

# VVTA RFP 2020-10 HYDROGEN FUELING STATION ADDENDUM NO. 5

Monday, March 27, 2023

The following includes the questions posed prior to the deadline for questions on 03/17/2023 and VVTA's responses.

This addendum is provided to all known prospective proposers for clarification of the subject Request for Proposal (RFP).

Q1: "Are we able to submit a statement of qualifications with our bid proposal and if so, do we qualify for the 5% advantage?"

A1: Only those pre-qualified during the original RFQ process will be provided the 5% advantage"

Q2: "The proposer does not have Tax Returns prepared by a CPA, nor audited Financials since we are a private company. Would a financial wherewithal letter and a high-level summary of the past two years of financials be acceptable?"

A2: Please provide what you have to allow our Financial Evaluation Committee to complete the required Financial Evaluation.

Q3: "Would the Agency be open to have the fueling contract and the operations/maintenance contract line up on the same timeline of term?"

A3: No

Q4: "Will the awarding body please confirm that this project (is) subject to skilled and Trained Workforce requirements for apprenticeable crafts?"

A4: VVTA is a public entity that is engaging in a Design Build Project that exceeds \$1 Million dollars, so yes, Proposers are required to following the PCC 2600-2603 as they pertain to the Skilled and Trained Workforce requirements and for the apprenticeable crafts. Exhibit 1 to the Addendum includes the language from the Public Contract Code.

Q5: "Can VVTA please clarify the amount of fuel each bus will consume per day? This will assist the Proposer size the stations appropriately to fuel 60 buses in 7 hours."

A5: VVTA is estimating on average each bus will fuel approximately 40kg per day.

Q6: "Per section K, item (i) please confirm VVTA would like the proposers to list all services and facilities the proposer has provided or operated in the past five (5) year or if VVTA would like to see a select number, such as 3 references?"

A6: The Pre-Qualified Proposers already provided references during the RFQ process. No need to provide them again unless your company is submitting a new SOW with its RFP response.

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Q7: “Per section K, item (k) – the proposal requires stamped design drawings. Please clarify VVTA’s expectations of drawings that proposers must include with the proposal. “

A7: This is a Design/Build Project. Proposers are supposed to provide the drawings of the facility they are proposing to construct for VVTA on this project. The designs are needed with the Cost proposals.

Q8: “Can VVTA please consider an extension...?”

A8: VVTA is extending the deadline for proposals to April 20, 2023, at 3:00 PM.

Q9: “Should the Proposal Deviation form be submitted with the proposal?”

A9: Only if you need to propose a deviation. Otherwise, there is no need to submit a blank page for this item.

Q10: “Does the bid bond need to cover only the base year pricing? Does the option year pricing need to be included in the bid bond?”

A10: The bid bond is for the base year(s) of the project.

Q11: “Page 25. Please define the water flow rate and equipment needed for dewatering line.”

A11: This is the awarded contractor’s responsibility if contractor determines necessary.

Q12: “Page 25. Please specify the area needed to consider dewatering for the site.”

A12: See A11.

Q13: “Will all 60 buses be available for use on day one or is there a ramp up delivery schedule for the buses?”

A13: All 60 buses will not be available for use on day one. VVTA will start with 8-11 buses. The agency plans to add approximately 5-6 FCEB’s per year until its fleet is fully converted to FCEBs.

Q14: “What is the fueling performance expected of the public 350/700 Bar dispenser?”

A14: Expected to fuel a common passenger vehicle within 5 minutes @700 Bar. VVTA expects all 350 Bar dispensers to be able to fuel a bus within 10-12 minutes.

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Q15: “Will the proposal need to consider heavy duty and light duty vehicles for the 350 Bar AND 700 Bar fueling?”

A15: The proposal will consider heavy duty for 350 Bar fueling, and Light duty for 700 Bar fueling.

Q16: “What volume per vehicle type and pressure should the proposer consider?”

A16: VVTA plans to have buses with 57.5 kg storage @ 350 Bar. The public dispenser must be able to fuel VVTA’s buses as well as a common light duty Fuel Cell Electric Cars/vehicles.

Q17: “For the public dispenser, will VVTA want a single sided dispenser capable of 350 Bar/700 Bar or dual sided dispenser of 350 Bar/700 Bar dispensing?”

