

Attachment A - Location Map
**10087 - CENTER FOR THE PERFORMING ARTS
CHILLER, COOLING TOWER AND BOILER REPLACEMENT**



**Center for the Performing Arts
Chiller, Cooling Tower and Boilers Replacement
Location Map**
Not to Scale



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O. 408-356-3000
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July 10, 2025

Via Hand Delivery and Email

City of San Jose- Department of Public Works
Attention: Matt Loesch, Director of Public Works
Lauren Profeit, CIP Procurement
200 E. Santa Clara St.
Tower 5th Floor
San Jose, CA 95113
matt.loesch@sanjoseca.gov
lauren.profeit@sanjoseca.gov

Subject: *BID PROTEST*
10087 - Center for the Performing Arts Chiller, Cooling Tower, and Boilers Replacement (the “Project”)

In response to and in protest of the NOTICE OF INTENT TO AWARD, this letter is to notify the Governing Board that on behalf of Environmental Systems, Inc. (“ESI”) we are protesting the apparent low bidder Mesa Energy Systems, Inc. (“Mesa”) for the Project referenced above as per Special Provision under section 3-1.01C based on three issues.

A. Mesa Energy Systems, Inc. Was Not the Lowest Responsible Bidder.

Public owners have a statutory obligation to award the contract to the “lowest responsible bidder”. (Pub. Contract Code §§ 10180, 20162, 20672, 10185; *Universal By-Products, Inc. v. City of Modesto*, (1974) 43 CA3d 145, 152).

The lowest bidder responsible is the bidder whose bid is the lowest monetary bid, who responds to the requirements of the proposed work, and who is financially responsible and qualified to do the work. (*City of Inglewood-Los Angeles County Civic Ctr. Authority v. Sup. Ct.*, (1972) 7 C3d 861; *Associated Builders & Contractors v. San Francisco Airports Commission*, (1999) 21 C4th 352, 366.) It is clear ESI was the lowest responsible bidder. The first issue here is whether Mesa was and is a responsible bidder. It is not.

ISSUE #1:

- ESI as the protesting contractor has standing because as it has a reasonable possibility of being awarded the contract 10087-Center of Performing Arts Chiller, Cooling Tower, and Boilers Replacement should the City properly sustain this protest.



City of San Jose- Department of Public Works
 July 10, 2025
 Page | 2

We understand the issue of a contractor having a suspended license may not require a formal bid protest. As per section 2-1.10 Disqualification of Bidders, item #8 the failure of the bidder to have a valid contractor's license in the class specified in the Notice to Contractors at the time of bid opening . . . (is a reason for disqualification) but we raise the issue. At the time of the bid opening, Mesa Energy Systems Inc. contractor's license was under suspension. It therefore did not have a valid contractor's license in the class specified.

- Mesa's Contractor's license # 611215 was suspended until July 8. As such, we contend that Mesa is not a Responsible Bidder.
- A contractor whose license is under suspension due to a Qualifiers Bond Suspension cannot legally be awarded a public works project.
- A suspended license prohibits contracting for work: In California, a suspended license means the contractor cannot legally bid on, contract for, or perform any construction work.
- Public works require a valid license: Contractors bidding on public works projects must possess and maintain an active and valid contractor license.
- Performing work with a suspended license is illegal: Any work performed while a contractor's license is suspended is considered unlicensed and can lead to significant penalties, including disciplinary action and fines.

A copy of Mesa's California Contractors license information as of 7/7/25 from the CSLB website is attached. (See Attachment #1)

B. Environmental Systems, Inc. Was the Lowest Responsible Bidder.

The City does not assert that ESI was not qualified to bid the Project and acknowledges that ESI was the lowest bidder in its published bid results of July 3, 2025. The lowest bidder responsible is the bidder whose bid is the lowest monetary bid, who responds to the requirements of the proposed work, and who is financially responsible and qualified to do the work. (*City of Inglewood-Los Angeles County Civic Ctr. Authority v. Sup. Ct.*, (1972) 7 C3d 861; *Associated Builders & Contractors v. San Francisco Airports Commission*, (1999) 21 C4th 352, 366.) It is clear ESI was the lowest responsible bidder. The singular issue is whether ESI submitted a responsive bid (See Bid Result Summary, Attachment #5)

ISSUE # 2:

Reference is made to the Q & A Board-RFB Questions from suppliers questions 3, 24, & 40 (See Attachment #2)

- These items are answered directing contractors to use Distech Controls
- The answer to item 3 directs contractors to use Emcor. Note that Mesa is a wholly owned subsidiary of Emcor)
- This vendors pricing would be invalid because of pending suspended license (See Attachment #1.)
- Vendors' pricing from City's directed vendors contributed to
 - Confusion

City of San Jose- Department of Public Works

July 10, 2025

Page | 3

- Possible collusion
- Unfair bidding practices to contractors
- Emcor's (Mesa) bid proposal schedule of quantities item 8 shows a price of \$ 253,112 (See Attachment #3)
- Emcor's (Mesa) pricing to ESI on page 12 shows a price of \$321,527. It appears that there is a different price strictly for the city control contractor and contractor pricing (See Attachment #4)

ESI further protests the bid of Emcor's (Mesa Energy Systems Inc.) full price \$5,940,284 being allowed to bid the Project and yet the City lists them as the controls vendor when providing different values. Once again this contributed to:

- Confusion
- Possible collusion
- Unfair bidding practices to contractors

C. ESI's Bid Was Responsive; There Was No Irregularity in ESI's Bid But Even If There Was One It Was Immaterial And Should Have Been Waived

In California determining whether a bid is "responsive" is a two-step process. The first prong of this test is met. ESI properly submitted the correct bid forms, completed the bid forms, and has the required license to perform the work.

Under California law, the second step is to determine whether an irregularity or variance in a bid is material. Such a variance or irregularity in a bid only makes a bid nonresponsive if it:

- 1) Affords the bidder an advantage over other bidders, and
- 2) Affects an element relating to the price.

See MCM Construction, Inc. v. San Francisco and County of San Francisco, (1998) 66 Cal.App.4th 359.

ESI's bid did neither. Here, the City wrongfully rejected ESI's bid as non-responsive because it purportedly failed to properly complete the ambiguous CARB REGULATION COMPLIANCE form. (See Attachment 6). This mistake was immaterial and did not give ESI a competitive advantage.

Furthermore, both the City's ordinance and specifications give the City the legal authority to waive an immaterial irregularity.

- San Jose Code of Ordinances Title 27-Procurement of Public Works
- Item 27.10.570-Minor Irregularities

"In Accordance with section 1217(e)(5) of the Charter of the City of San Jose, informalities or minor irregularities in bids or bidding may be waived."

- Section 2-Proposal requirements and conditions Item 2-1.06 Rejection of Proposals:

City of San Jose- Department of Public Works

July 10, 2025

Page | 4

“The City, in its sole discretion, waive any informalities or minor irregularities in the bid or proposal.”

Regarding further information unavailable to the City’s premature nonresponsive bid results.

ISSUE #3: CARB Regulation Compliance sheet.

- The City appears to have done their best to try and present a clear and reasonable sheet (See Attachment #6)
- However, ESI contends this sheet caused confusion on bid day and up to 4:00 pm after the bid opening.
- There are two potential CARB compliance certificates. One for Off-Road Diesel Regulation and one for Truck and Bus Regulation. CARB certificate examples (Attachment #7)
- The CARB Compliance sheet for the project should have clearly stated there are two CARB compliance requirements, not one. The sheet has the word “regulations” on it multiple times. This is plural meaning more than one thus causing great confusion.
- When reading the first paragraph of the CARB Regulation Compliance Sheet, the wording in this paragraph does not match the City’s provided blank certificate form for off-road Diesel Vehicle regulation sheet causing confusion. (See Attachment #6)
- On the CARB Regulation Sheet “Bidders Fleet” portion, there is a sentence that says “Bidder must select one of the options below” a designated contractor can answer box (1) or (2), this portion is clear and understandable. ESI correctly answered that “Bidders fleet is not subject to CARB requirements”
- The second designation relating to Subcontractor’s Fleet area is vague and ambiguous.
- CARB Compliance under “Designated Subcontractors Fleet” sheet states: “If subcontractors have been designated on the List of Subcontractors, bidder must select one of the options below”.
- ESI could not answer this line as the City apparently intended because the subcontractor ESI intended to use was below the 0.5% of our total pricing. Therefore, it wasn’t required to be listed and not applicable to box (3) and (4) causing confusion.

The very last paragraph of the Carb Regulation Sheet then noted “Please Note: Rental equipment is not exempt from the CARB Regulations.” etc. (See the entire paragraph at the bottom of the CARB Regulation Sheet)

The note brought about the possibility of ESI needing to list its rigging contractor West Coast Cranes. West Coast Cranes has a CARB Regulation Certificate for Trucks and Buses. Box (3) and (4) could both be intended to be X out. Box (3) clearly says CARB Regulations (plural) which could mean CARB 1 Off Road Diesel and CARB 2 Trucks and Buses.

City of San Jose- Department of Public Works
 July 10, 2025
 Page | 5

If ESI had marked box (4) instead of (3) the City could have deemed ESI not responsive “Not responsive because the box (4) says CARB Regulations” (Plural) and West Coast Cranes does have one of 2 certificates. ESI submitted the CARB Regulation Certificate of West Coast Cranes.

ESI contends that checking the incorrect box as the City claims it did is immaterial and should be waived in that clearly:

- 1) It did not afford ESI an advantage over other bidders, and***
- 2) It was not an element relating to the price.***

By the City disqualifying ESI for an incorrectly box checked CARB compliance sheet, the City is voluntarily spending an additional \$292,284. Further, neither ESI nor any of its subcontractors were subject to the CARB In Use Off Road Diesel Fueled Requirements.

In *MCM Construction, Inc. v. San Francisco and County of San Francisco*, (1998) 66 Cal.App.4th 359, the court upheld the waiver of an inconsequential bid defect. There was no failure to list a supplier, or separate subcontractor or related information, and none of the items that the City points out are fatal flaws that would preclude the City from awarding the contract to the first responsible bidder, such as a failure to promise the construction services that the bidding documents seek, tardiness in submitting the bid, or licensing issues. See *National Coach Corp. v. State Board of Control*, (1982) 137 Cal.App.3d 750, 756.

Attached are the following supportive documents for your review and consideration:

- Mesa California Contractors license information from the CSLB website is attached dated 7/7/2025. (See Attachment #1)
- Q & A Board-RFB Questions from suppliers’ questions 3, 24, & 40 (See Attachment #2)
- Emcor’s (Mesa) bid proposal schedule of quantities item 8 \$ 253,112 (see Attachment #3)
- Emcor’s (Mesa) pricing to ESI page 12 shows a price of \$321,527. (See Attachment #4)
- Bid result Summary (See attachment #5)
- CARB Regulation Compliance sheet. (See Attachment #6)
- CARB Certificate Example. (See Attachment #7)

Clearly, the bid is responsive, any variance is immaterial and should be waived, and the protest must be granted.

City of San Jose- Department of Public Works

July 10, 2025

Page | 6

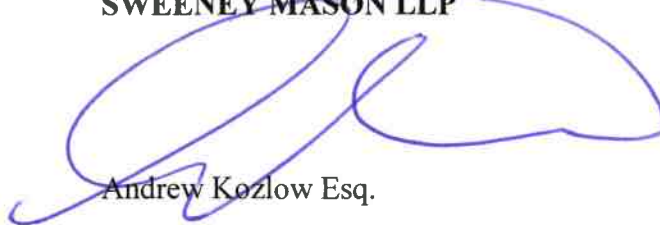
D. Conclusion

The City of San Jose has a legal and factual basis to rightfully find ESI as the lowest responsible bidder, its bid responsive, and allow ESI to move forward with the Project. However, if the City is not inclined to award the contract to ESI, we respectfully request that the City reject

all bids, and re-advertise the project. If a hearing before the City Council is necessary, ESI requests proper notice of the same to appear.

If you need further clarification or documents, please do not hesitate to contact our office. ESI specifically reserves all rights and remedies in this regard including without limitation, supplementing this response at a later date.

Best Regards,
SWEENEY MASON LLP

A handwritten signature in blue ink, appearing to read 'Andrew Kozlow', is written over the printed name 'Andrew Kozlow Esq.'.

Andrew Kozlow Esq.

Enclosures

Cc: Client

Mesa Energy Systems, Inc.

Michael Joseph Echsner-President

14450 Doolittle Drive, San Leandro CA 94577

dkraft@emcor.net

Via Overnight Mail

EXHIBIT 1



CONTRACTORS STATE LICENSE BOARD

▼ Contractor's License Detail for License # 611215

DISCLAIMER: A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.

- ▶ CSLB complaint disclosure is restricted by law ([B&P 7124.6](#)) If this entity is subject to public complaint disclosure click on link that will appear below for more information. Click [here](#) for a definition of disclosable actions.
- ▶ Only construction related civil judgments reported to CSLB are disclosed ([B&P 7071.17](#)).
- ▶ Arbitrations are not listed unless the contractor fails to comply with the terms.
- ▶ Due to workload, there may be relevant information that has not yet been entered into the board's license database.

Data current as of 7/7/2025 4:07:23 PM

Business Information

MESA ENERGY SYSTEMS INC
dba EMCOR SERVICES MESA ENERGY

2 CROMWELL
IRVINE, CA 92618
Business Phone Number:(949) 460-0460

Entity Corporation
Issue Date 01/27/1991
Expire Date 01/31/2027

License Status

License is under suspension for the following reasons:

- ▶ License is under Qualifier's Bond Suspension. A bond of qualifying individual may have been received by the Board but not yet processed. Once the bond is processed the suspension will be lifted retroactively to the effective date of the bond. Ask the contractor for proof of a bond of qualifying individual and contact the bonding company to verify bond status.

Classifications

- ▶ [C20 - WARM-AIR HEATING, VENTILATING AND AIR-CONDITIONING](#)
- ▶ [C10 - ELECTRICAL](#)
- ▶ [B - GENERAL BUILDING](#)
- ▶ [C38 - REFRIGERATION](#)
- ▶ [C36 - PLUMBING](#)
- ▶ [C-4 - BOILER, HOT WATER HEATING AND STEAM FITTING](#)
- ▶ [C46 - SOLAR](#)
- ▶ [C-7 - LOW VOLTAGE SYSTEMS](#)

Bonding Information

Contractor's Bond

This license filed a Contractor's Bond with [TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA](#).

Bond Number: 103533659

Bond Amount: \$25,000

Effective Date: 01/01/2023

[Contractor's Bond History](#)

Bond of Qualifying Individual

- ▶ This license filed Bond of Qualifying Individual number **105583416** for RANDALL JAMES FAIMAN in the amount of **\$25,000** with [TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA](#).

Effective Date: 01/01/2023

[BQI's Bond History](#)

- ▶ This license filed Bond of Qualifying Individual number **108263151** for MICHAEL JOSEPH ECHSNER in the amount of **\$25,000** with [TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA](#).

Effective Date: 03/04/2025

- ▶ This license filed Bond of Qualifying Individual number **105653063** for KEVIN PAUL ROELL in the amount of **\$25,000** with [TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA](#).

Effective Date: 01/01/2023

[BQI's Bond History](#)

NOTE: There are 4 qualifiers (with bonding information) for this license. Up to 3 are displayed on this page.

Workers' Compensation

This license has workers compensation insurance with the [CONTINENTAL CASUALTY COMPANY](#)

Policy Number: WC792783954

Effective Date: 10/01/2024

Expire Date: 10/01/2025

[Workers' Compensation History](#)

Workers' compensation classification code(s):

5140 - Electrical Wiring-high wage

5190 - Electrical Wiring-low wage

5542 - Description Unavailable

For a description of the workers' compensation classification code(s) listed for this licensee, contact the licensee's insurance carrier. Contact information for the licensee's insurer is available by clicking the insurer link above. Classification codes are also available on the Workers' Compensation Insurance Rating Bureau's classification search page.

The board does not verify or investigate the accuracy of classification codes displayed.

Other

- ▶ Personnel listed on this license (current or disassociated) are listed on other licenses.

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EXHIBIT 2

Q&A Board

 View Bid Detail

Solicitation Number	PW 10087
Solicitation Name	Center for the Performing Arts Chiller, Cooling Tower, and Boilers Replacement
Solicitation Type	RFB
Published Date	05/21/2025
Site Meeting	R 05/29/2025 09:00:00 AM PT  R 06/06/2025 09:00:00 AM PT 
Closing Date	06/26/2025 11:00:00 AM PT
Status	Revised
Question Deadline	06/19/2025 11:00:00 AM PT
Intent to Respond	R 06/19/2025 11:00:00 AM PT

Question(s) from Suppliers

When the online Q & A Board is activated it means the Agency is accepting questions or inquiries from suppliers directly through Biddingo.com.

- You have the ability to submit unlimited questions/inquiries through Biddingo.com until the Q & A deadline.
- When you submit a question through this portal your company name will remain confidential. However, the question can be viewed by others.
- **It is highly recommended that you do not include your company name in the question or any confidential information that will identify who you are.**
- It is at the Agency’s sole discretion to respond to individual question, and make the response public or issue an addendum/amendment to formally address all the questions.

 Add New Question

45

M-405 Detail 5

Heidi Bucio, Environmental Systems, Inc. 06/19/2025 10:47:42 PT

On M405 detail 5 shows stainless-steel wire rope are these new? Are these stainless-steel wire rope new on the 14” flue inside the 20” flue? if these stainless-steel wire ropes are existing on the 20” flue or new on the 20” flue what is to support the new flue?



