

INVITATION FOR BIDS

For EPDM Impervious Canal/Pond Liner

For

HARLINGEN IRRIGATION DISTRICT CAMERON COUNTY NO. 1



A handwritten signature in black ink, appearing to read "Allie Blair".

United States of America
Harlingen Irrigation District No. 1, Cameron County, Texas
Water Conservation Project
INVITATION FOR BIDS
For EPDM Impervious Canal/Pond Liner

This Invitation for Bids follows the General Procurement Notice for this project in the NADB News in the June 9th, 2003 edition.

Harlingen Irrigation District (the District) has applied for a grant from the North American Development Bank's (the Bank) Water Conservation Investment Funds and intends using part of the proceeds towards the cost of purchasing materials for the District's Water Conservation Project. The Purchaser now invites sealed bids from suppliers for the following material to be funded from part of the proceeds of the grant:

- A minimum of 200,000 square feet of EPDM Impervious Canal/Pond Liner as Specified in the Bidding Documents for delivery in the vicinity of Harlingen, Texas

Bidding for purchase order contracts to be financed with the proceeds of a grant from the Bank is open to firms from any country. To be qualified for the award of a purchase order, bidders must satisfy the following minimum criteria:

- Distributor or Manufacturer of EPDM Impervious Canal/Pond Liner meeting specifications in Bid Documents

Bid documents may be obtained from the office at the address below upon payment by check or money order of a nonrefundable fee of \$25 US. If requested in writing at the address below, the documents will be mailed to the potential bidders upon receipt of payment of the bid document fee, but no liability can be accepted for loss or late delivery. Alternatively, the bid solicitation package may be downloaded after 12 noon on December 17, 2003 using the Internet at <http://axiomblairengineering.com/awbprojs/hidcc1/bnsindex>.

The bids shall conform to the requirements of Subchapter I of Chapter 49 of the Texas Water Code. District reserves the right to reject any or all Bids or to waive any informalities and irregularities. All bids must be accompanied by a bid security bond or certified check from a bank located in Texas, USA of 2 percent of the bid price. Bids must be delivered to the office at the address below on or before 12:00 Noon local time on January 7, 2004, at which time they will be opened in the presence of the bidders' representatives who wish to attend. A register of potential bidder's, who have purchased the bidding documents, may be inspected at the address below. Prospective bidders may obtain further information from, and inspect and acquire bidding documents at the following office:

Axiom-Blair Engineering
1222 E. Tyler Street, Suite F
Harlingen, Texas 787550
Office: 956-365-4949 / Fax: 956-365-4987 / Cell: 512-415-1421
November 11, 2003

INSTRUCTIONS TO BIDDERS

Harlingen Irrigation District Cameron County No. 1

Water Conservation Project

1 Preparation of Bid

Each Bidder shall prepare a Bid in ink on forms furnished by the District. Blank spaces for each item in Bid shall be filled. Bidder shall submit a price for each item in the Bid. The Bid shall be executed with the complete and correct name of individual, partnership, firm, corporation or other legal entity. Bid prices shall not include sales tax on materials, supplies, or equipment used or consumed in performance of Purchase Order. The person signing the Bid shall initial any corrections to the Bid. Bids tendered after the due date and time designated in Notice to Bidders will not be accepted. Persons desiring further information or interpretation of Purchase Order Documents shall make a request for such information to the District's Representative no later than seven working days before Bid opening. District will not be responsible for any other interpretations of Purchase Order Documents.

2 Source of Funds

The Purchaser intends using part of the proceeds of a grant from the North American Development Bank (the Bank) for eligible payments under the Contract(s) for which this invitation for bids is issued. Payment by the Bank will be made only at the request of the Purchaser and upon approval by the Bank in accordance with the terms and conditions of the grant agreement and will be subject in all respects to the terms and conditions of that agreement. The proceeds of the Bank's grant will not be used for payments to persons or entities or for any import of goods if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

3 Eligibility and qualifications

3.1 Subject to paragraph 2 above, this invitation for bids is open to contractors from any country unless specified otherwise in the bidding data.

3.2 No affiliate of a purchasing entity shall be eligible to bid or participate in a bid in any capacity whatsoever, unless it can be demonstrated that there is not a significant degree of common ownership, influence or control amongst the purchasing entity and the affiliate.

