



Albuquerque Bernalillo County
Water Utility Authority

Request for Bids
General Instructions,
Terms and Conditions

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INTRODUCTION

These General Instructions, Terms and Conditions are incorporated by reference into each Request for Bids (“RFB”) issued by the Albuquerque/Bernalillo County Water Utility Authority (the “Water Authority”) through its eProcurement System, SicommNet. An electronic copy of this document, and Water Authority standard forms which may be required for the RFB, can be found on the internet at <http://www.abcwua.org/vendor-services.aspx>. A hardcopy may also be obtained from the Water Authority Central Purchasing Office.

These General Instructions, Terms and Conditions apply to the RFB and to any contract resulting from the RFB. Failure by a Bidder to review this document shall in no way constitute or be deemed a waiver by the Water Authority of its contents, or any part of them. No liability will be assumed by the Water Authority for a Bidder's failure to consider these General Instructions, Terms and Conditions in its response to the RFB.

The term “goods and services” as used herein shall refer to the specific products, equipment, items, vehicles, services, construction, or the like, or any combination thereof, which may be purchased under the RFB. The terms “services” and “work” may be used to refer to construction.

PART I INSTRUCTIONS TO BIDDERS

1. RFB Specific Instructions: Additional instructions to Bidders specific to the RFB can be found in the SicommNet Special Instructions and the Specifications, if any, attached in SicommNet.

2. Deadline for Receipt of Bids: The date and time for the receipt and opening of Bids is specified in SicommNet and in the Advertisement for Bids.

3. Pre-Bid Conference: Information regarding the date, time and place for a Pre-Bid Conference for the RFB, if held and whether it is mandatory is specified in SicommNet and in the Advertisement for Bids. A Pre-Bid Conference may be conducted to provide additional information concerning the RFB. When attendance is mandatory, failure to attend shall disqualify the prospective Bidder from submitting a Bid. If the Bidder is a joint venture, the attendance by any authorized representative of any of the parties to the joint venture will satisfy this requirement. Whenever attendance is not specified as mandatory, prospective Bidders are encouraged to attend. Bidders should be prepared to ask questions or request clarifications regarding the RFB at a Pre-Bid Conference.

4. Authority:

4.1 *Compliance with Governing Authorities.* The RFB is governed by the Bernalillo County Procurement Ordinance (the “Procurement Ordinance”), which the Water Authority has adopted, pursuant to the powers granted in Section 72-1-10 NMSA 1978, to govern all purchasing transactions of the Water Authority. It is also governed by the Water Authority’s Rules Governing the Award and Rejection of Bids/Offers and Debarment of Contractors for the Albuquerque/Bernalillo County Water Utility Authority (the “Rules”), and the Water Authority’s Approval Resolution designating approval authority for Water Authority contracts, purchases and procurement documents (“Approval Resolution”). Additional statutes, ordinances, resolutions, rules and regulations may apply. By submitting its Bid, the Bidder agrees to comply with the requirements of these authorities.

4.2 *Use by Other Public Governmental Agencies.* With the agreement of the successful Bidder (the “Contractor”), other public governmental agencies may purchase from the Contract resulting from the RFB, unless otherwise stated, conditioned on the following:

- Extension of the use of the Contract shall in no way impede the Contractor’s ability to fulfill the pricing, terms and conditions of the Contract with the Water Authority; and
- The Water Authority shall have no responsibility to verify whether another 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.

5. **Bid Documents:** The RFB, also referred to herein as the Bid Documents, contains the following:

- Advertisement for Bids
- All SicommNet pages, attachments and links, such as Specifications, forms, and Addenda
- These General Instructions, Terms and Conditions:
Part I, Instructions to Bidders
Part II, Terms and Conditions

The terms used in the Bid Documents shall have the meanings assigned to them in the Procurement Ordinance and Rules or herein.

Specifications, if attached, shall have precedence over these General Instructions, Terms and Conditions, SicommNet Special Instructions and other Bid Documents.

The Water Authority assumes no responsibility for errors or misinterpretations resulting from the use of incomplete Bid Documents.

6. **Contacts:** The RFB is issued by the Water Authority’s Purchasing Office, which is the sole point of contact during the entire procurement process. All questions regarding the RFB should be directed to the Contact Person identified in SicommNet. The Contract resulting from the RFB will be managed by the Water Authority’s Central Purchasing Office.

7. **Interpretation of RFB:** Any explanation desired by a Bidder regarding the meaning or interpretation of the RFB may be requested in writing at any time up to ten (10) calendar days prior to the date for receipt of Bids unless the procurement is deemed critical by the Water Authority and a shorter deadline for questions has been provided in the Advertisement for Bids or in an Addendum to the RFB. Questions shall be submitted to the Contact Person identified in SicommNet. Any interpretation of the documents will be made only by Addendum duly issued. Verbal answers, oral explanations or instructions given at any time will not be binding on the Water Authority.

8. **Examination of RFB:** Before submitting its Bid, each Bidder must:

- Examine the RFB thoroughly, including, but not limited to any Specifications attached in SicommNet.
- Take any necessary steps to familiarize itself with local conditions that may in any manner affect the performance of the Contract.

- Familiarize itself with federal, state, and local laws, ordinances, rules and regulations affecting performance of the Contract and employment of labor thereon.
- Familiarize itself with the Procurement Ordinance, Rules and the applicable Water Authority policies, regulations and ordinances.
- Carefully correlate its observations with the requirements of the RFB.

The submission of a Bid will constitute an incontrovertible representation by the Bidder that it has complied with every requirement of the RFB and that the RFB is sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Contract.

9. Addenda: Addenda to the RFB shall be in writing and attached in SicommNet and notice shall be sent electronically to all prospective Bidders that have been informed about the RFB or have notified the Central Purchasing Office of their desire to receive copies of all Addenda to the RFB. Copies of Addenda will be made available for inspection wherever Bid Documents are on file for that purpose. No Addendum will be issued later than **five (5) calendar days** prior to the date for receipt of Bids. Each Addendum shall be a part of the Bid Documents to the same extent and as though contained in the original documents and itemized listings thereof and all Bidders shall be bound by such Addenda. Failure to obtain an Addendum shall not be grounds for overturning a Recommendation of Award. If an Addendum affects a Bid already submitted, it may be changed at any time up to the deadline for receipt of Bids. Each Bidder shall ascertain, prior to submitting its Bid that it has received all Addenda issued.

10. Preparing the Bid: The Bidder shall comply with each of the following general provisions, if relevant to the type of goods, services or construction being procured, except in the case where the provision is superseded by a more specific provision in the SicommNet Special Instructions or in Specifications attached in SicommNet.

10.1 *Specifications Attached.* Specifications may be attached in SicommNet which apply to the RFB.

