



**PURCHASING DEPARTMENT
FORMAL INVITATION FOR BID**

INSTRUCTIONS TO BIDDERS

Bids are solicited for furnishing the goods, supplies, equipment and/or services as set forth in this solicitation. **Bids must be received Electronically or by Sealed Bid in the Purchasing Office by date and time specified**, and then publicly opened and read aloud. Sealed Bids that are either mailed or delivered must be enclosed in a sealed envelope, addressed to the Director Purchasing, and have the bid number, bid name, closing date, and company name clearly marked on the outside of the envelope. **Sealed Bids should be mailed or hand delivered to the following address:**

**San Antonio Water System
Purchasing Department
2800 US Highway 281 North,
Administration Bldg, 5th Floor
San Antonio, TX 78212**

Electronic Bids can not be accepted after the specified date/ time. Sealed Bids received late will be returned; they will not be opened nor considered in the evaluation of the bid. The undersigned agrees, if the bid is accepted, to furnish any and all items upon which prices are offered, at the price(s) and upon the terms and conditions contained in the specifications. The period of acceptance of this bid will be 90 calendar days after the bid opening date.

The undersigned, by his/ her signature, represents that he/she is authorized to bind the Bidder. I have read and agreed with the attached Terms and Conditions, Instructions to Bidders and the Invitation for Bid requirements. Failure to complete the requested information below may result in rejection of your bid.

Company Name	Company's Authorized Agent
Address	
City, State, Zip Code	Signature:
	Printed Name
Federal ID Number (TIN)	Title
Telephone Number	
Mobile Number	Date
Fax Number	E-mail Address

TERMS AND CONDITIONS OF INVITATION FOR BIDS AND BEST VALUE BIDS

1.0 INSTRUCTIONS TO BIDDERS

Bids will be submitted in accordance with the following:

1.1 Sealed Bids

1.1.1 Sealed bids that are hand delivered or mailed will be received by the Purchasing Department, **San Antonio Water System, Administration Building, 2800 US Highway 281 North, San Antonio, Texas 78212** until the date/ time specified in the Solicitation.

1.1.2 If the submittal of a sealed bid is by any means other than personal hand delivery, then it is the bidder's sole responsibility to insure the bid is delivered to address specified above no later than the exact time as specified in the Solicitation.

1.1.3 All bids received after the exact time set for the bid opening in the Solicitation will be returned unopened.

1.2. Electronic Bids

Bidder shall follow instructions for submission of the Electronic Bid as specified in the Electronic Bidding software.

2.0 PREPARATION OF BIDS

2.1 **Review of Documents:** Bidders are expected to examine all documents that make up the Solicitation such as drawings, specifications, schedules, instructions and all other documents. Bidders shall promptly notify SAWS of any omission, ambiguity, inconsistency or error that they may discover upon examination of the Solicitation. Bidders submitting Sealed Bids must use the Solicitation to prepare Bids. SAWS assumes no responsibility for any errors or misrepresentations that result from the submission of incomplete Solicitations.

2.1.1 Bidders shall make all investigations necessary to thoroughly inform themselves regarding plant and facilities for delivery of material and equipment as required by the bid conditions. No plea of ignorance by the bidder of conditions that exist or that may exist as a result of failure or omission on the part of the bidder to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the solicitation, will be accepted as a basis for varying the requirements of SAWS or the compensation to the vendor.

3.0 GENERAL CONDITIONS

3.1 Bidders are advised that all SAWS contracts are subject to all legal requirements provided for in Texas state and federal statutes. Any bid, after being opened, becomes subject to the Public Information Act, Government Code Chapter 552, see section below Texas Public Information Act.

3.2 No officer or employee of SAWS shall have a financial interest, direct or indirect, in any contract with SAWS, or shall benefit financially, directly or indirectly, in the sale to SAWS of any materials, supplies or services, except on behalf of SAWS as an officer or employee. This prohibition extends to all SAWS boards and commissions other than those which are purely advisory.

4.0 EXPLANATIONS OR CLARIFICATIONS

4.1 Any explanation, clarification, or interpretation desired by a Bidder regarding any part of the Solicitation must be requested through the Electronic Bidding System or if submitting a Sealed Bid in writing from the Purchasing Department point of contact on or before the due date and time set for questions to allow for an addendum to be issued. Interpretations, corrections, or changes to the Solicitation made in any other manner are not binding upon SAWS, and Bidders shall not rely upon such interpretations, corrections or changes. Oral explanations or instructions given are not binding.

4.2 SAWS reserves the right to request clarification to assist in evaluating the bidder's response when the bid response is unclear with respect to product pricing, packaging or other factors. Responses to requests

for explanations or clarifications may be faxed or e-mailed to the Purchasing Department point of contact as identified in the solicitation within two calendar days from request. The communication must clearly identify the Invitation for Bid or Best Value Bid number. Any material information given to one Bidder concerning a solicitation will be furnished by an Addendum to all Bidders by e-mail and/ or posted Addendum.