A17: Single sided.

Q18: “What is the demand for the H70 dispenser that has been requested?”

A18: Must be able fill 20 light duty passenger vehicles per day.

Q19: “Is there a fueling profile that could be shared?”

A19:

<b>Bus Information</b>	
Mass Stored	57.5 kg
Usable Mass	55 kg Estimated
Number of Cylinders	8
Cylinder Type Category	Type 3
Fuel Economy	Est. 8 Miles Per kg
Average Daily Use	300 Miles
Average Daily Fuel Consumption	35-40 kg
Fleet Average Daily Fuel Consumption	350-450 kg @ 8-11 buses
<b>Fueling Requirements</b>	
Fueling Time Per Bus	10-12 Mintes
Fills per Hour	Continuous
Fueling period	7:00PM to 3:30AM

Q20: “Is the dispenser expected to make Large HD fills? (more than 5kg)

A20: The H70 dispenser is expected to fill common light duty vehicles. All H35 dispensers are expected to make large fills more than 5kg.

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Q21: “Does VVTA want a canopy in the back lot fueling area?”

A21: VVTA will consider this as an optional line item. See below for Options pricing to be submitted with your proposal.

Q22: “Will VVTA want backup power in the event of a utility power loss, to be considered as part of this bid?”

A22: Yes, please include a natural gas backup generator in the proposal.

Q23: “Does VVTA want a fully redundant pump in the event that one pump is down for maintenance?”

A23: Yes.

Q24: “How many days of fuel is required to be on site?”

A24: 4 days initially. This may change as VVTA’s fleet grows.

Q25: “Has there been an Environmental Site Assessment (i.e. contaminated soils) done in the new site location?”

A25: The Federal Transportation Administration has approved VVTA’s Categorical Exclusion through the NEPA process during the purchase of the property. The CEQA Notice of Exemption was filed with the County of San Bernardino as well. Because of these processes, VVTA was not required to file an Environmental Impact Statement.

Q26: “Should proposers include a geotechnical survey?”

A26: No.

Q27: “One of our Key Personnel listed in the RFQ is no longer with the company. How can we qualify a replacement?”

A27: Please provide the person’s resume with the Proposal and reference why there is a change.

Q28: “Can you extend the due date?”

A28: Please see A8 above.

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Q29: “Can we schedule a second visit?”

A29: Yes

Q30: “Can you release the as-built drawings of the block wall that will be removed?”

A30: Please following this link to the As Built Drawings:  
<https://www.dropbox.com/scl/fo/oebh9po1xl1gdijytu70i/h?dl=0&rlkey=lmi6gnut7zvd9un6g4ghgs72h>

Q31: “Can you estimate the # of FCEBs Operating in Years 1, 2, 3?”

A31 See A13

Q32: “What times are the daily fueling window for VVTA?”

A32: VVTA’s main fueling window is 7PM-3:30AM.

Q33: “Aggregate General Liability is very high. Previous hydrogen projects have been in the \$5 M range. Can VVTA lower the Aggregate requirement amount?”

A33: These limits were at the insistence of our Insurance Provider. We cannot change the limits. However, if you need to have a higher rate to make up for the aggregate amount in Excess Liability, VVTA may consider – with the awarded proposer.

Q34: “Auto Liability is very high. Previous hydrogen projects have been in the \$1M range. Can VVTA lower the Aggregate requirement amount?”

A34: Please see A33 above.

Q35: “Is contract expected to be single source for Equipment supply, H2 supply and maintenance, or is separate contracts still under consideration?”

A35: VVTA intends to award to a single Proposer.

Q36: “RFQ indicates subcontractors must be identified during/prior to proposal submission. Typically subcontracts are selected during the execution phase based on competitive bidding. Is sub-contractor identification required prior to award?”

A36: Sub-contractors need to be identified when Proposals are submitted.

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Q37: "LH2 Storage Tanks are typically leased, rather than included with the capital cost. Can LH2 storage tank be included with the H2 cost rather than sold as equipment?"

A37: No, VVTA will not consider a leased LH2 storage tank.

Q38: "Is there flexibility in the fueling window to fuel 60 buses within 7 hours?"