10.2 *All Inclusive Price.* The Bidder's total price must include all applicable costs to the Water Authority, including, but not limited to, all applicable taxes except New Mexico Gross Receipts Taxes (see Section 10.3 below), licenses, registration, insurance, bonds, permits, fees, freight (FOB Destination), and the like, unless otherwise provided in the Specifications or SicommNet Special Instructions.

10.3 *New Mexico Gross Receipts Taxes.* A Bidder shall not include any applicable gross receipts or local option taxes in its offered price, and its Bid will be considered on that basis. Applicable taxes shall be stated separately and will be paid by the Water Authority at current rates. If requested, the Water Authority will furnish a non-taxable transaction certificate. Determination of whether the tax is due and payment of the tax is the responsibility of the Bidder.

10.4 *Line Items.* Line items, if applicable, must be bid as specified, including container size, packaging, quantity, and units as noted in the bid schedule. Any line item deviating from the requirements contained in SicommNet or the Specifications, if applicable, will not be considered for purchase.

10.5 *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 should be for the units specified.

10.6 *Estimated Quantities Not an Order.* Estimated quantities, if provided, do not constitute an order. Said amounts represent what may be purchased during the course of a contract resulting from the RFB but are not a commitment to purchase any quantities or amounts and will be used only to evaluate Bids and award a contract. These quantities as stated may increase or decrease depending on the actual needs of the Water Authority. Actual orders will be placed by the Water Authority departments.

10.7 *Shipping.* Prices must be stated as FOB-Destination, unless otherwise indicated in the Specifications or SicommNet Special Instructions.

10.8 *Price List.* Before a purchase order is issued, the successful Bidder shall submit a copy of any price list referred to in the successful Bid. The price list shall not become effective until it is received and accepted by the Central Purchasing Office. Failure to submit a price list by the required date specified in the RFB may result in rejection of the Bid.

10.9 *Payment Terms.* Payment terms are net thirty (30) days unless otherwise provided in the Specifications or SicommNet Special Instructions. 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 Bid. The discount term will be computed from the date of actual delivery of the items procured or receipt of invoice, whichever is later.

10.10 *Equivalent Products.* Where a product is characteristic of a sole manufacturer, or where a brand name or model is indicated in the Specifications, the product, brand name or model shall represent a 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 Bidder offers an item other than the one specified it must be comparable in all material respects, and the Bidder should specify in its Bid the manufacturer's name and model number of that item and a performance specification and descriptive data sufficient to permit a thorough evaluation. Failure to provide the appropriate information may result in disqualification of the Bid.

10.11 *Manufacturer's Information:* If required by the Specifications or SicommNet Special Instructions, Bids must include the manufacturer's make and model number (if applicable) of each item offered in the Bid and literature clearly describing the item. This information should be uploaded with the Bidder's response. Failure to provide this information may result in rejection of the Bid.

10.12 *Safety Data Sheets.* To comply with OSHA 29 CFR 1910.1200 for general standards on handling hazardous materials, safety data sheets may be required. It is the responsibility of the Bidder to make this determination and, if required, a copy of the SDS must accompany the products 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 Bidder. The Specifications or SicommNet Special Instructions for the RFB may require that the SDS be provided with the Bid or prior to delivery to the end user. Failure to provide this information at the time required, may result in rejection of the Bid.

10.13 *Design Conformance – OSHA.* The design of all equipment offered in response to the RFB shall be in conformance with all applicable regulations of the federal Occupational Safety and Health Act in effect at the time of delivery.

10.14 *Delivery Time.* Delivery time stated in the Specifications shall apply. Deviations by the Bidder shall be stated in the SicommNet Comments area located beneath each bid item or in an

uploaded document with the Bid. Time, if stated in number of days, will be consecutive calendar days.

10.15 *Delivery to the Water Authority Warehouse.* All items delivered to the Water Authority Warehouse, as well as shipping labels, invoices and packing lists, shall be individually marked by the successful Bidder with the Water Authority Warehouse Stock Number if required by the Specifications or SicommNet Special Instructions. Delivery may be made to the Warehouse only during Warehouse Receiving Hours: 8 AM through 3 PM, local time, Monday through Friday, excluding Water Authority recognized holidays.

10.16 *Local Area Maintenance.* If required by the Specifications or SicommNet Special Instructions, no Bid in response to an RFB requiring maintenance services will be considered unless adequate maintenance is available in the Water Authority Service Area. Bidders shall indicate the nearest supplier of parts and service in the SicommNet comments area or in an uploaded document. Failure to comply may result in rejection of the Bid. The Water Authority reserves the right to conduct on-site inspections or request inventory parts lists to determine the adequacy of local area maintenance. The Water Authority will be the sole judge of the adequacy of the local area maintenance offered.

10.17 *Service Facilities.* The Bidder, at the time of submitting a Bid in response to an RFB, must have service facilities which are, in the opinion of the Water Authority, adequate to perform any services specified in the RFB. The Water Authority reserves the right to inspect and determine if the facilities meet this requirement. The final determination of satisfaction of this requirement rests with the Water Authority.

10.18 *Site Inspection Required.* The Specifications or SicommNet Special Instructions may require Bidders to conduct an on-site inspection. Failure by the Bidder to become acquainted with the conditions affecting the work specified in the RFB shall not constitute relief from responsibility for estimating properly the difficulty or cost of successfully performing the work. The Bidder shall be responsible for any excess costs resulting from failure to estimate accurately. Failure to conduct an on-site inspection may result in the rejection of a Bid.

10.19 *New Mexico Minimum Wage Rates.* If required by the Specifications or SicommNet Instructions, minimum wages and fringe benefits to be paid to various classes of laborers and mechanics under a contract resulting from the RFB shall be subject to a minimum wage rate determination by the State of New Mexico Department of Workforce Solutions. If applicable, this determination will be obtained by the Water Authority and provided to the Bidders. Failure by a Bidder to become acquainted with the wage rates shall not constitute relief from responsibility for estimating properly the cost of the work. It is the Bidder's responsibility to be familiar with the State of New Mexico statutes and regulations applicable to wage rates and if awarded a contract, to comply with them.

10.20 *Subcontractors Fair Practices Act.* This RFB may be subject to the provisions of the "Subcontractors Fair Practices Act," Sections 13-4-31, et seq., NMSA 1978 (the "SPFA") as provided in the Specifications or SicommNet Special Instructions, which shall identify the threshold amount (the "Threshold") and, if applicable, the areas of work for which the SPFA applies. In such case, the Bidder shall complete the Bidder's Listing of Subcontractors (SPFA) form provided in SicommNet in accordance with the instructions provided with the form and submit the form with its Bid. A Bid submitted without the required and properly completed form shall not be accepted. If a Bidder fails to list a subcontractor in excess of the Threshold and does

not state that no bid was received or that only one bid was received, he represents that he is fully qualified to perform, and that he shall perform that portion of the work himself.