Detail 5 on drawing M405 has been revised to indicate these wire ropes to be new by contractor. As shown on detail 5, the wire ropes are to support the new 14" dia flue. Refer to Addendum 2 issued on 6/18/2025 for latest flue dimensions.

Don Savage, City of San José - Public Works 06/23/2025 09:25:39 PT

44

M-405 Detail 5

Heidi Bucio, Environmental Systems, Inc. 06/19/2025 10:38:16 PT

On M405 detail 5 shows Stainless steel wire rope (by others). Are these existing on the 20” sheet metal boiler flue?



These stainless steel wire ropes are new provided by the contractor. The tern by others has been deleted. See Addendum 3.

Don Savage, City of San José - Public Works 06/23/2025 09:25:19 PT

43

Existing Louver Clarification

Owner does not want to disclose company name.

Please provide clarification on the dimensions of the existing louver above the door frame.



Sheets M102, M102-Alt 1, M201, and M201-Alt1 have been revised to show existing 95x83 louver dimension above door. See Addendum 3.

Don Savage, City of San José - Public Works 06/23/2025 09:24:53 PT

42

Flue Dimensions

Heidi Bucio, Environmental Systems, Inc. 06/19/2025 10:34:28 PT

Are the dimensions of the new flue pipe ID or OD?



The new flue pipe is I.D.

Don Savage, City of San José - Public Works 06/23/2025 09:24:22 PT

41

Flues

Heidi Bucio, Environmental Systems, Inc. 06/19/2025 10:31:13 PT

Is the 20” existing flue size ID or OD?



The existing flue is 20" O.D.

Don Savage, City of San José - Public Works 06/23/2025 09:23:52 PT

40

Unitary Controllers

Owner does not want to disclose company name.

Please confirm if the Unitary Controllers should be BACnet or LonWorks controllers. Specification 23 09 00 seems to indicate both.



The Unitary Controllers communication protocol shall be compatible with the Distech control system

Don Savage, City of San José - Public Works 06/23/2025 09:22:56 PT

39

DCW Valve at Cooling Tower

Owner does not want to disclose company name.

Drawing M503 shows new 4” DCW valve / Drawing M402 detail 5 picture note states existing DCW valve to remain. If it is to be replaced, is there an isolation valve upstream or do we need to shut down water to the whole building?



Existing 4" water valve shall be demolished and replaced. Flow diagrams on sheets M503 and M503-Alt1 have been updated to specify new 4" domestic cold water valve type. Detail 5/M402 has been updated to show the revised point of connection. Coordinate building water shut-down to occur during electrical shut-down. See Addendum 3.

Don Savage, City of San José - Public Works 06/23/2025 09:22:00 PT

38

Section 22 05 00

Heidi Bucio, Environmental Systems, Inc. 06/19/2025 10:09:21 PT

Specs 22 05 00 part 3.7 Item C. Painting states “Equipment in finished areas that will be painted to match the room décor will be painted by others. Should this Contractor install equipment in a finished area after the area has been painted, the Contractor shall have the equipment and all its supports, hangers, etc., painted to match the room décor.” Question 1. Where is the application of this statement or where is the finished area? Question 2. If applicable, any timeline on when the room décor painting subcontractor(by others) will be done?



Specification section referring to equipment in finished areas has been removed from specifications. See revised specification section.See Addendum 3.

Don Savage, City of San José - Public Works 06/23/2025 09:21:24 PT

37

Web-based Project Software

Heidi Bucio, Environmental Systems, Inc. 06/19/2025 09:41:33 PT

Please confirm if we can omit extra cost and fees required for web-based project software per 23 05 00 section 1.8.



Web based project software must be included in project as specified.

Don Savage, City of San José - Public Works 06/23/2025 09:20:51 PT

36

Estimated Start date

Heidi Bucio, Environmental Systems, Inc. 06/19/2025 09:40:30 PT

Please provide a estimated start of construction date.



The target date to issue a notice to proceed (NTP) after contract award is in September 19 2025. The selected contractor may start working on this project 11 days after the NTP. The proposed dates are subject to change.

Don Savage, City of San José - Public Works 06/23/2025 09:20:21 PT

35

Section 23 05 00

Heidi Bucio, Environmental Systems, Inc. 06/19/2025 09:39:42 PT

Is overtime required for chilled water hoses and supports above driveway per spec section 23 05 00, or will this area be closed off for traffic for a limited time?



Installation of temporary chilled water piping shall be scheduled with the Center for Performing Arts and will be scheduled during contractor working hours.The Driveway will be closed to traffic for a limited time.

Don Savage, City of San José - Public Works 06/23/2025 09:19:12 PT

34

Permit Fees

Heidi Bucio, Environmental Systems, Inc. 06/19/2025 09:38:59 PT

Is the contractor responsible for all permits, fees and inspection fees?



Contractor is NOT responsible for permit and inspection fees.

Don Savage, City of San José - Public Works 06/23/2025 09:16:22 PT

33

Boiler & Chiller

Heidi Bucio, Environmental Systems, Inc. 06/19/2025 09:38:18 PT

Please clarify the engineer considers all local and state codes regarding boiler and chiller unit to be placed in same room. In some cases a one-hour fire barrier is required to separate them from the building.



Codes regarding this installation has been reviewed and approved as shown on contract documents.

Don Savage, City of San José - Public Works 06/23/2025 09:15:51 PT

32

Alternate Equipment

Owner does not want to disclose company name.

Will alternate equipment be accepted?



Substitution requests will be considered after contract award. Please reference section 01 60 00 of Addendum No.2.

Don Savage, City of San José - Public Works 06/23/2025 09:13:05 PT

31

Pre-Balance

Owner does not want to disclose company name.

Will preliminary hydronic balance be required in addition to the final balance?



Preliminary balancing scope is shown on details 2 and 3 on drawing M403.

Don Savage, City of San José - Public Works 06/23/2025 09:12:40 PT

30

Water Flush

Owner does not want to disclose company name.

Will water flush be required before balancing the system?



Cleaning and flushing of the closed loop systems shall be provided per specification section 23 25 00.

Don Savage, City of San José - Public Works 06/23/2025 09:11:19 PT

29

Firestop Clarification

Owner does not want to disclose company name.

9. Please confirm if UL-listed penetration firestop systems are required for all new pipe/conduit penetrations through the rated mechanical room walls and ceilings.



Mechanical room penetration requirements are listed on drawing M201 and 201A General note 18

Don Savage, City of San José - Public Works 06/23/2025 09:03:34 PT

28

Temporary Fencing

Owner does not want to disclose company name.

8. Please clarify the exact standards and required dimensions/materials for temporary fencing for this site?



A chain link fence with black private screen, to enclose the temporary equipment per M100. Refer to spec 01 11 00 Part

1.03, paragraph 9, for additional downtown guidelines.

Don Savage, City of San José - Public Works 06/23/2025 09:02:13 PT

27

Work During Events

Owner does not want to disclose company name.

7. What is the decibel threshold allowed for “noisy work” within the mechanical room during events?



Second response at 12:00:21 PM pertains to Question #28.

Don Savage, City of San José - Public Works 06/23/2025 09:01:57 PT



A chain link fence with black private screen, to enclose the temporary equipment per M100. Refer to spec 01 11 00 Part 1.03, paragraph 9, for additional downtown guidelines.

Don Savage, City of San José - Public Works 06/23/2025 09:00:21 PT



There no specific decibel levels restrictions, however noise levels on event days will required pre-approval as per construction documents prior performing work.

Don Savage, City of San José - Public Works 06/23/2025 08:59:45 PT

26

Water Treatment & Chemical Feed

Owner does not want to disclose company name.

6. Will water treatment and chemical feed systems be part of this project scope or retained by owner?



Chemical Treatment is part of this project scope as specified in specifications section 23 25 00

Don Savage, City of San José - Public Works 06/23/2025 08:59:26 PT

25

VFD Requirements

Owner does not want to disclose company name.

Are there approved manufacturers or required specifications for VFDs on pumps and cooling tower fans?



See specification section 26 29 23 for VFD specifications and VFD schedule on drawing E601

Don Savage, City of San José - Public Works 06/23/2025 08:58:44 PT

24

Controls Clarification

Owner does not want to disclose company name.

Will the new Distech Controls DDC system interface with any remaining legacy pneumatic components, or is the transition to digital complete?



The new control systems shall be complete DDC systems replacing existing pneumatic systems for the mechanical systems included in the project scope. These systems will be DDC/electric as shown on the control diagrams.

Don Savage, City of San José - Public Works 06/23/2025 08:57:43 PT

23

Materials Survey Question

Owner does not want to disclose company name.

Can the owner provide a hazardous materials survey to confirm quantities, pipe locations, and material type for abatement for the entire site?



The hazardous material survey is included in the specifications, see project manual Volume 2/Div.2, section 02 41 00. The survey identifies material type for abatement in the area of the scope of work. Contractor shall review plans carefully in conjunction with section 02 41 00. Abatement is NOT required for the entire site.

Don Savage, City of San José - Public Works 06/23/2025 08:57:01 PT

22

HazMat Inspection Clarification

Owner does not want to disclose company name.

What is the protocol and estimated lead time for coordinating the required HazMat inspection with the City of San Jose Fire Department?



Refer to the San Jose Fire Plan Check Directive, the contact information is listed to call for inspections. Inspections shall be scheduled a minimum one week in advance.

Don Savage, City of San José - Public Works 06/23/2025 08:56:21 PT

21

Work Hour & Noise Clarification

Owner does not want to disclose company name.

Will night/weekend work outside the mechanical room require additional permitting or noise mitigation?



night/weekend work outside of mechanical will not required additional permits, other than the permits included in section 01 11 00.

Don Savage, City of San José - Public Works 06/23/2025 08:55:43 PT


20

RFI: Center for the Performing Arts Chiller, Cooling Tower, and Boilers Replacement

Owner does not want to disclose company name.

RFI Document Attached For Posterity

Attachment

Name	Description
 RFI_Center for the Performing Arts Chiller_Cooling Tower_ and Boilers Replacement.pdf	RFI_Center for the Performing Arts Chiller_ Cooling Tower_ and Boilers Replacement



See responses to each individual question 21 to 31 submitted separately which are the same questions submitted in this attachment.

Don Savage, City of San José - Public Works 06/23/2025 08:55:12 PT

19

Main Switchboard (MDS) Clarification

Owner does not want to disclose company name.

The basis of design for the main switchboard is based on Eaton gear.

Eaton has indicated that they do not manufacture switchboards in Nema 12 style. The plans and specifications indicate that main switchboard (MDS) is to be Nema 12.

Please clarify if Nema 3R is acceptable as this is what Eaton can provide.



Eaton offers a NEMA 1 enclosure with gasketing. This gasketing provides the necessary protection from dust, dirt, and limited moisture, making it an acceptable solution for this application. The dimensions of the switchboard must be as close to the design to meet the clearance requirements in the limited space. See Addendum No. 3.

Don Savage, City of San José - Public Works 06/23/2025 08:54:07 PT

18


Equipment Disconnect Clarification

Owner does not want to disclose company name.

The schedule on E601 shows the disconnects for the various equipment, but under "required accessories and options", it describes equipment typically found in a motor starter disconnect.

The process flow diagram on M504 shows CWP-1, 2 and CT-1 having VFDs. There's also a VFD schedule on E601 which confirms this. The VFD schedule does indicate a "drive bypass", which typically is to go from VFD control to across the line starters.

Please clarify if the local disconnecting means for CWP 1 and 2 and CT-1 should be a standard disconnect, or a motor starter disconnect.



Disconnect switches for CWP-1, CWP-2 and CT-1 are standard disconnect switches with auxiliary contact required for interlock with VFD. These disconnects are not motor starter disconnect, the VFD will serve as the motor starter for the pumps and cooling tower. The disconnect switches are required to meet NEC 110.29 requirement.

Elizabeth Vargas, City of San José - Public Works 06/18/2025 11:05:52 PT


17


Substitution Boiler Brand

Heidi Bucio, Environmental Systems, Inc. 06/16/2025 10:00:43 PT

Please confirm if ok to substitute the attached boiler brand?

Attachment

Name	Description
 Lochinvar Crest Boiler Submittalz.pdf	Lochinvar Crest Boiler Submittalz



Substitution requests will be considered after contract award. Please reference section 01 60 00 of Addendum No.2.

Elizabeth Vargas, City of San José - Public Works 06/17/2025 12:37:41 PT


16


Alternate Acceptable Equipment

Owner does not want to disclose company name.

Please see attached as recommended acceptable alternates to the equipment shown on the plans. Please advise if these alternates are acceptable

Attachment

Name	Description
 25-6-11_SJ_PERFORMING ARTS_RFI_QUESTIONS.xlsx	25-6-11_SJ_PERFORMING_ARTS_RFI_QUESTIONS



Substitution requests will be considered after contract award. Please reference section 01 60 00 of Addendum No.2.

Elizabeth Vargas, City of San José - Public Works 06/17/2025 12:38:38 PT

15

Section 23 21 14

Heidi Bucio, Environmental Systems, Inc. 06/11/2025 09:34:56 PT

Please specify the acceptable brand and manufacturer of pre-insulated underground piping servicing heating hot water pipe per section 23 21 14 par t 2.03.



There are no underground piping for heating hot water system. Please see Addendum No. 2. Underground piping sections/parts are removed.

Elizabeth Vargas, City of San José - Public Works 06/17/2025 12:36:46 PT


14

Boiler

Heidi Bucio, Environmental Systems, Inc. 06/11/2025 08:38:39 PT

Can we substitute the boiler?

Attachment

Name	Description
 ESI - Center of the Perfoming Arts Laars Substitution Request.pdf	ESI - Center of the Perfoming Arts Laars Substitution Request



Substitution requests will be considered after contract award. Please reference section 01 60 00 of Addendum No.2.

Elizabeth Vargas, City of San José - Public Works 06/17/2025 12:35:01 PT

13

CS/CR Pipe Sizing on M201-ALT1 Vs. M503-ALT1

Owner does not want to disclose company name.

CS/CR pipe sizing is shown differently on M201-ALT1 Vs. M503-ALT1. Shown as 8" for both chillers on M201-ALT1 and 6" for both chillers on M503-ALT1. Furthermore CS piping out of the tower is shown as 10" on M503-ALT-1 whereas on M201-ALT1 it is shown as 8". Please specify correct pipe sizes.



Please see Addendum No.2.

Elizabeth Vargas, City of San José - Public Works 06/17/2025 11:47:33 PT

12

CWS/CWR Pipe Sizing on M201 Vs. M503

Owner does not want to disclose company name.

CWS and CWR pipe sizes differ on M201 and M503. Please confirm that the CWS/CWR piping will be 6" and not 8"



Please see Addendum No.2.

Elizabeth Vargas, City of San José - Public Works 06/17/2025 11:47:11 PT

11

Estimated Construction Schedule

Heidi Bucio, Environmental Systems, Inc. 06/09/2025 08:36:37 PT

Please publish a estimated construction schedule for the project for rental durations.

Please refer to specification section 011100, Part 1.03, paragraph 7.

Elizabeth Vargas, City of San José - Public Works 06/12/2025 13:23:02 PT

10

Questions Regarding Water Treatment Scope

Owner does not want to disclose company name.

For the automation system, do you have any brand or model preferences for components such as controllers, pumps, tanks, etc.? Additionally, should we plan for single or dual biocide feed?

Would you like us to include a proposal for an ongoing service contract, including monthly chemical supply and water testing?

For the boiler and chiller systems, would you like a quote to replace the existing 5-gallon bypass feeders (Vector model FA-1000AL-TC)?

Page 574-B of the specifications references chemical cleaning for the boiler, chiller, and condenser. Can you confirm whether the "cleaning" for the condenser means a passivation process for the tower?

1. Existing automated Garratt Callahan chemical treatment system shall be existing to remain. The only scope of work associated to chemical feed system to the tower is reconnecting the feed pipe to the new tower. The existing chem treatment is a single biocide feed which will be maintained as existing. Please refer to Addendum No. 2. Floor plans and details have been updated to show water softener scope of work. Specification section 22 30 00 is also added for water softener system. See updated revised drawings for new makeup water meter requirements with BMS capability for chilled water and heating hot water system.
2. Ongoing service contract will not be part of the construction scope.
3. Mechanical drawings show the chemical pot feeder manufacturer and brand. Prime contractor for the project shall provide the same or approved equal.
4. Passivation for BAC cooling tower is not required because the tower will be full 304 stainless steel construction. Please see Addendum No.2 and refer to section 23 25 00 for chemical water treatment requirements.

Elizabeth Vargas, City of San José - Public Works 06/18/2025 11:22:06 PT

9

Onsite Water Treatment Vendor

Owner does not want to disclose company name.

Please provide company and contact information for the existing onsite water treatment vendor.

Vendor: Garratt Callahan, Contact Mike Bauman (650) 201-3096


Elizabeth Vargas, City of San José - Public Works 06/12/2025 15:22:53 PT

8

Onsite Roofing contractor

Owner does not want to disclose company name.

Please provide contact information for the preferred onsite roofing contractor.



Roofing Vendor: Statewide roofing, Contac: Rich Whitmer (408) 772-8916


Elizabeth Vargas, City of San José - Public Works 06/12/2025 15:22:27 PT

7

Natural gas PRV

Owner does not want to disclose company name.

