

ELK GROVE UNIFIED SCHOOL DISTRICT
BID #319-09/10 – CLEAIRE HORIZON DIESEL PARTICULATE FILTER (DPF) RETROFITS

BID INSTRUCTIONS AND CONDITIONS

In accordance with specifications and general conditions hereby furnished by the Elk Grove Unified School District, requested materials are to be delivered on a formal purchase order issued by the Purchasing Department after award of the bid to the successful bidder. All bid prices are to be F.O.B. destination.

The Elk Grove Unified School District reserves the right to reject any or all bids, to accept or reject any one or more items of a bid, or to waive any irregularities of information in the bids or in the bidding. The quantities shown are believed to be accurate, however, the Elk Grove Unified School District reserves the right to increase or reduce from quantities shown on the bid form. **BID EXPIRES: June 30, 2012**

1. TERMS OF CONTRACT

The term of the resultant contract shall commence upon Board of Education approval. The award expires June 30, 2012, during which time the performance and price of the contract will be reviewed on a yearly basis. The contract may be terminated for failure to comply with the bid instructions & conditions, performance, price, and/or due to the non-availability or non-appropriation of sufficient funds.

2. PRICE ADJUSTMENTS

The prices on this contract may be subject to adjustment on December 1, 2010 and each year thereafter, effective January 1. Requests for price adjustments are to be made in writing to be received by the Director of Purchasing/Warehouse no later than June 1, in any year. Bidders requesting adjustments must be prepared to provide documented proof to the District justifying any adjustments.

3. BID OPENINGS

Bids shall be delivered to Elk Grove Unified School District, on or before the day and hour set for the opening of the bid. Bids shall be submitted on the printed form provided by the Elk Grove Unified School District and placed in a **sealed envelope**. Any bids received after the scheduled closing time in the Notice to Bidders shall be unopened. All unsigned bids will be rejected. After the bids are opened at the designated time, no commitment will be made at that time until all bids are evaluated for pricing, specifications and other pertinent information.

4. FORMS

No bids will be considered unless submitted upon the forms provided by the Elk Grove Unified School District. All bidders shall be responsible for familiarizing themselves with the conditions and requirements of bidding prior to submitting a bid.

5. EXAMINATION OF BID DOCUMENTS

Bidders shall thoroughly examine and be familiar with the specifications. The failure or omission of any bidder to receive or examine any bid document(s), forms, instruments, addendum or other document there existing shall in no way relieve any bidder from obligations with respect to this bid or to the contract. The submission of a bid shall be taken as prima facie evidence of compliance with this section.

6. SUBMISSION OF BIDS

All prices and quotations must be in ink or typewritten. Bidders must explicitly address any discrepancies between the part numbers and the descriptions of the items. Prices and discounts must be stated in units specified herein. Bidders should quote each manufacturer separately. **NO FAXED BIDS WILL BE ACCEPTED.**

7. SPECIFICATIONS – GENERAL

Materials furnished must conform to the specifications and will be subject to the inspection and approval of the Purchasing Department. Qualifications or changes in specifications prior to bid opening must be in writing. Only written qualifications or changes will be valid, and must accompany the bidder's documents. All specifications are minimal requirements that must be met or exceeded. Alternates or more than one bid on any item are acceptable provided all conditions herein defined are met. Alternate bids must be submitted on forms provided in the bid package. Indicate "Alternate bid" on the outer envelope and on the top of the first page of such a bid.. Alternate bids submitted on forms other than those supplied by the Elk Grove Unified School District will negate all bids submitted under that item.

8. ERRORS AND CORRECTIONS

Bidders are responsible for checking carefully all conditions and specifications. The Elk Grove Unified School District will not be responsible for any error or omissions on the part of the Bidder in making a bid. No erasures are permitted. Mistakes may be crossed out and corrections made adjacent, and must be initialed in ink by person signing the bid. Verify your bids before submission as they cannot be withdrawn or corrected after being opened.

9. ACCEPTANCE OF BIDS

The Elk Grove Unified School District reserves the right to reject any or all bids and to select individual items. Bids may be rejected on grounds of non-responsiveness or non-responsibility.

10. NON-RESPONSIVE

Bidders who do not respond will be considered non-responsive and will be removed from the bid list for future bids. If a bidder does not desire to bid at this time but wishes to remain on the bid list, the bidder must send back the invitation to bid with the statement "no bid at this time."

