

DIVISION 1 GENERAL REQUIREMENTS

SECTION 01200

PAYMENTS AND COMPLETION

PART 1 GENERAL

1.1 SUMMARY

Section includes description of all “payment to complete” requirements and procedures for determining amount of Work performed and for obtaining payment for Work performed.

1.2 REFERENCES

- A. California Public Contract Code
- B. Code of Civil Procedures
- C. Government Code

1.3 SCOPE OF WORK

Work under Contract Documents, or under any Bid Item, allowance, or alternate, shall include all labor, materials, taxes, transport, handling, storage, supervision, administration, and all other items necessary for the satisfactory completion of Work, whether or not expressly specified or indicated.

1.4 DETERMINATION OF QUANTITIES

Quantity of work to be paid for under any item for which a unit price is fixed in Contract Documents shall be number, as determined by District, of units of work satisfactorily completed in accordance with Contract Documents or as directed by District. Unless otherwise provided, determination of number of units of work so completed will be based, so far as practicable, on actual measurement or count within prescribed or ordered limits, and no payment will be made for work done outside of limits. Measurements and computations will be made by methods set forth in Contract Documents, including without limitation this Section 01200. If methods are not so set forth, measurements shall be made in any manner which District considers appropriate for class of Work measured (e.g., pre-assigned values, percentage completion, units completed or incremental milestones). Contractor must immediately inform District of any disputes regarding quantity measurements and shall immediately supply District with any documentation supporting the disputed measurements.

1.5 SCOPE OF PAYMENT

- A. Except as otherwise expressly stated in Section 01010 (Summary), payment to Contractor at the unit price or other price fixed in Contract Documents for performing Work required under any item, or (if the Contract is on a single lump sum price basis) at the lump sum price fixed in the Contract Documents for performing all Work required under Contract Documents, and as either may be adjusted pursuant to any approved Change Order or Construction Change Directive, shall be full compensation for completing, in accordance with Contract Documents, all Work required under the item or under Contract Documents, and for all expense incurred by Contractor for any purpose in connection with the performance and completion of said Work, including all incidental work necessary for completion of the Work.
- B. The Contract Sum, whether lump sum, unit price or otherwise, shall be deemed to include all costs necessary to complete required Work, all costs (if any) for loss or damage arising from nature of Work or prosecution of the Work, and from action of elements. Unless Contract Documents expressly provide otherwise, the Contract Sum shall be deemed to include:
 - 1. Any and all costs arising from any unforeseen difficulties which may be encountered during, and all risks of any description connected with, prosecution of Work or prosecution of Bid Item (whether lump sum or unit price) until acceptance by District;
 - 2. All expenses incurred due to suspension, or discontinuance of Work or discontinuance of Bid Item (whether lump sum or unit price) as provided in Contract Documents;

3. Escalation to allow for cost increases between time of Contract Award and completion of Work or completion of Bid Item (whether lump sum or unit price).
- C. Whenever it is specified herein that Contractor is to do work or furnish materials of any class for which no price is fixed in Contract Documents, it shall be understood that Contractor is to do such work or furnish such materials without extra charge or allowance or direct payment of any sort, and that cost of doing work or furnishing materials is to be included in price Bid, unless it is expressly specified herein, in particular cases, that work or material is to be paid for as extra work.
- D. Unit Prices shall apply to work covered by unit prices so long as actual quantities performed on the Project are not less than 75 percent or greater than 125 percent of the estimated quantities contained in Document 00400 (Bid Form) or otherwise referenced in Document 01010 (Summary). If actual quantities exceed these parameters, then the unit price shall be adjusted by an amount to reflect the Contractor's incremental cost differential resulting from increased or decreased economies of scale.
- E. No payment shall be made for materials or equipment not yet incorporated into the Work, except as specified in Section 01010 (Summary).
- F. The District may, in its discretion, where Contractor requests payment on the basis of materials and equipment not incorporated in the Work, Contractor must satisfy the following conditions:
 1. The materials and/or equipment shall be delivered and suitably stored at the Sites or at another local location agreed to in writing, for example, a mutually acceptable warehouse;
 2. Full title to the materials and/or equipment shall vest in District at the time of delivery to the Sites, warehouse or other storage location;
 3. Obtain a negotiable warehouse receipt, endorsed over to District for materials and/or equipment stored in an off-site warehouse. No payment will be made until such endorsed receipts are delivered to District;
 4. Stockpiled materials and/or equipment shall be available for District inspection, but District shall have no obligation to inspect them and its inspection or failure to inspect shall not relieve Contractor of any obligations under the Contract Documents. Materials and/or equipment shall be segregated and labeled or tagged to identify these specific Contract Documents;
 5. After delivery of materials and/or equipment, if any inherent or acquired defects are discovered, defective materials and/or equipment shall be removed and replaced with suitable materials and/or equipment at Contractor's expense;
 6. At Contractor's expense, insure the materials and/or equipment against theft, fire, flood, vandalism, and malicious mischief, as well as any other coverages required under the Contract Documents;
 7. Contractor's Application for Payment shall be accompanied by a bill of sale, invoice or other documentation warranting that District has received the materials and equipment free and clear of all liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect District's interest therein, all of which must be satisfactory to District. This documentation shall include, but not be limited to, conditional releases of mechanics' liens and stop notices from all those providing materials and equipment as to which the Application for Payment relates, as well as unconditional releases of the same from the same as to the previous Application for Payment for which they have not already been provided.
- G. Amounts previously paid for materials and equipment prior to incorporation into the Work shall be deducted from amounts otherwise due Contractor as they are incorporated.