- 4.3 Restrictions on Communications:** Bidders' contact regarding this Invitation for Bid or Best Value Bid with employees other than the Purchasing Department, or the Small Minority and Women Owned Business (SMWB) Office, or as otherwise indicated in the IFB is prohibited.

This includes "thank you" letters, phone calls, emails, and any contact that results in the direct or indirect discussion of the bid and/or bid submitted by bidders.

Bidders or their representatives are prohibited from communicating with any City of San Antonio officials to include 1) City Council members (as defined by the City of San Antonio Ethics Code), 2) City Council member's staff, and 3) San Antonio Water System (SAWS) Board of Trustees regarding the IFB from the time the IFB is released until it has been acted upon by the Board of Trustees.

Violation of this provision by the Bidder and/or their agent may lead to disqualification of the Bidder's response and may result in disqualification from this procurement process.

5.0 PREPARATION OF BIDS

Each Bidder must furnish all information required by the Solicitation on the bid documents provided or via Electronic Bidding System. Sealed Bids that are submitted on other than the forms included in the Solicitation shall be considered non-responsive. Any attempt to alter the wording in the Solicitation is ineffective and will result in rejection of the Bid. All information required by the bid form shall be furnished or the bid may be deemed non responsive.

- 5.1 Taxes:** Purchase of Goods or Services for SAWS are exempt from federal taxes, and State of Texas limited sales excise and use taxes. The successful Bidder should request a Tax Exemption Certificate from the Purchasing Department. Under no circumstances shall SAWS be liable to pay taxes for which they have an exemption.
- 5.2 Description of Goods:** Any catalog or manufacturer's reference used in describing an item is merely descriptive, and not restrictive, unless otherwise noted, and is used only to indicate type and quality of material. Each bid must clearly identify the proposed product, model, and type proposed, as applicable. Prorata adjustments to packaging and pricing may be allowed at the sole discretion of SAWS.
- 5.3 Brand Name or Equal:** If the Solicitation indicates brand name or "equal" products are acceptable, the Bidder may offer an "equal" product and must be prepared to demonstrate those features that render it equal. Requests for approve "equal" product must be submitted by the due date and time as specified and prior to the bid submittal. Request must include adequate information, i.e. specification sheets, drawings, etc. such that a determination can be made. SAWS acceptance of "approved equals" will be done via posted addendum.
- 5.4 Samples, Demonstrations or Testing**
If product samples, demonstrations or testing of products is required as a part of the bid process, the requirement will be reflected in the General Requirements section of the bid package along with delivery instructions, time and due date for submittal. Failure to provide samples, demonstrations or testing of products prior to the specified due date will disqualify bidder from consideration. All samples (including return thereof), demonstrations and/or testing shall be at the expense of the bidder. Samples will be returned upon request; otherwise, samples will become property of SAWS, ten business days after award of the contract.
- 5.5 Delivery Time:** Delivery time, if stated as a number of days, will be based on calendar days. Successful vendor will be expected to meet quoted delivery time. Unless otherwise specified, delivery at the earliest date is required. The Bidder must clearly state in the bid the time required for delivery upon receipt of contract or purchase order. If the indicated date cannot be met or the date is not indicated, the Bidder

shall state its best delivery time.

5.6 **Delivery of Goods/ Services**

5.6.1 **Terms - Free on Board (FOB) Point:** Freight Terms shall be FOB Destination SAWS designated facility, Freight Prepaid and Allowed. The Bidder should quote its lowest and best price, with the goods delivered to the place specified, at the Bidder's expense and risk of loss until delivery to SAWS. Bids offering any other delivery terms are not acceptable and may be cause for rejection. If this Invitation for Bids or resulting Purchase Order does not contain delivery instructions, bidders shall request instructions in writing from the Purchasing Department.

5.6.2 Delivery dates pertaining to this invitation must be clearly stated in the bid form where required and include weekends and holidays. Failure to comply with this requirement may be a cause for disqualification of the bid. Unless otherwise specified, delivery at the earliest date is required. The bidder will clearly state in the bid the time required for delivery upon receipt of contract or purchase order. Proposed delivery time must be specific and such phrases "as required", "as soon as possible" or "prompt" may result in disqualification of the bid.

5.6.3 Upon award of a contract, the vendor is obligated to deliver the goods to the destination specified in the Invitation for Bids or the Purchase Order, signature required, and bears the risk of loss until delivery. If this Invitation for Bids or Purchase Order does not contain delivery instructions, bidders shall request instructions in writing from the Purchasing representative. If the delivery instructions contained in the Invitation for Bids allocate delivery costs and risks in a manner contrary to this section, the provisions of this Invitation for Bids shall prevail.