11. DISCREPANCIES /ADDENDA

Discrepancies in and omissions from the bidding documents or questions as to their meaning shall, at once, be brought to the attention of the Elk Grove Unified School District in writing only. Any interpretations, changes, additions or deletions will be made only by addendum duly issued, and a copy of such addendum will be mailed, faxed or delivered to each person or firm receiving a set of bid documents. The Elk Grove Unified School District will not be responsible for any other interpretations or changes. Any addendums issued must be initialed and returned with other bid response documents at the time set for the bid opening.

12. FAILURE TO COMPLY WITH INSTRUCTIONS

Failure to comply with any of the instructions stated in the bidding documents may result in rejection of the bid.

- Any party submitting a bid shall not contact, or lobby any District Board of Education member, District official, and employee, or agent or representative during the bidding process including up to the date of Board action, except as specified in the bid for contact. Any party attempting to influence the bid including the submittal, review process and awarding of bid will have their firm's bid rejected for violating this term and condition of the bid.
- Any party, individual, group or firm, not submitting a bid, but which may have a financial or business interest in the award of the bid shall not contact or lobby any District Board of Education member, District official, employee, agent, contractor or representative, including up to the date of Board action. Any and all public comment regarding the Board of Education's action in the award of this bid will be accepted on the date of Board action in a public meeting pursuant to the Brown Act.

13. WITHDRAWAL OF BID

Any bidder may withdraw his/her bid either personally or by written request, prior to bid opening. Any bidder having questions regarding this bid is to submit a written request for clarification to the Director of Purchasing at 8431 Gerber Road, Sacramento, CA 95828 or FAX (916) 686-7779. All requests for clarification must be received at least five (5) days prior to the bid opening to allow for written response by the Elk Grove Unified School District to all bidders.

14. BID NEGOTIATIONS

A bid response to any specific item of this bid with terms such as “negotiable,” “will negotiate,” or similar, will be considered non-responsive to that specific item.

15. EQUAL BIDS

Whenever equal bids are received on advertised items, the successful bidder shall be selected as follows:

- **Single Item Bid:** The successful bidder shall be randomly selected through a drawing.
- **Multiple Item Bids:** The successful bidder shall be the bidder whose aggregate bid for all items is the lowest.

If there are equal aggregate bids, the successful bidder shall be randomly selected through a drawing from such equal bidders. In the event that equal bids are received for the same manufacturer in the same category the Elk Grove Unified School District hereby reserves the right to issue multiple awards to those bidders. The decision of the Elk Grove Unified School District shall be final.

16. BRANDS

All bidders must indicate the manufacturer’s brand name and model number of the item bid in the appropriate column of the bid form. (Do not use “as specified” in responding to this requirement.) Bids that do not show the information listed above will be disqualified. **The Elk Grove Unified School District reserves the right to decide what is an acceptable equal to any product in this bid. Price will not be the sole deciding factor in the award of this contract. The Elk Grove Unified School District further reserves the right to award the bid line by line, or all or none, depending on which is most advantageous to the Elk Grove Unified School District.** Where appropriate, vendors will supply M.S.D.S at time of delivery.

17. SUBSTITUTIONS AND SAMPLES

All items bid must conform to the specifications set forth in these bid documents. The Elk Grove Unified School District reserves the right to reject all bids that do not conform to the specifications. When bidding on brands other than those specified, the bidder must state on the bid the brand, quantity, model number, or other trade designation on each item. Do not use “as specified” in responding to this requirement. At a minimum, descriptive technical literature fully describing the claimed “as equal” product must be attached to the bid. Suitability and valuation of “equal” rests in the sole discretion of the Elk Grove Unified School District. Where samples are requested they must be furnished free. Samples will be returned at bidder’s expense provided a request accompanies the samples and provided further that samples are not destroyed by tests.

18. TAXES

No bid shall include Federal Excise Tax, as the Elk Grove Unified School District is exempt from such tax and will furnish appropriate tax exemption certificates. The Elk Grove Unified School District will pay California Sales Tax and Use Tax, if applicable, but the amount of this tax will be paid separately and shall not be included in your bid price.

19. DELIVERY/FOB DESTINATION PRICING

Bidders must quote prices F.O.B. Destination, to the delivery location designated by the Elk Grove Unified School District and/or Purchasing Department for all transactions against this agreement. All transportation charges shall be prepaid to the address indicated on the purchase order unless a different address is specified in writing by the Elk Grove Unified School District Purchasing Department. The Elk Grove Unified School District will not pay shipping and handling charges, nor shall the Elk Grove Unified School District pay for any fuel surcharges that are not indicated herein. If the material is not received within the time specified for delivery, it will be received at the discretion of the Elk Grove Unified School District. Should it be necessary to refuse delivery of any material contained in the bid document, the bidder shall be responsible for the cost of retrieving the merchandise in question.

