

SECTION 3

AWARD AND EXECUTION OF CONTRACT

3.01 CONSIDERATION OF BIDS:

After the Proposals are opened and read, the approximate estimated quantity of each item multiplied by the unit price bid for that item, the products calculated, and the gross sums bid obtained in each of the acceptable Proposals, the Contract Bid Prices will be compared and the results of such comparison will be made available to each Bidder on request. Until the final award of the Contract, however, the Owner reserves the right to reject any and all Proposals, and to waive all technicalities.

3.02 AWARD OF CONTRACT:

The award of the Contract, if it is to be awarded, will be by the Owner to the lowest responsible Bidder whose Proposal shall comply with all the requirements necessary to render it formal. The successful Bidder will be notified by letter, mailed to the address shown on his Proposal, that his bid has been accepted and that he has been awarded the Contract. Award will be made within 60 days after bids are received unless otherwise stated in the Special Provisions. This period may be extended if mutually agreeable to Owner and Contractor.

The Owner, before awarding the Contract, may require a reviewed financial statement. If, in the opinion of the Owner, this statement does not justify the award, the Owner reserves the right to reject the low bid. The reviewed financial statement shall contain, as a minimum, a review of financial statements including performing inquiry and analytical procedures that provide the Owner with a reasonable basis for expressing limited assurance that there are not material modifications that should be made to the statements in order for them to be in conformity with generally accepted accounting principles or, if applicable, with any other comprehensive basis of accounting. The financial statement shall be submitted within 10 days of the Owner's request.

Should it be necessary to eliminate part of the Work in order to award the Contract within the funds available for construction, the Owner reserves the

right to designate the portion of the Work to be omitted. The amount of deduction will be determined by multiplying the quantity of items omitted by the unit price or lump sum bid for such items, or by negotiation.

3.03 RETURN OF PROPOSAL GUARANTEE:

All Proposal Guarantees will be returned, if requested, within 30 days following the opening of Proposals; except those of the three lowest Bidders, which will be returned, if requested, after satisfactory bonds have been furnished and the Contract has been executed. The Owner reserves the right to return all Proposal Guarantees by mail and its responsibility shall end upon the mailing thereof.

3.04 EXECUTION OF CONTRACT:

The Contract shall be signed by the successful Bidder and returned to the Engineer with satisfactory Contract Bonds within 10 days after the date of Notice of Award.

3.05 FAILURE TO EXECUTE CONTRACT:

Failure to execute a Contract and file acceptable Contract Bonds within 10 days after the date of Notice of Award shall be just cause for the annulment of the award and the forfeiture of the Proposal Guaranty¹ as liquidation of damages sustained. Award may then be made to the next lowest responsible Bidder or the Work may be readvertised or constructed by day labor, or otherwise contracted as the Owner may decide.

3.06 REQUIREMENTS OF CONTRACT BONDS:

Prior to award of the Contract, the Contractor shall submit to the Owner the name and address of the bonding company for the approval of the Owner.

¹ Revised 02/03

A Contract Bond, and a Labor and Material Payment Bond, in the forms which are included in the Contract Documents, and each in the sum as herein specified, to be duly executed at the proper time sequence by the successful Bidder as Principal and by a surety company licensed to do business under the laws of the State in which the Work is located, and satisfactory to the Owner, will be required for the faithful performance of the Contract, and the payment for labor and materials. Sureties to be acceptable must be named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. In addition, the surety company must have a rating of A- or better, as rated by A. M. Best Company.²

To insure the faithful performance of each and every condition, stipulation, and requirement of the Contract, and to indemnify and save harmless the Owner from any and all damages, either directly or indirectly, arising out of any failure to perform the same, the successful Bidder, to whom the Contract is awarded shall, within 10 days from the date of the award, furnish and file with the Owner an acceptable Contract Bond in the amount equal to 100 percent of the Contract Bid Price of the Contract awarded. In case of default on the part of the Contractor, all expenses incident to ascertaining and collecting losses suffered by the Owner under the bond, including both engineering and legal services, shall lie against the Contract Bond for performance of the Work.