5.6.4 When delivery is not met as provided for in the contract, the SAWS Purchasing Department reserves the right to make the purchase on the open market, with any cost in excess of the contract price paid by the vendor, in addition to any other damages, direct or consequential, incurred by SAWS as a result thereof. In addition, failure of the vendor to meet the contract delivery dates will be cause for removal of the vendor from SAWS list of eligible bidders as determined by the Purchasing Department.

5.7 **Variances and Exceptions to Bid Terms:** In order to comply with Texas State law, bidders must submit bids on the same material terms and conditions. Bids that contain material variances, or exceptions to the terms and conditions, including additional "Supplemental Terms and Conditions", will be rejected.

5.8 **Texas Public Information Act:** All bids become the property of SAWS upon receipt and will not be returned. Bidders are advised that all SAWS contracts are subject to all legal requirements provided for in state and federal statutes. Any bid, after being opened, becomes subject to the Texas Public Information Act, Government Code Chapter 552. Bidders must clearly indicate any portion of the submitted bid that the bidder claims is not subject to public inspection under the Public Information Act.

Any information deemed to be confidential by Bidder should be clearly noted; however, SAWS cannot guarantee that it will not be compelled to disclose all or part of the public record under the Texas Public Information Act, since information deemed to be confidential by Bidder may not be considered confidential under Texas law, or pursuant to a Court order. Note that pursuant to state law, bids are opened publicly and read aloud. In addition, bids are tabulated and posted to SAWS website or Electronic Bidding System so shall not be considered proprietary or confidential.

5.9 **Prices**

5.9.1 Bids shall be firm priced offers unless otherwise requested or specified.

For Sealed Bids:

5.9.2 Pricing shall be entered on the Price Sheet in ink.

5.9.3 Totals shall be entered in the "Total Price" column on the Price Sheet.

5.9.4 In the event of a discrepancy between unit price and extended price, the unit price shall govern.

An error in a unit price may not be changed.

5.9.5 **Line Item Bids:** Any bid that is considered for award by each line item must include a unit price for each line item for which the bidder wishes to be considered.

5.9.6 **All or None Bids:** Any bid that is considered for award on an “all or none” basis must include a unit price for all line items.

5.9.7 Any ambiguity in the bid as a result of omission, error, unintelligible or illegible wording shall be construed in favor of SAWS.

5.9.8 Prices shall be offered in the dollars of the United States of America (or decimal fractions thereof).

For Electronic Bids:

5.9.9 Pricing shall be entered on the Line Item Tab on the bid in the Electronic Bidding System..

5.9.10 Totals will be automatically calculated and can be viewed by selecting “Error Check” button.

5.9.11 An error in a unit price may be changed until the due date and time, however an error in a unit price may not be changed after the due date and time.

5.9.12 **Line Item Bids:** Any bid that is considered for award by each line item must include a unit price for each line item for which the bidder wishes to be considered.

5.9.13 **All or None Bids:** Any bid that is considered for award on an “all or none” basis must include a unit price for all line items.

5.9.14 Prices shall be offered in the dollars of the United States of America (or decimal fractions thereof).

5.10 **Signature:** The Bidder must sign each document (manually if submitting a Sealed Bid and electronically if submitting an Electronic Bid) in the Solicitation requiring a signature. Any change made to the bid must be initialed by the Bidder.

5.11 **Bid Security and Performance Bonds**

5.11.1 **Bid Security:** If a bid security is required for this purchase, the requirement will be reflected in the General Requirements section of the bid package. A bid bond, cashier’s check or acceptable surety bond in the amount indicated signed by a duly authorized officer (checks to be drawn payable to SAWS) must be submitted at the time the bid is submitted, and is then subject to forfeiture in the event the successful bidder fails to deliver as promised.

5.11.2 **Performance Bond:** If a performance bond is required for this purchase, the requirement will be reflected in the General Requirements section of the bid package. Bidder will be required to submit a letter from their surety stating that in the event of award, the Bidder will be able to obtain the required performance bond. Upon notification of award, the selected bidder will be required to provide the performance bond, renewable annually, in the amount as specified within 10 calendar days of request. Failure to provide consistent service or failure to maintain an adequate service level may result in forfeiture of the bond.

5.11.3 **Payment Bond:** If the bidder is using subcontractors, a payment bond may be required as reflected in the “General Requirements section of the bid package. Upon notification of award, the selected bidder will be required to provide the payment bond, renewable annually, in the amount as specified within 10 calendar days of request.

5.11.4 When a Performance Bond and or a Payment Bond is required, SAWS will not enter into a contract or issue a purchase order until the successful vendor has complied with the Performance Bond/ Payment Bond requirement.

