcontracts to include the provision that all Subcontractors shall pay not less than the prevailing rates to all workers employed by such Subcontractors in the execution of the Work. Seller and any subcontractor under him shall, as a penalty to the University, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the Director of the Department of Industrial Relations, for the work or craft in which the worker is employed by him or her or, except as provided in subdivision (b) of Section 1775 of the California Labor Code, by any subcontractor under him or her. The amount of this penalty shall be determined by the California Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Seller or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Seller in meeting his or her prevailing wage obligations, or the willful failure by the Seller or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Seller or subcontractor had knowledge of his or her obligations under this part. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Seller or subcontractor.

4. PAYROLL RECORDS

4.1 For purposes of this Paragraph 4, the term Subcontractor shall not include suppliers, manufacturers, or distributors.

4.2 Seller and each subcontractor under Seller shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with this order. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

4.2.1 The information contained in the payroll record is true and correct.

4.2.2 The employer has complied with the requirements of Sections 1771, 1811, and 1815 of the California Labor Code for any work performed by his or her employees on this order.

4.3 The payroll records enumerated under paragraph 4.2 shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Seller on the following basis:

4.3.1 A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

4.3.2 A certified copy of all payroll records enumerated in paragraph 4.2 shall be made available for inspection or furnished upon request to a representative of the University, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

4.3.3 A certified copy of all payroll records enumerated in paragraph 4.2 shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the University, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph 4.3.2, the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Seller, subcontractors, and University of other entity through which the request was made. The public shall not be given access to the records at the principal office of the Seller.

4.4 The certified payroll records shall be on forms provided by the California Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

4.5 Seller or subcontractor shall file a certified copy of the records enumerated in paragraph 4.2 with the entity that requested the records within ten 10 days after receipt of a written request.

4.6 Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the University, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in a manner so as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Seller awarded the order or the subcontractor performing the order shall not be marked or obliterated.

4.7 The Seller shall inform the University of the location of the records enumerated in paragraph 4.2, including the street address, city and county, and shall, within five working days, provide a notice of change of location and address.

4.8 The Seller or subcontractor shall have ten 10 days in which to comply subsequent to a receipt of a written notice requesting the records enumerated in paragraph 4.2. In the event that the Seller or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the University, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A Seller is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

5. APPRENTICES

5.1 For purposes of this Paragraph 5, the term Subcontractor shall not include suppliers, manufacturers, and distributors.

5.2 Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 of the California Labor Code are eligible to be employed on this order. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training.

5.3 When Seller, or any subcontractor under him or her, in performing any of the work under this order, employs workers in any apprenticeable craft or trade, the Seller and subcontractors shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site where the order is to be performed for a certificate approving the Seller or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject Seller or subcontractor, shall arrange for the dispatch of apprentices to the Seller or subcontractor in order to comply with California Labor Code section 1777.5. Every Seller and subcontractor shall submit order award information to the applicable joint apprenticeship committee that includes an estimate of journeyman hours to be performed under the order, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There is an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the craft or trade in the area of the site where the order is to be performed to ensure equal employment and affirmative action in apprenticeship for women and minorities. The Seller and its subcontractors shall not be required to submit individual applications for approval to joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen who shall be employed in the craft or trade on the order may be the ratio stipulated in

the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided herein, in no case shall the ratio be less than one hour of apprentices work for every five hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one apprentice for every five journeymen.

5.4 Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the site where the order is to be performed and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The Seller shall employ apprentices for the number of hours computed as above before the completion of the order. However, the Seller shall endeavor, to the greatest extent possible, to employ apprentices during the same period that the journeymen in the same craft or trade are employed at the site where the order is to be performed. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

5.5 The Seller or subcontractor, if he or she is covered by California Labor Code section 1777.5, upon the issuance of the approval certificate, or if he or she has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by Seller that he or she employs apprentices in the craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by a journeyman or, in the land surveyor classification, one apprentice for each five journeymen, the Division of Apprenticeship Standards may grant a certificate exempting Seller from the 1-to-5 hourly ratio as set forth in this section. This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000) or 20 working days. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the hourly ratio required by this section.

5.6 "Apprenticeable craft or trade," as used herein, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. The joint apprenticeship committee has the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a Seller from the 1-to-5 ratio set forth herein when it finds that any one of the following conditions is met:

5.6.1 Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

5.6.2 The number of apprentices in training in the area exceeds a ratio of 1 to 5.

5.6.3 There is a showing that the apprenticeable craft or trade is replacing at least on-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

5.6.4 Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

5.7 When exemptions are granted to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

5.8 A Seller to whom this order is awarded, or any subcontractor under him or her, who, in performing any of the work under the order, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any craft or trade in the area of the site where the order is to be performed, to which fund or funds other contractors in the area of the site where the order is to be performed are contributing, shall contribute to the fund or funds in each craft or trade in which he or she employs journeymen or apprentices on the order in the same amount or upon the same basis and in the same manner as the other contractors do, but, where the trust fund administrators are unable to accept the funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The Seller or subcontractors may add the amount of the contributions in computing his or her bid for the order. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in Section 227 of the California Labor Code.

5.9 Seller shall be responsible for compliance with this paragraph 5 for all apprenticeable occupations.

6. WORKDAY

6.1 Seller shall not permit any worker to labor more than 8 hours during any I day or more than 40 hours during any I calendar week, except as permitted by law and in such cases only upon such conditions as are provided by law. Seller shall forfeit to University, as a penalty, \$50 for each worker employed in the execution of this Contract by Seller, or any Subcontractor, for each day during which such worker is required or permitted to work more than 8 hours in any I day and 40 hours in any I calendar week in violation of the terms of this Paragraph 6 or in violation of the provisions of any law of the State of California. Such forfeiture amounts may be deducted from the Contract Sum. Seller and each Subcontractor shall keep, or cause to be kept, an accurate record showing the actual hours worked each day and each calendar week by each worker employed on the Project, which record shall be kept open at all reasonable hours to the inspection of University, its officers and agents, and to the inspection of the appropriate enforcement agency of the State of California.

7. TIME OF THE ESSENCE.

7.1 Any time limits stated in the Purchase Order for Seller's performance are of the essence.

8. APPLICABLE CODE REQUIREMENTS

8.1 Seller shall perform the Work in accordance with the following Applicable Code Requirements:

8.1.1 All laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over University, Seller, any Subcontractor, the Project, the Project site, the Work, or the prosecution of the Work.

8.1.2 All requirements of any insurance company issuing insurance required hereunder.

8.1.3 The Federal Occupational Safety and Health Act and all other Applicable Code Requirements relating to safety.

8.1.4 Applicable titles in the State of California Code of Regulations.

8.1.5 Applicable sections in the State of California Labor Code.

8.1.6 All Applicable Code Requirements relating to nondiscrimination, payment of prevailing wages, payroll records, apprentices, and work day.

8.2 Seller shall comply with and give notices required by all Applicable Code Requirements, including all environmental laws and all notice requirements under the State of California Safe Drinking Water and Enforcement Act of 1986 (State of California Health and Safety Code Section 25249.5 and applicable sections that follow). Seller shall promptly notify University's Representative in writing if Seller becomes aware during the performance of the Work that the Purchase Order is at variance with Applicable Code Requirements.

8.3 If Seller performs Work which it knows or should know is contrary to Applicable Code Requirements, without prior notice to University, Seller shall be responsible for such Work and any resulting damages including, without limitation, the costs of correcting Defective Work.