1.6 BASIS OF PAYMENT

- A. Unit Price Quantities: When estimated quantity for specific portions of Work is listed in Bid Form, quantity of Work to be paid for shall be actual number of units satisfactorily completed, as determined by District and certified by Contractor, in accordance with Contract Documents.
- B. Lump Sum: When estimated quantity for specific portion of Work is not indicated and unit is designated as lump sum, payment will be on a lump sum basis for Work satisfactorily completed in accordance with Contract Documents.

- C. Allowances: Allowance items (if any) will be paid for as provided in Section 01010 (Summary). Funds authorized for Allowance work will not be released for Contract payments unless District has authorized Allowance work in writing.
- D. District does not expressly, or by implication, agree, warrant, or represent in any manner, that actual amount of Work will correspond with amount shown or estimated and reserves right to increase or decrease amount of any class or portion of Work, to leave out entire Bid Item or Items, or to add work not originally included in Bid or Contract Documents, when in its judgment such change is in best interest of District. No change in Work shall be considered a waiver of any other condition of Contract Documents. No claim shall be made for anticipated profit, for loss of profit, for damages, or for extra payment whatever, except as otherwise expressly provided for in Contract Documents, because of any differences between amount of work actually done and estimated amount as set forth herein, or for elimination of Bid Items.

1.7 **PROGRESS PAYMENTS**

- A. If requested by Contractor, progress payments will be made monthly.
- B. Schedules of Values:
 - 1. Contractor shall provide a separate Schedule of Values for each of the three campus sites.
 - 2. Within ten Days from issuance of Notice of Award and prior to the Contractor's first Application for Payment, submit a detailed breakdown of its Bid by scheduled Work items and/or activities, including coordination responsibilities and Project Record Documents responsibilities. Where more than one Subcontractor comprises the work of a Work item or activity, the Schedules of Values shall show a separate line item for each subcontract. Furnish such breakdown of the total Contract Sum by assigning dollar values (cost estimates) to each applicable Progress Schedule network activity, which cumulative sum equals the total Contract Sum. The format and detail of the breakdown shall be as directed by District to facilitate and clarify future progress payments to Contractor for direct Work under Contract Documents. This breakdown shall be referred to as the Schedules of Values.
 - 3. Contractor's overhead, profit, insurance, cost of bonds (except to the extent expressly identified in a Bid Item) and/or other financing, as well as "general conditions costs," (e.g., Site cleanup and maintenance, temporary roads and access, off-Site access roads, temporary power and lighting, security, and the like), shall be prorated through all activities so that the sum of all the Schedules of Values line items equals Contractor's total Contract Sum, less any allowances designated by District. Scheduling, record documents and quality assurance control shall be separate line items.
 - 4. District will review the breakdown in conjunction with the Progress Schedule to ensure that the dollar amounts of this Schedules of Values are, in fact, fair market cost allocations for the Work items listed. Upon favorable review by District, District will accept these Schedules of Values for use. District shall be the sole judge of fair market cost allocations.
 - 5. District will reject any attempt to increase the cost of early activities, i.e., "front loading," resulting in a complete reallocation of moneys until such "front loading" is corrected. Repeated attempts at "front loading" may result in suspension or termination of the Work for default, or refusal to process progress payments until such time as the Schedules of Values is acceptable to District.
 - 6. Funds shall be allocated in the Schedules of Values for Project Closeout.
- C. Applications for Payment: Contractor shall establish and maintain records of cost of the Work in accordance with generally accepted accounting practices. In addition:
 - 1. On or before the 16th of the month, Contractor shall meet with the District's Project Manager and the Inspector of Record with proposed "pencil copy" of Application for Payment indicating % complete for

each value. Application for Payment shall include % complete for each value as agreed in the pre-Application meeting.