5.12 **Bid Preparation Costs:** All costs associated with preparing a Bid in response to a Solicitation shall be

borne by the Bidder.

5.13 **Prompt Payment Discount:**

5.13.1 SAWS will take Bidder's offered prompt payment discount into consideration in determining the low bidder or when evaluating pricing. The evaluation will be based upon the net price as determined by applying the discount to the bid price, either per line item or total bid amount. SAWS may reject a discount if the percentage is so high as to create an overly large disparity between the price SAWS would pay if it is able to take advantage of the discount and the price SAWS would pay if it were unable to pay within the discount period.

5.13.2 SAWS will not consider discounts that provide fewer than 10 calendar days to pay in order to receive the discount.

5.13.3 If no payment discount is offered, all payment terms shall be "Net 30 Days" unless otherwise specified in bid document.

6.0 **SUBMISSION OF SEALED BIDS**

For bidders intending to submit a paper copy of bid (Sealed Bid):

6.1 **Copies:** Unless otherwise specified, Bidders are required to submit an executed original and one (1) copy of the Bid enclosed in a sealed envelope.

6.2 **Documents required with Bid:** The following documents must be submitted with each Bid prior to the Due Date:

6.2.1 The completed and signed Invitation to Bid Sheet (Bid Coversheet);

6.2.2 The completed and signed Bid Price Schedule (if requested); and

6.2.3 Any other documents included in the Solicitation requiring completion or execution by the Bidder.

6.3 **Addenda:** Receipt of an Addendum must be acknowledged by signing and returning the Addendum Acknowledgment with the Bid if requested or under separate cover prior to the Due Date and Time. Addenda containing bid pricing should be returned in a sealed envelope marked on the outside with the Bidder's name, address, the Solicitation number, and the Due Date and Time.

6.4 **Late Bids:** Bids must be received in the Purchasing Department prior to the Due Date and Time. All Bids received after the Due Date and Time are considered late and will be returned to the Bidder unopened. It is the sole responsibility of the Bidder to ensure timely delivery of the Bid. SAWS will not be responsible for failure of services on the part of the U.S. Postal Services, courier companies, or any other form of delivery service chosen by the bidder.

Bids with the correct address on the outside, that are delivered to one of SAWS other buildings or facilities by no fault of the bidder may be accepted if it can be confirmed by a SAWS employee that the bid was received by the Due Date and Time.

7.0 **MODIFICATION OF WITHDRAWAL OF BIDS**

7.1 **Modification of Sealed Bids:** Bids may be modified in writing at any time prior to the Due Date and Time set for receipt of bids and must be in a sealed envelope marked on the outside with the Bidder's name, address, the Solicitation number, and the Due Date and Time.

7.2 **Modification of Electronic Bids:** Bids may be modified at any time prior to the Due Date and Time set for receipt of bids.

7.3 **Withdrawal of Sealed Bids:** Bids may be withdrawn in writing, or by facsimile (signed by the bidder) at any time prior to the Due Date and Time. A Bid may also be withdrawn in person by a Bidder, provided the withdrawal is made prior to the Due Date. A receipt of withdrawal must be signed by the Bidder. No Bids may be withdrawn after the Due Date without forfeiture of the Bid Guarantee, unless there is a material error in the Bid. Withdrawn Bids may be resubmitted, with or without, modifications, prior to the Due Date.

- 7.4 **Withdrawal of Electronic Bids:** Bids may be withdrawn at any time prior to the Due Date and Time. No Bids may be withdrawn after the Due Date and Time without forfeiture of the Bid Guarantee, unless there is a material error in the Bid. Withdrawn Bids may be resubmitted, with or without, modifications, prior to the Due Date.

8.0 **OPENING OF BIDS**

- 8.1 **Invitation for Bids:** The Purchasing Department representative responsible for opening Bids shall confirm the time and announce the Bid opening. The representative shall then publicly open all Sealed and Electronic Bids timely received, reading each bid aloud.
- 8.2 **Invitation for Best Value Bids:** The Purchasing Department representative responsible for opening Bids shall confirm the time and announce the Bid opening. The representative shall announce the names of the Bidders. The pricing will be opened as specified in the General Requirements at the completion of the Technical Evaluation. A webex will be set up to publicly open all Sealed and Electronic Bids pricing timely received, reading each bid aloud.

