ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

GENERAL INSTRUCTIONS, TERMS, AND CONDITIONS

IMPORTANT: READ CAREFULLY BEFORE SUBMITTING OFFERS. FAILURE TO DO SO SHALL NOT ABSOLVE THE OFFEROR FROM RESPONSIBILITY TO PERFORM OR DELIVER AS SPECIFIED.

1. **Authority:** The Albuquerque Bernalillo County Water Utility Authority ("Water Authority"), pursuant to Section 72-1-10, NMSA 1978, has been granted all powers to carry out and effectuate its public and corporate purposes and is authorized to use city or county procurement processes. To that end, the Water Authority has adopted the City of Albuquerque Public Purchases Ordinance, Chapter 5, Article 5 of the Revised Ordinances of the City of Albuquerque, 1994 (the "Ordinance"), to govern all purchasing transactions of the Water Authority. Pursuant to Section 5-5-19(D) R.O.A., 1994, of the Ordinance, approval authority for Water Authority contracts, purchases and procurement documents shall be made by the Executive Director of the Water Authority (the "Executive Director") and the Water Utility Authority Board (the "Board") in place of the Mayor and the City Council, respectively. The Ordinance was enacted for the purpose of providing maximum local self-government and the Water Authority will conduct, manage and evaluate all its purchases by reference to and compliance with the Ordinance procedures and processes.

2. **Applicability:** Except as otherwise specifically provided in the Request, these General Instructions, Terms, and Conditions shall govern the procurement of the items specified in this Request. In the event of a conflict between these General Instructions, Terms, and Conditions, Supplemental Conditions or the specifications of this bid, the order of applications shall be as follows: Specifications, Supplemental Conditions, and the General Instructions, Terms and Conditions. In addition, the Ordinance and promulgated Rules and Regulations shall apply.

3. **Definitions:** As used in this request, the definitions of the Ordinance (Section 5-5-3 ROA 1994) apply including the following:
   
   A. **“ABCWUA” or “Water Authority”** means the Albuquerque Bernalillo County Water Utility Authority.
   
   B. **“Board”** means the Albuquerque Bernalillo County Water Utility Authority Board.
   
   C. **“City”** means the City of Albuquerque, New Mexico.
   
   D. **“Contract” or “Agreement”** means any written agreement for the procurement of goods, services or construction, or for the establishment of a concession, including, but not limited to, a purchase order and incorporated documents.
   
   E. **“Contractor”** means an Offeror who has been awarded a Contract.
   
   F. **“Greater Albuquerque Metropolitan Area”** means all locations within the City and Bernalillo County.
   
   G. **“Local Business”** means a business that maintains its principal office and “Place of Business” in the Greater Albuquerque Metropolitan Area. A principal office is the main or home office of the business as identified in tax returns, business licenses and other official business documents.
   
   H. **“Offeror”** means a business that submits a response to a competitive solicitation.
   
   I. **“Place of Business”** means a business’s location in the Greater Albuquerque Metropolitan Area which is staffed and open to the public on a regular basis.
   
   J. **“Purchase Order”** means a document issued by the Purchasing Office directing the Contractor to deliver goods, services or construction.
   
   K. **“Purchasing Office”** means the Purchasing Division of the Water Authority.
   
   L. **“Purchasing Officer”** means the person charged with the responsibility of administering the Water Authority Purchasing Office.
   
   M. **“Resident Business Preference”** means the preference described in Section 13-1-21 NMSA 1978, as currently enacted or hereafter amended.
   
   N. **“Resident Contractor Preference”** means the preference described in Section 13-4-2 NMSA 1978, as currently enacted or hereafter amended.
   
   O. **“Resident Veteran Business Preference”** means the preference described in Section 13-1-21 NMSA 1978, as currently enacted or hereafter amended.
   
   P. **“Resident Veteran Contractor Preference”** means the preference described in Section 13-4-2 NMSA 1978, as currently enacted or hereafter amended.
   
   Q. **“Responsive Offer”** means a business which has the capability in all respects to perform fully the contract requirements set out in the competitive solicitation, and the integrity and reliability which will assure good faith performance, and who has not violated or attempted to violate any provision of law or ethical conduct. Factors which may be considered in determining the Offeror’s capability to perform, among others, are its financial resources, production or service facilities, service reputation and experience.
   
