

1. APPLICABILITY

These conditions are applicable and form a part of the contract documents in each equipment and/or service contract and a part of the terms of each purchase order for items of equipment and/or service included in the specifications and bid forms issued herewith.

2. FINALITY AND CORRECTNESS

All statement of qualifications shall be deemed final, conclusive and irrevocable, and no offer shall be subject to correction or amendment for errors or miscalculations by the Respondent. Proposals may be withdrawn or amended until the date and time due, at which time they become the sole property of **AGUA Special Utility District**.

3. WITHDRAWAL OF QUALIFICATIONS

The withdrawal of qualifications will not be allowed for a period of ninety (90) days following the proposal opening. Proposals will represent a true and correct statement and shall contain no cause for claim of omission or error. Request for withdrawal of proposal is allowed based on proof of mechanical error; however, a vendor may be removed from approved vendor list.

4. SPECIFICATIONS

All specifications will be provided by **AGUA Special Utility District**, unless otherwise indicated in the "Submission Criteria". All supplemental information required by the proposal documents must be included with the response. Failure to provide complete and accurate information may disqualify a vendor from consideration.

5. RFP SUBMISSIONS

Proposal must be submitted utilizing this document only and must reach the AGUA Special Utility District's Business Office on or before the hour on the date specified. Deviations to the General Conditions and/or Specifications shall be prominently noted in writing by the Respondent and shall be included with the proposal. Late submittals will be returned unopened.

6. ONLY SEALED QUALIFICATIONS ARE ACCEPTABLE

Faxed or emailed proposals will not be accepted by **AGUA Special Utility District** since the method does not provide the delivery of a sealed proposal. Proposals received unsealed or after the hour on the date specified will be returned to sender unopened.

7. LEGAL VENUE

Both parties agree that the venue for any litigation arising from the contract shall lie in Bexar County, Texas.

8. CONTRACT PERIOD:

The term of the contract is for the project scope listed in "Submission Criteria". This agreement is designed to secure set, fixed pricing for the items/services specified herein. Any contract resulting from this bid will be effective from the date the successful vendor(s) is approved for the award until the work is completed or otherwise specified. The initial term of the contract arising from this RFP will be for a period of twenty-four (24) months, 11/07/2022, through 05/30/2024, with the option to renew annually for an additional two (2) years if mutually agreed upon in writing by both parties. Any awarded contract will work with the current awarded Agent of Record and online enrollment process, prior to the term of this contract for implementation purposes.

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9. CONTRACTUAL RELATIONSHIP

Nothing herein shall be construed as creating the relationship of employer or employee between the AGUA Special Utility District and the Vendor or between the AGUA Special Utility District and the Vendor's employees. The AGUA Special Utility District shall not be subject to any obligation or liabilities if the Vendor or his employees incurred in the performance of the contract unless otherwise herein authorized. Neither the Vendor nor its employees shall be entitled to any of the benefits established for AGUA Special Utility District employees, nor be covered by the AGUA Special Utility District Workers' Compensation Program.

10. INDEMNIFICATION

Vendor shall indemnify, defend and hold harmless the AGUA Special Utility District, its trustees, officers, agents and employees, from and against any and all loss, cost, damage, expense and claims, including attorney's fees and liability of any kind in connection with any acts or omission of Vendor, its officers, agents or employees, in performance of contract, so long as the sole negligence of the AGUA Special Utility District is not the cause of the loss, claim, damage expense or cost

10. TERMINATION FOR CAUSE

The AGUA Special Utility District reserves the right to terminate all or any part of the undelivered portion of any order resulting from this bid solicitation with thirty (30) days written notice; upon default by the Vendor, for delay or nonperformance by the Vendor or, if it is deemed in the best interest of the AGUA Special Utility District, for convenience.

11. VENDORS WHOM DO NOT RESPOND

Any vendor who fails to respond to three (3) consecutive bids will be purged from the mailing list for any additional bids. Vendors are requested to notify the **AGUA Special Utility District** in writing or return the cover sheet of this bid.

12. EVALUATION OF QUALIFICATIONS

AGUA Special Utility District takes into account the considerations detailed on page four (4) of the RFP. Ongoing documentation by **AGUA Special Utility District** Purchasing Department regarding a company's past performance will be used in determining the bidder's responsibility for award purposes of this award.

13. UNDUE INFLUENCE

In order to ensure the integrity of the selection process, Vendor's officers, employees, agents or other representatives shall not lobby or attempt to influence a vote or recommendation related to the Vendor's response, directly or indirectly, through any contact with school board trustees or other AGUA Special Utility District officials from the date this solicitation is released until the award of a contract by the AGUA Special Utility District's Board of Managers. By signing the proposal documents, a submitter affirms that, to the best of his/her knowledge, the proposal has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain favoritism that would in any way limit competition or give them an unfair advantage over other submitters in the award of this RFP.

14. AVAILABILITY OF FUNDS

Any contract resulting from this solicitation is contingent upon the continued availability of appropriations and is subject to cancellation, without penalty, in whole or in part, if funds are not appropriated by AGUA Special Utility District's Board of Manages or otherwise not made available to the AGUA Special Utility District.