Please provide manufacturer and specs for natural gas PRV pertaining to the boilers.



Please see Addendum No.2.


Elizabeth Vargas, City of San José - Public Works 06/17/2025 12:34:28 PT

6

Gas Vent Piping from Boiler Gas PRV

Owner does not want to disclose company name.

Please specify if black steel piping is to be used for the vent piping associated with the natural gas PRVs



Please see Addendum No.2.

Elizabeth Vargas, City of San José - Public Works 06/17/2025 11:44:14 PT

5

Plumbing Piping Specifications for Domestic Water line Rework

Owner does not want to disclose company name.

Currently there are no plumbing piping specifications shown for the material to be installed after the domestic water line is demoed. Please specify what type of material is to be used for the various pipe sizes pertaining to the Domestic Water Line Rework.



Please see Addendum No.2.

Elizabeth Vargas, City of San José - Public Works 06/17/2025 11:38:52 PT

4

Equipment

Heidi Bucio, Environmental Systems, Inc. 06/02/2025 08:40:36 PT

3. Are there acceptable substitutions for the scheduled equipment?



Substitution requests will be considered after contract award. Please reference section 01 60 00 of Addendum No.2.

Elizabeth Vargas, City of San José - Public Works 06/17/2025 12:33:47 PT

3

Controls

Heidi Bucio, Environmental Systems, Inc. 06/02/2025 08:40:07 PT

2. Please provide the name and contact for the controls vendor associated with this site.



Controls Vendor: Emcor, Contact: Stephen Chin (510) 755-2304

Elizabeth Vargas, City of San José - Public Works 06/12/2025 15:21:43 PT

2

Grass

Heidi Bucio, Environmental Systems, Inc. 06/02/2025 08:36:16 PT

1. Please clarify if we are responsible for restoring the grass in the temp chiller laydown area as a result of SJ water shutting off the irrigation in this area.



Restoring the grass is not the responsibility of the contractor.

Elizabeth Vargas, City of San José - Public Works 06/12/2025 13:42:11 PT

1

Additional Site Walk for Week of 06/02 or 06/09

Owner does not want to disclose company name.

Could we please schedule an additional walk for the week of 06/02 or 06/09? Walk will allow contractors the opportunity to view any additional items as they are going through the bidding process.



Please see Addendum No.1.

Elizabeth Vargas, City of San José - Public Works 05/30/2025 12:31:55 PT

EXHIBIT 3

SCHEDULE OF QUANTITIES**FOR ROJECT****10087 – CENTER FOR THE PERFORMING ARTS CHILLER, COOLING TOWER, AND BOILERS REPLACEMENT**

Item	Spec. Section (or Div. Section)	Description	Unit	Price
Base Bid Items:				
1	DIVISION 1 (All Sections)	General Requirements (If not covered in any of the following sections)	LS	\$302,732.00
2	01 50 50 01 11 00	Mobilization and Demobilization, including Crane picking plan and street encroachment permit.	LS	\$241,313.00
3	01 33 00 01 40 00	Site surveys, construction documents, submittal preparation, and inspections.	LS	\$38,520.00
4	01 41 00	Base Bid Demolition Work, chiller, cooling tower, pumps, electrical MSB, and other all work as depicted on the drawings and specifications	LS	\$77,496.00
5	02 41 00	Abatement scope all work as depicted on the drawings and specifications.	LS	\$180,000.00
6	01 78 39	Closeout documentation as called out in the contract document (Record Documents, Manuals, Inspections, Warranty, etc.)	LS	\$8,500.00
7	DIVISION 23	All mechanical scope per contract document. Including Chiller, and all other scope as depicted on the drawings and specifications.	LS	\$1,895,302.00
8	DIVISION 23	All Controls scope per contract documents. All scope as depicted on the drawings and specifications.	LS	\$253,112.00
9	DIVISION 26	All electrical scope per contract documents. All scope as depicted on the drawings and specifications.	LS	\$317,560.00
10	DIVISION 26	Electrical MSB Replacement. All scope as depicted on the drawings and specifications.	LS	\$254,220.00
11	01 91 13 DIVISIONS 23, 26	Provide start-up, testing, and support to the commissioning agent. This item includes training for the staff.	LS	\$29,688.00
12	DIVISIONS 22, 23, 26	All miscellaneous items (all work called out in the contract documents, plans & specs but were not covered in the above item 1 to 11.	LS	\$105,492.00
BASE BID AMOUNT:				\$3,703,935.00
Bid Alternate(s):				
13	DIVISION 22, 23, 26 01 23 00	Alternate #1: All mechanical, plumbing, electrical, and structural works, as called out in the contract documents to provide two smaller chillers instead of a single chiller as noted in the base bid, the cost for the single chiller shall be deducted from the bid alternate total cost. Remove and replace the boilers and heating hot water pumps including controls as per contract documents.	LS	\$2,236,349.00
TOTAL (BASE BID + BID ALT(S)):				\$5,940,284.00

EXHIBIT 4



San Jose Center for the Performing Arts

Distech Controls Proposal

Presented to:

Heidi Bucio
Bid Coordinator
Environmental Systems, Inc.
3353 De La Cruz Blvd.
Santa Clara, CA 95054
Phone: 408-980-1711 #159
Email: hbucio@esite.net

Prepared by:

Brett Morgan
Automation Estimator
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June 25, 2025
Proposal #25-58463



EMCOR Services, Mesa Energy Systems Inc. is pleased to present this proposal for the Building Automation System (BAS) system at the San Jose Center for the Performing Arts Chiller, Cooling Tower, and Boiler Replacement project.

This proposal is based on the following;

- Site walk performed on 5/29/25
- Mechanical drawings dated 5/12/25
- Specifications dated May 12, 2025
- Addenda 1, 2 and 3.

The scope of work includes the following:

- The HVAC Building Automation System (BAS) shall be Distech Controls.
 - Mesa to provide temperature control panels (TCP), controller hardware, sensors and devices, programming, graphics, startup and commissioning.
 - Mesa to install controller hardware, sensors and devices.
 - Furnish and install required low voltage control wiring and BACnet communication cabling.
 - Furnish and install required conduit, raceways and supports.
 - Conduit installed indoors will be EMT conduit.
 - Conduit installed outdoors will be RMC conduit.
 - Provide submittals, engineered drawings and O & M manuals
 - Provide programming, point-to-point checkout, start-up and commissioning.
 - Div. 26 Electrical contractor to provide required 120VAC circuit for each TCP.
 - Mechanical contractor shall provide startup and commissioning assistance.
- IT infrastructure shall be provided by owner for connection to these devices.

The following represents a detailed scope of work and our understanding of the project documents:



BASE SCOPE OF WORK

The Base Scope of Work includes controls for (1) Chiller and (1) Cooling Tower, (1) Refrigerant Monitoring System, (1) Supervisory Controller and integration to the San Jose BMS Server.

- **Supervisory Controller**

- Furnish and install (1) new Distech Controls JACE Supervisory Controller, per specifications, within a new Temperature Control Panel (TCP), for integration of the new controls to the existing San Jose Distech Controls Server.
 - The new JACE controller will be provided with licensing to accommodate the Base Scope of Work.
 - Includes Software License to expand the San Jose Distech Controls Server to integrate the new JACE.
 - The TCP will include a UPS power supply per specifications.
- Furnish (1) new Workstation Computer for local access to the control system per specifications.
 - The new Workstation Computer will be installed within a new Global Industrial Workstation per specifications.
 - Access to the Distech Controls system will be through Ethernet connection. The Server software is existing on the San Jose server and not hosted locally at the Center for Performing Arts.

- **Chiller Controls**

- Furnish and install (1) Distech Controls BACnet controller for control and monitoring of (1) Chiller and (1) Cooling Tower.
 - Provide Temperature Sensor Wells, Flow Meters, Valves, and Differential Pressure Sensors per Addendum 2 Control Diagram Sheet M504.
 - These devices to be installed by the Mechanical Contractor.
 - Furnish and install Temperature Sensors, Current Switches and Relays per Sheet M504.
 - Furnish and install BACnet MS/TP cabling to the Chiller, Pump and Fan VFD's for integration to the BMS.
 - Furnish and install conduit and low voltage control wiring for the control points identified in the project drawings.
 - Conduit installed within the Mechanical Room will be EMT, conduit installed outdoors will be RMC.
 - Provide Demolition of the existing Chilled Water system controls.

- **Refrigerant Monitoring System**

- Furnish and install (1) new Bacharach Multi-Zone Refrigerant Monitoring system per Sheet M201 Keynote 8.
 - Furnish and install sensors, strobes, switches and other devices per Sheet M201.
 - Furnish and install conduit and wiring as required.
 - Refrigerant Monitor to control EF-1.



Programming, Graphics, Commissioning and Owner Turnover

- **Sequence of Operation/Programming**
 - Provide programming to meet the Sequence of Operation per Sheet M504.
 - Programming will reside on the local controller and not on the BMS server.
- **Graphics**
 - Furnish graphics for above mechanical equipment and floor level navigation to respective equipment.
 - Prior to graphics creation a meeting will be held with the Owner to develop a graphic submittal package for approval.
 - Graphics will be hosted on the San Jose Distech Server.
- **Commissioning**
 - Provide point to point checkout report for the above controlled equipment.
 - Provide labor to demonstrate system functionality to building owner/operator for system acceptance.
 - Provide (16) hours of 3rd Party Commissioning Assistance
- **Training**
 - Provide (4) hours training to the Balance Contractor per specifications.
 - Provide (16) of Operator Training per specifications.



ALTERNATE 1 SCOPE OF WORK

The Alternate 1 Scope of Work includes controls for (1) Additional Chiller and (2) Boilers, including integration to the San Jose BMS Server.

- **Chiller Controls**

- Furnish and install Distech Controls Input/Output Modules to expand the Base Scope controller for control and monitoring of (1) additional Chiller.
 - Provide Temperature Sensor Wells, Flow Meters Valves, and Differential Pressure Sensors per Addendum 2 Control Diagram Sheet M504-ALT1.
 - These devices to be installed by the Mechanical Contractor.
 - Furnish and install Temperature Sensors, Current Switches and Relays per Sheet M504-ALT1.
 - Only those devices that are specific to Chiller 2 are included in this scope, all others are included in the base scope.
 - Furnish and install BACnet MS/TP cabling to the Chiller, Pump and Fan VFD's for integration to the BMS.
 - Furnish and install conduit and low voltage control wiring for the control points identified in the project drawings.
 - Conduit installed within the Mechanical Room will be EMT.
 - Furnish and install (2) additional Refrigerant Sensor Probes per Sheet M504-ALT1.

- **Boiler Controls**

- Furnish and install (1) Distech Controls BACnet controller for control and monitoring of (2) Heating Water Boilers.
 - Provide Temperature Sensor Wells, Flow Meters Valves, and Differential Pressure Sensors per Addendum 2 Control Diagram Sheet M505-ALT1.
 - These devices to be installed by the Mechanical Contractor.
 - Furnish and install Temperature Sensors, Current Switches and Relays per Sheet M505-ALT1.
 - Furnish and install BACnet MS/TP cabling to the Boiler Plant Controller and Pump VFD's for integration to the BMS.
 - Furnish and install conduit and low voltage control wiring for the control points identified in the project drawings.
 - Conduit installed within the Mechanical Room will be EMT.
 - Install the Factory provided Boiler sensors and valves per Sheet M505-ALT1.
 - Includes provision of conduit and wire only. Devices by others.
 - Provide and install devices, conduit and wire required for the Boiler Emergency Power Off controls per Sheet M505-ALT1 Detail 2.
 - Assumes any Fire Alarm related contacts and wiring to be provided by the Fire Alarm Contractor.
 - Any Carbon Monoxide sensors or wiring are excluded.



Project Responsibility Matrix

Task	Mesa	Mechanical	Electrical
Supply and Install low voltage control wire	X		
Install all low voltage control conduit	X		
Terminate low voltage control wiring	X		
Install mech. field devices		X	
Build TCP panels	X		
Mount TCP panels	X		
Provide power to panels			X
Provide engineered drawings	X		
Program	X		
Start up and Commission	X	X	X

Project Specific Assumptions, Clarifications and Exclusions:

1. Assumes all mechanical equipment is functional and in good working order.
2. Test and Air Balance is specifically excluded, but can be provided as an alternate price.
3. Pricing is based on having “free and clear” access to all work areas.
4. Provision or installation of any fire/life-safety equipment is excluded unless otherwise mentioned above.
5. 120V power wiring is not included.
6. Provision of control for any equipment, other than those outlined in the above proposal, is excluded.
7. Pricing is based up having a reasonably leveled schedule; work is considered sequential, not concurrent.
8. Bonds, permits parking fees, utility fees, temporary power and lighting are excluded but may be obtained for an additional fee.
9. All dumpster fees, any and all asphalt or concrete cutting, breaking, removal or patching, sealing of roof penetrations and/or repairs to existing roofing systems is excluded.
10. Any and all labor and/or material associated with layout, coring, X-ray, cutting, framing, patching, painting, removal/repair of existing ceilings, walls, floors as required for controls installation is excluded.
11. Any and all 3D BIM/Revit modeling and/or CAD design services is excluded.
12. Any and all labor and/or material for tamper proof covers and or security covers for temperature sensors is excluded.
13. Any and all work in areas containing Asbestos or Lead is excluded until materials have been removed or encapsulated.
14. Accelerated construction schedule is excluded.
15. *All labor is bid based on work being performed during normal working hours. After hours and weekend work is excluded.*



Inclusions, Exclusions & Project Clarifications

Checked items below are included in this proposal; non-checked items are excluded.

Engineering, Permits & Bonds			
Mechanical Engineering	<input type="checkbox"/>	Structural Engineering	<input type="checkbox"/>
Electrical Engineering	<input type="checkbox"/>	Plan Check Fees	<input type="checkbox"/>
Mechanical Permits	<input type="checkbox"/>	Electrical Permits	<input type="checkbox"/>
Structural Permits	<input type="checkbox"/>	Street Closure Permits	<input type="checkbox"/>
Performance Bond	<input type="checkbox"/>	Architectural Drawings	<input type="checkbox"/>
Rigging and Specialty Rentals			
Rigging	<input type="checkbox"/>	Scissor Lift as Required	<input type="checkbox"/>
Helicopter	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Additional Services			
Comfort Air Balance	<input type="checkbox"/>	Certified Air Balance	<input type="checkbox"/>
Water Balance	<input type="checkbox"/>	Certified Water Balance	<input type="checkbox"/>
Recover Refrigerant Per EPA Guideline	<input type="checkbox"/>	Dispose of old Equipment	<input type="checkbox"/>
Project to be Performed at the Below Listed Times			
Normal Business Hours (M-F 7 am to 5 pm)	<input checked="" type="checkbox"/>	Overtime (non-Normal Business Hours)	<input type="checkbox"/>
Normal Hours and Overtime	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Specialty Trades			
Electrical	<input type="checkbox"/>	Abatement	<input type="checkbox"/>
Framing of Curbs & Openings	<input type="checkbox"/>	Duct Cleaning	<input type="checkbox"/>
Re-roofing	<input type="checkbox"/>	Seismic Upgrades	<input type="checkbox"/>
Insulation of New Ducting (As Required)	<input type="checkbox"/>	Insulation of New Piping (As Required)	<input type="checkbox"/>
Coring	<input type="checkbox"/>	X-Ray Prior to Coring	<input type="checkbox"/>
Project Completion			
Start Up and Commissioning	<input checked="" type="checkbox"/>	Factory Start Up	<input type="checkbox"/>
Operation & Maintenance Manuals in electronic format	<input checked="" type="checkbox"/>	As Built Drawings in electronic format	<input checked="" type="checkbox"/>
Additional Components			
New Programmable Digital Thermostat	<input type="checkbox"/>	EMCOR Retains All Salvage Rights	<input type="checkbox"/>
Smoke Detectors in Supply Duct	<input type="checkbox"/>	Smoke Detectors Return Ducts	<input type="checkbox"/>
Warranties			
90-Day Labor and Materials from Date of Beneficial Use	<input type="checkbox"/>		
One (1) year Labor and Materials from Date of Beneficial Use	<input checked="" type="checkbox"/>		

Mesa Energy Systems, Inc.

14450 Doolittle Dr, San Leandro, CA | Phone: 510-670-1690 | Fax: 510-670-1698



General Project Clarifications

Concealed Conditions

If concealed or unknown conditions of an unusual nature which affect the performance of the work are encountered below the roof line or above the ceiling or in an existing part of the building other than the work, which conditions are not ordinarily found to exist or which differ materially from those generally recognized as inherent in work of the character provided for in this Agreement, notice by the observing party shall be given promptly to the other party, if possible before conditions are disturbed and in no event later than fourteen days after first observance of the conditions. The Contract Sum shall be equitably adjusted for such concealed or unknown conditions by Change Order upon claim made within fourteen days after claimant becomes aware of the conditions.

Regulatory Changes

Mesa Energy Systems Inc. shall be compensated for changes in the Work necessitated by the enactment or revision of codes, laws or regulations subsequent to the execution of this Agreement.

Hazardous Materials

Customer hereby agrees to indemnify, defend and hold harmless Mesa Energy Systems, Inc. and its agents, employees, consultants and subcontractors from and against any claim, damage, allegation, suit, cause of action, cost, loss, expense or injury in connection with Hazardous Materials not introduced to the Project by the Indemnified Parties, including, without limitation, all costs of remediation, experts, consultants or other costs in connection with Hazardous Materials associated with the Project.