20. COST OF BID PREPARATION

Cost of preparation of the response to this Invitation for Bids is solely the responsibility of the Bidder. The Elk Grove Unified School District accepts or implies no liability in the cost of preparation.

21. AWARD OF BID

The Elk Grove Unified School District realizes that the products of various manufacturers/suppliers invited to bid are proprietary in nature and differ considerably in concept, design, structure, methods and materials of fabrication and finish. Although the Elk Grove Unified School District reserves the right to reject any and all bids or to waive any irregularities of informalities in any bids or in the bidding, the award will be made to the responsible bidder whose bid represents, in the Elk Grove Unified School District's evaluation and judgment, the most advantageous combination of value to be delivered per dollar bid. Responsibility of the bidders will be determined by an evaluation that each bidder is:

- Qualified by experience to be a competent manufacturer and/or distributor of equipment, which meet the requirements of the Elk Grove Unified School District.
- In possession of adequate plant and/or distribution facilities, currently in active production, to produce and distribute the required items.
- Financially responsible to complete the project as proposed.

22. PREVIOUS PERFORMANCE

Bidders are advised that the Elk Grove Unified School District reserves the right to reject a bid from a bidder that cannot demonstrate the ability to provide the services required. Past service and delivery performance with a similar sized organization and scope of work is a factor in the determination of award against this bid. Bidder's past performance practices and service to the Elk Grove Unified School District will be examined. Bidders who have demonstrated unsatisfactory performance will be subject to disqualification as a responsible bidder, thereby disqualifying the bidder from contract award.

23. COMPETENCY OF BIDDERS

No bid will be accepted from or contract awarded to a contractor who is not licensed in accordance with the law, is not a factory authorized dealer qualifying him to perform work under this contract, to whom a proposal form has not been issued by the Elk Grove Unified School District and who has successfully performed on projects of similar character and scope to the proposed work. A representative of the Elk Grove Unified School District, prior to contract award may examine the business premises of any bidder. Bidders shall agree to fully comply with all City, State and Federal laws, regulations and ordinances governing performance of the contract awarded. It will be the responsibility of the contractor to obtain any clearances necessary for completion of the contract.

24. INSURANCE

Limited Indemnification and Hold Harmless: CONTRACTOR and its agents, officers and employees shall defend, indemnify, and hold harmless EGUSD, its elected and appointed officers, agents, employees, volunteers, contractors and representatives from and against any and all claims, demands, losses, defense costs, expenses, attorney fees, litigation expenses, or liability which EGUSD, its selected

and appointed officers, agents, employees, volunteers, contractors and representatives may sustain or incur, or which may be imposed upon them by law for damages due to personal and bodily injury or death of persons, or damage to property, to the extent caused as a result of or arising out of the operations, negligent acts, errors or omissions, caused in whole or in part by the agents, officers and employees of CONTRACTOR in the performance of and in accordance with the terms of the Agreement entered into between CONTRACTOR AND EGUSD. The indemnification provisions contained in this Agreement include but are not limited to any violation of applicable law, ordinance, regulation or rule, including where the claim, loss, damage, charge or expense was caused by deliberate, willful, or criminal acts of either party to this Agreement, or any of their agents, officers or employees or their performance under the terms of this Agreement. The indemnity provisions of this Agreement shall survive the expiration or earlier termination of this Agreement.

Commercial General Liability Insurance: CONTRACTOR shall maintain at its expense a policy of commercial general liability insurance, endorsed to include professional liability coverage relative to the scope of service performed by CONTRACTOR. Such insurance shall be maintained in a company or companies lawfully authorized to do business in California as admitted carriers so designated by the California Department of Insurance. It is preferred that such carriers will have a financial rating of at least "A,II" status as rated in the most recent edition of Best's Insurance Reports or as amended agreement between EGUSD and CONTRACTOR. All policies shall contain a provision requiring thirty (30) days written notice to be given to EGUSD prior to cancellation, modification, or reduction of limits.

Additional Insured Endorsement: EGUSD, its elected and appointed officers, agents, employees, volunteers' contractors and representatives shall be listed as Additional Insured as respects the operations of the named insured. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Said insurance policy shall be endorsed (copy of Endorsement attached to Certificate of Insurance) to include the following language, "EGUSD, its elected and appointed officers, agents, employees, volunteers, contractors and representatives shall be listed as Additional Insured as respects the operations of the named insured performed under the terms of this Agreement."