A38: 7pm-3:30am.

Q39: "Can you specify the Back-to-Back requirement for the fueling of the buses?"

A39: Continuous between 7pm-3:30am.

Q40: "Can you specify how many buses are 40ft vs. 60ft buses? (60ft buses have a much bigger fuel tank 37.5kg vs. 56kg)"

A40: VVTA does not have 60ft buses in its fleet. However, VVTA is planning to have 40' buses with a capacity of 57.5kg.

Q41: "What is the fuel tank specification of the buses? (volume or fueled mass, number of tanks etc.)"

A41: Eight (8) type III tanks, 57.5kg @ 5000 psig.

Q42: "Can VVTA please confirm expected daily usage as 2,000+ kg/day equates to 730,000 kgs/yr which does not align with the annual requirements in Attachment E – Required Forms?"

A42: VVTA does not expect a daily usage of 2,000+ kg/day for several years. The Agency expects fuel usage to increase as its FCEB fleet grows to full capacity by 2035. Please see Attachment E in the scope of work for VVTA's annual estimated usage.

Q43: "Can you share the Bid Bond format?"

A43: Please see Exhibit 2 – the Bid Bond form provided by the Federal Acquisition Regulation (FAR)

Q45: "RFP indicate each deviation on a separate form. Would you accept an attachment with a table summarizing exemptions (sic)"

A45: Yes, but please make sure the title of the document matches the title on the one provided in Attachment E.

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- Q46: “Why is O&M term different from Product Supply term?”
- A46: VVTA feels it is in its best interest to have different terms for maintenance and product supply.
- Q47: “Can you please confirm VVTA is responsible for all state and local taxes on the Product Supply and equipment use as this is not in clear in the RFP?”
- A47: See pg. 10 of the RFP – L.3
- Q48: “Is bonding required for the O&M and Product Supply for the full term of agreement?”
- A48: Bid Bond is for the base years of service. Performance and Payment bonds (only for the selected Design/Build Contractor) are for the Construction phase of the contract. Sample Bid Bond is attached to this Addendum. Sample Performance and Payment bonds are included in the RFP package in Attachment E – Required Forms.
- Q49: “Will a proposal that is contingent upon the award being all inclusive (Design/Build; O&M; Liquid Supply) be deemed non-responsive?”
- A49: The intent of VVTA is to have one contract, all inclusive.
- Q50: “Is the proposal the contract or will VVTA negotiate with prospective awardee those exceptions that may have been taken in the bid response?”
- A50: VVTA reserves the right to request a Best and Final Offer from the Proposers and to negotiate a contract with the Proposer who is selected for award.
- Q51: “Is VVTA requiring a canopy over the filling station? There are significant costs associated with this type of structure, therefore, will VVTA allow for a line item to enter pricing for this requirement?”
- A51: See A21 above.
- Q52: “If a telemetry unit is installed, the supplier will be managing deliveries, therefore, the 24 hours’ notice is not applicable. Do you agree?”
- A52: VVTA’s intent is to place orders directly. However, VVTA may consider supplier managed deliveries. Deliveries of fuel must be fulfilled within 24 hours of the specified delivery date.

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Q53: “Is it VVTA intent that they will be placing H2 orders directly vs. supplier managing deliveries? If so, 48 hours’ notice will be required. Is this acceptable?”

A53: See A52

Q54: “Can we have 24/7 access for liquid H2 deliveries?”

A54: VVTA’s facility can generally be accessible 24/7, however the facility will be closed on major holidays.

Q55: “As it pertains to Federal Regulatory Requirements, are all of these clauses needed? If not, which ones apply to each phase of the agreement – Design/Build; O&M; Product Supply?”

A55: Yes. Each clause is enacted by the dollar amount associated with it. Because this project will exceed all of the Federal requirements as listed in Attachment B, all of the regulations apply.

Q56: “How does VVTA plan to pay the O&M pricing? Is it annually/monthly?”

A56 This will be negotiated with the awarded contractor.

Q57: “Can VVTA please elaborate on what specifically would be audited as this is a lump sum contract for the Work and payments will be made based on molecules delivered and invoiced? We can provide invoices and delivery tickets for auditing purposes, is this acceptable?”