Unforeseen Conditions

Customer understands and agrees that Mesa Energy Systems, Inc. shall not be liable for added costs or time delays caused by unforeseen conditions at the Project, including, without limitation, unanticipated rerouting of existing piping, fire sprinklers or gas piping. In the event that the fire sprinklers, water, electrical conduit or gas piping are required to be relocated, Mesa shall not be responsible for such work. Mesa Energy Systems, Inc. or a subcontractor under the control and supervision of Customer shall perform such work.

NFPA 70E

Mesa technicians are trained to understand the specific hazards associated with electrical energy according to NFPA 70E, Standard for Electrical Safety in the Workplace. They are trained in safety-related work practices and procedural requirements as necessary to provide protection from the electrical hazards associated with their respective job or task assignments. Documented safe work practices include lockout/tagout and energy isolation. Category 2 personal protective equipment is issued for electrical hazards while working on voltages between 50 and 480 volts. Mesa's policy is to remove the energized electrical hazard by working on de-energized circuits and by using the written lockout/tagout policies and procedures when feasible.



Licenses

Mesa Energy Systems, Inc. holds the following licenses:

STATE	LICENSE NUMBER	CLASSIFICATIONS
Arizona	ROC 350025	C-4
Arizona	ROC 322130	C-77
Arizona	ROC 244611	C-39
Arizona	ROC 292050	CR-16
Arizona	ROC 279512	C-77
Arizona	ROC 294369	KB-1
California	611215	B, C-4, C-7, C10, C20, C36, C38, C46
Nevada	0079466	B-2
Nevada	0073520	C-21
Nevada	0083284	C-2A, C-2D
Nevada	0085759	C-1
Washington	MESAEES777CH	HVAC/RFRG, MAINTENANCE
Washington	MESAEES770QF	GENERAL

Supply Chain

The parties understand and agree that (i) there are current issues with the manufacture and supply of various materials and equipment (all, collectively, “Goods”), which issues generally are referred to as “supply chain disruption” (“Disruption”), (ii) the Disruption arises from a variety of global, national, and local factors, all of which are beyond the control of Mesa Energy Systems, and (iii) the Disruption has impacted suppliers’ ability to provide Goods by dates certain, in the quantities ordered, and/or for the specified price.

This proposal is conditioned on Mesa Energy Systems, Inc. confirming the price, delivery time, and availability of goods with Mesa Energy System’s subcontractors, vendors, and/or suppliers at the time when Mesa Energy Systems, Inc. and customer are ready to enter a final contract for the proposed work. Mesa Energy Systems, Inc. reserves the right to (i) adjust the proposal price and schedule in the final contract if needed due to such confirmation, and (ii) condition the final contract on, and include in it, any reservations and/or limitations that Mesa Energy Systems Inc. must accept from its subcontractors, vendors, and/or suppliers to obtain any goods.

To the extent this quotation/proposal includes materials, products, and/or equipment that are manufactured, produced, assembled in, or otherwise originate from, a country other than the United States, the price set forth herein for such items is guaranteed for a period of 30 days from the date of this quotation/proposal. After such time, Mesa Energy Systems, Inc. reserves the right to increase the price set forth herein for such items when the parties enter a contract for the work or when Mesa Energy Systems, Inc. actually orders such items, whichever the later, to reflect the then-current price of such items, as such

pricing may be affected by market conditions including, but not limited to, tariffs, quotas, and/or duties. The parties agree that the pricing for such items in this quotation/proposal is guaranteed only for such time, and Customer assumes the risk of any such price increases for such items after such time. If Customer fails to sign this quotation/proposal within 30 days from the date of this quotation/proposal, this quotation/proposal shall be deemed void, withdrawn, and canceled.

Any contract concerning this proposal shall include the following:

The parties understand and agree that (i) there are current issues with the manufacture and supply of various materials and equipment (all, collectively, “Goods”), which issues generally are referred to as “supply chain disruption” (“Disruption”), (ii) the Disruption arises from a variety of global, national, and local factors, all of which are beyond the control of Mesa Energy Systems, and (iii) the Disruption has impacted supplier’s ability to provide Goods by dates certain, in the quantities ordered, and/or for the specified price.

And, to the extent Mesa Energy Systems’ supplier(s) are unable to meet their obligations to Mesa Energy Systems solely due to the Disruption, Mesa Energy Systems (i) shall not be deemed in breach of contract or otherwise assessed costs or damages arising from the Disruption and (ii) shall be entitled to (a) an equitable extension of time and (b) an increase in the contract price for Goods.

Credit Card Payment

A credit card surcharge of 3.00% will be charged at checkout automatically for all payments initiated via www.PayEMCOR.com. You may avoid this fee and pay via check or ACH instead. To make a payment by credit card, please go to www.payemcor.com. Enter the following 3-digit code: 778 into the “ID code” field, and Mesa Energy Systems will appear on the right-hand side of the screen. Enter your credit card and payment details as directed on the screen to complete the payment.

Transfer of Liability and Maintenance Responsibility

Upon substantial completion of the project and delivery of the computer equipment to the Customer, all liability for the computer equipment and related security shall transfer to the Customer. The Customer acknowledges and agrees to assume full responsibility for the ongoing maintenance, including but not limited to security updates, of the computer equipment. The Subcontractor shall not be held liable for any damages, losses, or cyber attacks resulting from the Customer's failure to properly maintain or update the computer equipment. The Customer's obligation to maintain the equipment in accordance with industry standards is essential to ensure its security and functionality.

Terms and Conditions

1. Contractor will perform the services ("Services") set forth in the attached proposal ("Proposal").
2. Contractor will perform the Services during normal working hours, Monday through Friday, unless specified otherwise in writing by Contractor. If Customer requests that Contractor provide Services on an expedited basis and/or outside normal working hours, Customer shall pay all additional charges for freight, labor, or materials according to Contractor's established rates and fees.
3. If Contractor determines that other work beyond the Services is required, such work shall not constitute a part of the Services, and Contractor will provide Customer with a quotation for such work.
4. Customer agrees to (i) provide safe and reasonable access, and any other assistance as is reasonably necessary, so that Contractor can perform the Services and (ii) remove and replace/refinish any part of the work site that must be disturbed so Contractor can perform the Services.
5. Contractor shall not perform any service that concerns hazardous materials, and shall have no responsibility for remediation, accumulation, storage, transportation, or disposal of any hazardous materials generated by Customer or present at the work site.
6. Contractor shall not be required to perform any Services where hazardous materials are present or where Contractor suspects the presence of hazardous materials, and Contractor immediately may stop providing Services in either instance and notify Customer of the circumstance giving rise to the stoppage.
7. Customer agrees to pay Contractor the lump sum or time and materials rates set forth in the Proposal, and all excise, sales, use, occupation or other similar taxes connected with Contractor's performance of the Services.
8. Customer's payment is due net 30 days from date of invoice, and late payment to Contractor shall be subject to interest at the rate of one and one-half percent (1½ %) per month, not to exceed the maximum amount allowed by applicable law. Contractor may cease providing Services, including warranty services, if Customer fails to make any payment that is due and owing.
9. Materials provided will be free from defects for one (1) year from the date of the Services or to the extent of the manufacturer's warranty, whichever the lesser. Workmanship provided will be good and of a workman-like standard for sixty (60) days from the date of the Services. During the applicable warranty period, Contractor promptly shall repair or replace, at its sole option and at its own expense, any defective materials or workmanship during normal working hours (for defective materials, Contractor only will provide (i) warranty coverage to the extent that Contractor is able to enforce liability against the manufacturer and (ii) necessary labor at its own expense for sixty (60) days from the date of the Service and during normal working hours). Customer's sole and exclusive warranty is the repair or replacement set forth herein. If Customer requests that Contractor provide warranty services on an expedited basis and/or outside normal working hours, Customer shall pay all additional charges for freight, labor, or materials according to Contractor's established rates and fees.
10. Contractor's warranty applies only to materials and workmanship furnished by Contractor. Contractor's warranty shall be null and void if (i) Customer fails properly to operate and maintain equipment and/or the system for which Services were provided, (ii) acts of vandalism or other alterations or modifications occur that affect the equipment and/or the system for which Services were provided, or (iii) Customer subsequently has another contractor provide goods or services that affect to the Services.
11. Contractor shall not be liable for any delay, or loss or damage arising therefrom, and shall be entitled to additional time for the Services, if the delay is caused by an occurrence beyond the reasonable control of Contractor.
12. Contractor is not responsible for equipment and/or system design deficiencies, obsolete equipment or systems, equipment or systems beyond serviceable life, or electrical failures, and Customer shall remain obligated to pay for Services if the Proposal properly was performed but the Services do not remedy the condition giving rise to the Proposal because of the foregoing.
13. Contractor shall not be liable for operation of any equipment or system, nor for injury to person or damage to property, except to the extent such injury or damage is caused by the negligent acts or omissions of Contractor, and only to the proportionate extent of Contractor's negligence.
14. Under no circumstances, whether arising out of contract, tort (including negligence), strict liability, warranty or otherwise, shall either party be liable to the other for special, indirect, incidental, consequential, exemplary or punitive damages of any nature.
15. In no event shall Contractor's aggregate liability to Customer exceed an amount that is the lesser of (i) the amount of the Proposal or (ii) the cost to Contractor to repair or replace the item giving rise to the claim.
16. This Proposal shall be governed by the laws of the State where the Services are performed, without giving effect to its conflict of laws provisions. Any action concerning the subject matter of this Proposal shall be commenced in the State court of such State, which shall have exclusive jurisdiction over such action. Any such action shall be submitted TO THE COURT ONLY for resolution, WITHOUT TRIAL TO A JURY. THE PARTIES HEREBY WAIVE ANY RIGHT TO A JURY TRIAL REGARDING ANY SUCH ACTION.
17. Contractor shall be entitled to all fees and costs, including reasonable attorney's fees, incurred by it in any action to collect amounts due to it from Customer.
18. By signing the Proposal, Customer authorizes Contractor to perform the Services and agrees to these Terms and Conditions and those set forth in the Proposal. Customer further agrees that the Proposal and these Terms and Conditions constitute the parties' entire agreement, and any other documents generated or provided by Customer are intended only to create payment authority for Customer's internal purposes. No such Customer documents shall form a part of this agreement, or constitute a counteroffer, amendment, modification, or revision, and hereby are rejected by Contractor.
19. This proposal, including but not limited to pricing and schedule, is made contingent upon the work addressed herein not being adversely affected, either directly or indirectly, by the COVID-19 pandemic and/or the Corona virus. This proposal is further conditioned upon the parties agreeing, prior to beginning of any work and in writing as part of any contract/subcontract, that any (i) schedule issues (including, but not limited to, delay, acceleration, compression, interference, hindrance), (ii) overtime hours or added resources to perform work, (iii) shortages (whether as to labor, subcontracted services, materials, or supplies), (iv) change orders, extra work, or extra costs, or (v) inefficiency and impacts relating to the foregoing, that arise as a result of the COVID-19 pandemic or Corona virus will entitle contractor to a change order equitably addressing impacts to its time for performance and costs.



Project Costs

Base Scope

The total cost for the Base Scope of Work including applicable taxes is: **\$321,527.00**

Alternate 1 Scope

The total additional cost for the Alternate 1 Scope of Work including applicable taxes is: **\$177,720.00**

Total Combined Scope

The total cost for the Base Scope of Work and Alternate 1 to be completed concurrently including applicable taxes is: **\$499,248.00**

This proposal, scope of work, and pricing is valid for 30-days from the date of this proposal. Pricing assumes work to be completed prior to end of 2026.

Payment Terms

30% Mobilization due net 30-days.

Remaining balance paid via progress billings due net 30-days.

Payments received via credit card will be charged a 3.00% surcharge.



Agreement Execution

This agreement defines the understanding of services between Mesa Energy Systems, Inc. and Environmental Systems, Inc. This agreement shall begin on Customer's Acceptance Date, or upon receipt of a Letter of Intent. Wet signature or time-stamped, verifiable digital signature constitutes acceptance of this proposal.

Customer Acceptance:

Signature

Printed Name

Title *Date*

Mesa Energy Systems, Inc:

Signature

Printed Name

Title *Date*

Mesa Energy Systems, Inc.

14450 Doolittle Dr, San Leandro, CA | Phone: 510-670-1690 | Fax: 510-670-1698



ADD ALTERNATES TO INCLUDE AS APPLICABLE:

Maintenance Add

Recommended Option: 1st Year Preventive Maintenance Agreement*

Annual Cost for Quarterly Maintenance Services per the Equipment listed Herein

..... \$X,XXX

_____ Initial for Acceptance

*If approved, a reference proposal will be provided detailing scopes of work, frequencies, and covered equipment. Note: Manufacturer's warranties are dependent upon completing routine preventive maintenance services throughout the year. Failure to complete and record basic OEM maintenance requirements may result in voided warranties and rejected claims.

BAS Preventive Maintenance Plan: Year One

Annual Cost for *Quarterly (or Annual or Semi-Annual)* BAS Maintenance Services based on the BAS-controlled equipment listed Herein (*Level 1, 2, 3, or 4 from table below*)

_____ Initial for Acceptance

EXHIBIT 5



NOTICE OF INTENT TO AWARD

FOR

10087 - Center for the Performing Arts Chiller, Cooling Tower, and Boilers Replacement

July 03, 2025

On June 26, 2025, the City of San José opened bids for the above referenced project. Bid results for this project will be made available on Biddingo at www.Biddingo.com/sanjose.

This letter serves as notification that the Director of Public Works intends to recommend that the City Council award the contract to the apparent low bidder, Mesa Energy Systems, Inc. on or about August 12, 2025.

A bidder who wishes to protest this Notice of Intent may file a written protest with the procurement contact listed below within five (5) business days following the date this notice is issued. Protests must be received before 5:00pm on the fifth business day, and must include the following information:

- a. The protestor's identity and standing to submit a protest;
- b. The name of the City Project as listed on the Notice to Contractors;
- c. A complete statement of the legal and factual grounds for the protest, including specific references to relevant documents and legal authorities;
- d. Copies of any documents that support the protest; and
- e. A request for a responsibility hearing in accordance with San José Municipal Code Section 27.10.470 if the bidder is protesting a proposed determination that it is not a responsible bidder.

The City of San José appreciates your interest and effort in preparing and submitting a bid for this project.

If you have any questions about the bid process or the City's decision to award, please contact the procurement contact listed below.

Lauren Profeit
CIP Procurement
Department of Public Works
200 E. Santa Clara St.
San Jose, CA 95113
lauren.profeit@sanjoseca.gov



Prj ID: 10087

Project Name: Center for the Performing Arts Chiller, Cooling Tower, and Boilers Replacement

Project Manager: Rodriguez, Manuel

Bid Opening Date: June 26, 2025

Today's Date: July 03, 2025

BID RESULTS SUMMARY

Bid Results		
Engineer's Estimate: \$4,250,000.00		\$2,000,000.00
Bid Amount	% Variance	Bid Alt 1
Mesa Energy Systems, Inc., San Leandro, CA Apparent Low Bidder		
\$3,703,935.00	-12.85%	\$2,236,349.00
Environmental Systems, Inc, Santa Clara, CA Non-Responsive, Irregularities: CARB Certificate of Reported Compliance is missing or invalid (subcontractor)		
\$3,873,000.00	-8.87%	\$1,775,000.00
Western Allied Mechanical , Union City , CA Non-Responsive, Irregularities: CARB Certificate of Reported Compliance is missing or invalid, Schedule of Quantities information missing or invalid, Statement of Bidder's Experience form did not provide the information requested by City		
\$4,998,299.00	17.61%	\$2,675,095.00

EXHIBIT 6

CARB REGULATION COMPLIANCE

Bidder must represent whether the fleet(s) used in performance of this contract are subject to California Air Resources Board (CARB) In-Use Off-Road Diesel-Fueled Fleets requirements (CARB Regulations) and provide Certificate(s) of Reported Compliance for itself and all designated subcontractors as applicable. A screenshot or printout of the certificate validation web portal or any other CARB website is not a substitute for submitting a Certificate of Reported Compliance.

Bidder's Fleet:

If bidder's fleet is subject to the CARB Regulations, bidder must submit with its bid a valid Certificate of Reported Compliance.

Bidder must select one of the options below:

- ☐ Bidder's fleet is subject to the CARB Regulations and the Certificate of Reported Compliance is **attached to the proposal**.
- ☐ Bidder's fleet is not subject to the CARB Regulations.

Designated Subcontractor(s)' Fleet(s):

For those designated subcontractor(s) fleet(s) that are subject to the CARB Regulations, bidder must submit a valid Certificate of Reported Compliance to the City **no later than 4:00 p.m. on the 2nd business day after bid opening**.

If subcontractors have been designated on the List of Subcontractors, bidder must select one of the options below:

- ☐ One or more designated subcontractor(s)' fleets are subject to the CARB Regulations and the Certificate(s) of Reported Compliance is/are attached to the proposal or will be submitted to the City via email (PW_Procurement@sanjoseca.gov) no later than 4:00 p.m. on the 2nd business day after bid opening.
- ☐ None of the designated subcontractors has a fleet subject to the CARB Regulations.