Primary Insurance Endorsement: In addition to the "Additional Insured" as stated above, said insurance policy shall be endorsed (copy of Endorsement attached to Certificate of Insurance) to include the following language, "Such insurance as is afforded by the Endorsement for the Additional Insured's shall apply as primary insurance. Any other insurance maintained by the EGUSD, its elected and appointed officers, agents, employees, contractors and representatives shall be excess only and not contributing with the insurance afforded by this Endorsement."

Limitation of Commercial, General Liability and Property Damage Insurance: Total limits shall be no less than one million (\$1,000,000.00) dollars on a per occurrence basis for all coverage's and two (\$2,000,000.00) dollars general aggregate.

Certificate of Insurance: Prior to commencing services pursuant to this Agreement, CONTRACTOR shall provide certificates as evidence of the existence of the insurance required by this Agreement, on insurance certificates executed by a duly-authorized agent of CONTRACTOR'S insurance provider. Such certificate shall include the Endorsements described in this Agreement as attachments.

Workers' Compensation: CONTRACTOR shall provide Workers' Compensation coverage as required by California law, and in signing this Agreement, makes the following certification: "CONTRACTOR is aware of the provisions of Section 3700 of the Labor Code which require every

employer to be insured against liability for Workers' Compensation or two undertake self-insurance in accordance with such provisions before commencing the performance of the Agreement." Prior to commencing services pursuant to this Agreement, CONTRACTOR shall provide a certificate indicating the existence of Workers' Compensation coverage as required by this Agreement, or an insurance certificate executed by a duly-authorized agent of CONTRACTOR'S insurance provider.

Injury and Illness Prevention: CONTRACTOR shall maintain and enforce an Injury and Illness Prevention Program as required by State law, and in signing this Agreement, makes the following certification: "CONTRACTOR is aware of the provisions of California Labor Code, Division 5, and of the California Code of Regulations, Title 8, and shall maintain an active Injury and Illness Prevention Plan in accordance with such provisions before commencing the performance of this Agreement." The Injury and Illness Prevention Plan shall be available to EGUSD upon request.

25. HOLD HARMLESS STIPULATION

The bids shall indemnify and hold the Elk Grove Unified School District, its officers, agents, and employees, harmless from and against any and all loss, liability and expense (including attorney's fees) of any nature of kind whatsoever, on account of use by the publisher or author, manufacturer or agent of any copyrighted or un-copyrighted composition, secret process, trademark, patented or un-patented, article or appliance furnished or used under this bid.

26. CANCELLATION FOR INSUFFICIENT OR NON-APPROPRIATED FUNDS

The bidder hereby agrees and acknowledges that monies utilized by the Elk Grove Unified School District to purchase the items bid is public money appropriated by the State of California or acquired by the Elk Grove Unified School District from similar public sources and is subject to variation. The Elk Grove Unified School District fully reserves the right to cancel this bid at any time and/or to limit quantities of items due to non-availability or non-appropriation of sufficient funds

27. LIQUIDATED DAMAGES

The Elk Grove Unified School District shall hold the successful bidder liable and responsible for all damages, which may be sustained because of his/her failure to comply with any condition herein. If the successful bidder fails to furnish or deliver any materials, supplies, equipment or other services at the price quoted, or at a time and place stated, or otherwise fails to comply with the terms of this bid in its entirety the order will be canceled and, the Elk Grove Unified School District may purchase the items herein specified elsewhere, without further notice to the successful bidder. Additional cost accrued by the Elk Grove Unified School District through this purchase will be deducted from any unpaid invoices.

28. ASSIGNMENT AND SUBCONTRACTING

The contractor shall not assign or subcontract the work or any part thereof, without the previous written consent of the Elk Grove Unified School District, nor shall he assign, by power of attorney or otherwise, any of the money payable under this contract unless written consent of the Elk Grove Unified School District has been obtained. No right under this contract, or claim for any money due or to become due hereunder shall be assessed against the Elk Grove Unified School District or persons acting for the Elk Grove Unified School District, by reason of any so-called assignment of this contract or any part thereof, unless such assignment has been authorized by the written consent of the Elk Grove Unified School District. In case the contractor is permitted to assign monies due or to become due under this contract, the instrument of assignment shall contain a clause subordinating the claim of materials supplied for the performance of the work.