PERSONAL INTEREST IN CONTACT

Any **AGUA Special Utility District** Board of Manager who has any substantial interest, either direct or indirect, in any business entity seeking to contract with the AGUA Special Utility District, shall, before any vote or decision on any matter involving the business entity, file an affidavit stating the nature and extent of interest and shall abstain from any

participation in the matter. This is not required if the vote or decision will not have any special effect on the entity other than its effect on the public. However, if a majority of the governing body is also required to file, and do file similar affidavits, the member is not required to abstain from further participation.

15. APPLICABLE LAW

This contract shall be governed by the policies of the AGUA Special Utility District's Board of Managers, laws of the State of Texas and the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this contract. The AGUA Special Utility District's Board Policies can be accessed online. It shall be the obligation of the contractor to apply for, pay for, and obtain all permits and licenses as required by the various agencies of state and local government.

16. INVOICE

The following rules apply to render an invoice for payment:

- Each invoice will reference the correct **AGUA Special Utility District** purchase order number.
- Each invoice will be submitted in duplicate.
- There must a separate invoice for each purchase order.
- Invoices will be accepted only for services/products that have been delivered and received.
- Discounts will be taken from the date of receipt of goods or receipt of invoice, whichever is later. As pertains to this contract, the date of payment will be considered the date payment is mailed. If no discount is offered or accepted, payment terms will be net thirty (30) days.

17. TAXES

AGUA Special Utility District is exempt from all applicable Federal and State Tax. Tax-exempt information will be furnished upon request.

18. REJECTION/AWARD

AGUA Special Utility District reserves the right to reject any and/or all submittals, to award contracts as may appear advantageous to the AGUA Special Utility District and to waive all formalities in the procurement process.

19. INSURANCE

The contractor shall takeout, pay for, and maintain in effect at all times during the execution of the work under the contract, the following forms of insurance and minimum amounts, in carriers acceptable to **AGUA Special Utility District**.

- Worker's Compensation as required by applicable State Law
- Contractor's Public Liability Insurance in limits of One Million Dollars
- Personal Injury in limits of One Million Dollars
- Each occurrence in limits of One Million Dollars
- Property Damage in limits of Five Hundred Thousand for each accident
- Two Million Dollars in aggregate

The successful proposal must provide all above insurance requirements to the **AGUA Special Utility District** Purchasing Department within ten (10) days after awarding this bid. Only the original copies

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or a notarized copy of the Certificate of Insurance are acceptable. If the deadline for the above insurance requirement is not met within ten (10) days, this will result in the loss of the contract.

20. BONDS

If the contract exceeds \$100,000 the contractor awarded the bid must provide, within ten (10) days, a performance bond in the amount of the contract, conditioned upon the faithful performance of the work in accordance with the plans, specifications, and contract documents. If the contract is between \$25,000 and \$100,000.00, the contractor awarded the bid must provide, within ten (10) days, a payment bond in the amount of the contract, guaranteeing payment to all subcontractors supplying labor and/or material to the project, to the **AGUA Special Utility District** Purchasing Department.

All bonds must be in a form acceptable to **AGUA Special Utility District** and be executed by a corporate surety authorized to do business in the State of Texas.

21. MODIFICATIONS

The contract may only be modified by a written agreement signed by both of the parties or their duly authorized agents.

22. GOVERNMENTAL IMMUNITY

The Parties are aware that there are constitutional and statutory limitations on the authority of AGUA Special Utility District (a Texas political subdivision) to enter into certain types of contracts, including, but not limited to, any terms and conditions relating to liens on the AGUA Special Utility District's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), and terms and conditions related to the Limitations will not be binding on AGUA Special Utility District except to the extent authorized by the laws and Constitution of the State of Texas. Notwithstanding anything to the contrary in this agreement, the Vendor acknowledges, stipulates and agrees that nothing in this agreement shall be construed as a waiver of any statutory or governmental immunity from suit and liability available to AGUA Special Utility under applicable law.

23. GRATUITIES

AGUA Special Utility District may, by written notice to the Vendor, cancel any agreement without liability to AGUA Special Utility if it is determined by AGUA Special Utility that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Vendor, or any agent or representative of the Vendor, to any officer or employee of the AGUA Special Utility District with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performing of such a contract. In the event this contract is cancelled by AGUA Special Utility District pursuant to this provision, the AGUA Special Utility District shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Vendor in providing such gratuities.

24. ASSIGNMENT-DELEGATION

No right or interest in this contract shall be assigned or delegation of any obligation made by the Vendor without the written permission of AGUA Special Utility District. Any attempted assignment or delegation by the Vendor shall be wholly void and ineffective for all purposes unless made in conformity with this paragraph.

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25. WAIVER No claim or right arising out of a breach of any contract can be discharged in whole or in part a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

26. INTERPRETATION OF EVIDENCE

No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in a contract. Acceptance or acquiescence in a course of performance rendered under a contract shall not be relevant to determine the meaning of the contract even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in the contract, the definition contained in the Code is to control.

27. ADVERTISING

Vendor shall not advertise or publish, without AGUA Special Utility District's prior consent, the fact that AGUA Special Utility District has entered into any contract, except to the extent necessary to comply with proper request for information from an authorized representative of the federal, state or local government.

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