A57: Please provide invoices and delivery tickets as examples.

Q58: “Are there any limitations on Construction working hours?”

A58: Construction hours shall be during normal business hours.

Q59: “Can you please provide As-Builts of the existing Public Fueling Island?”

A59: See A 30 above.

Q60: “Can we have the SCE planners contact information?”

A60: This will be provided to the awarded contractor.



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Q61: "Carrying Insurance for 5 years beyond the project completion will add considerable costs, can we just include an extended warranty on the equipment (3 years is typical) and carry GL insurance during construction only?"

A61: The insurance requirements are for the O&M contract as well as fuel deliveries. So, yes, the awarded bidder will have to carry insurance beyond the project completion.

Q62: "We request an extension of two weeks..."

A62: Please see A8 above.

Q63: "(RFP pg 10) Please confirm a 'proposed design of the facility – approved and stamped by the Firm's Architect/Engineer.'

A63: VVTA requires the design to be included with the bidder's Cost proposal. VVTA will need to value engineer to ensure the design and the cost will best fit VVTA's needs.

Q64: "(RFP page 11) Please clarify the 5% DBE Preference. Does this mean any involvement of a California registered DBE as a subcontract will result in this 5% bonus on bidders pricing score, ie any percent contribution to bidder's total budget?"

A64: Any of the Bidders who list a DBE as a subcontractor are availed the preference. Meaning, 5% of the price proposal will be reduced, in the price evaluation only and not on the contract price.

Q65: "(RFP page 21) Please confirm the station does not need to be fully complete by December 31, 2024 and that schedules based on the actual Notice to Proceed date will be considered with realistic timeframes for equipment procurement and construction."

A65: This will be negotiated with the Awarded Design/Build contractor.

Q66: "(RFP page 24) Can VVTA please advise what the fueling rate per day requirement is for public 700 bar fueling (kg/day)?"

A66: See A18

Q67: "(continued from Q66) Can VVTA please advise what average fill amount (kg/bus) should be assumed for the 350 bar '60 buses in 7hours' requirement?"

A67: See A5 above.

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Q68: “(RFP page 68) Please confirm the facility Maintenance Annual amounts (Subtotal – 05), which are listed as Estimated Costs are firm, fixed amount the bidder will be compensated each year the maintenance contract is effective.”

A68: That is correct.

Q69: “This RFP essentially has 3 scopes of work: 1) design and construction of the hydrogen fuel station, 2) maintenance of the equipment, and 3) liquid hydrogen fuel supply. Please advise if VVTA will consider proposals with pricing for 2 of the 3 scopes, i.e. proposals that do this will not be automatically deemed non-responsive. For example: design, construction and maintenance only? This may result in best value offers to VVTA.”

A69: See A49 above.

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Please include the following with your response to the RFP:

OPTIONS	Parts	Labor	Markup	Options Total
Option Line 1 - Natural Gas Backup Generator	\$	\$	\$	\$
Options Line 2 – Back Lot Fueling Area Canopy	\$	\$	\$	\$

The Due Date for the proposals has changed:

Description	Previously Scheduled	Changed to:
Proposal Due Date	3:00 PM PDT, Thursday, March 30, 2023	3:00 PM PDT, Thursday, April 20, 2023

As stated in the RFP, all addenda must be acknowledged. Please use Attachment E included in the RFP package to acknowledge receipt of this addendum. Failure to acknowledge any addenda to this RFP may be a cause to deem Potential Proposer as “Non-Responsive.”

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End of Addendum No. 5

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**PUBLIC CONTRACT CODE - PCC**

**DIVISION 2. GENERAL PROVISIONS [1100 - 22355]**

*( Division 2 enacted by Stats. 1981, Ch. 306. )*

**PART 1. ADMINISTRATIVE PROVISIONS [1100 - 9204]**

*( Heading of Part 1 added by Stats. 1982, Ch. 1120, Sec. 2. )*

**CHAPTER 2.9. Skilled and Trained Workforce Requirements [2600 - 2603]**

*( Chapter 2.9 added by Stats. 2016, Ch. 774, Sec. 4. )*

**2600.**

(a) This chapter applies when a public entity is required by statute or regulation to obtain an enforceable commitment that a bidder, contractor, or other entity will use a skilled and trained workforce to complete a contract or project.