In addition thereto, the successful Bidder to whom the Contract is awarded shall, within 10 days, furnish and file with the Owner an acceptable surety bond for payment of labor, materials, feed-stuffs or supplies payable to the Owner in an amount not less than 100 percent of the Contract Price, with the obligation that the Contractor shall promptly make payment to all persons furnishing him or them with labor, materials, feed-stuffs, or supplies for or in the prosecution of the Work, and for the payment of reasonable attorney's fees incurred by successful claimants or plaintiffs in suits on said Bond.

If at any time, the Owner, for justifiable cause, shall be or become dissatisfied with any surety or sureties upon the Performance or Payment Bonds, the Contractor shall, within 5 days after notice from the Owner, substitute an acceptable bond (or bonds) in

² Revised and adopted 07/24/06

such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums on such bond shall be paid by the Contractor. No further payments to the Contractor shall be deemed due nor shall be made until the new surety or sureties shall have furnished acceptable bond to the Owner.

In lieu of a Contract Bond and a Labor and Material Bond, the Contractor may submit an irrevocable letter of Credit (Appendix K). The letter must be completed and certified by a lending institution satisfactory to the Board. The letter shall be in the amount of 100% of the Contract amount.

3.07 INSURANCE:³

A. General: The Contractor shall provide insurance in accordance with the required specifications.

B. Contractor Coverage: The Contractor shall not commence work under this Contract until he has obtained all insurance required under the following paragraphs and until such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been obtained and approved. If the subcontractor does not take out insurance in his own name, the principal contractor shall provide such insurance protection for the subcontractor and such subcontractor's employees.

C. Casualty Insurance: The following insurance coverages (with limits not less than specified herein) shall be maintained by the Contractor for the duration of the Contract, affording coverage for any claim arising out of Contractor's operations herein, whether by the Contractor or by any subcontractor or by any Employee or Agent of either:

1. Claims of employees under Worker's Compensation and other similar employee benefit acts, including claims because of bodily injury, occupational sickness or disease, or death.

³ Revised and adopted 07/24/06

2. Claims arising out of bodily injury, sickness, disease, or death of any person other than employee.
3. Claims for damages arising out of libel, slander, false arrest, detention or imprisonment, malicious prosecution, defamation or violation of right of privacy, wrongful entry or eviction or other right of private occupancy, including claims as a result of an offense related to the employment of a claimant by Contractor (so-called "Personal Injury").
4. Claims arising out of damage to or destruction of tangible property, including loss of use.
5. The Contractor shall furnish certification of insurance and policies verifying that the above coverages are in effect before commencing any work, and that each policy is endorsed to give the Owner 30 days notice in writing in the event of cancellation or material change therein.

Policies of Insurance shall state that the Owner and the Owner's employees be named as additional insureds on the Contractor's Automobile Liability and Commercial General Liability policies.

In respect to Worker's Compensation, a Waiver of Subrogation shall be issued in favor of the Owner. Where applicable, the U.S. Longshore and Harborworkers Compensation Act Endorsement shall be attached to the policy. Where applicable, the Maritime Coverage Endorsement (to include coverage under Jones Act) shall be attached to the policy. Both the U. S. Longshore and Harborworkers and the Maritime Coverage shall have limits equal to or greater than the employer's liability coverage.

6. Rated by AM Best – A- or better. For non-admitted companies, a rating of A or better by AM Best.
 - a. At the discretion of the Board, worker's compensation insurance may be placed through a qualified worker's compensation self-insurance fund.

b. Limits of Liability:

<u>Type of Insurance</u>	<u>Bodily Injury</u>
Worker's Compensation	Statutory
Employers' Liability	\$500,000 Each Accident; \$500,000 By Disease, Policy Lmt \$500,000 Disease,Each Employee
Commercial Automobile	\$1,000,000 Each Accident. Bodily Injury and Property Damage Combined Business auto includes all owned, leased, hired and non-owned automobiles.