Please note: Rental equipment is not exempt from the CARB Regulations. If any party is using rental equipment that is subject to the CARB Requirements, bidder must submit a Certificate of Reported Compliance from the rental fleet company. When submitting a rental fleet company's Certificate of Reported Compliance, bidders should write the name of the party covered by the rental fleet's certificate on the top of the certificate.

EXHIBIT 7

California Environmental Protection Agency
Air Resources Board

January 1, 2024

**CERTIFICATE OF REPORTED COMPLIANCE
OFF-ROAD DIESEL VEHICLE REGULATION**

is issued to



This certificate indicates that the fleet listed above has reported off-road diesel vehicles to the California Air Resources Board and has certified they are in compliance with title 13 CCR, section 2449. All applicable vehicles owned by the individual, company, or agency must be reported and labeled, as specified in Section 2449, with all possible completeness, else this certificate is null and void. **Certificate expires 2/28/2025**

Jack Kitowski
Chief, Mobile Source Control Division
California Air Resources Board

Off-road Diesel Fleet Identification



To verify the authenticity of this certificate, enter this number at
http://www.arb.ca.gov/doors/compliance_cert1.html



CALIFORNIA

AIR RESOURCES BOARD

Certificate of Reported Compliance With:

Truck and Bus Regulation

Issued to:

West Coast Cranes

This certificate confirms that the fleet owner has attested under penalty of perjury that the statements and information they provided to the California Air Resources Board (CARB) are true, accurate, and complete regarding all relevant vehicles in the fleet required to show compliance. CARB hereby finds that the fleet listed has reported compliance with:

Title 13 CCR 2025 (Truck and Bus Regulation)

If CARB subsequently finds that the statements and information that have been provided are not true, accurate, and complete, this certificate shall be effectively revoked and the fleet subject to noncompliance penalties.

This certificate is valid until December 31, 2025

Printed on 2025-02-05

TRUCRS Fleet Identification
PI 3008

30 Vehicles

Jack Kitowski

Jack Kitowski
Division Chief, Mobile Source Control
Division California Air Resources Board

To verify the authenticity of this certificate, visit
www.arb.ca.gov/msprog/onrdiesel/tblookup.php



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Construction Counsel

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July 16, 2025

VIA PERSONAL SERVICE AND E-MAIL

City of San Jose, Department of Public Works
200 E. Santa Clara St.
San Jose, CA 95113
Attn: Matt Loesche
Director, Department of Public Works
matt.loesch@sanjoseca.gov

City of San Jose, Department of Public Works
200 E. Santa Clara St.
San Jose, CA 95113
Attn: Lauren Profeit
CIP Procurement
lauren.profeit@sanjoseca.gov

Re: Response to Environmental Systems, Inc.'s July 10, 2025 Bid Protest
Project: PW10087 – Performing Arts Chiller, Cooling Tower, and Boilers Replacement

Dear Director:

Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy (“Mesa”) submits its response to Environmental Systems, Inc.’s (“ESI”) Bid Protest, dated July 10, 2025 (“Protest”), regarding the City’s Notice of Intent to Award for Project No. PW 10087, Center for the Performing Arts Chiller, Cooling Tower, and Boilers (the “Project”).

As a threshold matter, ESI lacks standing to bring its Protest as there is no reasonable possibility of it being awarded the Project. See Special Provisions to the Standard Specifications, 3-1.01C, subsection 3.b. The City of San Jose (the “City”) determined ESI’s bid non-responsive for failure to submit a complete and accurate proposal. As such, ESI’s Protest should be disregarded in its entirety.

The merits of ESI’s Protest also fail. Mesa was a duly licensed contractor at all times, Mesa is the lowest responsible bidder, and the City should proceed with its award of the Project to Mesa.

This Response is timely pursuant to Special Provisions to the Standard Specifications, 3-1.01C, subsection 5.



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1. ESI Lacks Standing to Protest Because Its Bid Was Non-Responsive

Bid responsiveness measures whether the bid, as submitted, is in compliance with all of the requirements of the bid documents. To be “responsive,” a bid must be in strict and full accordance with the material terms of the bidding instructions. (*Taylor Bus Serv., Inc. v. San Diego Board of Educ.* (1987) 195 Cal.App.3d 1331; *MCM Constr., Inc. v. City & County of San Francisco* (1998) 66 Cal.App.4th 359.) To that end, the Special Provisions to the Standard Specifications, Section 2-1.05 provides: “Proposals which are not submitted in strict compliance with the instructions in the procurement documents may, in the City’s sole discretion, result in the proposal being considered non-responsive and rejected on that basis.” In addition, Special Provisions to the Standard Specifications, Section 2-1.10, subsection 9 provides: “The City may disqualify a bidder and reject the bidder’s bid for any one or more of the following causes: ... 9. ... submitting an incomplete or otherwise non-responsive proposal.”

The City determined that ESI’s bid was non-responsive despite its total bid value being the lowest of three (3) bidders. ESI failed to follow the City’s clear instructions regarding submission of CARB regulation compliance documentation on two accounts. First, ESI submitted a form that contained inaccurate information regarding its designated subcontractors. Second, ESI attached the incorrect certification for its listed subcontractor. In response to the City deeming ESI’s bid non-responsive, ESI claims that (i) its bid is not irregular or non-responsive, (ii) the City’s instructions and sample form caused “confusion,” and (iii) the error is immaterial because there is no advantage and price impact from this error. These statements are false.

a. ESI Submitted a Defective Bid.

ESI submitted the wrong CARB Regulation Certificate (“Truck and Bus Regulation” instead of “Off-Road Diesel Regulation”) and checked the incorrect box on the CARB regulation compliance sheet. *See Enclosure 1.*

b. ESI’s Allegation that the City Caused “Confusion” Is Disingenuous.

ESI must take responsibility for its defective bid as the City could not have been more clear.

As part of the Notice to Contractors, the City specified which type of compliance certification was required. See Notice to Contractors, p. 4.



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IN-USE OFF-ROAD DIESEL-FUELED VEHICLES REQUIREMENTS

This project is subject to the California Air Resources Board (CARB) **In-Use Off-Road Diesel-Fueled Fleets** requirements found in California Code of Regulations, Title 13, Div. 3, Ch. 9, Art. 4.8, Sec. 2449 ("CARB Regulations"). **Bidders must submit valid Certificate(s) of Reported Compliance for itself and all designated subcontractor(s) that are using fleet(s) subject to the CARB Regulations in performance of this contract.**

Certificates of Reported Compliance are obtained through CARB's Diesel Off-Road Online Reporting System (DOORS). For technical support, please contact CARB directly at 1-877-593-6677 or via email at doors@arb.ca.gov.

In addition, per the Special Provisions for this Project, Section 7-1.10N again referenced the type of certification required:

Section 7-1.10 of the Standard Specifications shall have the following section added:

7-1.10N California Air Resource Board Contractor In-Use Off-Road Diesel-Fueled Fleet Requirements. – Contractor and any and all subcontractors must at all times have valid Certificate(s) of Reported Compliance as described in California Code of Regulations, Title 13, ("13 CCR") Section 2449(n) for fleets of vehicles subject to 13 CCR Section 2449 which may be use in performance of this Contract. No such vehicle is permitted onsite unless and until Contractor provides City with a valid Certificate of Reported compliance therefor.

Finally, the City provided a sample certificate desired per the specifications:





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The City specified multiple times that the required CARB regulation certification relates to “Off-Road Diesel Vehicle Regulation.” The City consistently requires CARB regulation compliance for their public works jobs, and this is not ESI’s first time bidding or working with the City.¹

In any event, ESI waived any objection to the City’s instructions or the CARB regulation form as unclear. All bidders were required to submit as part of the bid package a cover page titled “Proposal to City of San Jose” which was signed under penalty of perjury. Notably, the highlighted language is instructive:

PROPOSAL TO CITY OF SAN JOSE

FOR

Project: **10087-Center for the Performing Arts Chiller, Cooling Tower, and Boilers Replacement**

Name of Bidder: Environmental Systems, Inc.

Contact Information of Bidder:	<u>V.C Enfantino</u>	<u>408-980-1711</u>	<u>cenfantino@esite.net</u>
	Submitter Name	Phone Number	Email

The representations herein are made under penalty of perjury.

To: The City of San José, State of California

The undersigned, as bidder, declares that the only person or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm or corporation; **that the bidder has thoroughly read and examined and has full knowledge of and understands all the provisions and contents of this proposal and the documents which must be attached hereto, the Plans and Specifications approved by the Director of Department of Public Works on 05/15/2025**, entitled **10087-Center for the Performing Arts Chiller, Cooling Tower, and Boilers Replacement** and approved for advertising and opening by the Director of Public Works on **05/15/2025**, on file in the office of the Director of Public Works of the City of San José in City Hall, 5th Floor, San Jose, California; that **the bidder has thoroughly examined said Plans and Specifications which are on file in the office of the Director of Public Works, and that the bidder has full knowledge of and understands said Plans and Specifications and the requirements thereof; and that the bidder has further read and understands, and has knowledge of the contents of any and all addenda to said Plans and Specifications on file;** and that the bidder proposes and agrees, if this proposal is accepted, that the bidder will contract with the City of San José, in the form of the copy of the contract on file in the office of the Director of Public Works, to do all the work and furnish all materials specified or referred to in the contract, in the manner and time therein prescribed, and according to the requirements of the City or Director of Public Works as therein set forth, to furnish the contract, bonds and insurance specified in the Specifications, and to do all other things required of the Contractor by the contract; and will take in full payment therefor the following price or unit prices as shown in the Schedule of Quantities on the next page(s).

Per the above, ESI declared, under penalty of perjury, that it fully understood the Project specifications and its own submitted proposal.

¹ Mesa and ESI have bid on the same City of San Jose public works projects in the past; an example is the Seven Trees Community Center Chiller Replacement.



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Finally, if ESI experienced “confusion” with the CARB regulation certification and form, it should have exercised the Requests For Information (“RFI”) process and submitted pre-bid questions, as it did numerous times for other aspects of the specifications.²

ESI cannot now claim that the City’s instructions were “confusing” only after its bid was rejected for non-compliance.

c. ESI’s Bid Variation Is Material.

Any “material” variance in a bid may not be waived by the awarding authority, and bids containing “material” variances must be rejected. (*Stimson v. Hanley* (1907) 151 Cal. 379; *Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 897.) This principle ensures that all bidders will be treated alike and guards against the possibility for fraud, corruption or favoritism in the bidding selection process. More fundamentally, it ensures that the public agency will be comparing “apples to apples” when reviewing the competing bid proposals. The “material” terms of a bid are (1) those terms which could affect price, quantity, quality, or delivery; and (2) those terms which are clearly identified by the bid documents as mandatory. (See, e.g., *Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432.)

The determination of whether a bid proposal fails to comply with material terms of the bid documents is by necessity a factual determination based upon whether the variation gives the bidder an unfair advantage relative to other bidders or the bidder could have withdrawn its bid without forfeiting its bid security. (*Menefee v. County of Fresno* (1985) 163 Cal.App.3d 1175, 1180-1181.) Where a deviation gives a bidder an unfair advantage relative to other bidders or a variance could have affected the amount of the bid, a public agency may not waive the deviation as immaterial. (*Id.*; *Konica Business Machines U.S.A. Inc. v. Regents of University of California* (1988) 206 Cal.App.3d 449, 455.) Further, under California law, all that is required is the theoretical possibility that a bidder will obtain an unfair advantage. It need not be shown that a bidder possessed any intention of seeking a competitive advantage for a public agency to be required to reject such a bid as non-responsive. (*Konica, supra*, 206 Cal.App.3d at 456-457.)

ESI’s non-compliance is material. In *MCM Construction, Inc. v. City and County of San Francisco* (1998) 66 Cal.App.4th 359, 368, the Court agreed that a bidder’s failure to list the amount of subcontracts in its bid was a deviation that could not be waived because it was a requirement under the San Francisco Administrative Code Provision 6.48. ESI’s deficiency is akin to that of the bidder in *MCM Construction, Inc.* This Project is subject to CARB requirements pursuant to California Code of Regulations, Title 13, Div. 3, Ch. 9, Art. 4.8, Sec. 2449. Accordingly, the City required that all bidders provide accurate and complete information regarding CARB regulation compliance. Failure to provide the proper certification could expose

² ESI submitted various questions during the RFI process on June 9, 11, 16, 19. See Protest, Exhibit 2.



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the City to liability. Importantly, this deviation cannot be waived because compliance with the CARB regulations is necessitated by law and thus is a mandatory piece of bids for this Project.

Additionally, compliance with CARB regulations affects bidders' pricing, rendering non-compliance a material bid variation. In *Konica Bus. Machs. U.S.A., Inc., v. Regents of Univ. of Cal.*, (1988) 206 Cal.App.3d 449, Copy-Line was the apparent low bidder on a contract to provide copying services to the University of California. Konica contended that Copy-Line's bid was nonresponsive because it did not meet the performance requirements set forth in the request for bids. The court found that Copy-Line gained an unfair competitive advantage by deviating from the performance requirements because the deviation allowed it to submit a lower bid than it otherwise could have. Here, Mesa factored in the CARB regulation requirement when selecting subcontractors and negotiating pricing related to this scope, which demonstrates that ESI's failure to comply with the CARB regulations gave it an unfair advantage over other bidders. As such, that is a material deviation that cannot be waived by the City.

Even assuming, for argument's sake, that ESI's non-compliance was immaterial, the City clearly chose not to waive this variance by deeming ESI's bid non-responsive, as is the City's right. A local agency is not required to waive insubstantial deviations from bid requirements because the power to waive immaterial bid variations is discretionary, not mandatory. (*MCM Construction, Inc.*, 66 Cal.App.4th at 359.)

The City correctly determined that ESI's bid was non-responsive. ESI should not be allowed a second bite at the apple for its failure to comply with the City's clear instructions, which would afford ESI an unfair advantage for this opportunity.

2. Mesa's Contractor License Was Active at All Relevant Times

ESI alleges without any legal support that Mesa "did not have a valid contractor's license in the class specified." See figure below, taken from ESI's Exhibit 1:



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▼ Contractor's License Detail for License # 611215

DISCLAIMER: A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.

- ▶ CSLB complaint disclosure is restricted by law ([B&P 7124.6](#)) If this entity is subject to public complaint disclosure click on link that will appear below for more information. Click [here](#) for a definition of disclosable actions.
- ▶ Only construction related civil judgments reported to CSLB are disclosed ([B&P 7071.17](#)).
- ▶ Arbitrations are not listed unless the contractor fails to comply with the terms.
- ▶ Due to workload, there may be relevant information that has not yet been entered into the board's license database.

Data current as of 7/7/2025 4:07:23 PM

Business Information

MESA ENERGY SYSTEMS INC
dba EMCOR SERVICES MESA ENERGY

2 CROMWELL
IRVINE, CA 92618
Business Phone Number:(949) 460-0460

Entity Corporation
Issue Date 01/27/1991
Expire Date 01/31/2027

License Status

License is under suspension for the following reasons:

- ▶ License is under Qualifier's Bond Suspension. A bond of qualifying individual may have been received by the Board but not yet processed. Once the bond is processed the suspension will be lifted retroactively to the effective date of the bond. Ask the contractor for proof of a bond of qualifying individual and contact the bonding company to verify bond status.

As seen above, Mesa's license was under a "qualifier's bond suspension." The California State Licensing Board ("CSLB") qualified this suspension by explaining that "a bond of qualifying individual may have been received by the Board but not yet processed. Once the bond is processed **the suspension will be lifted retroactively to the effective date of the bond.**" *See also, Bus. & Prof. Code § 7071.7(a)*, which provides: "[T]he registrar shall accept a bond required by Section ... 7071.8 ... as of the effective date shown on the bond, if the bond is



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www.emcorgroup.com

received by the registrar within 90 days after that date, and shall reinstate the license to which the bond pertains, if otherwise eligible, retroactive to the effective date of the bond.”

Mesa’s suspension resulted due to a clerical error by the CSLB. In April of 2025, Mesa changed its Responsible Managing Officer (“RMO”). Despite the fact that Mesa submitted a qualifier bond for this new RMO within 90 days in May of 2025, the CSLB placed Mesa’s license under “suspension” in error, mistakenly keeping on record the **prior** RMO’s qualifier bond. The CSLB has clarified that Mesa’s new RMO qualifier bond is now on file and properly associated with Mesa’s new RMO, not the disassociated RMO. *See Enclosure 2.* The CSLB promptly lifted the suspension and Mesa’s license was reinstated retroactively as of the date of the bond, which was March 4, 2025, several months prior to the release of the Project bid. Thus, Mesa has, at all relevant times, been a duly licensed contractor. *See Enclosure 3.*

3. ESI’s Allegations Regarding Mesa’s Pricing and Controls Vendor Are Meritless

While Section B / Issue #2 of ESI’s Protest is difficult to decipher, it would appear ESI contends that (i) the City directed bidders to use Mesa for the controls portion of scope, which caused a variety of issues, and (ii) Mesa should not have been allowed to bid because it is the City’s controls vendor. ESI relies on the City’s response to RFI questions 3, 24, and 40 in support of these contentions, and claims these caused confusion in relation to the controls scope of work, as well as even giving rise to “possible collusion” and “unfair bidding practices to contractors.” See Protest at p. 3. These unfounded statements, however, are flatly incorrect and both ignore the actual facts of this matter and grossly misrepresent the City’s responses.