(b) A public entity may require a bidder, contractor, or other entity to use a skilled and trained workforce to complete a contract or project regardless of whether the public entity is required to do so by a statute or regulation.

(c) When the use of a skilled and trained workforce to complete a contract or project is required pursuant to subdivision (a) or (b), the public entity shall include in all bid documents and construction contracts a notice that the project is subject to the skilled and trained workforce requirement.

*(Amended by Stats. 2020, Ch. 347, Sec. 1. (AB 2311) Effective January 1, 2021.)*

**2600.5.**

**2601.**

For purposes of this chapter:

(a) "Apprenticeable occupation" means an occupation for which the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations had approved an apprenticeship program pursuant to Section 3075 of the Labor Code before January 1, 2014.

(b) "Chief" means the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations.

(c) "Graduate of an apprenticeship program" means either of the following:

(1) An individual that has been issued a certificate of completion under the authority of the California Apprenticeship Council for completing an apprenticeship program approved by the chief pursuant to Section 3075 of the Labor Code.

(2) An individual that has completed an apprenticeship program located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(d) "Skilled and trained workforce" means a workforce that meets all of the following conditions:

(1) All the workers performing work in an apprenticeable occupation in the building and construction trades are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the chief.

(2) (A) For work performed on or after January 1, 2017, at least 30 percent of the skilled journeypersons employed to perform work on the contract or project by every contractor and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation. This requirement shall not apply to work performed in the occupation of teamster.

(B) For work performed on or after January 1, 2018, at least 40 percent of the skilled journeypersons employed to perform work on the contract or project by every contractor and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation, except that the requirements of subparagraph (A) shall continue to apply to work performed in the following occupations: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.

(C) For work performed on or after January 1, 2019, at least 50 percent of the skilled journeypersons employed to perform work on the contract or project by every contractor and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation, except that the requirements of subparagraph (A) shall continue to apply to work performed in the following occupations: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.

(D) For work performed on or after January 1, 2020, at least 60 percent of the skilled journeypersons employed to perform work on the contract or project by every contractor and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation, except that the requirements of subparagraph (A) shall continue to apply to work performed in the following occupations: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.

(3) For an apprenticeable occupation in which no apprenticeship program had been approved by the chief before January 1, 1995, up to one-half of the graduation percentage requirements of paragraph (2) may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation before the chief's approval of an apprenticeship program for that occupation in the county in which the project is located.

(4) The apprenticeship graduation percentage requirements of paragraph (2) are satisfied if, in a particular calendar month, either of the following is true:

(A) At least the required percentage of the skilled journeypersons employed by the contractor or subcontractor to perform work on the contract or project meet the graduation percentage requirement.

(B) For the hours of work performed by skilled journeypersons employed by the contractor or subcontractor on the contract or project, the percentage of hours performed by skilled journeypersons who met the graduation requirement is at least equal to the required graduation percentage.

(5) The contractor or subcontractor need not meet the apprenticeship graduation requirements of paragraph (2) if, during the calendar month, the contractor or subcontractor employs skilled journeypersons to perform fewer than 10 hours of work on the contract or project.

(6) A subcontractor need not meet the apprenticeship graduation requirements of paragraph (2) if both of the following requirements are met:

(A) The subcontractor was not a listed subcontractor under Section 4104 or a substitute for a listed subcontractor.

(B) The subcontract does not exceed one-half of 1 percent of the price of the prime contract.

(e) "Skilled journeyperson" means a worker who either:

(1) Graduated from an apprenticeship program for the applicable occupation that was approved by the chief or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(2) Has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the chief.

*(Amended by Stats. 2018, Ch. 882, Sec. 1. (AB 3018) Effective January 1, 2019.)*

## **2602.**

(a) When a contractor, bidder, or other entity is required to provide an enforceable commitment that a skilled and trained workforce will be used to complete a contract or project, the commitment shall be made in an enforceable agreement with the public entity or other awarding body that provides both of the following:

(1) The contractor, bidder, or other entity, and its contractors and subcontractors at every tier, will comply with this chapter.