9.0 **EVALUATION FACTORS AND AWARD**

- 9.1 **Evaluation:** General Requirements will specify the basis for award.
- 9.2 **Award:** Per Section 252.043 of the Texas Local Government Code, award will be made to either the lowest responsible bidder or to the bidder that provides the goods and/or services at the best value for SAWS. In considering best value, SAWS may consider price, reputation, quality, past relationship with SAWS, SMWB requirements, long term cost and any other relevant factors.
- 9.2.1 A written award of acceptance (and when required, manifested by an approved Board Resolution and appropriation) mailed or otherwise furnished to the successful bidder results in a binding contract without further action by either party, unless otherwise stated.
- 9.2.2 Breaking of tie bids shall be in accordance with the Texas Local Government Code § 271.901.
- 9.2.3 Although the information furnished to bidders specified the approximate quantities needed, based on the best available information where a contract is let on a unit price basis, payment shall be based on the actual quantities supplied. SAWS reserves the right to delete items, prior to the awarding of the contract, and purchase said items by other means; or after the awarding of the contract, to increase or decrease the quantities bid in accordance with § 252.048 of the Texas Local Government Code. When estimated quantities are lower than estimated by more than 25%, bidder acknowledges acceptance of decrease with no further written consent required. No other changes shall be made without written notification of SAWS
- 9.3 **Acceptance of Bid:** Acceptance of a Bid will be in the form of a Purchase Order, Award Letter, Contract or Service Agreement. The contents of a Bid shall become a part of the Contract. Under no circumstances will SAWS be responsible for Goods or Services provided without an acceptance signed by an authorized Purchasing representative.
- 9.4 **Reservation of Rights:** SAWS expressly reserves the right to:
- 9.4.1 Specify estimated or approximate quantities in the Bid;
- 9.4.2 Extend the Solicitation opening date and time.
- 9.4.3 Waive as an informality, minor deviations from specifications provided they do not affect competition or result in functionally unacceptable goods or services; informalities and irregularities;
- 9.4.4 Waive any minor informality, in any Bid or Solicitation (a minor informality is one that does not affect the competitiveness of the Bidder);
- 9.4.5 Add additional terms or modify existing terms in the Solicitation;

- 9.4.6 Reject a bid because of unbalanced unit prices bid; **UNBALANCED BIDS:** A bid shall be mathematically unbalanced if the Bid contains unit pricing that does not reflect reasonable costs (including actual labor and material cost, overhead and profit) for the performance of the bid item(s) in question. A bid shall be materially unbalanced if there is a reasonable doubt that award of the mathematically unbalanced Bid will result in the lowest ultimate cost to SAWS. A Bid that is, in the sole discretion of the Purchasing Director both mathematically and materially unbalanced, may be rejected as non-responsive.

(An example would be bidding overtime labor rates below regular time rates, or bidding laborer rates above Supervisor or Foreman rates. Another example is bidding a 1 gallon container of a product higher than a 5 gallon container of the same product).

- 9.4.7 Reject a bid if bidder misstates or conceals any material fact in the bid,
- 9.4.8 Reject a bid if it does not strictly conform to law or the requirements of the bid,
- 9.4.9 Reject a bid because it is conditional,
- 9.4.10 Reject or cancel any or all Bids;
- 9.4.11 Cancel the entire Bid,
- 9.4.12 Issue a subsequent Bid;
- 9.4.13 Procure any item by other means; and/ or;
- 9.4.14 Award to multiple vendors on a non-exclusive award basis, or primary and secondary vendors,
- 9.4.15 Make multiple recommendations to the Board;
- 9.4.16 Request additional information or clarification.

10.0 **POST BID DOCUMENTS REQUIRED FROM BIDDERS**

- 10.1 **Certificates of Insurance:** If required, Insurance Specifications will be included in the General Requirements. When required, the successful Bidder must provide Certificates of Insurance in the amounts and for the coverage required within 10 business days of written notification of pending award. Certificates will be distributed as defined in the Insurance Specifications.
- 10.2 **Performance Bonds:** When Performance Bonds are required, the successful Bidder must provide the bonds, in the amounts and on the conditions required, within 10 business days after notification of award, or as otherwise required by Solicitation.
- 10.3 **Assurance of Compliance – Equal Employment Opportunity and Small Minority Women and Veteran Owned Business (SMWVB) Policy Requirements**

It is the policy of SAWS that Small Minority Women and Veteran Owned Businesses shall have the maximum practicable opportunity to participate in the performance of public contracts. Bidder agrees that if this bid is accepted, he/she will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap or political belief or affiliation. In addition, bidder agrees, by submittal of this bid, that he/she will abide by all applicable terms and provisions of the Small Minority Women and Veteran Owned Business Policy. This policy is available on the SAWS Small Minority Women and Veteran Business' website <https://www.saws.org/business-center/smwvb-at-saws/>.