10.21 *Additional Notification of Subcontractors and Suppliers.* If required by the Specifications or SicommNet Special Instructions, the Bidder will, within the requested time frame, provide to the Water Authority all information required regarding subcontractors, suppliers and other companies furnishing the principal items of material and equipment for the work required by the RFB.

If the Water Authority, after due investigation, has reasonable objection to any business or contractor so identified, the Water Authority may, before giving a Notice of Award, request the apparent successful Bidder to submit an acceptable substitute without an increase in the Bid amount. Any business or contractor so listed to whom the Water Authority does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to the Water Authority.

10.22 *Public Works Project Registration.* In order to submit a Bid valued at more than sixty thousand dollars (\$60,000) for a project which is subject to the Public Works Minimum Wage Act (Sections 13-4-10 to 13-4-17 NMSA 1978) as provided in the Specifications or SicommNet Special Instructions, Bidder, serving as a prime contractor or not, shall be registered with the Labor Relations Division of the New Mexico Workforce Solutions Department at the time of submitting its Bid. The Bidder should upload to SicommNet proof of its registration with its Bid unless otherwise provided in the Specifications or approved by the Central Purchasing Office.

10.23 *Public Works Bid Security/Bid Bond.* If the RFB results in a public works construction contract in excess of twenty-five thousand dollars (\$25,000), Section 13-4-18 NMSA 1978 shall apply (see Part II, Section 9.2) and all Bidders shall furnish with their Bids a bid bond in the form provided in SicommNet. Failure to submit a bid bond will cause the Bid to be rejected. Said bid bond shall be issued by a surety duly authorized to conduct business in the State of New Mexico and acceptable to the Water Authority and shall be in the amount of five percent (5%) of the total amount of the Bid, unless otherwise provided in the Specifications or SicommNet Special Instructions. Such surety shall be named in the most current version of the U.S. Department of the Treasury's Listing of Approved Sureties, Circular 570, which can be found at www.fiscal.treasury.gov. Bidders shall require the Attorney-in-Fact who executes the required bond on behalf of the surety to affix to the bond a certified and current copy of his Power of Attorney. Bid security is submitted as a guarantee that the Bidder, if awarded the Contract will promptly execute such Contract in accordance with the Bid and in the manner and form required by the Contract Documents, as defined in Part II of these General Instructions, Terms and Conditions, and will furnish good and sufficient bond for the faithful performance of the same and for the protection of all persons supplying labor and material to the contractor or its subcontractors, and will furnish required certificates of insurance. The Bidder must be named as principal on the bond. No third-party bonds will be accepted. In addition to uploading a copy of the bond and Power of Attorney with the Bid, the original bond and Power of Attorney must be received by the Contact Person listed above no later than three (3) calendar days after the deadline for receipt of Bids. Cashier's checks, letters of credit, cash or other substitutes will not be accepted.

10.24 *Licenses and Certifications.* All licenses and certifications required by law to perform the Contract resulting from the RFB must be held by the Bidder at the time of submitting its Bid unless otherwise provided in the Specifications or SicommNet Special Instructions. The Bidder must

provide proof of all such licenses and certifications in a manner acceptable and within the time period specified in the RFB or by the Central Purchasing Office.

10.25 *Warranties.* The Bidder agrees to provide the warranties required in Section 6.4 of Part II of these General Instructions, Terms and Conditions, or as otherwise required by the Specifications or SicommNet Special Instructions. The Bidder shall provide any such warranties preferably with its Bid, but in any event, prior to award of the Contract.

10.26 *Agency:* In the event that a Bid is signed by an agent, the Water Authority reserves the right to require evidence of the agent's authority before accepting the Bid.

11. Submission of Bids/EProcurement Instructions:

11.1 *Electronic Response.* Unless otherwise specified, the RFB must be responded to electronically by submitting the required information and uploading any required documents as instructed below or in SicommNet. Instructions may also be in a document attached in SicommNet. No other method of delivery will be permitted unless an exception has been approved in writing by the Central Purchasing Office at least **five (5) calendar days** prior to the deadline for receipt of Bids.

11.2 *Obtaining Access to SicommNet.* If the Bidder does not have a SicommNet username and password, registration at <https://basec.sicomm.net/vendorlogin/> is required. For assistance, SicommNet technical support is available at (800) 614-0563, ext. 206.

11.3 *Certifications of Bidder.*

- The individual submitting the Bid certifies that he/she is authorized to submit the electronic response for the Bidder. The Bidder understands that it has an obligation to, and accepts responsibility for, safeguarding the vendor user identification ("ID") and password against unauthorized use and that the Water Authority has the right to rely on the authenticity of any Bids submitted through the vendor user ID and password. The Bidder understands that a Bid submitted electronically has the same force and effect as an originally signed document and that the Bidder is bound by any Bid submitted electronically through the vendor user ID and password.
- The Bidder certifies that it has provided accurate information in registering for access to SicommNet. In the event that the Central Purchasing Office finds that a Bidder has provided inaccurate registration information allowing the Bidder an unfair advantage, the Bidder must correct the information upon receipt of written notification from the Water Authority.

11.4 *SicommNet Instructions.* Information and instructions for preparing the Bid are contained herein and in SicommNet. The Bidder shall follow all instructions to:

- Enter pricing, if indicated.
- Complete other required information, if indicated; and
- Submit the Bid with attachments by the RFB closing date and time.

It is the responsibility of all Bidders to download (open, save or print) the attachments located above the Special Instructions, which are necessary for preparing the Bid.

11.5 *Submitting an Attachment to the Bid.* To upload/attach a document (e.g. pricing sheets, preference documents, bid bonds, etc.):

- Click the radio button beside “Upload New Files OR Manage already uploaded File(s):” which is located within any of the line items
- A new window will appear. Click “Browse”
- Find your file, select it
- Click “Open”
- Click “Upload File”

11.6 *Exceptions to the RFB.* Bidders shall state clearly any exceptions taken to the RFB in the Comments section located beneath each bid item or shall upload a written attachment to the Bid listing such exceptions. The Water Authority may accept an exception which it deems to be not material. If an exception is determined to be material, the Water Authority may reject the Bid or request that the exception be withdrawn. If the exception is determined to be material and is not withdrawn, the Bid will be rejected. If no exceptions are stated in the Bid, the Bidder will be required to furnish the items exactly as specified and to comply with all other requirements of the RFB.

12. Modification and Withdrawal of Bids:

12.1 *Before Bid Opening.* A Bid containing a mistake discovered before Bid Opening may be modified or withdrawn by a Bidder prior to the time set for Bid Opening by delivering written notice to the Water Authority Central Purchasing Office, duly executed in the manner required for execution of a Bid, unless notice is waived by the Chief Procurement Officer or by procedural rules applicable to electronic transmissions.