29. TERMINATION OF CONTRACT

If at any time, in the opinion of the Elk Grove Unified School District, upon recommendation of the Purchasing Department; (1) contractor fails to conform to the requirements of this contract; (2) contractor seeks relief under any law for the benefit of insolvent or is adjudicated bankrupt; (3) any legal proceedings are commenced against contractor which may interfere with the performance of the contract; or (4) contractor has failed to supply an adequate working force, or material of proper quality, or has failed in any other respect to prosecute the work with the diligence and force specified and intended in and by the terms of the contract, notice thereof in writing may be served upon him, and should he neglect to provide means for a satisfactory compliance with the contract, as directed by the Elk Grove Unified School District's Board of Education within the time specified by said notice the Elk Grove Unified School District in any such case shall have the right and power, at its option and without prejudice to any other right it may have, to terminate the contract. Any excess of the cost arising there from will be charged against the contractor and his sureties, who will be liable thereof. In the event of such termination, all monies due the contractor or retained under the terms of the contract shall be forfeited to the Elk Grove Unified School District; but such forfeiture will not release the contractor or his sureties from liability for failure to fulfill the contract.

30. EXCUSE FOR NON-PERFORMANCE

The parties to this agreement shall be excused from performance during the time and to the extent that they are prevented from obtaining, delivering or performing by Act of God, fire, strike, walk-out or commandeering of materials, products, plants, or facilities by the government, provided that the non-performance is not due to the fault or neglect of the supplier. In such cases, however, satisfactory evidence thereof must be presented, in written form.

31. ORDERING

Ordering shall be by the procedures, policies and forms used by the Elk Grove Unified School District.

32. NO MINIMUM OR MAXIMUM QUANTITIES, ORDER CHARGES, OR LIMITATIONS UPON NUMBER OF ORDERS

The Elk Grove Unified School District does not guarantee orders nor shall the Elk Grove Unified School District be required to limit its orders. Bidders shall not specify minimum or maximum quantities or charges.

33. INVOICING/ACKNOWLEDGMENTS

Invoices for goods delivered against any agreement or order must be itemized and all applicable discounts identified. Invoices must show the Purchase Order number.

34. DELIVERY

All orders placed on this bid must be delivered to the Elk Grove Unified School District within 30 calendar days of receipt of purchase order, unless otherwise stated on the purchase order.

35. PIGGYBACKABLE BID

Other school districts and public agencies may purchase under this bid at the same prices, terms and conditions stated in these bid documents, at the discretion of the successful bidder.

School Districts participating in this bid shall be responsible for obtaining approval from their Boards of Education or other approving body of authority when necessary and shall hold the Elk Grove Unified School District harmless from any disputes, disagreements or actions which may arise as a result of using this bid.

The Elk Grove Unified School District waives its right to receive payment, and authorizes each district to make payment and place orders directly to the successful bidder.

**NON-COLLUSION AFFIDAVIT
PUBLIC CONTRACTS CODE SECTION 7106**

TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

**ELK GROVE UNIFIED SCHOOL DISTRICT
BID #319-09/10 – CLEAIRE HORIZON DIESEL PARTICULATE FILTER (DPF) RETROFITS**

STATE OF CALIFORNIA
COUNTY OF _____

I, _____, being first duly sworn, deposes and says that
(Typed or Printed Name)

I am the _____ of _____, the party
(Title) (Bidder Name)

Submitting the foregoing Bid (the "Bidder"). In connection with the foregoing Bid, the undersigned declares, states and certifies that:

1. The Bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization or corporation.
2. The Bid is genuine and not collusive or sham.
3. 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 other bidder or anyone else to put in sham bid, or to refrain from bidding.
4. The Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price, or that of any other bidder, or to fix any overhead, profit or cost element of the bid price or that of any other bidder, or to secure any advantage against the public body awarding the contract or of anyone interested in the proposed contract.
5. All statements contained in the Bid and related documents are true.
6. The Bidder has not directly or indirectly, submitted the 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 person, corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Executed this _____ Day of _____, 20__ at _____
(City, County and State)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature (Address)

Name Printed or Typed (City, County and State)

(Area Code and Telephone Number)

E-Mail Address

NOTARY ACKNOWLEDGEMENT

STATE OF CALIFORNIA
COUNTY OF _____)

On _____ before me, _____
(Name and title of the officer)

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 acknowledge 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 PENTALTY 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 _____ (Seal)

ELK GROVE UNIFIED SCHOOL DISTRICT

Bid #319-09/10

CLEAIRE HORIZON DIESEL PARTICULATE FILTER (DPF) RETROFITS

The undersigned hereby proposes and agrees to furnish and deliver the goods and services in accordance with the terms, conditions specifications and prices, herein set forth. Prices are valid through:

COMPANY NAME: _____

ADDRESS: _____

SIGNATURE: _____

TITLE: _____

TELEPHONE#: _____

FAX NUMBER: _____

EMAIL ADDRESS: _____

EST DELIVERY TIME: _____

TERMS: _____

DATE: _____

ALL UNSIGNED BIDS WILL BE REJECTED