11.0 **PROTEST PROCEDURE**

- 11.1 Any bidder that is adversely affected in connection with the solicitation, evaluation, or proposed award of a contract may file a protest appealing the adverse decision.
- 11.2 The vendor must submit any protest in writing to the Purchasing Director within 10 business days of the posting on SAWS website or on the Electronic Bidding System of the intent to award. If vendor does not file a written notice within this time; the vendor will have waived all rights to formally protest the intent to award. It is the vendor's responsibility to check SAWS website posting.
- 11.3 The Purchasing Director, or designee, is authorized to resolve a protest concerning a purchasing action through telephone discussions, mail, e-mail, or in person meetings with the protesting vendor.
- 11.4 After discussions or meetings, the Purchasing Director or designee will issue a decision in writing, state the reasons for the action taken and inform the protesting vendor of the right to review by a panel made up of SAWS staff.
- 11.5 SAWS protest review panel will consist of an Attorney, a representative of the operating departments, the Purchasing Director or designee and any other appropriate personnel or employees of the operating department. .

12.0 **DISCLOSURE OF INTERESTED PARTIES**

Section 2252.908 of the Government Code is an ethics law that was enacted by H.B. 1295 in 2015, that prohibits a governmental entity from entering into a contract with a business entity (contractor) unless contractor submits a disclosure of interested parties for applicable contracts entered into after January 1, 2016.

The Texas Ethics Commission website, https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm provides the electronic filing application that must be used by the successful contractor to file Form 1295.

Upon notification from SAWS, the successful contractor will be required to use the electronic application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the contractor will be required to sign the printed copy of the form. The electronic form requests a Contract ID be entered which should be the Bid Number.

13.0 **GIFT POLICY**

SAWS employees are prohibited from soliciting, accepting or agreeing to accept any gifts from outside sources; please see Section M. – Gifts or Benefits of the Water System's Code of Ethical Standards. Section M of the Water System's Code of Ethical Standards regarding Gifts or Benefits is available on the SAWS Business Center website, <https://www.saws.org/about-saws/code-of-ethical-standards/>.

14.0 **INVOICES AND PAYMENTS**

- 14.1 ACH: Successful bidders are encouraged to register for Automated Clearing House (ACH) payments prior to providing goods and/or services. Interested bidders shall contact the Purchasing Department for instructions on how to get set up.
- 14.2 **Submission of Invoices:** Invoices shall be submitted to the Accounts Payable Department via mail or e-mail. If mailed to the following address:

**San Antonio Water System
Attn: Accounts Payable
PO Box 2449
San Antonio, TX 78298-2449**

If e-mailed to accountspayable@saws.org

Once award is made, the appropriate Accounts Payable point of contact and contact information will be provided to include e-mail address. It is also permissible to provide an electronic invoice to the end user at the same time a copy is provided to Accounts Payable.

14.2.1 At a minimum, invoice shall state: Item(s) ordered, quantity, date of order, PO number, delivery location or name of SAWS employee that ordered and or who picked item up, invoice number, manufacturer's list price, discounted price/ and or markup, and total invoice amount.

14.2.2 If above information is not stated on the invoice, payment could be delayed.

14.2.3 Invoices shall be paid in accordance with State Law.

14.2.4 SAWS cannot pay for any goods or services without an invoice. Vendor must invoice SAWS no later than 90 calendar days from the date goods are delivered or services rendered. Failure to submit an invoice within said 90 days may negate any liability of the part of SAWS and constitute a waiver by the vendor and any and all right or claims to collect moneys that vendor may rightfully be otherwise entitled to.

14.3 **Payment by SAWS:** SAWS shall have not less than 30 days to pay for goods or services. Time for payment, including payment under discount terms, will be computed from the later of: (1) the date SAWS receives conforming goods under the contract; (2) the date performance of the service under the contract is completed; or (3) the date SAWS receives a correct and valid invoice for the goods or services. Payment is deemed to be made on the date of mailing of the check. Payment is made in US dollars only.

14.2.3 This provision shall not apply where there is a bona fide dispute between SAWS and Vendor about the goods delivered or the service performed that causes the payment to be late, or where the invoice is not correct, or is not mailed to the Accounts Payable address as provided herein; or e-mail address.

14.2.3 The payment amount due on invoices may not be manually altered by SAWS personnel. Once disputed items are reconciled, Vendor must submit a corrected invoice, or a credit memorandum for the disputed amount. SAWS will not make partial payments on an invoice where there is a dispute without written consent of SAWS requesting department.

14.4 **Total Price:** The total price for all goods and/or services is shown on the Price Schedule. No additional fees or expenses of Vendor shall be charged by Vendor nor be payable by SAWS. The parties hereby agree that all compensable expenses of Vendor are shown on the Price Schedule. If there is a discrepancy on the Price Schedule between the unit price for an item, and the extended price, the unit price shall govern.

14.5 **Discounts:** In connection with any discount offered, time will be computed from the date of receipt of supplies or services, or from the date a correct invoice is received, whichever is later. Payment is deemed to be made on the date of mailing of the check.