   R. **“Responsive Offer”** means a written offer to furnish goods, services, or construction in conformity with standards, specifications, delivery terms and conditions, and all other requirements established in a competitive solicitation.
S. “Small Business” means a “Local Business” which employs an average of fewer than 50 full-time employees in a calendar year, which number can be verified on request by submittal of the business’s quarterly IRS Form 941 or other documentation acceptable to the Water Authority.

4. Preparation of Offer:

A. Unit Prices: The unit prices for each item offered shall be shown unless otherwise specified. In the case of a discrepancy between the unit price and the extended price, the unit price will govern in determining the price used for evaluation. Unit prices offered shall be for the units specified.

B. Delivery Time: Delivery time stated in the Specifications shall apply. Deviations by the Offeror shall be stated in the comments area or in an uploaded document with the offer. Time, if stated in number of days, will be consecutive calendar days.

C. Payment Terms: Payment terms are net thirty (30) days unless otherwise approved by the Water Authority. Discounts for early payment may be offered and accepted by the Water Authority, but will NOT be used as a factor in determining the lowest responsive offer. The discount term shall not begin until the goods, services or construction have been delivered and accepted and the correct invoice is received.

D. Agency: In the event that an offer is signed by an agent, the Water Authority reserves the right to require evidence of the agent’s authority before accepting the offer.

E. Material Safety Data Sheets: To comply with the Occupational Health and Safety Regulation 1910.1200 for general standards on handling hazardous materials, material safety data sheets may be required for all or part of the products included on this solicitation. It is the responsibility of the Offeror to make this determination and, if required, a copy of the MSDS must accompany the product when delivered to the end user. Failure to comply with this requirement may cause the delivery of products to be rejected and all costs related to such action to be borne by the Offeror.

F. Design Conformance - OSHA: The design of all equipment offered shall be in conformance with all applicable regulations of the federal Occupational Safety and Health Act in effect at the time of delivery.

G. Licenses and Certifications: The Offeror must provide proof in a manner acceptable and within the time period specified in the solicitation or by the Purchasing Office, but prior to award unless otherwise specified in the solicitation, that they are licensed and certified by the appropriate agencies as required by law to perform the services or provide the goods specified in this solicitation.

H. Equivalent Offers: Where a product is characteristic of a sole manufacturer, or where a brand name or model is indicated in the Specifications, it shall be defined to mean minimum acceptable level or minimum quality required by the Water Authority unless the Specifications state that no substitutions or equivalents will be allowed. If the Offeror offers an item other than the one specified, which the Offeror considers comparable, the manufacturer’s name and model number of that item should be specified in the offer and a sufficient performance specification and descriptive data provided to permit a thorough evaluation. Failure to provide the appropriate information may result in disqualification of the offer.

I. Exceptions to Specifications: An Offeror may state any exceptions taken to this solicitation in the comments area on the SicommNet cover page for this solicitation or in an uploaded document submitted with its offer. The Water Authority may accept the Offeror’s exceptions which it deems to be not material. If an exception is determined to be material, the Water Authority may reject the offer or request that the exception be withdrawn. If the exception is determined to be materials and is not withdrawn, the offer will be rejected. If no exceptions are stated in the offer, the Offeror will be required to furnish the items exactly as specified and to comply with all other requirements of the solicitation.

5. Certifications:

A. Debarment or Ineligibility Compliance: By submitting its offer in response to this solicitation, the Offeror certifies that (i) it has not been debarred or otherwise found ineligible to receive funds by any agency of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States, and (ii) should any notice of debarment suspension, ineligibility or exclusion be received by the Offeror, the Offeror will notify the Water Authority immediately.

B. Ethical Conduct: By submitting its offer in response to this solicitation, the Offeror certifies that:

1) It has not offered, given or agreed to give to any Water Authority employee or former employee, a gratuity or offer of employment to influence the preparation of or recommendation of award of this solicitation;

2) It has not retained a person to solicit or secure a Water Authority contract for a contingent fee;

3) It has not taken any action in restraint of free competitive bidding in connection with this solicitation;

4) It has not in any way violated the ethical conduct or other provisions of the Ordinance; and

5) It currently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with its performance of the Contract.