12.2 *Withdrawal After Bid Opening.* After Bid Opening, no modifications in price or other material provisions of the Bid are permitted. However, a low Bidder, alleging a material mistake of fact which makes his Bid non-responsive, may be permitted to withdraw his Bid if:

- The mistake is clearly evident on the face of the Bid; or
- The Bidder submits evidence which clearly and convincingly demonstrates that a material mistake was made.

The decision to permit or deny withdrawal of a Bid on the basis of mistake is a decision to be made by the Central Purchasing Office and shall be supported by a written determination setting forth the grounds of the decision.

12.3.1 *Waiver After Bid Opening.* After the Bid Opening and prior to the award, the following provisions apply:

- **Minor Technical Irregularities:** The Central Purchasing Office may waive technical irregularities that do not alter the price, quality or quantity of the Bid. See Section 19 of Part I of the RFB, Instructions to Bidders, below.
- Minor mistakes where the intent of a bid is clearly evident on the face of the bid document shall be corrected and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

All corrections or withdrawals allowed by the Central Purchasing Office shall be supported by a written determination placed in the specific procurement file.

13. Bid Opening: Bid Opening shall occur on the date and at the time set out in the

Advertisement for Bids and in SicommNet as the deadline for the receipt of Bids (“Solicitation CLOSING (Due) Date”). At Bid Opening, Bidders may view all Bids online in SicommNet. If provided in the Specifications or SicommNet Special Instructions, a public Bid Opening may be held at the time and place designated.

14. Bid Review: The Water Authority shall review the Bids for a period of up to ninety (90) calendar days after the hour and date specified for the receipt of Bids to determine the successful Bidder. If Bidder agrees to maintain its pricing, the review period may be extended for a period agreed to by the parties. The Water Authority is not restricted to the minimum information required by the Bid Documents in determining the responsiveness of a Bid and responsibility of a Bidder and any relevant information from reliable sources may be considered. The Water Authority may make such investigations it deems necessary, may also request clarification from Bidders regarding their Bids, obtain additional materials or literature, and use any assistance deemed advisable, including Water Authority contractors and consultants to assist in the review of Bids. The Bidder shall furnish to the Water Authority all such information and data for this purpose as the Water Authority may request.

15. Disqualification of Bids:

Specifically, but not by way of limitation, the Water Authority may reject a Bid if:

- The Bidder is debarred or suspended by the federal government, the State of New Mexico or any local public body of the State of New Mexico at the time of submitting its Bid.
- In the past the Bidder has not had a satisfactory record of previous performance on similar work.
- The Bidder does not have the ability, capacity, availability or skill to perform the Contract resulting from the RFB.
- The Bidder does not have adequate financial resources, production or service facilities, personnel, service reputation or the experience to provide the goods and services required in the RFB.
- The Bidder has not provided sufficient information in connection with any inquiry concerning the Bidder’s responsibility or which allows for the evaluation of its Bid.
- Additional factors exist which show the Bidder’s lack of responsibility as described in Section 11 of the Rules.
- The offered prices are higher than the prices for which the goods and services can be purchased on the open market.
- The Bidder failed to properly fill in any required spaces or attach required documents where information is required.
- The Bidder did not, at the time the Bid is made, have an appropriate New Mexico Contractor’s License or Certification when one is required by law, regulation or the RFB.
- The Bidder failed to submit, with its Bid, bid bonds or other material requirements as specified in the RFB or has otherwise submitted a non-responsive Bid.
- There are unauthorized additions, conditions, alternate proposals or other irregularities of any kind which might make the Bid incomplete, indefinite or ambiguous in meaning.
- The Water Authority determines that the Bid contains misrepresentations of any kind.

16. Civil Rights Compliance: Bidder certifies and agrees, by submittal of its Bid, to comply and act in accordance with all provisions of 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 and regulations relating to civil rights.

17. Collusion: The Bidder warrants that its Bid is submitted and entered into without any unlawful act of collusion with any other person or company engaged in the same line of business or commerce, or any other fraudulent act punishable under state or federal law. Collusion among Bidders or the submission of more than one Bid under different names with the intent to obtain an unfair advantage by any company or individual shall be cause for rejection of single or multiple Bids, without review.

18. Unfair Business Practices: Each Bidder shall execute and submit with its Bid the form entitled, Unfair Business Practices Disclosure Form, provided in SicommNet. If awarded a contract, the Bidder agrees to comply with Section 2-376 of the Procurement Ordinance and the New Mexico Unfair Practices Act, Section 57-12-1 et seq. NMSA 1978.

19. Penalties for Criminal Activities: Any business or person that willfully violates any provision of the Procurement Ordinance contrary to the New Mexico Criminal Code may be referred to the appropriate authorities for felony or misdemeanor prosecution. In addition, civil penalties may apply.

20. Rejection of Bids and Cancellation: The Water Authority may cancel the RFB or any portion thereof or the resulting Contract without penalty or reject any or all Bids in whole or in part when it is in the best interest of the Water Authority. All nonconforming or conditional bids or counter proposals may be disregarded. If a Bid is rejected, written notice of the rejection, together with the reasons therefor, shall be mailed by certified mail, postage prepaid, to the Bidder. Bidders whose Bids are rejected for any reason shall not be entitled to recover damages of any nature against the Water Authority resulting from the rejection. A determination containing the reasons for cancellation shall be made part of the procurement file.

21. Minor Technical Irregularities: The Central Purchasing Office may waive technical irregularities in Bids that do not alter the price, quality or quantity of the items bid or insignificant mistakes that can be waived or corrected without prejudice to other Bidders; i.e. when there is no effect on the price, quantity, quality, delivery or material contract conditions. The Chief Procurement Officer may waive such irregularities or allow the low Bidder(s) to correct them, if either action is in the best interest of the Water Authority. Examples include, but are not limited to, the failure of a low Bidder to: (i) return the number of signed Bids required by the RFB; (ii) sign the Bid, but only if the unsigned Bid is accompanied by other material indicating the low Bidder's intent to be bound; (iii) or acknowledge receipt of an Addendum to the RFB, but only if it is clear from the Bid that the low Bidder received the Addendum and intended to be bound by its terms or the Addendum involved had no effect on price, quality or quantity.

22. Award of Contract:

22.1 *Award Occurs.* Award of contract may occur when a Notice of Award is issued, a purchase order is issued, a written contract is signed by the Water Authority, or other evidence of acceptance by the Water Authority is provided to the Bidder. A Recommendation of Award does not constitute award of contract.

22.2 *Multiple Awards.* The Water Authority reserves the right to make multiple awards as a result of the RFB if doing so may be advantageous to the Water Authority.

