**INSTRUCTIONS FOR USE**

(December 2014)

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**SCHOOLS LEGAL SERVICE**

**PUBLIC WORKS BID PACKAGE**

**DESIGN-BID-BUILD MODEL (SINGLE GENERAL CONTRACTOR)**

**INTRODUCTION**

These documents are designed to be applicable on most public school construction projects, whether the project is considered to be large or small. The documents are designed for use with Design-Bid-Build projects where a single general contractor is to be selected and awarded the construction contract. Other documents are or will be available for use on Construction Management and Design-Build projects. Many of the documents are the same from one project delivery method to another, but significant differences exist in portions of the documents.

The options in structuring the construction agreement and/or general conditions differ depending on whether the project is a large project or a small project. The question of large or small is determined on a case-by-case basis, and depends on the duration of the project, dollar value, complexity and implications to the Owner of a potential failure to complete the project on time. Schools Legal Service typically defines a small project as being less than $500,000 in price and/or with a duration of only a couple of months. You may wish to consult with legal counsel for assistance in making this determination, and for consulting on various other options in conjunction with planning a successful construction project.

For large projects, Owners will use the Construction Agreement (Form 09) and General Conditions (Form 10) with their lengthy, complex and detailed provisions on virtually every aspect of large projects. On smaller projects, the Construction Agreement and General Conditions are both replaced by a single form, the Construction Agreement (Small Projects) (Form 09s).[[1]](#footnote-1)1 This single document covers matters considered essential for smaller projects, without the length, complexity and detail deemed essential for larger projects.

These documents are intended to provide a starting point from which the Owner[[2]](#footnote-2)2 may obtain a satisfactory set of public works bid documents for public school construction projects. These documents require tailoring on every project. These documents may not be suitable for use on your project—consult your legal counsel.

Schools Legal Service will work with the user, on request and as authorized by our clients, to tailor these documents for use on any particular project.

Items for consideration when tailoring documents for use on specified projects include many decisions that have to be made about how the project is viewed by the Owner. These decisions may include, but are not limited to, decisions about:

1. The nature and extent of liquidated damage provisions;

2. The nature and extent of scheduling requirements on the project;

3. Whether pre-qualification will be done;

4. Whether a mandatory job walk will be required;

5. The nature of the Labor Compliance Program for the project;

6. The presence of alternate bids whether additive or deductive; and

7. How substitution of “equal” products will be handled.

In drafting these documents, our intent was to make a set of documents that could be modified to reflect the particulars of each project, while maintaining the integrity of the package as a whole. When significant differences exist on how to approach a particular issue or point addressed in the documents, the Supplemental General Conditions section of the bid package permits an Owner to make significant changes to a form, without changing the text of the original form.

In this manner, the integrity of the base form will be maintained, the changed or special conditions are clearly identified, and the scope of legal review is limited, addressing only the changes made by filling in blanks in the forms, and changes made in the Supplemental General Conditions. The need for a word-for-word comparison of the entire package is eliminated, along with the attendant cost of such review.

To that end, the construction forms on our web site are in fillable Word format. By using fillable Word format each document can be customized to a limited extent to fit an Owner’s individual needs. Use the tab key to advance through a document and fill in the blank spaces as needed. Save and print each form as you complete it.

**INSTRUCTIONS FOR USE**

**Form 01—Notice to Contractors Calling for Bids**

Sections 1-4: All blanks should be completed identifying the public entity and the project.

Sections 5-6: The date, precise location and time of bid opening, which is the bid deadline, should be entered.

Section 8: Identify where plans are on file. This is where the contractors can obtain from the Owner a set of plans and specifications in order to bid. This can include the name of the contract person.

Section 9: The desired markings on the exterior of the sealed bids should be specified. In the absence of additional information sought, the exterior of the sealed bid should be marked with the bid number assigned to the project, and the name of the project as noted in section 2.