15.0 DEBRIEFING

Debriefing of contract award is available upon request and after award of the contract or Board Approval if applicable.

16.0 CONTRACT TERMINATION

16.1 **Termination for Cause.** SAWS may terminate this contract at any time for "Cause" in accordance with the procedures provided below. Termination by SAWS of this contract for "Cause" shall mean termination upon (i) the neglect, breach or inattention by Vendor of its duties hereunder, and such neglect, breach or inattention has not been cured within ten (10) calendar days after written notice thereof given by SAWS to Vendor, (ii) the engaging by Vendor in willful or fraudulent conduct that is injurious to SAWS, monetarily or otherwise, (iii) the failure by Vendor to otherwise perform its duties hereunder and such failure has not been cured within ten (10) days after written notice thereof given by SAWS to Vendor. Upon such termination for cause, the Vendor shall not be entitled to any further compensation under this Contract, except for the compensation which has been earned for services rendered by Vendor in accordance with this Contract through the date of notice of such termination.

In the event termination for cause is not proper under this Section, the termination shall be deemed to constitute a termination for convenience as set forth in Section 8.2 below.

16.2 **Other Termination.** SAWS may terminate this contract at any time for its sole convenience, without cause, upon thirty (30) calendar days written notice to the Vendor. Upon termination of this Contract, the Vendor will be entitled only to the compensation and expenses which have been earned for services rendered in accordance with this Contract through the date of such termination. No termination of this Contract shall impair or defeat those obligations set forth elsewhere in this Contract, which require either party to do or refrain from doing any specified act or acts after termination of this Contract, or to perform any obligation which by its terms or normal meaning survives termination of this Contract.

16.3 **Suspension.** SAWS reserves the right to suspend work under this Contract at any time and from time-to-time work for the convenience of SAWS by issuing a written notice of suspension. The notice shall outline the reasons for the suspension and the estimated duration of the suspension; in no way will the notice guarantee the total number of days of suspension. Such suspension shall take effect immediately upon the date specified in the notice. If a date is not specific in the suspension notice, suspension shall take effect upon the date of delivery to the Vendor. Upon receipt of a notice of suspension in excess of 180 calendar days, the Vendor shall have the right to terminate this Contract by written notice to SAWS. Vendor may exercise this right to terminate any time after a suspension has continued for more than 180 calendar days if SAWS has not provided written notice to resume the work. Termination (under this paragraph) by Vendor shall be effective immediately upon SAWS's receipt of said written notice from Vendor.

16.3.1. Upon receipt of a written notice of suspension or termination, unless the notice otherwise directs, Vendor shall immediately phase-out and discontinue all services in connection with the performance of this Contract and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to SAWS under this Contract.

16.4 **Non-Appropriation:** SAWS retains the right to terminate this contract at the expiration of each of SAWS budget periods. This contract is conditioned on a best efforts attempt by SAWS to obtain and appropriate funds for payment of any debt due by SAWS herein.

17.0 INDEPENDENT CONTRACTOR

It is expressly understood and agreed by both parties hereto that SAWS is contracting with the successful vendor as an independent contractor. The parties hereto understand and agree that SAWS shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the successful vendor under this contract and that the successful vendor has no authority to bind SAWS.

18.0 **NON-EXCLUSIVE CONTRACT:** Any contract resulting from this Bid will be awarded with the understanding and agreement that it is for the sole convenience of SAWS. SAWS reserves the rights to obtain like goods or services from another source when necessary. Only the SAWS Purchasing Department may approve off-contract purchase authorization. Approval will be at the discretion of the Purchasing Department and will be conclusive. However, approval will be granted only after a proper review and when deemed to be appropriate. Off-contract procurement will be consistent with the Purchasing's Policies and Procedures.

19.0 PATENTS/COPYRIGHTS

The successful vendor agrees to indemnify and hold SAWS harmless from any claim involving patent infringement or copyrights on goods supplied.

20.0 INDEMNIFICATION

BIDDER covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, SAWS and the board members, employees, officers, directors, volunteers and representatives of SAWS, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon SAWS directly or indirectly arising out of, resulting from or related to BIDDER'S activities under this contract, including any acts or omissions of BIDDER, any agent, officer, director, representative, employee, consultant or subcontractor of BIDDER, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of SAWS, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT BIDDER AND SAWS ARE FOUND JOINTLY LIABLE BY A COURT OF

COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE SAWS UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. BIDDER shall advise SAWS in writing within 24 hours of any claim or demand against SAWS or BIDDER known to BIDDER related to or arising out of BIDDER's activities under this contract, and shall see to the investigation and defense of such claim or demand at BIDDER's cost. SAWS shall have the right, at its option and at its own expense, to participate in such defense without relieving BIDDER of any of its obligations under this paragraph.