22.3 *Basis of Award.* If a contract is awarded, or multiple contracts, award will be made to the responsive and responsible Bidder(s) whose Bid(s) is/are lowest in total price and most advantageous to the Water Authority, Specifications and other factors considered.

22.4 *Method of Award.* The Water Authority reserves the right to award a contract (or multiple contracts, if applicable) based in total or by group of items, on the basis of individual items, or any combination of these, which in the judgment of the Chief Procurement Officer, best serves the interests of the Water Authority, unless otherwise provided in the Specifications or SicommNet Special Instructions.

22.5 *Identical Bids.* If two or more of the Bids submitted are identical in price and are the low bid, the Water Authority may:

- (1) Make multiple awards in accordance with the Procurement Ordinance;
- (2) Award to a low Bidder who qualifies for any preferences if the other low Bidder(s) does/do not;
- (3) Award by lottery to one of the identical low Bidders; or
- (4) Reject all Bids and resolicit Bids.

22.6 *Notice of Award.* If one or more contracts are to be awarded, the Water Authority will give the apparent successful Bidder(s) a Notice of Award with reasonable promptness and within the time allotted in these Bid Documents for consideration and review of Bids, unless the Bidder and the Water Authority agree in writing to extend the period specified.

22.7 *Non-Exclusivity.* Unless otherwise provided in the Specifications, if the RFB results in an indefinite quantity contract, it shall not be exclusive to the successful Bidder. The Water Authority may make similar purchases of goods, services or construction from other businesses or contractors as needed; and the Water Authority is not obligated to make any amount of purchases under the Contract.

23. Contract: The terms and conditions of the Contract to be entered into are identified in Part II of these General Instructions, Terms and Conditions and in the Specifications for the RFB. The Contract shall consist of these General Instructions, Terms and Conditions, the Bid Documents and the Bidder's Bid, as well as the purchase order and any Exhibits, forms or other documents attached to or referenced in these documents. By submitting a Bid, a Bidder agrees to accept and be bound by all the terms and conditions set out in Part II of these General Instructions, Terms and Conditions and in the Specifications for the RFB. In order to be considered, exceptions to the terms and conditions, if any, must be made as provided in Section 11.6 above.

24. Execution of Contract and Delivery: Upon notification by the Water Authority prior to award of a contract, the awarded Bidder (the "Contractor") must sign and deliver any and all Contract Documents prepared by the Water Authority, and provide the following:

- A completed and executed Form W-9, Request for Taxpayer Identification Number and Certification
- Separate surety bonds, if required, and as specified in the Contract Documents
- Certificates of insurance as required in Part II of these General Instructions, Terms and

Conditions.

- Contractor's List of Subcontractors/Suppliers, if required, and as specified in the Contract Documents.

Failure of the Contractor to deliver these documents within a reasonable time after notification shall entitle the Water Authority to reject the Contractor's Bid and rescind the Notice of Award. In such event, the Water Authority shall be entitled to cancel the RFB, resolicit, or award to the next lowest responsive and responsible Bidder.

25. Debarment: By submitting its Bid in response to the RFB, the Bidder 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, or any local public body of the State, and (ii) should any notice of debarment, suspension, ineligibility or exclusion be received by the Bidder during the term of the Contract, the Bidder will notify the Water Authority immediately.

26. Ethical Conduct: By submitting its Bid, the Bidder warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Contract. The Bidder certifies that the requirements of the Procurement Ordinance and Rules as well as all other Water Authority and State of New Mexico laws, ordinances, rules and regulations, policies, procedures, and administrative instructions governing ethical conduct, including the Water Authority Code of Conduct, the New Mexico Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, and the New Mexico criminal statutes prohibiting bribes, gratuities and kickbacks, Sections 30-41-1 through 30-41-3 have been followed.

27. Proprietary Data: Each Bid shall be open to public inspection at the Bid Opening and thereafter, except to the extent the Bidder designates trade secrets or other proprietary data in the Bid to be confidential by uploading that material separately from the Bidder's main Bid and clearly marking it as "Confidential". **Pricing and makes and models or catalog numbers of items offered, delivery terms, and terms of payment cannot be so designated.** The Water Authority will endeavor to restrict distribution of material separated, placed in a sealed envelope and designated as "Confidential" to only those individuals involved in the review of the Bids. If a request for inspection of records under the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq, NMSA 1978) ("IPRA") is received, however, which request encompasses such materials, the Bidder will be notified. It is the responsibility of the Bidder to take whatever action it deems necessary to assert and defend the confidentiality of the materials provided in its Bid. If no protective action is taken to prevent the Water Authority from fulfilling the request submitted in accordance with IPRA, the Water Authority will provide the entire response to the requestor.

28. Application of Preferences: Prior to determining the recommended Bidder, the following preferences will be applied to all Bids submitted by eligible businesses and contractors. The Preference Eligibility Application form attached in SicommNet is provided to assist the Bidder in providing the correct documentation required for all applicable preferences. The Bidder should review the form and **MUST** submit the required documentation with its Bid in order to obtain a preference. The completed and signed Preference Eligibility Application should be submitted with the Bid but may be submitted prior to award.

28.1 *State Preferences.*

- Resident Business Preference. To qualify for this preference of five percent (5%), the Bidder must submit with its Bid a copy of its Resident Business Certificate issued by the New Mexico Taxation and Revenue Department pursuant to Section 13-1-22 NMSA 1978.
- Resident Veteran Business Preference. To qualify for this preference of ten percent (10%), the Bidder must submit with its Bid a copy of its Resident Veteran Contractor Certificate issued by the New Mexico Taxation and Revenue Department pursuant to Section 13-1-22 NMSA 1978.
- Resident Contractor Preference. To qualify for this preference of five percent (5%), the Bidder must submit with its Bid a copy of its Resident Contractor Certificate issued by the New Mexico Taxation and Revenue Department pursuant to Section 13-1-22 NMSA 1978.
- Resident Veteran Contractor Preference. To qualify for this preference of ten percent (10%), the Bidder must submit with its Bid a copy of its Resident Veteran Contractor Certificate issued by the New Mexico Taxation and Revenue Department pursuant to Section 13-1-22 NMSA 1978.
- Recycled Content Goods Preference: To qualify for this preference of five percent (5%), the Bidder must supply documented evidence that goods and materials provided are recycled content goods (i.e. supplies and materials composed of twenty-five percent (25%) or more recycled materials and meet or exceed the minimum content standards set out in the Specifications for the RFB.

When a joint Bid is submitted by a combination of resident veteran, resident or nonresident businesses and contractors, the preference provided shall be calculated in proportion to the percentage of the services provided under the Contract which will be performed by each contractor as specified in the joint Bid.