(2) The contractor, bidder, or other entity will provide to the public entity or other awarding body, on a monthly basis while the project or contract is being performed, a report demonstrating compliance with this chapter.

(b) If the contractor, bidder, or other entity fails to provide the monthly report required by this section, or provides a report that is incomplete, the public agency or other awarding body shall withhold further payments until a complete report is provided. If a monthly report is incomplete due to the failure of a subcontractor to timely submit the required information to the contractor, bidder, or other entity, the public agency or awarding body shall only withhold an amount equal to 150 percent of the value of the monthly billing for the relevant subcontractor. If a public agency or other awarding body withholds amounts pursuant to this subdivision, the contractor, bidder, or other entity shall be entitled to withhold the same amount from the subcontractor until the subcontractor provides the contractor, bidder, or other entity a complete report, and the public agency or awarding body subsequently pays the contractor, bidder, or other entity the withheld payments. If the contractor, bidder, or other entity substitutes a subcontractor pursuant to Chapter 4 (commencing with Section 4100) for failure to provide a complete report, and the contractor, bidder, or other entity replaces the subcontractor with one that provides an enforceable commitment that a skilled and trained workforce will be used to complete the contract or project, the public agency or awarding body shall immediately resume making payments to the contractor, bidder, or other entity, including all previously withheld payments.

(c) If a monthly report does not demonstrate compliance with this chapter, the public agency or other awarding body shall do all of the following:

(1) Withhold further payments until the contractor, bidder, or other entity provides a plan to achieve substantial compliance with this chapter, with respect to the relevant apprenticeable occupation, prior to completion of the contract or project. All of the following shall apply to the withholding of payments under this paragraph:

(A) The public agency or awarding body shall withhold an amount equal to 150 percent of the value of the monthly billing for the entity that failed to comply with this chapter, or 150 percent of the value of the monthly billing for the subcontractor that failed to comply with this chapter. If a public agency or other awarding body withholds amounts pursuant to this paragraph, the contractor, bidder, or other entity shall be entitled to withhold the same amount from the subcontractor that did not demonstrate compliance with this chapter.

(B) If the contractor, bidder, or other entity substitutes a subcontractor pursuant to Chapter 4 (commencing with Section 4100) for failure to demonstrate compliance, and the contractor, bidder, or other entity replaces the subcontractor with one that provides an enforceable commitment that a skilled and trained workforce will be used to complete the contract or project, the public agency or awarding body shall immediately resume making payments to the contractor, bidder, or other entity, including all previously withheld payments.

(C) If a contractor, bidder, or other entity submits to the public agency or awarding body a plan to achieve substantial compliance with this chapter, the public agency or awarding body shall immediately resume making payments

to the contractor, bidder, or other entity, including all previously withheld payments unless, within a reasonable time, the public agency or awarding body rejects the plan as insufficient and explains the reasons for the rejection.

(2) Forward a copy of the monthly report to the Labor Commissioner for issuance of a civil wage and penalty assessment in accordance with Section 2603.

(3) Forward to the Labor Commissioner a copy of the plan, if any, submitted by the contractor, bidder, or other entity to achieve substantial compliance with this chapter and the response to that plan, if any, by the public agency or awarding body.

(d) A monthly report provided to the public agency or other awarding body shall be a public record under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code) and shall be open to public inspection.

*(Amended by Stats. 2021, Ch. 615, Sec. 353. (AB 474) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 463 of Stats. 2021, Ch. 615.)*

### **2603.**

(a) If the Labor Commissioner or his or her designee determines after an investigation that a contractor or subcontractor failed to use a skilled and trained workforce in accordance with this chapter, the contractor or subcontractor responsible for the violation shall forfeit, as a civil penalty to the state, not more than five thousand dollars (\$5,000) per month of work performed in violation of this chapter. A contractor or subcontractor that commits a second or subsequent violation within a three-year period shall forfeit as a civil penalty to the state the sum of not more than ten thousand dollars (\$10,000) per month of work performed in violation of this chapter.

(b) For the purposes of this section:

(1) "Any interest" shall have the same meaning as in subdivision (h) of Section 1777.1 of the Labor Code.

(2) "Contractor or subcontractor" shall have the same meaning as in subdivision (g) of Section 1777.1 of the Labor Code.