Section 10: If alternate bids are included, the manner of determining the low bidder should be specified. In the absence of specification to the contrary, the low bidder automatically is determined on the basis of base bid price, only.[[3]](#footnote-3)3 Check only one of the five options in paragraph 10. If subsection (b) is selected, also list the numbers of the alternates that will comprise the net bid. If subsection (c) is selected, also list the alternates, in order of preference, which will be taken until the maximum value, to be announced prior to opening the first bid, is reached. You cannot mix and match alternates under subsection (c). The alternates you designate, in the order you designate them, become fixed for the purpose of ascertaining who is the lowest bidder.

The Owner may award any of the alternates it selects, regardless of which box is checked and whether the alternate was part of the low bidder selection calculation.

Section 11: Job walks are not required, but may be advisable. Whether or not there will be a job walk is left to the discretion of the Owner, and depends on the circumstances of the project. Where a mandatory job walk is to be required, the date, time and location must be specified in the Notice. The date of the job walk must be at least five (5) calendar days after the date of initial publication of the Notice. If a mandatory job walk is part of the bid process, we suggest use of the “Certificate” which is included in the bid package as item 23, and accurate record keeping on attendance at the mandatory job walk. Failure to attend the entire job walk may render the bidder non-responsive. The Certificate assists the Owner in determining the responsiveness of the bidder.[[4]](#footnote-4)4

Section 12: If you charge a deposit for issuance of a set of plans, the amount should be entered here.

Section 16: The specific classification of contractor’s license that bidders should hold for this project must be indicated in the blank.

Section 17: Select a frequency, weekly, bi-weekly or monthly, for all contractors to electronically submit certified payroll records in PDF format to the Labor Commissioner.

Section 18: Place an “x” in one of the two blanks to indicate whether or not the Owner will retain 5% or 10%.

Section 19 Check one of two boxes to indicate whether prequalification pursuant to AB 1565 is required for general contractor and mechanical, electrical and plumbing subcontractors.[[5]](#footnote-5)

**Form 02—Instructions to Bidders**

Fill in the blanks for the Project Title/Bid # and identification of Owner.

Section 14: A blank must be completed to reflect whether the Owner is engaging in a prequalification process.

Note: If discretionary prequalification is conducted, the document “Contractor’s Qualification Questionnaire” (Form 24) should not be used. If no discretionary prequalification is performed, the Questionnaire can be used to assist the Owner in gather information on the qualifications and responsibility of the bidder to perform the requested work.

**Form 03—Bid Form**

Aside from the blanks indicating the name of the Owner and the Project Title/Bid #, all blanks in this form are to be completed by the Bidder. There is no further modification or filling-in for the Owner to perform on this form.

**Form 04—Substitution Listing Form**

Aside from the blanks indicating the name of the Owner and the Project Title/Bid #, all blanks in this form are to be completed by the Bidder. There is no further modification or filling-in for the Owner to perform on this form.

**Form 05—List of Subcontractors**

Aside from the blanks indicating the name of the Owner and the Project Title/Bid #, all blanks in this form are to be completed by the Bidder. There is no further modification or filling-in for the Owner to perform on this form.

**Form 06—Bid Bond**

Aside from the blanks indicating the name of the Owner and the Project Title/Bid #, all blanks in this form are to be completed by the Bidder. There is no further modification or filling-in for the Owner to perform on this form. Bidders should use this form of bond, not a form provided by their bond surety. Such forms may be different, and the differences may amount to a competitive advantage for the bidder, meaning the defect (failure to use the correct form) cannot be waived by the Owner.

**Form 07—Non-collusion Declaration**

Aside from the blanks indicating the name of the Owner and the Project Title/Bid #, all blanks in this form are to be completed by the Bidder. There is no further modification or filling-in for the Owner to perform on this form.

**Form 08—Exclusion of Asbestos and Lead Containing Products**

Aside from the blanks indicating the name of the Owner and the Project Title/Bid #, all blanks in this form are to be completed by the Bidder. There is no further modification or filling-in for the Owner to perform on this form.

**Form 09—Construction Agreement**

Introductory Paragraph: For bidding purposes, the name of the Owner and the county where the project is located must be completed. After awarding the contract, when sending it out for signature, all blanks in the initial section identifying the parties and the county where the project is located must be completed.