A Bidder shall not be awarded both a Resident Business Preference and a Resident Veteran Business Preference, nor a Resident Contractor Preference and a Resident Veteran Contractor Preference.

In the event a Bidder qualifies for a State preference for Resident Contractor or Resident Veteran Contractor or Recycled Content Goods and submits a qualifying Bid, the preference shall be applied in the manner set forth in Section 13-1-21 or 13-4-5 NMSA 1978.

A Resident Veteran Business with annual gross revenues of up to three million dollars (\$3,000,000) in the preceding tax year which qualifies for a Recycled Content Goods preference shall not be awarded both a Resident Veteran Preference and a Recycled Content Goods preference for the same Bid.

28.2 *County Preferences.*

- Local Business Preference. To qualify for this preference of five percent (5%), the Bidder must hold and submit with its Bid a valid Resident Business or Contractor Certificate issued by the New Mexico Taxation and Revenue Department pursuant to 13-1-22, NMSA 1978; and maintain its principal office and place of business in Bernalillo County, which must be staffed and open to the public on a regular basis. If necessary, the Central Purchasing Office may seek additional information or proof to verify eligibility for the Local Business Preference.
- Small Business Preference. To qualify for this preference of five percent (5%), the Bidder must hold and submit with its Bid a valid Resident Business or Contractor

Certificate issued by the New Mexico Taxation and Revenue Department pursuant to 13-1-22, NMSA 1978; must maintain its principal office and place of business in Bernalillo County, which must be staffed and open to the public on a regular basis; and must employ an average of fewer than fifty (50) full-time employees in a calendar year, which number shall be verified by submitting with its Bid an affidavit from a Certified Public Accountant. If necessary, the Central Purchasing Office may seek additional information or proof to verify eligibility for the Local Business Preference.

- **Pay Equity Preference.** To qualify for this preference of five percent (5%), a Bidder must maintain a deviation of seven percent (7%) or less between the salaries it pays to men and the salaries it pays to women for comparable positions. For purposes of this preference, comparable positions are those listed in the Job Classification Guide 2010 (as may be updated and amended from time to time) published by the federal Equal Employment Opportunity Commission. To be eligible for the preference, the Bidder must submit with its Bid a current and valid Pay Equity Business Certificate issued by the County Manager, or designee, or the State of New Mexico or a political subdivision of the State pursuant to an applicable statute, ordinance or regulation. The awarded Bidder must also provide a Bernalillo County Pay Equity Reporting Form upon signing the Contract resulting from the RFB and annually thereafter during the Contract term.

Note: The Pay Equity Preference described herein is currently unavailable until such time as the County Manager or designee establishes a pay equity preference certification program or enters into an agreement with the State of New Mexico or one of its political subdivisions that allows the Central Purchasing Office to use its pay equity certification program.

28.3 *Limitations.*

- These Preferences will not be applied if the valid Certificates, Certifications and forms required are not provided **with** the Bidder's Bid.
- Only the Bidder submitting a Bid and not a Subcontractor may qualify for a preference.
- The State Preferences shall be applied before the County Preferences.
- The total amount of all preferences applied under this Section 28, including the applicable State preference, in any single award, shall not exceed fifteen percent (15%), with the limit on State preferences as set forth under the New Mexico State Procurement Code.
- When applying the County preferences as set forth in this Section 28, the total dollar amount of County preferences shall never exceed \$150,000.00.
- These preferences shall not apply to RFBs for the expenditure of federal funds.

29. Protest: Any Bidder who is aggrieved in connection with the RFB or the resulting award of a contract may protest to the Chief Procurement Officer within fifteen (15) calendar days after knowledge of the facts or occurrences giving rise to the protest.

29.1 The protest must be submitted in written form and must be legible. Protests may be hand-delivered or mailed. Facsimile, telephonic, telegraphic or electronic protests will not be accepted. The protest shall be addressed as follows:

Albuquerque Bernalillo County Water Utility Authority
Attn: Chief Procurement Officer
PO Box 568

Albuquerque, New Mexico 87103
Project Number
PROTEST

- 29.2 The protest shall contain at a minimum the following;
- The name and address of the protesting party;
 - The number of the competitive solicitation;
 - A clear statement of the reason(s) for the protest detailing the provisions believed to have been violated;
 - Details concerning the facts which support the protest;
 - A statement of when knowledge of the facts or occurrences giving rise to the protest occurred;
 - Attachments of any written evidence available to substantiate the claims of the protest; and
 - A statement specifying the ruling requested.
- 29.3 The Chief Procurement Officer shall promptly issue a determination relating to the protest which shall state the reasons for the action taken and inform the protestant of the right to judicial review of the determination pursuant to the Procurement Ordinance. The written determination shall immediately be sent via certified mail to the protestant and otherwise provided via standard mail or electronically to other Bidders involved in the procurement.
- 29.4 The protestant shall have thirty (30) days from the date the protest determination is filed in the records of the Water Authority to file a Notice of Appeal with the Second Judicial District Court in Albuquerque, New Mexico, in accordance with Section 39-3-1.1 NMSA 1978.
- 29.5 The Chief Procurement Officer shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Bidder in accordance with the Procurement Ordinance.

PART II
CONTRACT TERMS AND CONDITIONS

1. **Contract Documents and Precedence:** A contract resulting from the RFB (hereafter the “Contract”) shall consist of the following (the “Contract Documents”) and shall have precedence and be applied in the following order: the purchase order and any terms and conditions written into, referenced and incorporated in or attached to the purchase order, the RFB Documents, and the Bid of the successful Bidder (the “Contractor”). Any exceptions taken to the RFB Documents in Contractor’s Bid which have not been written into the purchase order, have not been accepted by the Water Authority and are not part of the Contract. The Bid Documents shall have precedence in the order specified in Part I of these General Instructions, Terms, and Conditions, Section 5.
2. **Contract Term/Extension:** Unless otherwise provided in the Specifications or SicomNet Special Instructions, a Contract resulting from the RFB shall be for a term of twenty-four (24) months from the date of issue of the purchase order and may be extended at the discretion of the Water Authority to the extent allowed by the Procurement Ordinance, the Rules or other applicable authority.
3. **Contract Price, Payments and Title:** The Contract Price and Payment Terms for a contract resulting from the RFB shall be set out in a document referenced in or attached to the

purchase order issued by the Water Authority, unless otherwise provided in the Specifications or SicommNet Special Instructions.

3.1 *Invoices and Payments.* The Contractor shall submit an accurate invoice for each purchase. Invoices shall refer to the purchase order Number and the Blanket Release (“BR”) Number, if applicable, and shall be itemized unless otherwise specified in the RFB.

Applicable taxes shall be stated separately and will be paid by the Water Authority at current rates. Applicable taxes shall be shown as a separate amount on each billing or request for payment made under the Contract and may not be billed more than sixty (60) days after providing the goods and services to which the taxes apply.