3.3 Where a firm, its affiliates or parent company, in addition to consulting also has the capability to manufacture or supply goods or to construct works, that firm, its affiliates or parent company normally cannot be a supplier of goods or works on a project for which it provides consulting services, unless it can be demonstrated that there is not a significant degree of common ownership, influence or control.

3.4 A bidder may submit or participate in any capacity whatsoever in only one bid for each contract. Submission or participation by a bidder in more than one bid for a contract (other than alternatives which have been permitted or requested) will result in the disqualification of all bids for that contract in which the party is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid.

3.5 In the event that prequalification of potential bidders has been undertaken, only bids from pre-qualified bidders will be considered for award of the contract. A pre-qualified bidder should submit with its bid any information updating its original prequalification application or, alternatively, confirm in its bid that the original prequalification information submitted, remains essentially correct as of the date of bid submission.

3.6 If the Purchaser has not undertaken prequalification of potential bidders, to qualify for award of the contract, the bidder shall meet the qualifying criteria specified in the bidding data.

4 Cost of bidding

The bidder shall bear all costs associated with the preparation and submission of its bid, and the Purchaser will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

5 District Representatives - Receiving Agent and Project Engineer

Bidder shall limit all conversations regarding this Bid to the District's Project Engineer. Bidder shall address all bid and technical questions in writing to Project Engineer at:

Al Blair, P.E.
2711 West Anderson Lane, Suite 210
Austin, Texas 78757
Phone: 512-451-7100
Cell: 512-415-1421
Fax: 512-451-7120
Email: awblair@texas.net

The District's Representative is:

Al Martinez
Harlingen Irrigation District
301 E. Pierce Street
Harlingen, Texas 78551
Phone: 956-423-7015
Fax: 956-423-4671
Cell: 956-535-2955

6 Consideration of Bid Amount

For the purpose of award, after Bids are opened and read aloud, total amount Bid, including accepted Bid alternatives, will be considered the amount of Bid. District reserves right to reject any or all Bids or to waive any informalities and irregularities.

7 Submission of Bid.

Each Bid, completed and signed by person(s) authorized to bind individual, partnership, firm, or corporation or any other legal entity, the following information shall be sealed in a 12x15 ½ envelope.

- (a) One copy of Bid Form completed and signed.

- (b) Acknowledgement of receipt of Addenda issued, if any.
- (c) Any other required information indicated in Purchase Order Documents.

Bid shall include all specified items in this section and be placed in the envelope, sealed and clearly identified on outside as a Bid to District, with project name, and name and address of Bidder. Failure to submit Bid in a sealed envelope may subject Bidder to disqualification. Bids will not be considered unless received by the District on or before the date and time designated in the Notice to Bidders.

8 Language of Bid

The bid and all documents and correspondence relating to the bid exchanged by the bidder and the Purchaser shall be written in English. Supporting documents and printed literature furnished by the bidder may be in another language provided they are accompanied by an accurate translation of its pertinent passages in the language of the bid, in which case, for purposes of interpretation of the bid, the translation shall govern.

9 Currencies of Bid

The prices shall be quoted by the bidder entirely in U.S. dollars.

10 Good Faith Deposit

In accordance with Section 49.271 of the Texas Water Code, the District requires all Bidders to submit a certified or cashier's check on a responsible bank in the State of Texas equal to at least two percent of the total amount of the bid, or a bid bond of at least two percent of the total amount of the bid issued by a surety legally authorized to do business in this State of Texas, as a good faith deposit to ensure execution of the purchase order. If the successful bidder fails or refuses to enter into a purchase order with the district, or fails or refuses to furnish the payment and performance bonds required by law, the bidder forfeits the deposit.

11 Payment and Performance Bonds

Any successful Bidder to whom a purchase order is let must give good and sufficient performance and payment bonds in the minimum amounts as required in accordance with Chapter 2253, of the Texas Government Code.

12 Withdrawal of Bid

A Bid may be withdrawn by a Bidder, provided an authorized individual of the Bidder submits a written request to withdraw the Bid before the time set for opening the Bids.

13 Rejection of Bids

The following may be cause to reject a Bid:

- (a) Bids containing omissions, alterations of form, qualifications or conditions not called for by District. Incomplete Bids may be considered in noncompliance and may be rejected. In any case of ambiguity or lack of clarity in the Bid, District reserves right to determine the most advantageous Bid or to reject the Bid.