Section 2: The blank is for insertion of the identifying name/description of the project. Indicate the combination of base bid and alternates awarded (e.g., “The Acme Elementary School Project [base bid and alternates 1, 5, and 41]).”

Section 3: Fill in the contract price, including any alternates awarded.

Section 4: Fill in the number of days the Contractor has to commence the work after Owner issues the notice to proceed, and fill in the total number of calendar days permitted for completion of the project.

Section 5: Fill in the amount for the daily rate of liquidated damages. You should consult with legal counsel concerning this figure. It takes into account the size of the project, the completion date in relation to the Owner’s need for the facility and the consequences to the Owner and the public if the project is not delivered on time.

Section 8: For the final version after award of the Project, fill in corporate information concerning the Contractor (or leave blank and have the Contractor fill this in).

Signature

Blanks: For the final version after award of the Project, fill in the names of signatories.

**Form 09s—Construction Agreement (Small Projects)**

Introductory Paragraph. All blanks in the initial section identifying the parties must be completed.

Section 1: The blank is for insertion of the identifying name/description of the project. Indicate the combination of base bid and alternates awarded (e.g., “The Acme Elementary School Project (base bid and alternates 1, 5, and 41).”)

Section 2: Fill in the number of days permitted for completion of the Project.

Section 3: Fill in the contract price, including any alternates awarded.

Section 11: Fill in the amount for the daily rate of liquidated damages. You should consult with legal counsel concerning this figure. It takes into account the size of the project, the completion date in relation to the Owner’s need for the facility and the consequences to the Owner and the public if the project is not delivered on time.

Section 13: For the final version after award of the Project, fill in the addresses for the Owner and Contractor where notices should be sent for matters relating to the contract.

Signature

Blanks: Fill in names of signatories and the city and county where the contract is executed.

**Form 10—General Conditions**

Fill in the name of the Owner and the Project Title/Bid #. In Article 1.D, insert the name of any additional documents forming part of the Contract Documents for the Project.

**Form 11—Supplemental General Conditions-as Needed**

Supplemental General Conditions change the contract, by adding to it, taking terms out of it, or changing the terms. You may adjust the contract as needed to fit the Owner’s circumstances and requirements. However, all Supplemental General Conditions should be discussed with, and reviewed and approved by, your legal counsel.

Several “stock” supplemental General Conditions are provided for your consideration. To use any of these “stock” changes, select the appropriate page and fill in Owner name and the Project Title/Bid #, along with the number of the Supplemental General Condition. Number all your Supplemental General Conditions sequentially starting with number 1. Copies of the “stock” forms you choose not to use should not be included in the final bid package. For changes that are not covered by one of the “stock” forms, a separate blank form is provided, which can be used to modify any portion of the General Conditions. To use this form, reference the Article Number of the General Condition you wish to modify and describe the change with specificity. Number these specially-crafted Supplemental General Conditions sequentially with the “stock” changes you have chosen.

**Form 12—Payment Bond**

A payment bond is required by law on any public works contract with a value in excess of $25,000.

Aside from the blanks indicating the name of the Owner and a description of the work, all blanks in this form are to be completed by the Bidder. There is no further modification or filling-in for the Owner to perform on this form.

**Form 13—Performance Bond**

Performance bonds are recommended, but are not required by law. Discuss with legal counsel the requirement of a performance bond to your project.

Aside from the blanks indicating the name of the Owner and a description of the work, all blanks in this form are to be completed by the Bidder. There is no further modification or filling-in for the Owner to perform on this form.

**Form 14—Worker’s Compensation Certificate**

Aside from the blanks indicating the name of the Owner and the Project Title/Bid #, all blanks in this form are to be completed by the Bidder. There is no further modification or filling-in for the Owner to perform on this form.

**Form 15—Guarantee**

Aside from the blanks indicating the name of the Owner and the Project Title/Bid #, all blanks in this form are to be completed by the Bidder. There is no further modification or filling-in for the Owner to perform on this form.