21. ACCEPTANCE BY SAWS

SAWS shall have a reasonable time (but not less than 30 days) after receipt to inspect the goods and services tendered by vendor. SAWS at its option may reject all or any portion of such goods or services which do not, in SAWS sole discretion, comply in every respect with all terms and conditions of the contract. SAWS may elect to reject the entire goods and services tendered even if only a portion thereof is nonconforming. If SAWS elects to accept nonconforming goods and services, SAWS, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate SAWS for the nonconformity. Any acceptance by SAWS, even if non-conditional, shall not be deemed a waiver or settlement of any defect in such goods and services.

22. WARRANTY

The supplies or services furnished under this contract shall be covered by the most favorable commercial warranties given to any customer for same or similar supplies or services.

REJECTION OF DISCLAIMERS OF WARRANTIES & LIMITATIONS OF LIABILITY. ANY TERM OR CONDITION IN ANY DOCUMENT FURNISHED BY VENDOR, DISCLAIMING THE IMPLIED

WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE, OR ATTEMPTING TO LIMIT VENDOR'S LIABILITY SHALL BE OF NO FORCE OR EFFECT, AND SHALL BE STRICKEN FROM THE CONTRACT DOCUMENTS AS IF NEVER CONTAINED THEREIN.

23. CHANGE ORDERS

No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change orders will be made in writing by the San Antonio Water System Purchasing Department.

24. ASSIGNMENT

Except as otherwise stated herein, Vendor may not sell, assign, pledge, transfer or convey any interest in this contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the prior written approval and consent of the SAWS Purchasing Director or designee. As a condition of such consent, if such consent is granted, Vendor shall remain liable for completion of the services and provision of goods outlined in this contract in the event of default by the successor vendor, assignee, transferee or subcontractor. Any attempt to transfer, pledge or otherwise assign this Contract without said written approval, shall be void and shall confer no rights upon any third person.

25. INTERLOCAL PARTICIPATION

(a) SAWS may, from time to time, enter into Interlocal Cooperation Purchasing Agreements with other governmental entities or governmental cooperatives (hereafter collectively referred to as "Entity" or "Entities") to enhance SAWS purchasing power. At SAWS sole discretion and option, SAWS may inform other Entities that they may acquire items listed in this Invitation for Bids (hereafter "IFB"). Such acquisition(s) shall be at the prices stated herein, and shall be subject to bidder's acceptance. Entities desiring to acquire items listed in this IFB shall be listed on a rider attached hereto, if known at the time of issuance of the IFB. SAWS may issue subsequent riders after contract award setting forth additional Entities desiring to utilize this bid. VENDOR shall sign and return any subsequently issued riders within **ten** calendar days of receipt.

- (b) In no event shall SAWS be considered a dealer, remarketer, agent or other representative of Vendor or Entity. Further, SAWS shall not be considered and is not an agent; partner or representative of the Entity making purchases hereunder, and shall not be obligated or liable for any such order.
- (c) Entity purchase orders shall be submitted to Vendor by the Entity.
- (d) Vendor authorizes SAWS use of Vendor's name, trademarks and Vendor provided materials in SAWS presentations and promotions regarding the availability of use of this contract. SAWS makes no representation or guarantee as to any minimum amount being purchased by SAWS or Entities, or whether Entity will purchase utilizing SAWS contract.
- (e) **SAWS WILL NOT BE LIABLE OR RESPONSIBLE FOR ANY OBLIGATIONS, INCLUDING, BUT NOT LIMITED TO, PAYMENT, AND FOR ANY ITEM ORDERED BY AN ENTITY OTHER THAN SAWS.**

26. **CONFLICT OF INTEREST**

The Bidder is required to submit a completed Conflict of Interest Questionnaire (CIQ Form). Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with SAWS shall file a completed Conflict of Interest Questionnaire (CIQ) with SAWS. The CIQ Form will be submitted as part of the bid. This form is available from the Texas Ethics Commission at <https://www.ethics.state.tx.us/>. Please consult your own legal advisor if you have questions regarding the statute or form. To report suspected ethics violations impacting The San Antonio Water System, please call 1-800-687-1918.

27. **NO BOYCOTTING ISRAEL VERIFICATION**

Contractor agrees that it does not boycott Israel and will not do so during the term of this Agreement. This provision is in compliance with §2270.001 of the Texas Government Code. The Water System agrees to comply with the United States and Texas Constitutions in consideration of whether to enforce this provision.

28. **SAFETY**

Successful Vendor/Contractor recognizes and agrees that safety is of great importance in performing any work for SAWS, regardless of the risk associated with the work. Vendor/Contractor shall perform all work safely, in compliance with SAWS PPE Guidelines for Industrial Facilities, Vendor/Contractors safety program, and any additional safety standards, plans, procedures, rules or requirements set for in the Contract.