(3) "Entity" shall have the same meaning as in subdivision (i) of Section 1777.1 of the Labor Code.

(c) The amount of any monetary penalty may be reduced or waived by the Labor Commissioner if the amount of the penalty would be disproportionate to the severity of the violation. The Labor Commissioner shall consider, in setting the amount of a monetary penalty, all of the following circumstances:

(1) Whether the violation was intentional.

(2) Whether the contractor or subcontractor has committed other violations of this chapter or of the Labor Code.



(3) Whether, upon notice of the violation, the contractor or subcontractor took steps to voluntarily remedy the violation.

(4) The extent or severity of the violation.

(5) Whether a contractor or subcontractor submitted and followed a plan to achieve substantial compliance with this chapter.

(d) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741 of the Labor Code, upon determination of penalties assessed under subdivision (a). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742 of the Labor Code. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code, shall apply.

(e) The determination of the Labor Commissioner as to the amount of the penalty imposed under subdivision (a) shall be reviewable by the Director of Industrial Relations only for an abuse of discretion.

(f) If a subcontractor is found to have violated this chapter, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of the subcontractor's failure to comply with this chapter or unless the prime contractor fails to comply with any of the following requirements:

(1) For contracts entered into on or after January 1, 2019, the contract executed between the contractor and the subcontractor for the performance of work on the project shall include a copy of this chapter.

(2) The contractor shall periodically monitor the subcontractor's use of a skilled and trained workforce.

(3) Upon becoming aware of a failure of the subcontractor to use a skilled and trained workforce, the contractor shall take corrective action, including, but not limited to, retaining 150 percent of the amount due to the subcontractor for work performed on the project until the failure is corrected.

(4) Prior to making the final payment to the subcontractor for work performed on the project, the contractor shall obtain a declaration signed under penalty of perjury from the subcontractor that the subcontractor has met the requirements of this chapter.

(g) The Labor Commissioner shall notify the prime contractor within 15 days of the receipt by the Labor Commissioner of a complaint that a subcontractor violated this chapter.

(h) Whenever a contractor or subcontractor is found by the Labor Commissioner to be in violation of this chapter with intent to defraud, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or

subcontractor has any interest is ineligible for a period of not less than one year or more than three years to do either of the following:

(1) Bid on or be awarded a contract for a public works project.

(2) Perform work as a subcontractor on a public works project.

(i) Whenever a contractor or subcontractor is found by the Labor Commissioner to have committed two or more separate willful violations of this chapter within a three-year period, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period of up to three years to do either of the following:

(1) Bid on or be awarded a contract for a public works project.

(2) Perform work as a subcontractor on a public works project.

(j) The debarment procedures adopted by the Labor Commissioner pursuant to Section 1777.1 of the Labor Code shall apply to any finding made under subdivisions (h) or (i) of this section.

(k) The Labor Commissioner shall publish on the commissioner's Internet Web site a list of contractors who are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project pursuant to this section. The list shall contain the name of the contractor, the Contractors' State License Board license number of the contractor, and the effective period of debarment of the contractor. Contractors shall be added to the list upon issuance of a debarment order and the commissioner shall also notify the Contractors' State License Board when the list is updated. At least annually, the commissioner shall notify awarding bodies of the availability of the list of debarred contractors.

(l) (1) If a public entity or awarding body that is required to obtain an enforceable commitment that a skilled and trained workforce will be used to complete a contract or project receives a monthly report which does not demonstrate compliance with the skilled and trained workforce requirements of subdivision (c) of Section 10506.6, Section 10506.8, Section 10506.9, or subdivision (c) of Section 20928.2 of this code, Article 9 (commencing with Section 388) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, or subparagraph (B) of paragraph (8) of subdivision (a) of Section 65913.4 or subparagraph (B) of paragraph (4) of subdivision (f) of Section 66201 of the Government Code, the public entity or awarding body shall forward a copy of the monthly report to the Labor Commissioner for issuance of a civil wage and penalty assessment in accordance with this section.