**Form 16—Fingerprinting Certificate**

Aside from the blanks indicating the name of the Owner and identification of the Project, all blanks in this form are to be completed by the Bidder. There is no further modification or filling-in for the Owner to perform on this form.

**Form 17—Davis-Bacon Certification**

Aside from the blanks indicating the name of the Owner and the Project Title/Bid #, all blanks in this form are to be completed by the Bidder. There is no further modification or filling-in for the Owner to perform on this form.

**Form 18—Escrow Agreement**

For the bid package version, fill in only the name of the Owner and the Project Title/Bid #. To generate an Escrow Agreement after award of the Project, all blanks should be filled in.

**Form 19—Shop Drawing Transmittal Form**

Aside from the blanks indicating the name of the Owner and the Project Title/Bid #, all blanks in this form are to be completed by the Bidder. There is no further modification or filling-in for the Owner to perform on this form.

**Form 20—Drug-Free Workplace Certification**

Aside from the blanks indicating the name of the Owner and the Project Title/Bid #, all blanks in this form are to be completed by the Bidder. There is no further modification or filling-in for the Owner to perform on this form.

**Form 21—Change Order Form**

For the bid package version, only the name of the Owner and the Project Title/Bid # should be completed.

To create a change order for use on the Project after award, all blanks should be filled in.

**OPTIONAL FORMS**

**Form 22—Certificate of Attendance at Mandatory Job Walk**

Aside from the blanks indicating the name of the Owner and the Project Title/Bid #, all blanks in this form are to be completed by the Bidder. There is no further modification or filling-in for the Owner to perform on this form.

**Form 23—Contractor Qualifications Questionnaire**

Aside from the blanks indicating the name of the Owner and the Project Title/Bid #, all blanks in this form are to be completed by the Bidder. There is no further modification or filling-in for the Owner to perform on this form.

**Form 24—Attachment**

To modify or add to forms other than the General Conditions (Form 10), use this form. You must indicate the form number of the form being modified, fill in the Project Title/Bid # and the Owner’s name, and type in the change or addition. Attach the form to the document it modifies. For changes to the General Conditions, use the Supplemental General Conditions (Form 11).

**Form 25—AB 1565 Contractor Prequalification Questionnaire**

Aside from the blanks indicating the name of the Owner and the Project Title/Bid #, all blanks in this form are to be completed by the Bidder. There is no further modification or filling-in for the Owner to perform on this form.

**Form 26—AB 1565 Prequalification Questionnaire Validation**

Aside from the blanks indicating the name of the Owner and the Project Title/Bid #, all blanks in this form are to be completed by the Bidder. There is no further modification or filling-in for the Owner to perform on this form.

**Form 27—Iran Contracting Act Certification**

Aside from the blanks indicating the name of the Owner and the Project Title/Bid #, all blanks in this form are to be completed by the Bidder. There is no further modification or filling-in for the Owner to perform on this form.

All changes should be reviewed with legal counsel.

1. 1Do not use the General Conditions (Form 10) in conjunction with the Construction Agreement (Small Projects [Form 09s]). [↑](#footnote-ref-1)
2. 2We use “Owner” to reflect permissive use by school districts, ROP’s, community colleges, county offices and other public education entities [↑](#footnote-ref-2)
3. 3Public Contract Code section 20103.8. [↑](#footnote-ref-3)
4. 4If a contractor does not attend the job walk and submits a bid, the bid must contain this certificate. The certificate requires the contractor, under penalty of perjury, to certify that he/she attended the job walk. If the contractor fails to return the certificate with the bid, the bid is non-responsive. If the contractor indicates he/she did not attend, the bid is non-responsive for failure to attend the mandatory job walk. If the contractor lies, and the certificate is not consistent with your attendance information, and the contractor is the apparent low bidder, the bid may be rejected as being from a non-responsible bidder (one who lied to bid). [↑](#footnote-ref-4)
5. Prequalification is required on public works projects of $1 Million or more undertaken by K-12 districts of 2,500 ADA, or more utilizing State bond proceeds in whole or in part. [↑](#footnote-ref-5)