C. Civil Rights Compliance: Offeror certifies and agrees, by submittal of its offer, to comply and act in accordance with all provisions of the Albuquerque Human Rights Ordinance, the New Mexico Human Rights Act, Title VII of the U.S. Civil Rights Act of 1964, as amended, and all federal statutes and executive orders, and New Mexico statutes.
D. **Americans with Disabilities Act Compliance:** Offeror certifies and agrees, by submittal of its offer, to comply and act in accordance with all applicable provisions of the Americans With Disabilities Act of 1990 and federal regulations promulgated thereunder.

E. **Goods Produced Under Decent Working Conditions:** It is the policy of the Water Authority not to purchase, lease, or rent goods, for use or for resale at Water Authority-owned enterprises that were produced under sweatshop conditions. The Offeror certifies, by submittal of its offer in response to this solicitation, that the goods offered to the Water Authority were produced under decent working conditions. The Water Authority defines under decent working conditions as production in a factory in which child labor and forced labor are not employed; in which adequate wages and benefits are paid to workers; in which workers are not required to work more than 48 hours per week (or less if a shorter workweek applies); in which employees are free from physical, sexual or verbal harassment, and in which employees can speak freely about working conditions and can participate in and form unions. [City Council Bill NO. M-8 Enactment No. 9-1998].

F. **Registration Information:** In the event that the Purchasing Office finds that an Offeror has provided inaccurate registration information allowing the Offeror an unfair advantage, the Offeror must correct the information upon receipt of written notification from the Water Authority. If the change is not made within 15 consecutive calendar days of the date of notification, the Purchasing Office may remove the Offeror from the Water Authority’s vendor database and the Offeror will be unable to participate in further solicitations until the information is corrected.

6. **Public Inspection of Offers:** Each offer shall be open to public inspection, except to the extent the Offeror designates trade secrets or other proprietary data to be confidential. Material so designated must be separated and clearly marked “Confidential.” Prices, makes and models or catalog numbers of the items offered, delivery terms and terms of payment shall be publicly available regardless of any designation to the contrary. The Water Authority shall endeavor to restrict distribution of the material designated as “Confidential” to only those individuals involved in the review and analysis of the offers. Offerors are cautioned, however, that if a request for inspection of records under the Inspection of Public Records Act (Sections 14-2-1 et seq., NMSA 1978) is received, which request encompasses such materials, they will be disclosed. The Water Authority assumes no responsibility to maintain the confidentiality of any materials submitted in response to this solicitation.

7. **Clarification of Offers:** The Water Authority may, in the evaluation of offers, request clarification from Offerors regarding their offers, obtain additional material or literature, and pursue other avenues of research as necessary to insure that a thorough evaluation is conducted.

8. **Disqualification of Offer:** Any offer received from an Offeror that is, at the time of submitting its offer or prior to receipt of award of a Contract, debarred by or otherwise ineligible to receive funds from any agency of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States, shall be rejected. In addition, the Water Authority reserves the right to reject an offer for, but not limited to, any one or more of the following circumstances:

   A. In the past the Offeror has failed to comply with previous contractual commitments or offers to the Water Authority.
   B. In the opinion of the Water Authority the Offeror is not capable of providing the offered goods, services, or construction as offered or required by the solicitation or is otherwise not a responsible Offeror.
   C. The Offeror has not provided sufficient or detailed information which allows for the evaluation of the offer.
   D. In the opinion of the Water Authority, the offered prices are higher than the prices for which the specified items or services can be purchased on the open market.
   E. The Offeror failed to properly fill in any required spaces or attach required documents where information is required.
   F. The Offeror did not, at the time the offer is made, have an appropriate New Mexico Contractor’s License or Certification when one is required by law, regulation or this solicitation.
   G. The Offeror failed to submit with their offer, bid bonds or other material requirements of the solicitation or has otherwise submitted a non-responsive offer.
   H. There are unauthorized additions, conditions, alternate proposals or other irregularities of any kind which might make the offer incomplete, indefinite or ambiguous in meaning.
   I. The Water Authority determines that an offer contains any misrepresentations whatsoever.

9. **Minor or Technical Irregularities:** Minor or technical irregularities in an offer, when there is no effect on price, quality or quantity, may be waived and clerical errors in an offer may be corrected if permitted by the Purchasing Officer and are in the best interest of the Water Authority.

10. **Nonconforming/Conditional or Counter Offers:** An offer which is nonconforming or conditional, whether in part or in whole, will be rejected.