Question 3 - which was submitted by ESI itself - states, “Please provide the name and contact for the controls vendor associated with this site,” to which the City responded, “Emcor, Contact: Stephen Chin (510) 755-2304.” Mesa, a subsidiary of EMCOR, is the current controls vendor for the site. **However, nowhere in its response does the City “direct contractors to use Emcor.”** See Protest p 2. It would appear ESI either has read too much into the answer or failed to ask a clear question to ascertain some other information it may have desired to know in developing its bid.

Question 24 states, “Will the new Distech Controls DDC system interface with any remaining legacy pneumatic components, or is the transition to digital complete?” to which the City responded, “The new control systems shall be complete DDC systems replacing existing pneumatic systems for the mechanical systems included in the project scope. These systems will be DDC/electric as shown on the control diagrams.”

Question 40 states, “Please confirm if the Unitary Controllers should be BACnet or LonWorks controllers. Specification 23 09 00 seems to indicate both,” to which the City responded, “The



Cindy J. Lee
Construction Counsel

EMCOR Building Services,
Inc.

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Unitary Controllers communication protocol shall be compatible with the Distech control system.”

Both Questions 24 and 40 suggest that bidders needed to plan to install Distech Controls, as shown on the control diagrams; no more and no less. Mesa is a Distech Controls authorized vendor. However, Distech Controls works with eight (8) other controls vendors in the Bay Area alone. As such, any allegation that the City suggested, much less “directed,” that Mesa be listed as a subcontractor for the controls scope because Mesa is a Distech Controls authorized vendor is a complete misrepresentation. In fact, all three bidders listed a different Distech Controls authorized vendor, and **ESI did not list Mesa**. There is no way these questions rendered any confusion, let alone any collusion or unfair practices, as bidders were free to select any manner or method to meet the planned requirements for installation of Distech Controls. ESI listed Sunbelt Controls, not Mesa, making its argument that it was directed to use Mesa puzzling, as well as false.

In kind, the contention that Mesa should not have been allowed to bid because it is the current controls vendor also fails and is without merit, as that current role is irrelevant to the Project and bids at issue here.

ESI also appears to take issue with the fact that Mesa provided a quote to ESI as a controls subcontractor that differed from the price Mesa submitted in its own proposal for the same portion of Project scope. Here too, there is no merit to this argument because the City did not require any bidder to use Mesa, and all bidders were free to seek pricing from anyone that each bidder thought an appropriate resource for the controls scope of work. To that end, ESI listed Sunbelt Controls as its controls vendor in its proposal, so clearly ESI did not rely on or utilize Mesa’s proposal for its own bid. ESI’s inclusion of Mesa’s subcontractor bid in the Protest is irrelevant. Further, it goes without saying that Mesa’s price for the entire Project as a direct bidder would differ from its price as subcontractor for a limited scope, and that in no way contributed to “confusion, possible collusion, and unfair bidding practices to contractors.”

Conclusion

ESI’s Protest should be dismissed in its entirety as it is a desperate attempt to get a second bite at the apple. ESI’s bid was nonresponsive and the defects cannot be waived as they are material, relate to compliance with the law, and would afford ESI an unfair advantage. Mesa has been a duly licensed contractor at all relevant times and submitted the lowest, responsive bid. The City should proceed with awarding Mesa the Project.



Cindy J. Lee
Construction Counsel

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Mesa is ready, willing, and able to perform and looks forward to working with the City on this project. Your attention to this matter is appreciated. Please do not hesitate to contact me if you have any questions.

Respectfully,

Cindy J. Lee

In-House Counsel

Copy to:
Andrew J. Kozlow
Sweeney Mason LLP
akozlow@smlp.com

Enclosures:
Enclosure 1 – ESI's Proposal
Enclosure 2 – E-mail correspondence with CSLB
Enclosure 3 – Current status of Mesa's license

ENCLOSURE 1

PROPOSAL TO CITY OF SAN JOSE

FOR

Project: **10087-Center for the Performing Arts Chiller, Cooling Tower, and Boilers Replacement**

Name of Bidder: **Environmental Systems, Inc.**

Contact Information of Bidder:	<u>V.C Enfantino</u>	<u>408-980-1711</u>	<u>cenfantino@esite.net</u>
	Submitter Name	Phone Number	Email

The representations herein are made under penalty of perjury.

To: The City of San José, State of California

The undersigned, as bidder, declares that the only person or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm or corporation; that the bidder has thoroughly read and examined and has full knowledge of and understands all the provisions and contents of this proposal and the documents which must be attached hereto, the Plans and Specifications approved by the Director of Department of Public Works on 05/15/2025, entitled **10087-Center for the Performing Arts Chiller, Cooling Tower, and Boilers Replacement** and approved for advertising and opening by the Director of Public Works on 05/15/2025, on file in the office of the Director of Public Works of the City of San José in City Hall, 5th Floor, San Jose, California; that the bidder has thoroughly examined said Plans and Specifications which are on file in the office of the Director of Public Works, and that the bidder has full knowledge of and understands said Plans and Specifications and the requirements thereof; and that the bidder has further read and understands, and has knowledge of the contents of any and all addenda to said Plans and Specifications on file; and that the bidder proposes and agrees, if this proposal is accepted, that the bidder will contract with the City of San José, in the form of the copy of the contract on file in the office of the Director of Public Works, to do all the work and furnish all materials specified or referred to in the contract, in the manner and time therein prescribed, and according to the requirements of the City or Director of Public Works as therein set forth, to furnish the contract, bonds and insurance specified in the Specifications, and to do all other things required of the Contractor by the contract; and will take in full payment therefor the following price or unit prices as shown in the Schedule of Quantities on the next page(s).

If this proposal shall be accepted and the undersigned shall fail to contract, and to give the Contractor's Bond For Faithful Performance and the Contractor's Payment Bond required by the specifications and contract and by law, and to provide all insurance as required by said contract, within eight (8) days after the bidder has received notice from the City of San José, the City may, at its option, determine that the bidder has abandoned his/her contract, and thereupon this proposal and the acceptance thereof shall be null and void, and the forfeiture of such security accompanying this proposal shall operate and the same shall be the property of the City of San José.

Accompanying this proposal are the following documents completely filled in by the bidder and the same are incorporated herein by reference;

1. A bidder's bond in an amount equal to no less than ten percent (10%) of the total amount bid including all alternatives or ten percent (10%) of the contract value, if applicable, as indicated in the Notice to Contractors.
2. A "Statement of Bidder's Experience".
3. A "List of Subcontractors".
4. A "Wage Theft Prevention Policy Disclosure".
5. A "CARB Regulation Compliance".

City may at its option, request additional supplemental information after bid opening.

Bidder understands that the City reserves the right to reject any or all bids and to waive any informalities in the bidding.

The undersigned, as bidder, declares under penalty of perjury as follows.

1. In accordance with Public Contract Code Section 10232, no more than one final unappealable finding on contempt of court by a federal court has been issued against the bidder within the immediately preceding two year period because of the bidder's failure to comply with an order of a federal court which orders the bidder to comply with an order of the National Labor Relations Board.
2. The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.
3. In accordance with Title 23, United States Code, Section 112, the bidder has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this contract. Bidders are cautioned that making a false certification may subject certifier to criminal prosecution.
4. In listing subcontractors in this bid, the bidder did not discriminate or give any preference to any person or firm based on race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin. The bidder understands that any such discrimination or preference violates Chapter 4.08 of the Municipal Code.
5. Before submitting its bid, (a) the bidder affirmatively checked to confirm it had all the procurement documents – including addenda, notices, requests for information and the City's response to any requests for information, (b) the bidder reviewed such procurement documents and is knowledgeable about their contents and (c) the bid is based on and incorporates all such procurement documents.
6. Before submitting its bid, the bidder affirmatively checked its wage and hour compliance history and is in compliance with the City's "Wage Theft Prevention Policy."
7. The information contained in this proposal and all accompanying documents are true and correct.
8. The undersigned is a duly authorized representative of the bidder and has authority to sign documents on its behalf.

Signing this proposal on the signature portion thereof shall constitute signature of these statements.

Executed on	<u>06/25/2025</u>	City Business Lic. No.:	<u>9997511210</u>
		Expiration Date:	<u>9/15/2025</u>
		State Contractor Lic. No.:	<u>422478</u>
<u>Environmental Systems, Inc.</u>		Expiration Date:	<u>5/31/2026</u>
Legal Company Name		Classification:	<u>C20, C36, C38, C43, B, C-4</u>
		DIR Registration Number:	<u>1000001175</u>
<u>Corporation</u>		Expiration Date:	<u>06/31/2026</u>
Indicate Type of Entity: Sole Proprietorship, Partnership (General/Limited Partners), Corporation, Joint Venture, etc.		Federal I. D. No.:	<u>94-2298197</u>
		Address:	<u>3353 De La Cruz Blvd.,</u> <u>Santa Clara, CA 95054</u>
		Telephone:	<u>408-980-1711</u>
By:	<u>V.C. Enfantino</u>	Email:	<u>cenfantino@esite.net</u>
Title:	<u>President</u>		

SCHEDULE OF QUANTITIES**FOR ROJECT****10087 – CENTER FOR THE PERFORMING ARTS CHILLER, COOLING TOWER, AND BOILERS REPLACEMENT**

Item	Spec. Section (or Div. Section)	Description	Unit	Price
Base Bid Items:				
1	DIVISION 1 (All Sections)	General Requirements (If not covered in any of the following sections)	LS	\$45,000.00
2	01 50 50 01 11 00	Mobilization and Demobilization, including Crane picking plan and street encroachment permit.	LS	\$87,000.00
3	01 33 00 01 40 00	Site surveys, construction documents, submittal preparation, and inspections.	LS	\$45,000.00
4	01 41 00	Base Bid Demolition Work, chiller, cooling tower, pumps, electrical MSB, and other all work as depicted on the drawings and specifications	LS	\$100,000.00
5	02 41 00	Abatement scope all work as depicted on the drawings and specifications.	LS	\$150,000.00
6	01 78 39	Closeout documentation as called out in the contract document (Record Documents, Manuals, Inspections, Warranty, etc.)	LS	\$10,000.00
7	DIVISION 23	All mechanical scope per contract document. Including Chiller, and all other scope as depicted on the drawings and specifications.	LS	\$2,351,000.00
8	DIVISION 23	All Controls scope per contract documents. All scope as depicted on the drawings and specifications.	LS	\$330,000.00
9	DIVISION 26	All electrical scope per contract documents. All scope as depicted on the drawings and specifications.	LS	\$475,000.00
10	DIVISION 26	Electrical MSB Replacement. All scope as depicted on the drawings and specifications.	LS	\$200,000.00
11	01 91 13 DIVISIONS 23, 26	Provide start-up, testing, and support to the commissioning agent. This item includes training for the staff.	LS	\$50,000.00
12	DIVISIONS 22, 23, 26	All miscellaneous items (all work called out in the contract documents, plans & specs but were not covered in the above item 1 to 11.	LS	\$30,000.00
BASE BID AMOUNT:				\$3,873,000.00
Bid Alternate(s):				
13	DIVISION 22, 23, 26 01 23 00	Alternate #1: All mechanical, plumbing, electrical, and structural works, as called out in the contract documents to provide two smaller chillers instead of a single chiller as noted in the base bid, the cost for the single chiller shall be deducted from the bid alternate total cost. Remove and replace the boilers and heating hot water pumps including controls as per contract documents.	LS	\$1,775,000.00
TOTAL (BASE BID + BID ALT(S)):				\$5,648,000.00

BIDDER'S BOND

KNOW ALL PERSONS BY THESE PRESENTS:

That we, Environmental Systems, Inc. as PRINCIPAL, and Liberty Mutual Insurance Company, a corporation duly organized under the laws of the State of Massachusetts and duly licensed to become sole surety on bonds required or authorized by the State of California, as SURETY, are held and firmly bound unto the City of San José (hereinafter called the "City"), in the penal sum of TEN PERCENT (10%) OF THE TOTAL AGGREGATE AMOUNT OF THE BID (including all bid alternates) of the Principal above named, submitted by said Principal to the City of San José, for the work described below; for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. In no case shall the liability of the Surety hereunder exceed the sum of TEN PERCENT (10%) OF THE TOTAL AGGREGATE AMOUNT OF THE BID (including all bid alternates).

THE CONDITION OF THIS OBLIGATION IS SUCH,

That whereas the Principal has submitted the above mentioned bid to the City of San José, for certain construction specifically described as follows, for which bids are to be opened in the Office of the Director of Public Works, City of San José, City Hall, 200 E. Santa Clara St., 5th Floor, San Jose, CA 95113-1905, for

10087-Center for the Performing Arts Chiller, Cooling Tower, and Boilers Replacement

NOW, THEREFORE, if the aforesaid Principal is awarded the contract and, within the time and manner required under the specifications, after the prescribed forms are presented to Principal for signature, enters into a written contract, in the prescribed forms, in accordance with the bid, and files a Faithful Performance Bond and a Contractor's Payment Bond, and files the required insurance policies with the City, all as required by the specifications and the contract or by law, then the obligation shall be null and void; otherwise it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that the obligation of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such Bid; and said Surety does hereby waive notice of any such extension.

In the event suit is brought upon this bond by the Obligee and judgement is recovered, the Surety shall pay all costs incurred by the Obligee in such suit, including a reasonable attorney's fee to be fixed by the court.

IN WITNESS WHEREOF, we have hereunto set our hands on this

25th day of June, 2025.

PRINCIPAL

Environmental Systems, Inc.
Legal Company Name

By 

Title 

3353 De La Cruz Blvd.
Santa Clara CA 95054
Business Address

SURETY

Liberty Mutual Insurance Company
Legal Company Name
(Affix Corporate Seal)

By 
Vincent M. Scolari

Title Attorney-In-Fact
(Attach Notarization Acknowledgement)

One Embarcadero Center, Suite 1320
San Francisco CA 94111
Business Address

NOTARY ACKNOWLEDGEMENT (SURETY)

Use this form or substantive equivalent

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____ before me, _____ personally appeared

_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under the PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Please see attached certificate(s) (Seal)

Notary Public

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Santa Clara)

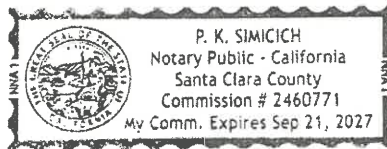
On June 25, 2025 before me, P. K. Simicich, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Vincent M. Scolari
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: **8196862-971768**

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, David J. Bachan, Charles M. Griswold, Wendy R. Pastora, Yesenia Rivera, Vincent M. Scolari, Patricia K. Simicich

all of the city of San Jose state of California each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 18th day of September, 2018.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By:

David M. Carey
David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 18th day of September, 2018 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2021
Member, Pennsylvania Association of Notaries

By:

Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 25th day of June, 2025.



By:

Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit,
currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call
1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

STATEMENT OF BIDDER'S EXPERIENCE

The bidder must provide a minimum of three (3) completed projects as references. The completed projects must demonstrate the bidder's experience and ability to complete the construction work as required under the terms of the Contract by meeting the following requirements:

Requirement No. 1: Each reference project must have involved construction substantially similar to the construction for this Project. "Substantially similar" means the following:

- a) The original contract amount was at least 70% of the engineer's estimate for this Project; and
- b) The project must have involved replacement of heating and/or cooling systems.

Requirement No. 2: The substantial completion date for each reference project must have been after January 1, 2018.

Requirement No. 3: At least one of the three completed projects must have included installation of a chiller.

Requirement No. 4: At least one of the three completed projects must have included installation of a boiler.

Requirement No. 5: Each reference project must have been performed by the bidder or its predecessor in interest. Reference projects completed by a subcontractor or key personnel will not meet these requirements.

<u>Project Name/Location</u>	<u>Owner Name and Contact Information</u>	<u>Replacement of Heating and/or Cooling Systems</u> <u>Y/N?</u>	<u>Installation of a Chiller</u> <u>Y/N?</u>	<u>Installation of a Boiler</u> <u>Y/N?</u>	<u>Initial Contract Amount</u>	<u>Substantial Completion Date</u>
		<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes		

SEE ATTACHED

		<input type="checkbox"/> No	<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> No		
		<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes		
		<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No		
		<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes		
		<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No		

Environmental Systems, Inc.

COMPLETED PROJECTS

Project Name / ESI's Job No.	Project Address	Scope of Work	Owner Rep. / Owner Contact / Phone	ESI'S Contract Value	Actual Comp. Date
City of Livermore - City Hall & Central Chiller (9051)	1110 S. Livermore Ave. Livermore, CA 94550	Replacement & upgrades of various components of the City Hall, Central Plant & Police Dept HVAC System including: replacement of (2) chillers, (3) boilers, mini split system , controls & other supporting equipment.	Nick Bagakis Associate Engineering Technician Community Development Department City of Livermore Office(925) 960-4542 Cell (925) 580-8305	\$3,094,000.00	12/10/2024
Silicon Valley Surgery Center (8953) (SUB) Design Build	2605 S. Winchester Blvd. Campbell, CA 95008	HVAC - AHU's, Steam Humidifiers, Boilers, Pumps, Ductwork, Buffer Tanks, Chillers, Exp Tanks, Pot Feeders, Split Systems , Piping, Gas Detection etc.	COBE Construction 498 Salmar Ave. Campbell, CA 95008 Mike O'Banks Superintendent 408-410-9242 mike@cobeinc.com Shaun Olson CEO 408-391-6010 shaun@cobeinc.com	\$5,802,448.00	11/30/2023
CW 1875 HVAC Infrastructure Upgrades (8748) Design Build	1875 Charleston Rd. Mtn. View, CA 94043	Remove (E) boilers & install air source heat pumps. Replace (E) rooftop AC units, replace toilet EF, ceiling diffusers, install new ALC control system, N condensate piping serving AC unit & fan coils. Remove all aluminum - flex ducting after VAV & replace with galvanic spiral ducting.	COBE Construction 498 Salmar Ave. Campbell, CA 95008 Garrett Miller 408-371-3400 garrett@cobeinc.com	\$3,459,935.00	4/1/2022

Environmental Systems, Inc.