2. On or before the 20th Day of each month (but after receipt of District's approval of the updated Schedule as required by Section 01320 (Progress Schedules and Reports), Contractor shall submit to District five copies of an Application for Payment for the cost of the Work put in place during the period from the 15th Day of the previous month to the 15th Day of the current month. Such Applications for Payment shall be for the total value of activities completed or partially completed, including approved activity costs, based upon Schedules of Values prices (or Bid item prices if unit price) of all labor and materials incorporated in the Work up until midnight of the last Day of that one month period, less the aggregate of previous payments. Accumulated retainage shall be shown as separate item in payment summary. Contractor shall submit in a form acceptable to District an itemized cost breakdown of Contractor's record of Cost of the Work together with supporting data and any certification required by District. If Contractor is late submitting its Application for Payment, that Application may be processed at any time during the succeeding one-month period, resulting in processing of Contractor's Application for Payment being delayed for more than a Day for Day basis.
3. Applications for Payment may include, but are not necessarily limited to the following:
 - a. Material, equipment, and labor incorporated into the Work, less any previous payments for the same;
 - b. Up to 75 percent of the cost of equipment identified in paragraph 1.5F of this Section 01200 (if any), if purchased and delivered to the Sites or stored off Site, as may be approved by District.
 - c. Up to 50 percent of the cost of materials identified in paragraph 1.5F of this Section 01200 (if any), specifically fabricated for the Project that are not yet incorporated into the Work.
4. At the time any Application for Payment is submitted, certify in writing the accuracy of the Application and that Contractor has fulfilled all scheduling requirements of Document 00700 (General Conditions) and Section 01320 (Progress Schedules and Reports), including updates and revisions. A responsible officer of Contractor shall execute the certification.
5. No progress payment will be processed prior to District receiving all requested, acceptable schedule update information. Failure to submit a schedule update complying with Section 01320 justifies denying the entire Application for Payment.
6. Each Application for Payment shall list each Change Order and Construction Change Directive ("CCD") executed prior to date of submission, including the Change Order/CCD Number, and a description of the work activities, consistent with the descriptions of original work activities. Submit a monthly Change Order/CCD status log to District.
7. If District requires substantiating data, submit information requested by District, with cover letter identifying Project, Application for Payment number and date, and detailed list of enclosures. Submit one copy of substantiating data and cover letter for each copy of Application for Payment submitted.
8. If Contractor fails or refuses to participate in work reconciliations or other construction progress evaluation with District, Contractor shall not receive current payment until Contractor has participated fully in providing construction progress information and schedule update information to District.

D. Progress Payments

1. District will review Contractor's Application for Payment following receipt. If adjustments need to be made to percent of completion of each activity, District will make appropriate notations and return to Contractor. Contractor shall revise and resubmit. All parties shall update percentage of completion values in the same manner, i.e., express value of an accumulated percentage of completion to date.

2. Each Application for Payment may be reviewed by District and/or inspectors to determine whether the Application for Payment is proper, and shall be rejected, revised, or approved by District pursuant to the Schedules of Values prepared in accordance with paragraph 1.7B of this Section 01200.
3. If it is determined that the Application for Payment is not proper and suitable for payment, District will return it to the Contractor as soon as practicable, but no later than seven Days after receipt, together with a document setting forth in writing the reasons why the Application for Payment is not proper. If District determines that portions of the Application for Payment are not proper or not due under the Contract Documents, then District may approve the other portions of the Application for Payment, and in the case of disputed items or defective Work not remedied, may withhold up to 150 percent of the disputed amount from the progress payment.
4. Pursuant to Public Contract Code Section 20104.50, if District fails to make any progress payment within 30 Days after receipt of an undisputed and properly submitted Application for Payment from Contractor, District shall pay interest to the Contractor equivalent to the legal rates set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure. The 30-Day period shall be reduced by the number of Days by which District exceeds the seven-Day return requirement set forth herein.
5. As soon as practicable after approval of each Application for Payment for progress payments, District will pay to Contractor in manner provided by law, an amount equal to 90 percent of the amounts otherwise due as provided in the Contract Documents, or a lesser amount if so provided in Contract Documents, provided that payments may at any time be withheld if, in judgment of District, Work is not proceeding in accordance with Contract, or Contractor is not complying with requirements of Contract, or to comply with stop notices or to offset liquidated damages accruing or expected.
6. Before any progress payment or final payment is due or made, Contractor shall submit satisfactory evidence that Contractor is not delinquent in payments to employees, Subcontractors, suppliers, or creditors for labor and materials incorporated into Work. This specifically includes, without limitation, conditional lien release forms for the current progress payment and unconditional release forms for past progress payments. District also may elect in its sole discretion to pay progress payments by joint check to Contractor and each Subcontractor having an interest in that progress payment in such amount.
7. District reserves and shall have the right to withhold payment for any equipment and/or specifically fabricated materials that, in the sole judgment of District, are not adequately and properly protected against weather and/or damage prior to or following incorporation into the Work.
8. Granting of progress payment or payments by District, or receipt thereof by Contractor, shall not be understood as constituting in any sense acceptance of Work or of any portion thereof, and shall in no way lessen liability of Contractor to replace unsatisfactory work or material, though unsatisfactory character of work or material may have been apparent or detected at time payment was made.
9. When District shall charge sum of money against Contractor under any provision of Contract Documents, amount of charge shall be deducted and retained by District from amount of next succeeding progress payment or from any other moneys due or that may become due Contractor under Contract. If, on completion or termination of Contract, such moneys due Contractor are found insufficient to cover District's charges against it, District shall have right to recover balance from Contractor or Sureties.