Invoices are to be mailed to:

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

Or emailed to: vendorinvoices@abcwua.org 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) calendar days after delivery of goods or completion of the services under the Contract and submittal of invoice, by contacting the Accounting Division at (505) 289-3008.

Unless otherwise stated in the Specifications or SicommNet Special Instructions, the Contractor shall not receive any compensation until all goods have been delivered and the services have been completed, final inspection has been made, the goods and services have been accepted by an authorized representative of the Water Authority and complete and correct invoices have been received by the Water Authority in accordance with the invoicing process detailed herein. Progress payments will not be made to the Contractor unless otherwise specified in the RFB.

3.2 *Title.* Title to all goods and services provided under the Contract shall pass to the Water Authority at the time of payment, free and clear of all liens, claims, security interests and encumbrances.

4. Personnel, Subcontractors, and Suppliers:

4.1 *General.* The Contractor represents that it has, or will secure at its own expense, all personnel required to perform the Contract. Such personnel shall not be employees of or have any contractual relationships with the Water Authority. All the work required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform the work. None of the work described in the RFB shall be subcontracted without the prior written approval of the Water Authority. Any work subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of the Contract.

4.2 *Subcontractors Fair Practices Act.* If the Subcontractors Fair Practices Act (“SFPA”) applies, the Contractor shall not substitute any person as subcontractor in place of the subcontractor listed in its original Bid and shall not permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the subcontractor listed in its original Bid without the written consent of the Water Authority in accordance with the SFPA.

In addition, the Contractor shall not sublet or subcontract any portion of the contract work in an amount exceeding the SPFA Threshold, as set out in the RFB, where the original Bid did not designate a subcontractor, unless the Bidder received no bid or only one bid for that category and that was noted on the Bidder's Listing of Subcontractors (SPFA) form submitted with its Bid, or the work is pursuant to a Change Order that causes changes or deviations from the original Contract.

If after award of the Contract the Contractor subcontracts any portion of the Work, except as provided in the SFPA, the Contractor shall be guilty of violation of the SFPA and subject to the penalties provided in Section 13-4-41 NMSA 1978.

5. Delivery and Acceptance:

5.1 *No Delivery before Purchase Order is Issued.* The Contractor shall not deliver any goods or commence services prior to the issuance of a purchase order or other notice to proceed issued by the Water Authority Central Purchasing Office.

5.2 *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.

5.3 *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 goods or services not in accordance with the Specifications or the Contract Documents. Such acceptance of delivery shall not waive the Water Authority's right to require replacement of defective goods or correction of inadequate services.

6. Quality of Materials:

6.1 *New Material.* All goods, materials, supplies, equipment, vehicles, and the like provided under the Contract shall be new, the latest in production and manufactured within the last twelve (12) months (computed from the date and time of Bid Opening) unless otherwise indicated in the Specifications or SicomNet Special Instructions. This does not apply to equipment or vehicles used by the Contractor to provide the required goods and services.

6.2 *Inspection of Materials.* 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 goods and services found inferior to the quality specified in the RFB, 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 or services within the time frame specified in the notice of rejection.

6.3 *Right to Inspect Plant.* The Water Authority's Chief Procurement Officer, or designee, may inspect, at any reasonable time, the Contractor's or any subcontractor's plant or place of business related to the performance of the Contract.

6.4 *Warranties.* All goods and materials furnished by the Contractor shall be free from defects and imperfections and workmanship shall be in accord with the best industry standards and

practices. All goods, materials and workmanship shall be subject to the approval of the Water Authority.

Goods and materials furnished by the Contractor shall be accompanied by the manufacturer's written warranty against defects in quality and craftsmanship and 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 shall 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 the RFB.

THE CONTRACTOR AGREES NOT TO DISCLAIM WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY. Warranties shall become effective at the time of acceptance of the goods and services provided.

The Contractor guarantees that the goods and services supplied meet the performance required in the Specifications and elsewhere in the RFB and agrees to make such changes, adjustments or replacements as immediately necessary in order 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 noncompliant 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.

7. Site Conditions:

7.1 *Removal of Debris and Cleaning the Area.* The Contractor shall, during the progress of any work required under the RFB, 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.

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

7.3 *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.

7.4 *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.

8. Indemnity:

8.1 *General 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 performance of the Contract or by reason of any act or omission, neglect or misconduct of the Contractor, or its agents, employees or subcontractors 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.

8.2 *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 and 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.

9. Insurance and Bonds:

9.1 *Insurance.* Unless otherwise provided in the Specifications or SicommNet Special Instructions, the Contractor shall procure and maintain at its expense until final payment by the Water Authority under 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 the Contract, whether performed by it or its agents. Before commencing the Contract, 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 SicommNet Special Instructions.

- **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 the Contract.

- **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.

- **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 has determined that it is not subject to

the Act, the Contractor will certify, in a signed statement to that effect. The Contractor will notify the Water Authority and comply with the Act if it becomes subject to the Act during the term of the Contract.

If, during the term of the Contract, 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.

If appropriate, the Water Authority Risk Manager may waive all or part of the insurance requirements.

9.2 *Bonds.* If the Contract is a public works construction contract in excess of twenty-five thousand dollars (\$25,000), Section 13-4-18 NMSA 1978 requires that performance and labor and material payment bonds or security shall be delivered to the Water Authority and shall become binding on the parties upon the execution of the Contract. If the Contractor fails to deliver the required performance and payment bonds, the Contractor's Bid shall be rejected and its bid security shall be enforced to the extent of actual damages. A performance bond alone or with a labor and material payment bond may also be required by the Specifications or SicommNet Special Instructions for other types of contracts.

If required, the awarded Bidder (the "Contractor") shall furnish the necessary bonds as security for the faithful performance and payment of all its obligations under the Contract. These bond(s) shall be in an amount equal to the Contract Price (unless otherwise provided in the Contract Documents), in such form as provided in SicommNet, and with such sureties as are duly authorized to conduct business in the State of New Mexico and are named in the most current version of the Department of the Treasury's Listing of Approved Sureties (Department Circular 570, which can be found at www.fiscal.treasury.gov). Bidders shall require the Attorney-in-Fact who executes a required bond on behalf of the surety to affix to the bond a certified and current copy of his Power of Attorney. The performance bond shall also include coverage for the warranty period, if applicable. These bonds and Powers of Attorney must be furnished prior to or at the time of the issuance of a purchase order, but no later than fifteen (15) calendar days after the date of receipt of a written Notice of Award of a Contract resulting from this RFB. The Bidder must be named as principal on the bonds. No third-party bonds will be accepted. Cashier's checks, letters of credit, cash or other substitutes will not be accepted.