COMPLETED PROJECTS

Gavilan College Boiler Replacement & UG Piping (8854)	5055 Santa Teresa Blvd. Gilroy, CA 95020	Replace boilers, heating HW pumps & VFD's in (3) bldgs and water softners systems in business & gymnasium. Replace underground HW piping from boiler plants (3) bldgs. with preinsulated piping. Reconnect to above ground bldg risers to exterior to the connected bldgs.	Eddy Medal (408) 515-8857 emedal@gavilan.edu	\$2,004,900.00	2/22/2022
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LIST OF SUBCONTRACTORS

1. Complete this form by providing the following information clearly and accurately: the name of the Subcontractor, its state contractor's license number, Department of Industrial Relations (DIR) Registration number, and location of business, and a brief description of the work it will perform.
2. The designation of Subcontractors is required as described in Section 2-1.15A of the City of San Jose Standard Specifications, July 1992.
3. Bidders have 24 hours from the time of the bid opening to provide any corrections to the state subcontractor license numbers and/or the DIR Registration Number that were submitted with the original proposal.

NAME OF SUBCONTRACTOR	STATE SUBCONTRACTOR LICENSE NUMBER	DIR REGISTRATION NUMBER	LOCATION OR PLACE OF BUSINESS	PORTION (DESCRIPTION) OF WORK
DW Nicholson Corp.	932483	1000001407	San Jose, CA	Steel
Insulation Specialties	464164	1000008860	Pleasanton CA	Insulation
Metro Electric	401047	1000028931	San Francisco, CA	Electrical
24/7 Concrete	943313	10000019442	San Jose, CA	Concrete
Coastwide Environmental	523560	1000001357	Watsonville, CA	Asbestos Abatement
Sunbelt Controls	800423	1000000551	Pleasanton, CA	Controls

WAGE THEFT PREVENTION POLICY DISCLOSURE

Bidder must disclose whether they have been found by a court or final administrative action of an investigatory government agency to have violated federal, state, or local wage and hour laws within the past five years from the date of the filing of bids deadline. For each disclosed violation, Bidder must provide a copy of the court order, judgement, and/or final administrative decision.

Upon request by City, Bidder must provide documents demonstrating that the assessment, court order, judgement, and/or final administrative decision has been satisfied.

<u>Violation Name</u>	<u>Violation Status</u>	<u>Court (if applicable)</u>	<u>Defendant/Employer Name</u>
Not Applicable			

CARB REGULATION COMPLIANCE

Bidder must represent whether the fleet(s) used in performance of this contract are subject to California Air Resources Board (CARB) In-Use Off-Road Diesel-Fueled Fleets requirements (CARB Regulations) and provide Certificate(s) of Reported Compliance for itself and all designated subcontractors as applicable. A screenshot or printout of the certificate validation web portal or any other CARB website is not a substitute for submitting a Certificate of Reported Compliance.

Bidder's Fleet:

If bidder's fleet is subject to the CARB Regulations, bidder must submit with its bid a valid Certificate of Reported Compliance.

Bidder must select one of the options below:

- ☐ Bidder's fleet is subject to the CARB Regulations and the Certificate of Reported Compliance is **attached to the proposal**.
- ☒ Bidder's fleet is not subject to the CARB Regulations.

Designated Subcontractor(s)' Fleet(s):

For those designated subcontractor(s) fleet(s) that are subject to the CARB Regulations, bidder must submit a valid Certificate of Reported Compliance to the City **no later than 4:00 p.m. on the 2nd business day after bid opening**.

If subcontractors have been designated on the List of Subcontractors, bidder must select one of the options below:

- ☒ One or more designated subcontractor(s)' fleets are subject to the CARB Regulations and the Certificate(s) of Reported Compliance is/are attached to the proposal or will be submitted to the City via email (PW_Procurement@sanjoseca.gov) no later than 4:00 p.m. on the 2nd business day after bid opening.
- ☐ None of the designated subcontractors has a fleet subject to the CARB Regulations.

Please note: Rental equipment is not exempt from the CARB Regulations. If any party is using rental equipment that is subject to the CARB Requirements, bidder must submit a Certificate of Reported Compliance from the rental fleet company. When submitting a rental fleet company's Certificate of Reported Compliance, bidders should write the name of the party covered by the rental fleet's certificate on the top of the certificate.



CALIFORNIA

AIR RESOURCES BOARD

Certificate of Reported Compliance With:

Truck and Bus Regulation

Issued to:

West Coast Cranes

This certificate confirms that the fleet owner has attested under penalty of perjury that the statements and information they provided to the California Air Resources Board (CARB) are true, accurate, and complete regarding all relevant vehicles in the fleet required to show compliance. CARB hereby finds that the fleet listed has reported compliance with:

Title 13 CCR 2025 (Truck and Bus Regulation)

If CARB subsequently finds that the statements and information that have been provided are not true, accurate, and complete, this certificate shall be effectively revoked and the fleet subject to noncompliance penalties.

This certificate is valid until December 31, 2025

Printed on 2025-02-05

TRUCRS Fleet Identification

PI 3008

30 Vehicles

Jack Kitowski

Jack Kitowski
Division Chief, Mobile Source Control
Division California Air Resources Board

To verify the authenticity of this certificate, visit
www.arb.ca.gov/msprog/onrdiesel/tblookup.php

ENCLOSURE 2

From: [Heather Alexander](#)
To: [Cindy J. Lee](#)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Bonds@CSLB <Bonds@cslb.ca.gov>
Sent: Tuesday, July 8, 2025 10:41 AM
To: Heather Alexander <halexander@emcor.net>
Subject: RE: URGENT Bond Update

This Message Is From an External Sender

This message originated outside your organization.

Hello,

I've verified that you currently have at least one active qualifier for each classification on the license; the suspension has been lifted, and the license is now clear.

Cheers,

Michael Varischetti
Program Technician II

Workers Compensation/Bond Unit
Contractors State License Board

Bonds Unit: [916-255-4050](tel:916-255-4050)

Workers Compensation Unit: [916-255-1104](tel:916-255-1104)



From: Heather Alexander <halexander@emcor.net>

Sent: Monday, July 7, 2025 12:06 PM

To: Bonds@CSLB <Bonds@cslb.ca.gov>

Subject: URGENT Bond Update

You don't often get email from halexander@emcor.net. [Learn why this is important](#)

CAUTION: This email originated from outside of CSLB. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello –

For License 611215

You updated the Bond for our new Qualifier, Micheal Echsner. However, the Suspension Notice is still on our License Page. This is causing issues with our Customers. Can you please correct immediately.

Heather Alexander

Executive Director

Mesa Energy Systems, Inc.

dba EMCOR Services Mesa Energy

2 Cromwell Irvine, Ca 92618

Cell: 657.236.9768 **Office:** 949.460.4643

halexander@emcor.net



This message is for the named person's use only. It may contain confidential, proprietary or legally privileged information. No confidentiality or privilege is waived or lost by any mistransmission. If you receive this message in error, please immediately delete it and all copies of it from your system, destroy any hard copies of it and notify the sender. You must not, directly or indirectly, use, disclose, distribute, print, or copy any part of this message if you are not the intended recipient.

THIS BOND SHALL BE FILED WITH THE REGISTRAR OF CONTRACTORS
STATE OF CALIFORNIA
CONTRACTORS STATE LICENSE BOARD

SURETY CODE: 2444-8

BOND NO.: 108263151

LICENSE NO.: _____

OR

APP FEE NO.: 20240206575

Bond of Qualifying Individual

(BUSINESS AND PROFESSIONS CODE SECTIONS 7071.5-7071.11)

The premium on this bond is \$ 113.00 for the term 03/04/2025 - 03/04/2026

PLEASE TAKE NOTICE: THAT Michael Joseph Echsner

NAME OF QUALIFIER

whose address for service is 2 Cromwell, Irvine, CA 92618

STREET ADDRESS

CITY

STATE

ZIP CODE

as Principal, and Travelers Casualty and Surety Company of America

NAME OF SURETY

a corporation organized under the laws of CT

and authorized to transact a general surety business in the State of California, as Surety, are held and firmly bound unto the State of California, for the payment of which well and truly to be made we bind ourselves, our heirs, administrators, successors and assigns, jointly and severally, firmly by these presents. This bond is filed pursuant to the provisions of Sections 7071.9-7071.11, Business and Professions Code, in respect to the principal as qualifying individual covering the person or firm as a licensee under Division 3, Chapter 9, Business and Professions Code.

Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy

BUSINESS NAME AS SHOWN ON APPLICATION OR LICENSE

2 Cromwell, Irvine, CA 92618

STREET ADDRESS

CITY

STATE

ZIP CODE

WHEREAS, The provisions of Sections 7071.9 and 7071.10, of the *Business and Professions Code*, require that the Principal file or have on file with the Registrar a bond issued by an admitted surety in the amount of Twenty-Five Thousand Dollars (\$25,000), and Principal admits it is so required.

NOW THEREFORE, The conditions of the foregoing obligation are that if the Principal shall comply with and be subject to the provisions of Division 3, Chapter 9 (commencing with Section 7000) of the *Business and Professions Code*, then this obligation shall be null and void; otherwise to remain in full force and effect.

PROVIDED HOWEVER, This bond is issued subject to the following express conditions:

1. This bond may be cancelled by the Surety in accordance with the provisions of Sections 996.310 *et seq.* of the *Code of Civil Procedure*.
2. This bond shall be deemed continuous in form and shall remain in full force and effect and shall run concurrently with the license period for which the license is granted and each and every succeeding license period or periods for which the Principal may be licensed, after which liability hereunder shall cease except as to any liability or indebtedness therefore incurred or accrued hereunder.
3. The limitation of the liability of the Surety and the conditions of the bond are as set forth in Sections 7071.9, 7071.10 and 7071.11, *Business and Professions Code*, and any person claiming against this bond may bring an action in a proper court on this bond for the amount of the damage he may suffer as a result of such acts or omissions by the Principal except that such action must be brought within two (2) years after the expiration of the license period during which the act or omission occurred, or within two (2) years of the date of license of active licensee was inactivated, canceled or revoked, whichever occurs first, except provided further that a claim for fringe benefits shall be brought within six (6) months after the date the fringe benefit delinquencies were discovered, and any civil action thereon shall be filed within two (2) years after the date the fringe benefit contributions were due.
4. This bond is executed by the Surety to comply with the provisions of Division 3, Chapter 9, (commencing with Section 7000) of the *Business and Professions Code* and of Part 2, Title 14, Chapter 2 (commencing with Section 995.010) of the *Code of Civil Procedure*, and this bond shall be subject to all of the terms and provisions thereof.
5. This bond to become effective March 4, 2025

EFFECTIVE DATE

Travelers Casualty and Surety Company of America

NAME OF SURETY

One Tower Square, Hartford, CT 06183

ADDRESS FOR SERVICE

I certify (or declare) under penalty of perjury under the laws of the State of California that I have executed the foregoing bond under an unrevoked power of attorney.

Executed in Uniondale, NY on May 1, 2025, under the laws of the State of California.

CITY AND STATE

DATE

Certificate of Authority # 6516

Signature of Attorney-in-Fact Camille Maitland

Printed or Typed Name of Attorney-in-Fact Camille Maitland

Alliant Insurance Services, Inc.

Address of Attorney-in-Fact 333 Earle Ovington Boulevard, Suite 700, Uniondale, NY 11553

Telephone Number of Attorney-in-Fact (516) 414-8900



Nº 6516

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
SAN FRANCISCO

Amended

Certificate of Authority

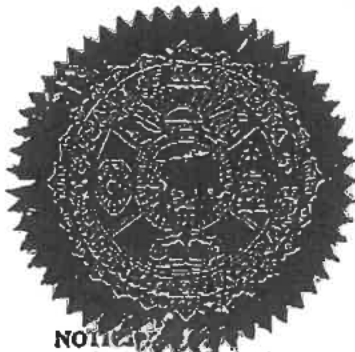
THIS IS TO CERTIFY, That, pursuant to the Insurance Code of the State of California,

Travelers Casualty and Surety Company of America

of Hartford, Connecticut, organized under the
laws of Connecticut, subject to its Articles of Incorporation or
other fundamental organizational documents, is hereby authorized to transact within this State,
subject to all provisions of this Certificate, the following classes of insurance: Fire, Marine,
Surety, Disability, Plate Glass, Liability, Workers' Compensation,
Common Carrier Liability, Boiler and Machinery, Burglary, Credit,
Sprinkler, Team and Vehicle, Automobile, Aircraft, and Miscellaneous
as such classes are now or may hereafter be defined in the Insurance Laws of the State of California.

THIS CERTIFICATE is expressly conditioned upon the holder hereof now and hereafter being in
full compliance with all, and not in violation of any, of the applicable laws and lawful requirements
made under authority of the laws of the State of California as long as such laws or requirements are
in effect and applicable, and as such laws and requirements now are, or may hereafter be changed
or amended.

IN WITNESS WHEREOF, effective as of the 1st day
of July, 1997, I have hereunto set
my hand and caused my official seal to be affixed this 16th
day of June, 1997.



By

Chuck Quackenbush
Insurance Commissioner
Victoria S. Sidbury
Deputy

NOTICE: Qualification with the Secretary of State must be accomplished as required by the California Corporations Code promptly after issuance of this Certificate of Authority. Failure to do so will be a violation of Ins. Code Sec. 701 and will be grounds for revoking this Certificate of Authority pursuant to the covenants made in the application therefor and the conditions contained herein.



Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company

POWER OF ATTORNEY

Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and the Companies do hereby make, constitute and appoint **Camille Maitland** of **UNIONDALE**, **New York**, their true and lawful Attorney(s)-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **16th** day of **February, 2024**.



State of Connecticut

City of Hartford ss.

On this the **16th** day of **February, 2024**, before me personally appeared **Bryce Grissom**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June, 2026**



Anna P. Nowik

Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of each of the Companies, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **1st** day of **May**, **2025**.



Kevin E. Hughes

Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.

ACKNOWLEDGEMENT OF SURETY COMPANY

STATE OF NEW YORK

COUNTY OF NASSAU

On this May 1, 2025 before me personally came Camille Maitland to me known, who, being by me duly sworn, did depose and say; that he/she resides in Nassau County, State of New York, that he/she is the Attorney-In-Fact of the Travelers Casualty and Surety Company of America the corporation described in which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the Board of Directors of said corporation; and that he/she signed his/her name thereto by like order; and the affiant did further depose and say that the Superintendent of Insurance of the State of New York, has, pursuant to Section 1111 of the Insurance Law of the State of New York, issued to Travelers Casualty and Surety Company of America (Surety) his/her certificate of qualification evidencing the qualification of said Company and its sufficiency under any law of the State of New York as surety and guarantor, and the propriety of accepting and approving it as such; and that such Certificate has not been revoked.



Notary Public

DONNAMARIE A KISSANE
Notary Public, State of New York
No. 01K16297783
Qualified in Nassau County
Commission Expires 03/03/2026

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

HARTFORD, CONNECTICUT 06183

FINANCIAL STATEMENT AS OF DECEMBER 31, 2024

CAPITAL STOCK \$ 6,480,000

ASSETS		LIABILITIES & SURPLUS	
BONDS	\$ 5,367,684,447	LOSSES	\$ 1,648,831,742
STOCKS	99,502,344	LOSS ADJUSTMENT EXPENSES	169,492,904
CASH AND INVESTED CASH	69,689,626	REINSURANCE PAYABLE ON PAID LOSSES & LOSS ADJ. EXPENSES	15,148,347
OTHER INVESTED ASSETS	9,968,793	COMMISSIONS	62,360,717
SECURITIES LENDING REINVESTED COLLATERAL ASSETS	30,993,966	OTHER EXPENSES	69,184,511
INVESTMENT INCOME DUE AND ACCRUED	45,630,862	TAXES, LICENSES AND FEES	18,311,579
PREMIUM BALANCES	346,017,428	CURRENT FEDERAL AND FOREIGN INCOME TAXES	7,102,552
REINSURANCE RECOVERABLE	62,034,928	UNEARNED PREMIUMS	1,647,964,685
NET DEFERRED TAX ASSET	78,278,940	ADVANCE PREMIUM	3,970,618
UNDISTRIBUTED PAYMENTS	15,607,795	POLICYHOLDER DIVIDENDS	26,872,597
GUARANTY FUNDS RECEIVABLE OR ON DEPOSIT	2,148,727	CEDED REINSURANCE NET PREMIUMS PAYABLE	57,879,540
OTHER ASSETS	1,100,106	AMOUNTS WITHHELD / RETAINED BY COMPANY FOR OTHERS	17,071,685
		REMITTANCES AND ITEMS NOT ALLOCATED	10,456,481
		PROVISION FOR REINSURANCE	8,746,887
		PAYABLE TO PARENTS, SUBSIDIARIES AND AFFILIATES	79,937,444
		PAYABLE FOR SECURITIES LENDING	30,993,966
		ESCHEAT LIABILITY	595,014
		OTHER ACCRUED EXPENSES AND LIABILITIES	4,728
		TOTAL LIABILITIES	\$ 3,873,025,985
		CAPITAL STOCK	\$ 6,480,000
		PAID IN SURPLUS	433,803,760
		OTHER SURPLUS	1,815,345,416
		TOTAL SURPLUS TO POLICYHOLDERS	\$ 2,255,633,176
TOTAL ASSETS	\$ 6,128,659,161	TOTAL LIABILITIES & SURPLUS	\$ 6,128,659,161

STATE OF CONNECTICUT)
COUNTY OF HARTFORD) SS.
CITY OF HARTFORD)



MICHAEL J. DOODY, BEING DULY SWORN, SAYS THAT HE IS VICE PRESIDENT – FINANCE, OF TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA,
AND THAT TO THE BEST OF HIS KNOWLEDGE AND BELIEF, THE FOREGOING IS A TRUE AND CORRECT STATEMENT OF THE FINANCIAL CONDITION OF SAID
COMPANY AS OF THE 31ST DAY OF DECEMBER, 2024.