11. **Offer Analysis:** The Water Authority reserves the right to analyze, examine and interpret any offer for a minimum period of ninety (90) consecutive calendar days, after the deadline for the receipt of offers. Offers may not be rescinded during this period except for good cause and with the written approval of the Purchasing Officer. In those situations where the analysis/evaluation exceeds the ninety (90) calendar days, Offerors may withdraw their offers from consideration.

12. **Rejection/Cancellation of Solicitation:** This solicitation, prior to opening or after opening, may be cancelled or any or all offers may be rejected in whole or in part when it is in the best interest of the Water Authority.
13. **Protest Process:**

   A. **Request Documents:** Protests concerning the Specifications of this solicitation or other matters relating to the solicitation documents must be received by the Purchasing Officer no later than ten (10) consecutive calendar days prior to the deadline for the receipt of offers.

   B. **Recommendation of Award:** Protests concerning other matters relating to this solicitation must be filed with the Purchasing Officer not later than 5:00 p.m. of the fifth business day following the date of the email notification of the Recommendation of Award.

   C. **Timely Protests:** Protests must be received by the Purchasing Officer prior to the appropriate deadline as set out in A. and B. of this Section or they will not be considered valid. The Purchasing Officer may waive the deadline for good cause, including a delay caused by the fault of the Water Authority. Late delivery by the U.S. Postal Service or other carrier shall not be considered good cause.

   D. **Required Information from Offeror:** All protests must be submitted in written form and must be legible. Facsimile, telephone or telegraphic protests will not be accepted. Protests shall contain at a minimum the following:

   1) Name and address of the protesting party
   2) The solicitation number
   3) A clear statement of the reason(s) for the protest
   4) Details concerning the facts which support the protest
   5) Attachments of any written evidence to substantiate the claims of the protest
   6) Statement specifying the ruling requested

   E. **Protest Hearing:** If a hearing is requested, the request must be included in the protest and received within the time limit to be allowed. The filing fee of twenty dollars ($20.00) must accompany the request for hearing. The grant of a hearing shall be at the discretion of the Purchasing Officer following review of the protest.

   F. **Delivery of Protest:** Protests may be hand-delivered. Protests which are mailed should be addressed as follows:

   Purchasing Officer
   Albuquerque Bernalillo County Water Utility Authority
   Purchasing Division
   P.O. Box 568
   Albuquerque, NM 87103

   Envelope should also clearly indicate “PROTEST” and the solicitation number.

   G. **Purchasing Officer Action:** The Purchasing Officer will, after evaluation of a protest, issue a response. Only issues outlined in the written protest will be considered by the Purchasing Officer or may be raised at a protest hearing.

14. **Award of Contract:**

   A. **When Award Occurs:** The award of a Contract occurs when a Purchase Order is issued or another written contractual commitment of acceptance by the Water Authority Purchasing Office is provided to the Offeror. A Recommendation of Award or Letter of Intent does not constitute award of contract.

   B. **Award:** If a Contract is awarded, it shall be awarded to the responsive and responsible Offeror whose offer is lowest in total price and is the most advantageous to the Water Authority, Specifications and other factors considered.

   C. **Basis of Award:** The Water Authority reserves the right to award a Contract based on this solicitation in total or by group of items, on the basis of individual items, or any combination of these, which in the judgment of the Purchasing Officer, best services the interests of the Water Authority, unless otherwise stated in this solicitation.

   D. **Application of Preferences:** Prior to determining the recommended Offeror, the small business preference and the local business preference will be applied to all offers submitted by eligible small businesses. The local preference only will be applied to all offers submitted by eligible local businesses which are not small businesses. If there are no offers submitted in response to a request for bids or proposals that are eligible for the local preference, then the Resident Business Preference or Resident Veteran Business Preference will be applied to any offers for requests for bids or proposals submitted which have provided a valid State of New Mexico Taxation and Revenue Department certification. (Resident Business and Veteran Preference not applicable to request for quotes.) The application of preferences for resident contractor or resident veteran contractor for construction of public works projects shall be in accordance with Section 13-4-2 NMSA 1978. The applicable definitions of Local Business, Small Business, Resident Contractor Preference and Resident Business Preference are contained in Section 3 above. These preferences will be applied to qualified offers as follows utilizing information provided by the Offeror with its vendor registration and, if applicable, submittal of a valid State of New Mexico Taxation and Revenue Department certification(s). The Water Authority reserves the right to request additional evidence to support this registration information at any time. For additional information regarding preferences contact the Water Authority’s Purchasing Division at (505) 768-3504.

   1) The Local Preference is applied to all qualified requests for bids, requests for proposals, and requests for quotes for the purchase of goods or services or for the award of concession contracts.

   2) The Small Business Preference is applied to all qualified requests for bids, requests for proposals, and requests for quotes for the purchase of goods or services.
3) The Resident Contractor Preference is applied to all qualified requests for bids or requests for proposals for the award of construction, in accordance with Section 13-4-2 NMSA 1978.

4) The Resident Business Preference is applied to a qualified request for bids or request for proposals for the purchase of goods or services, but only if no offers have been received in response to the solicitation from Offerors eligible for the local preference.

5) The Resident Veteran Business or Resident Veteran Contractor shall be applied to a qualified request for bids or request for proposals for the purchase of goods or services in accordance with Sections 13-1-22 and 13-4-2 NMSA 1978.

6) Limitation. The total amount of all preferences awarded for the purchase of goods and services in any single award shall not exceed 10% or $50,000, whichever is less.

7) Applicability. This section shall not apply to competitive solicitations where the cost to the Water Authority or revenues to the business will exceed $5,000,000. (Exception: The application of preferences for resident contractor and resident veteran contractor for public works contracts are as set forth in Section 13-4-2 NMSA 1978.)

15. **Contract Changes:**

   A. **Contract Changes:** In no case shall a Contract be changed without the prior written approval of the Purchasing Officer.

   B. **Increase of Quantities:** The Water Authority reserves the right to increase the quantities of items of tangible personal property, services or construction to be provided within a twelve (12) month period, under the terms of the Contract, at the same prices, with the consent of the Contractor.

   C. **Decrease of Quantities:** The Water Authority reserves the right to decrease the quantities of items of tangible personal property, services or construction to be provided under the terms of the Contract. However, the Contractor shall be offered an opportunity to cancel the portion of the Contract affected by such a decrease if the Contractor is not able to meet the contracted prices by delivering the decreased amount. This clause shall not have effect if the Contract was originally awarded based on estimated quantities.

   D. **Debarment/Cancellation of Contract:** Upon receipt of notice of debarment of the Contractor, or other ineligibility of the Contractor to receive funds from any agency of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States, the Water Authority shall have the right to cancel the Contract with the Contractor for cause as provided below.

   E. **Additions/Deletions of Items:** The Water Authority reserves the right to add ancillary items/services or delete items/services specified in the Contract as requirements change during the term of the Contract. Items may only be added or deleted by written approval from the Purchasing Officer or designee.

   Prices and/or discounts for additional items/services will be mutually agreed to by the Water Authority and the Contractor either:

   1) Under the price structure of the Contract, to include, but not by way of limitation, price margin above Contractor cost; or

   2) By quotation from the Contractor, which quotation is validated to be competitive by solicitation of comparable quotes within the market if necessary; or

   3) As otherwise determined by the Purchasing Officer.

   An amended Contract (Purchase Order) will be issued for each addition or deletion, prior to change taking effect.

   The Water Authority reserves the right to award these ancillary items to the primary Contractor, another vendor based on the lowest price quoted, or to acquire the items through a separate solicitation.

   F. **Price Escalation:** A request for escalation of Contract pricing may be made under the following conditions:

   1) Offered prices must be firm for a least ninety (90) consecutive calendar days after written notification of a Contract.

   2) The Contractor shall provide written notice to the Water Authority of any requested price increases.

   3) All requests for price increases shall be accompanied by:

      a) A letter from the Contractor’s supplier certifying the price increase to the Contractor; or

      b) Evidence of verifiable market conditions resulting in increased costs such as mandated labor rate increases and significant fuel or energy cost increases.

   4) All revisions to Contract pricing shall become effective when they are approved by the Water Authority.

   5) As provided in the section, Audits and Inspections, below, all supplier invoices for the offered items shall be subject to auditing by the Water Authority and furnished without delay upon request.

   6) The Water Authority reserves the right to cancel a Contract and solicit a new contract if a requested price escalation is unacceptable to the Water Authority. Cancellation of the Contract shall not affect any outstanding orders.

   7) All approved price changes resulting from this escalation clause shall be firm for a period of ninety (90) consecutive calendar days after approval by the Water Authority.
8) Contractor shall notify the Water Authority within five (5) working days of subsequent price de-escalations from its supplier or cost reductions in areas where pricing increases were previously implemented. The Contractor will reduce its pricing to the Water Authority immediately to pass on such de-escalations and reductions unless otherwise agreed by the parties.

9) The Water Authority reserves the right to approve pricing increases requested by the Contractor other than those described in this subsection, if in the best interest of the Water Authority.

10) All approvals required by this subsection must be in writing by the Water Authority Purchasing Officer.

16. **Use by Other Public Governmental Agencies:** With the agreement of the Contractor, other public governmental agencies may purchase from the Contract, unless otherwise stated, subject to the following:
   A. Extension of the use of the Water Authority Contract shall in no way impede on the Contractor’s ability to fulfill the pricing, terms and conditions of the Contract with the Water Authority; and
   B. The Water Authority shall have no responsibility to verify whether the other public governmental agency is a legitimate entity to which it may extend this option or whether the entity is authorized under its applicable laws, rules and regulations to utilize the Contract.

17. **New Material:** All materials, supplies, equipment, and vehicles provided shall be new, the latest in production and manufactured within the last twelve (12) months (computed from the date and time of offer opening) unless otherwise indicated. This does not apply to materials, supplies, equipment or vehicles used by the Contractor to provide the required items of tangible personal property, services or construction.

18. **Graffiti Free:** The Contractor will be required to furnish graffiti free equipment, facilities or other items as may be required to complete the services specified in this solicitation. Failure of the Contractor to comply with this requirement may result in a cancellation of the Contract.

19. **Delivery, Acceptance and Guarantee:**
   A. **No Delivery before Purchase Order is Issued:** No vendor including the Contractor shall deliver any item of tangible personal property, commence services or construction prior to the issuance of a Purchase Order or other notice to proceed issued by the Water Authority Purchasing Division.
   B. **Cancellation for Non-Delivery:** The Water Authority reserves the right to cancel any order not delivered by a guaranteed date stipulated in the Contract without liability on the Water Authority’s part.
   C. **Acceptance of Delivery:** Acceptance by the Water Authority of any delivery shall not relieve the Contractor of any guarantee or warranty, expressed or implied. Such acceptance of delivery shall not be considered an acceptance of services or materials not in accordance with the Specifications. Such acceptance of delivery shall not waive the Water Authority’s right to require replacement of defective material or inadequate service.

20. **Inspections:** The Water Authority reserves the right to inspect materials provided by the Contractor to determine their quality, fitness and suitability. Inspection of these materials may be conducted whenever the Water Authority considers it necessary. All items of tangible personal property, services or construction found inferior to the quality specified in this solicitation, deficient or incorrect in weight, measurement, workmanship, handicraft or otherwise, may be rejected as a whole or in part and then shall be removed by the Contractor at the Contractor’s own risk and expense promptly after notice of rejection. The Contractor shall assume responsibility for taking the necessary action to correct or replace the rejected items, within the time frame specified in the notice of rejection.

21. **Warranties:** All materials furnished by the Contractor shall be free from defects and imperfections. Workmanship shall be in accord with the best industry standards and practices. Both materials and workmanship shall be subject to the approval of the Water Authority.

   Materials furnished by the Contractor shall be accompanied by the manufacturer’s written warranty against defects in quality, craftsmanship, and materials. The Contractor shall provide any such warranties preferably with its offer, but in any event, prior to award of the Contract.

   The Contractor agrees that the items of tangible personal property, services or construction furnished under the Contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such items. Further, the Contractor agrees that the rights and remedies provided in such warranties extend to the Water Authority and are in addition to and do not limit any rights afforded to the Water Authority by any other provision of this solicitation. The Contractor agrees not to disclaim warranties of fitness for a particular purpose of merchantability. Warranties shall become effective at the time of acceptance of the goods, services or construction.

   The Contractor guarantees that the materials supplied are capable of the performance required in the Specifications in this solicitation and agrees to make such changes, adjustments or replacements as immediately necessary in order for the materials to meet the requirements at no cost to the Water Authority. If defects or specification failures are discovered, the Water Authority shall have the right, notwithstanding acceptance and payment, to require the unit or item to be properly furnished in accordance with the Specifications and applicable drawings at the cost and expense of the Contractor or the Contractor’s surety.

22. **Force Majeure:** Neither the Contractor nor the Water Authority shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government not directly related to this
23. **Removal of Debris and Cleaning the Area:** The Contractor shall, during the progress of any work required under this solicitation, remove and dispose of all debris and keep the work premises clean and safe. When the work is complete, the Contractor shall remove all construction equipment and surplus materials (except materials that are to remain the property of the Water Authority as provided in the Specifications) and leave the premises in a clean condition satisfactory to the Water Authority.

24. **Responsibility for Damage:** The Contractor shall be responsible for any damage caused during removal or installation services or at any time during the performance of the Contract. Damage shall be reported immediately to the designated Water Authority representative.

25. **Risks:** All risks of deterioration, destruction, and loss of materials and equipment stored at the site of the work required under the Contract shall be borne by the Contractor.

26. **Working Conditions:** The Water Authority is not responsible for obstacles, unfavorable conditions, or hazards, which may be encountered by the Contractor, both above and below ground. These conditions are part of the risk and responsibility of the Contractor.

27. **Indemnity:** The Contractor expressly agrees to defend, indemnify and save harmless the Water Authority and its officers, agents and employees from and against any and all claims, suits demands, actions, or proceedings of every nature and description brought because of any injury or damage received or sustained by any person, persons, or property arising out of the Contractor’s providing the goods, services or construction pursuant to the offer or by reason of any act or omission, neglect or misconduct of the Contractor, the agents, employees or subcontractors of the Offeror or the agents or employees of any subcontractor of the Contractor. The indemnity required herein shall not be limited by reason of the specification of any particular insurance coverage.

28. **Patent Indemnity:** If any item furnished pursuant to the Contract shall be covered by any patent, copyright, or application for patent or copyright, the Contractor shall defend, indemnify and save harmless the Water Authority from any and all loss, cost or expense or any all claims suits, or judgments as a result of the use of such item in violation of rights under such patent, copyright, or application for patent or copyright.

29. **Insurance:** Unless this requirement has been waived by the Water Authority’s Risk Manager, the Contractor shall procure and maintain at its expense until final payment by the Water Authority for services covered by the Contract, insurance in the kinds and amounts listed below with insurance companies authorized to do business in the State of New Mexico, covering all operations under this Agreement, whether performed by it or its agents. Before commencing the services, the Contractor shall furnish to the Water Authority a certificate or certificates in form satisfactory to the Water Authority showing that it has complied with this Section. All certificates of insurance shall provide that thirty (30) days written notice be given to the Risk Manager, Albuquerque Bernalillo County Water Utility Authority, P.O. Box 568, Albuquerque, New Mexico 87102, before a policy is cancelled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. With respect to all coverages required other than workers’ compensation, the Water Authority shall be named an additional insured. All coverages afforded shall be primary with respect to operations provided. The kinds and amounts of insurance required are set out below and additional insurance may be required as set out in the Specifications or Solicitation Instructions.

**A. Commercial General Liability Insurance:** A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

- $1,000,000 Per Occurrence
- $1,000,000 Policy Aggregate
- $1,000,000 Products Liability/Completed Operations
- $1,000,000 Personal and Advertising Injury
- $50,000 Fire – Legal
- $5,000 Medical Payments

Said policy of insurance must include coverage for all operations performed for the Water Authority by the Contractor and contractual liability coverage shall specifically insure the hold harmless provisions of this Agreement.

**B. Automobile Liability Insurance:** An automobile liability policy with liability limits in amounts not less than $1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. Said policy of insurance must include coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off work.

**C. Workers’ Compensation Insurance:** Workers’ Compensation Insurance for its employees in accordance with the provisions of the Workers’ Compensation Act of the State of New Mexico (the “Act”). If the Contractor employs fewer than three employees and has determined that he is not subject to the Act, the Contractor will certify, in a signed statement, that the Contractor is not subject to the Act. The Contractor will notify the Water Authority and comply with the Act if he becomes subject to the Act during the term of this Agreement.

**D. Increased Limits:** If, during the term of this Agreement, the Water Authority requires the Contractor to increase the maximum limits of any insurance required herein, an appropriate adjustment in the Contractor’s compensation will be made.
30. **Invoices and Payments:** The Contractor shall submit an accurate invoice, in duplicate, for each purchase. Invoices shall refer to the Purchase Order Number, the Release Form Number if applicable, and shall be itemized unless otherwise specified in this Solicitation. Invoices are to be mailed to:

Accounting Division (Accounts Payable)
Albuquerque Bernalillo County Water Utility Authority
P.O. Box 568
Albuquerque, New Mexico 87103

with a copy to the applicable department.

Invoices mailed or provided to any other address will result in a delay in making payment. The Contractor is encouraged to inquire if payments due are not received within thirty (30) consecutive calendar days after delivery of goods/services and submittal of invoice by contacting the Accounting Division at (505) 768-2723.

Unless otherwise stated in the specification, the Contractor shall not receive any compensation until all services have been completed, final inspection has been made, the work has been accepted by an authorized representative of the Water Authority and complete and correct invoices have been received by the Water Authority following the invoicing process detailed herein. Progress payments will not be made to the Contractor unless otherwise specified in this solicitation.

31. **Title:** Title to all items of tangible personal property, services and construction provided pursuant to the Contract shall pass to the Water Authority at the time of payment free and clear of all liens, claims, security, interest and encumbrances.

32. **Audits and Inspections:** At any time during normal business hours and as often as the Water Authority may deem necessary, there shall be made available to the Water Authority for examination all of the Contractor’s records with respect to all matters covered by the Contract. The Contractor shall permit the Water Authority to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by the Contract.

33. **Default/Termination for Cause:** If, through any cause, the Contractor fails to fulfill the Contractor’s obligations under the Contract in a timely and proper manner, or if the Contractor, violates any of the covenants, agreements or stipulations of the Contract, the Water Authority shall notify the Contractor of such violations in writing and allow the Contractor a reasonable time, set out in the notice, to correct the default. If the default is not corrected within the specified time period the Water Authority shall have the right to cancel the Contract and any or all current contracts with the Contractor, and, if applicable, to purchase the required goods or services from another source or sources. The Water Authority shall provide written notice to the Contractor specifying the effective date of cancellation. The notice of cancellation may be contained in the notice of default.

If the Contract is cancelled, the Contractor shall not be relieved of liability to the Water Authority for damages caused by its breach of the Contract. The Water Authority reserves the right to recover such damages, including but not limited to any excess cost incurred in having to purchase contract goods/services from other sources by a deduction from an unpaid balance due to the Contractor, collection against a performance or labor and materials payment bond, a combination of these remedies, or any other legal method available. In addition, the Contractor may be removed from the Purchasing Office Vendor List or determined to be ineligible to respond to future solicitations, as being not responsible.

34. **Termination for the Convenience of the Water Authority:** The Water Authority may terminate the Contract at any time by giving at least thirty (30) consecutive calendar days’ notice in writing of such termination to the Contractor. In such event, the Contractor shall be paid under the terms of the Contract for all goods/services provided to and accepted by the Water Authority, if ordered or accepted by the Water Authority prior to the effective date of termination.

35. **Termination for Lack of Appropriations:** Funding for the Contract has been appropriated by the Water Authority Board for the Water Authority’s current fiscal year. Notwithstanding any other provisions in the Contract, its continuation beyond the end of the fiscal year is contingent on the Water Authority Board making the appropriations necessary to fund the Contract. If sufficient appropriations are not made the Contract may be terminated at the end of the Water Authority’s then current fiscal year upon written notice given by the Water Authority to the Contractor. Such termination shall not constitute a default. All payment obligations of the Water Authority and all of its interest in the contract will cease upon date of termination. The Water Authority’s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

36. **Assignment, Transfer and Subcontracting:** The Contractor shall not assign, transfer or subcontract any portion of the Contract without the express written consent of the Water Authority’s Purchasing Officer. Any work or Services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

37. **Construction and Severability:** If any part of the Contract is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of the Contract so long as the remainder of the Agreement is reasonably capable of completion.

38. **Enforcement:** The Contractor agrees to pay to the Water Authority all costs and expenses including reasonable attorney’s fees incurred by the Water Authority in exercising any of its rights or remedies in connection with the enforcement of the Contract.

39. **Compliance with Laws:** The Contractor shall, in performance of the Contract, fully comply with all applicable federal, state, or local laws, rules and regulations.

40. **Governing Law/Venue:** This Contract is governed by the laws of the State of New Mexico. The parties agree that the state and federal courts sitting in New Mexico will have exclusive jurisdiction over any claim arising out of the Contract or this procurement and each party consents to the exclusive jurisdiction of such courts.