(2) The penalty and debarment procedures of this section shall apply to violations of subdivision (c) of Section 10506.6, Section 10506.8, Section 10506.9, or subdivision (c) of Section 20928.2 of this code, Article 9 (commencing with Section 388) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, or subparagraph (B) of paragraph (8) of subdivision (a) of Section 65913.4 or subparagraph (B) of paragraph (4) of subdivision (f) of Section 66201 of the Government Code.

**EXHIBIT 2 - SAMPLE BID BOND**

<p><b>BID BOND</b> (See instructions on reverse)</p>	DATE BOND EXECUTED (Must not be later than bid opening date)	OMB Control Number: 9000-0045 Expiration Date: 8/31/2025
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Paperwork Reduction Act Statement - This information collection meets the requirements of 44 USC § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget (OMB) control number. The OMB control number for this collection is 9000-0045. We estimate that it will take 1 hour to read the instructions, gather the facts, and answer the questions. Send only comments relating to our time estimate, including suggestions for reducing this burden, or any other aspects of this collection of information to: General Services Administration, Regulatory Secretariat Division (M1V1CB), 1800 F Street, NW, Washington, DC 20405.

PRINCIPAL (Legal name and business address)	TYPE OF ORGANIZATION ("X" one) <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION <input type="checkbox"/> OTHER (Specify)
SURETY(IES) (Name and business address)	
STATE OF INCORPORATION	

PENAL SUM OF BOND					BID IDENTIFICATION	
PERCENT OF BID PRICE	AMOUNT NOT TO EXCEED				BID DATE	INVITATION NUMBER
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS	FOR (Construction, Supplies or Services)	

**OBLIGATION:**

We, the Principal and Surety(ies) are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

**CONDITIONS:**

The Principal has submitted the bid identified above.

**THEREFORE:**

The above obligation is void if the Principal - (a) upon acceptance by the Government of the bid identified above, within the period specified therein for acceptance (sixty (60) days if no period is specified), executes the further contractual documents and gives the bond(s) required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of the forms by the principal; or (b) in the event of failure to execute such further contractual documents and give such bonds, pays the Government for any cost of procuring the work which exceeds the amount of the bid.

Each Surety executing this instrument agrees that its obligation is not impaired by any extension(s) of the time for acceptance of the bid that the Principal may grant to the Government. Notice to the surety(ies) of extension(s) is waived. However, waiver of the notice applies only to extensions aggregating not more than sixty (60) calendar days in addition to the period originally allowed for acceptance of the bid.

**WITNESS:**

The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

PRINCIPAL				
SIGNATURE(S)	1. _____ (Seal)	2. _____ (Seal)	3. _____ (Seal)	Corporate Seal
NAME(S) & TITLE(S) (Typed)	1. _____	2. _____	3. _____	

INDIVIDUAL SURETY(IES)		
SIGNATURE(S)	1. _____ (Seal)	2. _____ (Seal)
NAME(S) (Typed)	1. _____	2. _____

CORPORATE SURETY(IES)			
<b>SURETY A</b>	NAME & ADDRESS	STATE OF INCORPORATION	LIABILITY LIMIT (\$)
	SIGNATURE(S)	1. _____	2. _____
	NAME(S) & TITLE(S) (Typed)	1. _____	2. _____

<b>SURETY B</b>	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
<b>SURETY C</b>	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
<b>SURETY D</b>	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
<b>SURETY E</b>	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
<b>SURETY F</b>	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
<b>SURETY G</b>	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		

### INSTRUCTIONS

1. This form is authorized for use when a bid guaranty is required. Any deviation from this form will require the written approval of the Administrator of General Services.
2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
3. The bond may express penal sum as a percentage of the bid price. In these cases, the bond may state a maximum dollar limitation (e.g., 20% of the bid price but the amount not to exceed \_\_\_\_\_ dollars).
4. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitations listed therein. The value put into the LIABILITY LIMIT block is the penal sum (i.e., the face value) of the bond, unless a co-surety arrangement is proposed.  
  
(b) When multiple corporate sureties are involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identifier corresponding to each of the sureties. Moreover, when co-surety arrangements exist, the parties may allocate their respective limitations of liability under the bond, provided that the sum total of their liability equals 100% of the bond penal sum.  
  
(c) When individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.
5. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.
6. Type the name and title of each person signing this bond in the space provided.
7. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror."