

## **SURPLUS BID ATTACHMENT**

### **INSTRUCTIONS TO BIDDERS**

1. **INSPECTION:** This material should be carefully inspected before bidding and any questions regarding quantities or specifications shall be clarified by bidder before submitting his bid. Please contact Procurement Professional to make arrangements to view material.
2. **BID DEPOSIT:** Bid deposits are not required.
3. **ACCEPTANCE/REJECTION OF BIDS:** The right is reserved to SMUD to waive any informality, to withdraw any or all items from the sale, to reject any or all bids, or to accept one part of a bid and reject the other. In addition, SMUD reserves the right to reject all bids received if SMUD determines, in its sole discretion, that the price bid is not in SMUD's best interest.
4. **BID QUOTES:** Although SMUD desires a bid on each of the items listed, it is not mandatory that a bidder quote on every item. No alternate bids indicating first, second and third choices, etc., will be considered.

**S A M P L E   C O N T R A C T****SURPLUS MATERIALS CONTRACT NO.**

This contract by and between \_\_\_\_\_, hereinafter designated as the Buyer, and the Sacramento Municipal Utility District, hereinafter designated as SMUD sets forth the terms and conditions under which Buyer will purchase and SMUD will sell, as is and where is, the material described below.

ITEM NO.	QUANTITY	DESCRIPTION	UNIT PRICE	EXTENDED AMOUNT
1	1 ea	<b>SAMPLE</b>	\$_____	\$_____
2		TAX		\$_____
		TOTAL		\$_____

The terms and conditions of SMUDSurplus Materials Bid No. \_\_\_\_\_ dated \_\_\_\_\_, attached hereto and by this reference included herein and Buyer's Bid dated \_\_\_\_\_, shall apply.

The purchased material must be removed from the site no later than \_\_\_\_\_.

No verbal agreement or conversation with any representative or employee SMUD, either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained. This contract constitutes the entire agreement between the parties hereto and no changes, alterations, or modifications hereof shall be effective unless in writing and signed by the parties hereto.

ACCEPTED FOR  
**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name Title

ACCEPTED FOR  
**BUYER'S (COMPANY) NAME**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_  
(Type / Print)

Title: \_\_\_\_\_

## **TERMS AND CONDITIONS OF SALE**

1. **WARRANTY:** The material offered for sale is being made available on an “as is, where is” basis; and SMUD makes no warranty either expressed or implied as to quantity, quality, weight, size or description, or its merchantability or fitness for use or purpose.
2. **PAYMENT:** Payment is to be made prior to removal of items unless other arrangements are mutually agreed upon in writing. Complete payment must be made by certified or cashier’s check or approved company check and returned with executed contract.
3. **TAXES:** In addition to the prices specified herein, the amount of any present or future Sales, Use, Excise or other similar tax applicable to the sale of materials hereunder shall be paid by the Buyer. If this material is being purchased for use or consumption by Buyer, sales tax will be added. If the material is being purchased for resale, the Buyer shall provide SMUD with a tax exemption certificate acceptable to the taxing authorities.
4. **POINT OF SALE/F.O.B. POINT:** All materials will be sold F.O.B. SMUD. The Buyer will be responsible for all costs and arrangements associated with removing from the F.O.B. point, loading and transportation of the materials described.
5. **REMOVAL OF MATERIAL/TITLE:** Buyer agrees to remove all material from the site no later than thirty (30) days after mailing of the written contract to Buyer for execution. Title to the material will pass to Buyer upon receipt of payment or an approved purchase order and pickup of material. Risk of loss or damage to the material shall pass to Buyer with the passage of title except that Buyer agrees to assume to risk of loss or damage provided for in this paragraph. In the event material is not removed by the required performance date, SMUD reserves the right to sell the material, at its convenience by any method of sale it chooses, and without prior notice to Buyer. Title to any property remaining on the premises beyond the required performance date will revert to SMUD. Storage charges may be assessed to Buyer by SMUD for any property remaining on premises beyond the required performance date, unless SMUD is responsible for the delay in removal. In the event of a resale by SMUD or costs incurred for clean up work necessitated through the removal of material, Buyer will be responsible to SMUD for any costs or damage occasioned to SMUD due to Buyer’s failure to perform.
6. **PROTECTION OF SMUD PROPERTY:** Buyer shall be liable for any damage to SMUD property caused by removal operation.

7. **SECURITY REQUIREMENTS:** Access to SMUD facilities is controlled in accordance with specific site requirements. The Buyer's personnel must comply with SMUD's security requirements and guidelines.
8. **WORK HOURS:** Removal of material by Buyer will be limited to SMUD's regular workdays and hours as follows: Monday through Friday, 7:00 A.M. to 3:00 P.M. No removal will be permitted on, Saturday, Sunday or Holidays.
9. **COMPLIANCE:** Where the laws, rules or regulations, federal, state, or local, or any agency thereof, require permits, licenses or approval for the possession, removal or use of the material or any part thereof, to be furnished under this sale the Buyer shall be responsible for securing such permits, licenses and approval from the proper authorities and for paying any required fees.
10. **INDEMNIFICATION:** Buyer shall indemnify, defend, and hold harmless SMUD, it's Directors, Officers, Agents and Employees against all claims, loss, damage, expense and liability asserted or incurred by other parties, including, but not limited to, SMUD's employees and Buyer's employees, arising out of or in any way connected with the performance of this contract and caused by the acts, omissions, intent or negligence, whether active or passive, of Buyer, it's agents, employees and suppliers, and excepting only such loss, damage or liability as may be caused by the intentional acts or the sole negligence SMUD.
11. **FORCE MAJEURE:** SMUD shall not be liable for any loss or damage incurred through inability to secure proper transportation, strikes, fires, floods, wars, insurrections, riots, embargoes, delays in transportation, government action, acts of Providence, unavoidable contingencies, or any other cause beyond SMUD's control, preventing, delaying or interfering with the delivery of goods. Within a reasonable time after the cause of such breach is removed, SMUD shall perform this contract on his part, and the Buyer shall then accept and pay for the goods upon the terms as mentioned in this contract.
12. **ASSIGNMENT:** Any attempt to assign this contract shall be void unless the parties have mutually agreed thereto prior to the assignment and execution of the agreement.
13. **APPLICABLE LAW:** This Agreement shall be governed, construed and interpreted solely by and under the laws of the State of California without regard to conflict of laws provisions. In the event of litigation or disputes arising out of or in any way related to the performance of this Agreement, the Parties hereto agree to submit to the jurisdiction of any court of competent jurisdiction within Sacramento County, California and shall comply with all requirements necessary to give such Court jurisdiction.

14. **RESPONSIBILITY FOR COMPLIANCE:** The Buyer has the responsibility for compliance with the safety and health standards of the California Occupational Safety and Health Act (CAL/OSHA), and all applicable rules, regulations, and orders and specifically for complying the California Code of Regulations, Title 8, Section 5216, the “Lead Standard”.
15. **PERSONNEL SAFETY:** The Buyer has the responsibility for the safety of all personnel invoiced in the performance of the work under this bid.
16. **INSPECTION:** SMUD shall have the right to witness, at any time, Buyer’s services under this contract. The making or failure to make any inspection of, or payment for, or acceptance of the services, shall in no way impair SMUD’s right to reject non-conforming services, or to avail itself of any other remedies to which SMUD may be entitled, notwithstanding SMUD’s knowledge of the nonconformity, its substantiality of the ease of its discovery.
17. **NON-EXCLUSIVE AGREEMENT AND CANCELLATION:** This is a non-exclusive Agreement. SMUD may, in its sole discretion, enter into additional similar or identical agreements with other buyers at any time during the effective period of this Agreement to sell and dispose of Equipment and /or Materials of the same type and nature to be removed under this Agreement.

SMUD may, at its sole discretion, cancel or rescind this Agreement in whole or in part, upon giving the Buyer five (5) days prior written notice of such cancellation. SMUD may also, at its sole discretion, cancel or terminate any item or task to be performed under the terms of this agreement, in whole or in part upon giving Buyer five (5) day prior written notice of such discharge.

The Buyer will agree to pay SMUD for all Equipment or Materials removed under this Agreement as specified herein. SMUD may, at its sole discretion negotiate a revised sales price for items listed in this agreement as compensation for personnel costs and other similar recoverable costs incurred in the performance of such services prior to notice of cancellation or discharge when deemed necessary or appropriate by SMUD. The Buyer agrees to waive all claims for damages including, but not limited to incidental and consequential damages including, but not limited to loss of anticipated profit as a result of such discharge, discontinuance and/or modification as provided herein.

**SALES TAX EXEMPTION CERTIFICATE**

*(not needed with the bid response)*

I HEREBY CERTIFY: That I hold valid Seller's Permit No. \_\_\_\_\_ issued pursuant to the Sales and Use Tax Law, that I am engaged in the business of \_\_\_\_\_, that the tangible personal property described herein which I shall purchase from the Sacramento Municipal Utility SMUD will be resold by me in the form of tangible personal property; provided, however, that in the event any of such property is used for any purpose other than retention, demonstration, of the regular course of business, it is understood that I am required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of such property.

Description of property to be purchased: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
*PURCHASER*

\_\_\_\_\_  
*ADDRESS*

\_\_\_\_\_  
*By*

*DATED:* \_\_\_\_\_