1.8 SUBSTITUTION OF SECURITIES IN LIEU OF RETENTION

- A. In accordance with the provisions of Public Contract Code Section 22300, substitution of securities for any moneys withheld under Contract Documents to ensure performance is permitted under following conditions:
 1. At request and expense of Contractor, securities listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Contractor and District which are equivalent to the amount withheld under retention provisions of Contract shall be deposited with Controller or with a state or

federally chartered bank in California, as the escrow agent, who shall then pay such moneys to Contractor. Upon satisfactory completion of Contract, securities shall be returned to Contractor.

2. Alternatively, Contractor may request and District shall make payment of retentions earned directly to the escrow agent at the expense of Contractor. At the expense of Contractor, Contractor may direct the investment of the payments into securities and receive the interest earned on the investments upon the same terms provided for in this Section 01200 for securities deposited by Contractor. Upon satisfactory completion of Contract Documents, Contractor shall receive from escrow agent all securities, interest, and payments received by the escrow agent from District, pursuant to the terms of this Section 01200. Pay to each Subcontractor, not later than 20 Days after receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each Subcontractor, on the amount of retention withheld to insure the performance of Contractor.
3. Contractor shall be beneficial owner of securities substituted for moneys withheld and shall receive any interest thereon.
4. Enter into escrow agreement with Controller according to Document 00680 (Escrow Agreement for Security Deposits in Lieu of Retention), as authorized under Public Contract Code Section 22300, specifying amount of securities to be deposited, terms and conditions of conversion to cash in case of default of Contractor, and termination of escrow upon completion of Contract Documents.
5. Public Contract Code Section 22300 is hereby incorporated in full by this reference.

1.9 FINAL PAYMENT

- A. As soon as practicable after all required Work is completed in accordance with Contract Documents, including punchlist, testing, record documents and Contractor maintenance after Final Acceptance, District will pay to Contractor, in manner provided by law, unpaid balance of Contract Sum of Work (including without limitation retentions), or whole Contract Sum of Work if no progress payment has been made, determined in accordance with terms of Contract Documents, less sums as may be lawfully retained under any provisions of Contract Documents or by law.
- B. Prior progress payments shall be subject to correction in the final payment. District's determination of amount due as final payment shall be final and conclusive evidence of amount of Work performed by Contractor under Contract Documents and shall be full measure of compensation to be received by Contractor.
- C. Contractor and each assignee under an assignment in effect at time of final payment shall execute and deliver at time of final payment, and as a condition precedent to District's obligation to make final payment, Document 00650 (Agreement and Release of Any and All Claims) discharging District, its officers, agents, employees, and consultants of and from liabilities, obligations, and claims arising under Contract Documents.

1.10 EFFECT OF PAYMENT

- A. Payment will be made by District, based on District's observations at the Sites and the data comprising the Application for Payment. Payment will not be a representation that District has:
 1. Made exhaustive or continuous on-Site inspections to check the quality or quantity of Work;
 2. Reviewed construction means, methods, techniques, sequences, or procedures;
 3. Reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by District to substantiate Contractor's right to payment; or
 4. Made examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum.

1.11 CONTINGENCY RESERVE

- A. District will authorize and direct Contractor regarding provisions in this paragraph.
- B. Contingency Reserve Amount: as listed in Document 00520 (Agreement).

- C. District shall determine in its sole discretion which, if any, costs it will authorize in writing to be paid from the Contingency Reserve. Generally, Contingency Reserve will be used only for District-initiated changes in scope of Work of Contract Documents.
- D. Cost shall be determined as for CCD work as provided in Section 01250 (Modification Procedures).
- E. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due Contractor on account of Work covered by this Contingency Reserve, and the Contract Sum will be correspondingly adjusted.

END OF SECTION