Commercial General Liability:

\$1,000,000 per Occurrence
\$1,000,000 Personal &
Advertising Injury
\$2,000,000 General
Aggregate per project
\$2,000,000 Products &
Completed Operations
Aggregate
\$100,000 fire damage liability

Umbrella Liability:

In addition to the basic limits previously set out for Commercial General Liability, Products and Completed Operations, Automobile Liability and Worker's Compensation and Employer's Liability, Contractors shall provide Umbrella Liability limits of \$5,000,000 per occurrence and aggregate.

Coverage shall be issued with a "pay on behalf of" wording, including Personal Injury and other extensions, and provide coverage at least as broad as that afforded by the primary insurance policies.

Extensions:

Blanket Contractual Liability
Personal Injury
Blanket Collapse and Underground Coverage
Broad Form Property (including Completed Operations)
Employees as Additional Insureds
Host Liquor Liability
Non-owned Watercraft Liability
Worldwide Products

Fire Legal Liability
Incidental Medical Malpractice
Extended Bodily Injury (Assault and Battery)
Newly Acquired Organizations

When and if the use of explosives for blasting purposes appears necessary or desirable, such methods shall not be undertaken without written authorization of the Owner, and then only provided that acceptable extensions of liability coverage have been obtained specifically to include the explosion ("X") hazard and the collapse ("C") hazard.

The policy of general liability shall include the special underground property damage coverage (providing the so-called "U" hazard) on a blanket basis.

D. Owner's Protective Liability: The Contractor shall furnish from a carrier acceptable to the Owner, a policy of liability insurance, commonly called "Owner's Protective Liability" in the name of the Board of Water and Sewer Commissioners of the City of Mobile, d/b/a MAWSS, providing "Independent Contractor's Coverage" for the operations embraced by this Contract with limits of \$1,000,000 bodily injury and \$1,000,000 property damage. Policy shall be endorsed that the premium is to be paid by the named Contractor

E. Property Insurance - Contractor:

1. The Contractor shall assume complete responsibility for safe-guarding all portions of the Work in progress, whether completed or not, until such work has been accepted by the Owner, and shall maintain such insurance to protect himself against perils which may cause such property to be damaged or destroyed. This coverage shall be similar to the former All Risks of Physical Loss Form, including, if available, Collapse. Title to such work in progress, whether completed or not, shall remain vested in the Contractor until finally accepted by the Owner.
2. **Coverage Form** - Coverage shall be provided on an actual completed value Builder's Risk Form or, if more appropriate, an installation floater in the joint name of the Contractor and Owner for the duration of the Contract.

3. The Owner has the option of providing Builder's Risk coverage for any projects undertaken by a Contractor. If the Owner exercises this option, the Contract Proposal will appropriately indicate this and provide for separately showing the cost of the Builder's Risk coverage in the Bid.

3.08 INDEMNITY PROVISIONS:

The Contractor shall indemnify and hold harmless the Owner and the Engineer and their agents and employees from and against all claims, damages, losses, demands, payments, suits, actions, recoveries and judgments of every nature and description and expenses including attorney's fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense: (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom; and (2) is caused in whole or in part by a negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

The Contractor shall assume all risk and bear any loss or injury to property or persons occasioned by neglect or accident during the progress of Work until the same shall have been completed and accepted. He shall also assume all blame or loss by reason of neglect or violation of any state or federal law or municipal rule, regulation or order. The Contractor shall give to the proper authorities all required notices relating to the Work, obtain all official permits and licenses and pay all proper fees. He shall make good any injury that may have occurred to any adjoining building, structure or utility in consequence of the Work.

In any and all claims against the Owner or the Engineer or any of their agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under the "INDEMNITY PROVISIONS" shall not be limited in any way by any limitation on the amount or types of damages, compensation or benefits payable by or for the Contractor or any subcontractor under

workmen's compensation acts, disability benefit acts or other employee benefit acts.

The obligations of the Contractor under Paragraph 3.08 shall not extend to the liability of the Engineer's negligent acts, errors or omissions, or those of his employees or agents.

END OF SECTION