Michael J. Doody
VICE PRESIDENT – FINANCE

SUBSCRIBED AND SWORN TO BEFORE ME THIS
15TH DAY OF MARCH, 2025

NOTARY PUBLIC

SUSAN M. WEISSLEDER
Notary Public
My Commission Expires November 30, 2027



ENCLOSURE 3



▼ Contractor's License Detail for License # 611215

DISCLAIMER: A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.

- ▶ CSLB complaint disclosure is restricted by law ([B&P 7124.6](#)) If this entity is subject to public complaint disclosure click on link that will appear below for more information. Click [here](#) for a definition of disclosable actions.
- ▶ Only construction related civil judgments reported to CSLB are disclosed ([B&P 7071.17](#)).
- ▶ Arbitrations are not listed unless the contractor fails to comply with the terms.
- ▶ Due to workload, there may be relevant information that has not yet been entered into the board's license database.

Data current as of 7/14/2025 11:25:11 AM

Business Information

MESA ENERGY SYSTEMS INC
dba EMCOR SERVICES MESA ENERGY

2 CROMWELL
IRVINE, CA 92618
Business Phone Number:(949) 460-0460

Entity Corporation
Issue Date 01/27/1991
Expire Date **01/31/2027**

License Status

This license is current and active.

All information below should be reviewed.

Classifications

- ▶ [C20 - WARM-AIR HEATING, VENTILATING AND AIR-CONDITIONING](#)
- ▶ [C10 - ELECTRICAL](#)
- ▶ [B - GENERAL BUILDING](#)
- ▶ [C38 - REFRIGERATION](#)
- ▶ [C36 - PLUMBING](#)
- ▶ [C-4 - BOILER, HOT WATER HEATING AND STEAM FITTING](#)
- ▶ [C46 - SOLAR](#)
- ▶ [C-7 - LOW VOLTAGE SYSTEMS](#)

Bonding Information

Contractor's Bond

This license filed a Contractor's Bond with [TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA](#) .
Bond Number: 103533659
Bond Amount: \$25,000
Effective Date: 01/01/2023
[Contractor's Bond History](#)

Bond of Qualifying Individual

- ▶ This license filed Bond of Qualifying Individual number **105583416** for RANDALL JAMES FAIMAN in the amount of **\$25,000** with [TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA](#) .
Effective Date: 01/01/2023
[BQI's Bond History](#)
- ▶ This license filed Bond of Qualifying Individual number **108263151** for MICHAEL JOSEPH ECHSNER in the amount of **\$25,000** with [TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA](#) .
Effective Date: 03/04/2025
- ▶ This license filed Bond of Qualifying Individual number **105653063** for KEVIN PAUL ROELL in the amount of **\$25,000** with [TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA](#) .
Effective Date: 01/01/2023
[BQI's Bond History](#)

NOTE: There are 4 qualifiers (with bonding information) for this license. Up to 3 are displayed on this page.

Workers' Compensation

This license has workers compensation insurance with the [CONTINENTAL CASUALTY COMPANY](#)
Policy Number:WC792783954
Effective Date: 10/01/2024
Expire Date: 10/01/2025
[Workers' Compensation History](#)

Workers' compensation classification code(s):
5140 - Electrical Wiring-high wage
5190 - Electrical Wiring-low wage
5542 - Description Unavailable

For a description of the workers' compensation classification code(s) listed for this licensee, contact the licensee’s insurance carrier. Contact information for the licensee's insurer is available by clicking the insurer link above. Classification codes are also available on the Workers' Compensation Insurance Rating Bureau's classification search page.

The board does not verify or investigate the accuracy of classification codes displayed.

Other

- ▶ Personnel listed on this license (current or disassociated) are listed on other licenses.

Back to Top

Conditions of Use

Privacy Policy

Accessibility

Accessibility Certification



Department of Public Works

July 22, 2025

V.C. Infantino
Environmental Systems, Inc.
3353 De La Cruz Blvd.
Santa Clara, CA 95054
cenfantino@esite.net

SUBJECT: PW 10087 – Center for the Performing Arts Chiller, Cooling Tower, and Boilers Replacement Bid Protest

Dear Mr. Infantino,

This letter is to inform you that City staff has evaluated the July 10, 2025, letter sent by your attorney, Andrew Kozlow, entitled “Bid Protest 10087 Center for the Performing Arts Chiller, Cooling Tower, and Boilers Replacement” and will be making the following recommendation to the City Council. Pursuant to the San Jose Municipal Code, the City Council has the authority to resolve bid protests made during this procurement.

RECOMMENDATION:

City staff will recommend upholding the intent to award the construction contract to Mesa Energy Systems, Inc.

BACKGROUND:

On June 26, 2025, bids were opened for the PW 10087 – Center for the Performing Arts Chiller, Cooling Tower, and Boilers Replacement Project. Three bids were submitted:

1. Environmental Systems, Inc. (base bid \$3,873,000, bid alternates \$1,775,000);
2. Mesa Energy Systems, Inc. (base bid \$3,703,935, bid alternates \$2,236,349); and
3. Western Allied Mechanical (base bid \$4,998,299, bid alternates \$2,675,095).

After reviewing the bids for responsiveness, the City determined that the bid from Environmental Systems, Inc. was non-responsive for failing to provide California Air Resources Board Off-Road Diesel Vehicle Certificate(s) of Reported Compliance for one or more of its designated subcontractors' fleets. On July 3, 2025, the City issued a Notice of Intent to Award the contract to Mesa Energy Systems, Inc., the bidder who submitted the lowest responsive and responsible bid.

SUBJECT: PW 10087 Protest

Page 2

PROTEST:

On July 10, 2025, the City received a timely written protest from Environmental Systems, Inc. The protest asserted that the City should waive as a minor irregularity the deficiency in Environmental Systems, Inc.'s bid and award the contract to Environmental Systems, Inc. Alternatively, Environmental Systems, Inc. asked to deem Mesa Energy Systems, Inc.'s bid non-responsive and re-bid the project.

ANALYSIS: ENVIRONMENTAL SYSTEMS, INC.'S PROTEST IS BASELESS

A. *Environmental Systems, Inc. was required to submit California Air Resources Board Certificate(s) of Reported Compliance for any designated subcontractor with fleets subject to the In-Use Off-Road Diesel-Fueled Regulations and failed to do so.*

The City consistently holds that failing to submit a properly completed bid package is grounds for being considered non-responsive, as permitted by Section 2-1.06 of the City's Standard Specifications.

Since 2008, CARB has regulated certain types of construction vehicles through the In-Use Off-Road Diesel-Fueled Fleets Regulation (Off-Road Regulation). The Off-Road Regulation requires contractors and other fleet owners to reduce their emissions by retiring older vehicles and replacing the retired vehicles with newer vehicles, repowering older engines, or installing verified diesel emission control strategies in older engines; and by restricting the addition of older vehicles to fleets.

In 2022, CARB approved amendments to the Off-Road Regulation aimed at "[establishing] a proactive check at the onset of a project or at contract renewal to encourage fleets to comply with the regulation...[and] also safeguard against the unfair monetary advantage of non-compliance and thus help level the playing field for all fleets.¹" The amendments, which went into effect January 1, 2024, require public agencies to obtain a valid Certificate of Reported Compliance for the fleets and subcontractors that are listed in the contract. The certificates must be obtained by the public agency prior to entering into a public works contract.

In accordance with the Off-Road Regulation, the City has, since January 2024, required that bidders provide CARB compliance documentation with each bid:

- The Notice to Contractors states that bidders must submit valid Off-Road Regulation Certificate(s) or Reported Compliance for their fleet and those of their designated subcontractors.

¹ CARB Amendments to the In-Use Off-Road Diesel-Fueled Fleets Regulation website:
<https://ww2.arb.ca.gov/resources/fact-sheets/fact-sheet-contracting-requirements>

SUBJECT: PW 10087 Protest

Page 3

- A CARB Regulation Compliance form is included in the Request for Bids package. Bidders are required to mark two checkboxes: one to indicate whether the bidder's fleet is subject to the Off-Road Regulation and a second to indicate whether any subcontractor fleets are subject to the Off-Road Regulation. For any fleet that is subject to the Off-Road Regulation, the bidder must submit a valid Off-Road Certificate of Reported Compliance.

In order to encourage compliance with these requirements, Public Works staff issues a CARB Certificates of Reported Compliance Reminder notice to every solicitation on the City's e-procurement platform, Biddingo, approximately one week prior to the bid submittal deadline. Accordingly, on June 18, 2025, the City issued Special Notice PW 10087-5, which read:

"As a reminder, this project is subject to the California Air Resources Board In-Use Off-Road Diesel-Fueled Fleets requirements. Bidders must evaluate the vehicle(s) that will be used in the performance of this contract and submit CARB Off-Road Diesel Vehicle Certificate(s) of Reported Compliance for themselves and any designated subcontractor(s) as applicable.

When completing the CARB Regulation Compliance form, please double-check that you have marked a checkbox under "Bidder's Fleet" and (if you have designated subcontractors) under "Designated Subcontractor(s) Fleet(s)" on the form.

When submitting Certificates of Reported Compliance, please note:

- *A screenshot or printout of the certificate validation web portal or any other CARB website is not a substitute for submitting a Certificate of Reported Compliance.*
- *Off-Road Diesel Vehicle Certificate(s) of Reported Compliance are different than Truck and Bus Certificate(s) of Reported Compliance. Please see attached example of an Off-Road Diesel Vehicle Certificate."*

A sample Off-Road Regulation Certificate of Reported Compliance is attached to the notice as a clear example of what document bidders are required to submit to the City.

In its bid, Environmental Systems, Inc. indicated that one or more of its designated subcontractor(s)' fleets are subject to the Off-Road Regulation. However, the company failed to submit an Off-Road Regulation Certificate of Reported Compliance for any subcontractor and instead submitted a Truck and Bus Certificate of Reported Compliance for a designated subcontractor. Given that the City's procurement documents – including the CARB Certificates of Reported Compliance Reminder – clearly require Off-Road Certificates of Reported Compliance and not Truck and Bus Certificates of Reported Compliance, Environmental Systems, Inc.'s bid was deemed non-responsive on the basis that its "CARB Certificate of Reported Compliance is missing or invalid (subcontractor)." This irregularity was noted in the bid results which were posted with the Notice of Intent to Award on July 3, 2025.

SUBJECT: PW 10087 Protest

Page 4

B. Environmental Systems, Inc.'s argument that none of its designated subcontractors have fleets subject to the Off-Road Regulation means that the bidder failed to accurately complete their CARB Regulation Compliance form.

As noted above, failure to submit a properly completed bid package is grounds for being considered non-responsive, as permitted by Section 2-1.06 of the City's Standard Specifications.

On or around July 7, 2025, after the City posted the Notice of Intent to Award and bid results package, Environmental Systems, Inc. spoke to the City's CIP Procurement Manager, Lauren Profeit, to clarify that – contrary to the information provided in their bid – none of Environmental Systems, Inc.'s designated subcontractors has a fleet that is subject to the Off-Road Regulation. While this changes the nature of Environmental Systems, Inc.'s bid irregularity (from "CARB Certificate of Reported Compliance is missing or invalid (subcontractor)" to "CARB Regulation Compliance form improperly completed"), it does not change the fact that their bid is non-responsive.

The City relies on bidders to completely and accurately complete their bid packages and requires that, in signing the proposal form, each bidder declare under penalty of perjury that "the information contained in this proposal and all accompanying documents are true and correct." Environmental Systems, Inc.'s failure to accurately ascertain and report its subcontractors' CARB status at the time of bid is an issue the City is under no obligation to correct by treating it as a waivable minor irregularity.

It should be noted that, despite Environmental Systems, Inc.'s argument to the contrary, compliance with CARB's Off-Road Regulations has an effect on bid prices. CARB itself states that one of the reasons for requiring public agencies to enforce its regulations is to "safeguard against the unfair monetary advantage of noncompliance and thus help level the playing field for all fleets."² For this reason, the City considers it of paramount importance that bidders determine and accurately report whether their fleet and those of their designated subcontractors are subject to the Off-Road Regulations at the time of bid.

C. Mesa Energy Systems, Inc.'s Contractors State License was valid on June 26, 2025, as required by the procurement documents.

Section 2-1.10 of the City's Special Provisions requires that bidders have a valid contractor's license in the class specified in the Notice to Contractors at the time of bid. In accordance with the City's standard bid review practice, on June 26, 2025, the City visited the California Contractors State License Board "Check a Contractor License or Home Improvement Salesperson Registration" website to verify that Environmental Systems, Inc., Mesa Energy Systems, Inc. and Western Allied Mechanical had valid classification B and C-20 licenses. All three appeared on the website as having B and C-20 licenses which were "current and active" at that time.

² CARB Amendments to the In-Use Off-Road Diesel-Fueled Fleets Regulation website:
<https://ww2.arb.ca.gov/resources/fact-sheets/fact-sheet-contracting-requirements>

SUBJECT: PW 10087 Protest

Page 5

On or around July 7, 2025, Environmental Systems, Inc. contacted the City via phone and stated that the California Contractors State License Board website currently showed Mesa Energy Systems, Inc.'s license as "under suspension." The following day, Environmental Systems, Inc. provided the City with a screenshot of the suspension notice, dated July 7, 2025, and asserted by email that "[although] as of 7/8/25, [the website] is now showing the license is current and active...on bid day, [Mesa Energy Systems, Inc.'s] license was suspended." That claim is false, and the City received confirmation from the California Contractors State License Board that Mesa Energy Systems, Inc.'s license was not suspended until July 1, 2025, five days after bid opening. Per the suspension notation on the Contractors State License Board website, when the suspension was lifted, it was done so retroactively and the license is currently valid. As such, Mesa Energy Systems, Inc.'s bid is responsive.

D. The City's Plans and Specifications did not provide Mesa Energy Systems, Inc. with an unfair competitive advantage.

Environmental Systems, Inc.'s protest asserts that "unfair bidding practices" and "possible collusion" provided Mesa Energy Systems, Inc. with a competitive advantage. The City strongly disagrees with this characterization.

1. Bidders were not required to use Mesa Energy Systems, Inc. as their controls vendor.

There are limited circumstances under which the City can designate – or require – that any specific material, product, service, or business be used. In accordance with Chapter 27.20 of the San Jose Municipal Code, if the City makes such a requirement, the procurement documents must include written findings from the Director of Public Works to that effect. The specifications for this project did not include written findings designating Mesa Energy Systems, Inc. as the controls vendor and, as such, bidders were not required to obtain a quote from Mesa Energy Systems, Inc. or utilize Mesa Energy Systems, Inc. in any way. They were fully permitted to price out any vendor who could provide the Distech control system "or equal." They were, however, required to coordinate integration of their controls with the current vendor, as is standard industry practice.

Environmental Systems, Inc.'s protest seems to suggest that because the City responded to its June 2, 2025, request to "please provide the name and contact for the controls vendor associated with this site" by providing Mesa Energy Systems, Inc.³'s name and contact information, bidders were being directed to utilize Mesa Energy Systems, Inc. That is not the case and neither Environmental Systems, Inc. nor Western Allied Mechanical listed the company as their controls subcontractor.

³ The answer specifically read "Emcor, Contact: Stephen Chin (510) 755-2304." Mesa Energy Systems, Inc. is a subsidiary of EMCOR. Its corporate name is Mesa Energy Systems, Inc. but it does business as EMCOR Services Mesa Energy.

SUBJECT: PW 10087 Protest

Page 6

2. No grounds existed for precluding Mesa Energy Systems, Inc. from bidding on the project.

It is unclear what legal and factual grounds exist for Environmental Systems, Inc.'s assertion that Mesa Energy Systems, Inc. should have been precluded from bidding on the project. Mesa Energy Systems, Inc. holds a services contract with Team San Jose (not the City) and was not involved in the preparation of the project plans and specifications.

Based on the above, the City rejects Environmental Systems, Inc.'s argument that there was any unfair competitive advantage obtained by Mesa Energy Systems, Inc. nor is there any reason to re-bid this project.

As stated above, the City Council has the authority to resolve bid protests made during this procurement. Environmental Systems, Inc. will be afforded the opportunity to formally present its case to the City Council when this item is agendaized for City Council action. Alternatively, Environmental Systems, Inc. may withdraw its protest.

Thank you,

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