If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business in the State of New Mexico is revoked, Contractor shall within five (5) days thereafter substitute another bond and surety, both of which must be acceptable to the Water Authority.

10. New Mexico Minimum Wage Rates:

10.1 *Compliance.* If New Mexico Minimum Wage Rates apply, Contractor and any subcontractor performing work under the Contract shall comply fully with the "Public Works Minimum Wage Act", Sections 13-4-11 et seq., NMSA 1978 and all amendments thereto. The minimum wages and fringe benefits to be paid by the Contractor and all subcontractors to various classes of laborers and mechanics, shall be based upon the wages and benefits determined by the Director of the Labor Relations Division of the Workforce Solutions Department of the State of New Mexico to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the state or locality. Contractor and all subcontractors, and

any person acting as a contractor shall pay all mechanics and laborers employed on the site of the Project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those so determined to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

10.2 *Posting; Withholding Funds.* The prevailing wage rates and prevailing fringe benefit rates to be paid shall be posted by Contractor in a prominent and easily accessible place at the site of the work. The Water Authority may withhold from Contractor so much of accrued payments as may be considered necessary by the Water Authority to pay to laborers and mechanics employed on the project the difference between the prevailing wage rates and prevailing fringe benefit rates required by the Contract to be paid laborers and mechanics on the work and the wage rates and fringe benefit rates received by the laborers and mechanics and not refunded to the contractor, subcontractor, employer or a person acting as a contractor or the contractor's, subcontractor's, employer's or person's agents.

10.3 *Failure to Pay; Termination; Appeal.* In the event it is found by the Director of the New Mexico Department of Workforce Solutions Public Works (the "Director") that any laborer or mechanic employed on the site of the project has been or is being paid as a result of a willful violation a wage rate or fringe benefit rate less than the rates required, the Water Authority may, by written notice to the Contractor, subcontractor, employer, or person acting as contractor, terminate the right to proceed with the Work or the part of the Work as to which there has been a willful failure to pay the required wages or fringe benefits; and the Water Authority may prosecute the work to completion by contract or otherwise, and the Contractor and a person acting as a contractor and the Contractor's or person's sureties shall be liable to the State of New Mexico for any excess costs occasioned thereby. Any party receiving notice of termination of a Contract or subcontract under the provisions of this Section may appeal the findings of the Director, as provided in the Public Works Minimum Wage Act.

11. Records and Audits:

11.1 *Establishment and Maintenance of Records.* Records shall be maintained by the Contractor in accordance with applicable law and requirements prescribed by the Water Authority with respect to all matters covered by the Contract. Except as otherwise authorized by the Water Authority, such records shall be maintained for a period of six (6) years after receipt of final payment under the Contract.

11.2 *Audits.* 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.

12. **Ethical Conduct:** The Contractor warrants that it will perform the Contract in compliance with the Ethical Conduct provisions (§2-390) and Unfair Business Practices provisions (§2-376) of the Water Authority Procurement Ordinance and Rules (Section 37), the Water Authority Code of Conduct, Sections 10-16-1 through 10-16-18, NMSA 1978, the New Mexico criminal statutes prohibiting bribes, gratuities and kickbacks, Sections 30-41-1 through 30-41-3, and any other Water Authority or New Mexico laws, ordinances, rules and regulations, policies, procedures and

administrative instructions applicable to ethical conduct. The Contractor warrants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Contract.

13. Changes:

13.1 *Contract Changes.* In no case shall a Contract be changed without the prior written approval of the Chief Procurement Officer.

13.2 *Increase of Quantities:* The Water Authority reserves the right to increase the quantity of the goods and services to be provided under the terms of the Contract, at the same prices, with the consent of the Contractor.

13.3 *Decrease of Quantities.* The Water Authority reserves the right to decrease the quantity of goods and services 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 opportunity shall not be afforded the Contractor if the Contract was originally awarded based on estimated quantities.

13.4 *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, or any local public body of the State, the Water Authority shall have the right to cancel the Contract with the Contractor for cause, as provided below in Section 15.

13.5 *Additions/Deletions of Items.* The Water Authority reserves the right to add ancillary items or services or delete such items or 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 Chief Procurement Officer or designee.

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

- Under the price structure of the Contract, to include, but not by way of limitation, price margin above Contractor cost; or
- By quotation from the Contractor, which quotation is validated to be competitive by solicitation of comparable quotes within the market if necessary; or
- As otherwise determined by the Chief Procurement Officer.

An amended Contract (by purchase order or otherwise) will be issued for each addition or deletion, prior to the 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.

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

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

- The Contractor shall provide written notice to the Water Authority of any requested price increases.
- All requests for price increases shall be accompanied by: (1) a letter from the Contractor's supplier certifying the increases in cost to the Contractor; or (2) evidence of verifiable market conditions resulting in increased costs such as mandated labor rate increases and significant fuel or energy cost increases.
- All revisions to Contract pricing shall become effective when they are approved by the Water Authority.
- As provided in Section 11.2, *Audits*, above, all supplier invoices for the offered items shall be subject to auditing by the Water Authority and furnished without delay upon request.
- 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.
- All approved price changes resulting from this escalation clause shall be firm for a minimum of ninety (90) calendar days after approval by the Water Authority.
- Contractor shall notify the Water Authority within seven (7) calendar 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 to by the parties.
- The Water Authority reserves the right to approve pricing increases requested by the Contractor which may be requested for reasons other than an increased cost to the Contractor from an outside source, if it is in the best interest of the Water Authority.
- All approvals required by this subsection must be in writing by the Water Authority Chief Procurement Officer.

14. 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 Contract, acts or omissions of a military authority, acts of God, material shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party is using its best efforts to remedy such failure or delays.

15. 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 other current contracts with the Contractor, and, if applicable, to purchase the required goods and services from another source or sources. The Water Authority shall provide written notice to the Contractor specifying the effective date of cancellation which 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 and 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 Central Purchasing Office vendor list or determined to be ineligible to respond to future solicitations, as being not responsible.

16. Termination for Convenience: 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 and services provided to and accepted by the Water Authority, if ordered or accepted by the Water Authority prior to the effective date of termination.

17. 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.

18. Miscellaneous:

18.1 *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 Chief Procurement Officer. Any work subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of the Contract.

18.2 *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 is reasonably capable of completion.

18.3 *Compliance with Laws.* The Contractor shall, in performance of the Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including, but not limited to the New Mexico Human Rights Act, Title VII of the federal Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and all federal, State and local statutes, regulations and executive orders relating to civil rights.

18.4 *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.

18.5 *Entire Agreement.* The Contract Documents comprise the entire agreement between the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

18.6 *Governing Law/Venue.* The Contract is governed by the laws of the State of New Mexico. The parties agree that the state and federal courts sitting in Bernalillo County, 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.