- (b) Unreasonable or unbalanced unit Bid prices.
- (c) More than one Bid for same Work from an individual, firm, partnership or corporation.
- (d) Collusion among Bidders.
- (e) Poor performance in execution of work under previous Purchase Order.
- (f) Default on previous Purchase Orders or failure to execute Purchase Order after award.
- (g) Evidence of failure to pay Subcontractors, Suppliers or employees.
- (h) Bidder has not adequately demonstrated to District that Bidder has experience, knowledge and readily available equipment necessary to meet requirements of Purchase Order Documents.
- (i) District reserves right to reject any or all Bids or to waive any informalities and irregularities.
- (j) Good Faith Bid Deposit in the amount of 2% of the total Bid Price

14 Submission of Post Bid Information

The Bidder that submits the Bid that is most advantageous to the District shall submit such information as is required by District to evaluate Bid or Bidder to the District within sixty (60) calendar days after apparent most advantageous Bidder has been named. If the most advantageous Bidder does not submit such information or if the information submitted by the Bidder does not sufficiently meet the District request, or if the Bidder fails to meet any conditions of the Bid, the District reserves the right to disqualify the apparent most advantageous Bidder, and either re-Bid the project or pursue awarding of the Bid to the Bidder with the Bid the next most advantageous to the District.

15 Award and Execution of Purchase Order

District will process Bids expeditiously. Award of Purchase Order will occur within 90 days after the opening of Bid, unless otherwise mutually agreed between the parties. The District will process the Purchase Order expeditiously. However, the District will not be liable for any delays prior to the award or execution of Purchase Order. The District reserves the right to cancel the Bid and not award any Purchase Order and to award the bid within the range of quantities and Bid Alternatives defined in the Bid Quantities and Alternatives section below.

16 Subchapter I of Chapter 49 of the Texas Water Code

Subchapter I of Chapter 49 of the Texas Water Code is attached and made a part of this document. All Bids shall be submitted in accordance with the requirements and provisions of Subchapter I.

17 Purchase Order Documents

The Purchase Order Documents consist of and include as a part of the Purchase Order the following documents:

1. Notice to Bidders
2. Instructions to Bidders
3. Bid Form
4. Purchase Order Specifications
5. Purchase Order Terms and Conditions
6. Purchase Order Form (provided at time the bid is awarded)
7. Non-Bribery and Anti - Collusions Letter

18 Addenda to Purchase Order Documents

The District may issue addenda to the Purchase Order Documents from time to time during the Bid period. Such addenda shall be available at the Axiom-Blair Engineering office at 1222 E. Tyler Suite F, Harlingen, Texas 78550, by first contacting Debbie Schaefer at 512-394-1011 and through the internet at <http://axiomblairengineering.com>. It is the responsibility of the Bidder to periodically check with the District or at the above Internet site for such addenda.

19 Bidder and Seller

The entity preparing and submitting the sealed Bid to the District (the “Bidder”) and the entity agreeing to sell the District the equipment, supplies, and/or material specified in the Purchase Order (the “Seller”) shall be the same and identical entity.

20 Opening of Bids

The Bids shall be opened at the location, date, and time indicated in the Notice to Bidders.

21 Bid Quantities and Bid Alternatives

The District reserves the right to order between 200,000 and 300,000 square feet (SF) of the EPDM Liner specified on the Bid Form at the same cost per square foot as specified by the Seller on the Bid Form. Bidder should submit independent bid prices for all Bid Items (Bid Alternatives), if more than one bid item. District may award bid to all or part of each Bid Item as determined by the District to be most advantageous to the District.

22 Delivery Locations and Schedule

Bid price shall include delivery of the liner at various locations within the outer boundaries of the District in the vicinity of Harlingen, Texas. The District will provide all reasonable labor and equipment necessary to unload the liner. The above locations of the delivery of a given load of liner shall be at the sole discretion of the District and the bidder shall contract and coordinate with the District’s receiving agent a minimum of five days prior to a shipment of pipe arriving in vicinity of the Harlingen, Texas.

Bid Form

EPDM Impervious Canal/Pond Liner

Seller must complete all blank portions of the form shown below.

Bid Item #	Bid Item	Quantity	Unit Price	Total Price
1	EPDM Liner 45 mil	220,000 (SF) 22 ft width		
2	EPDM Liner 45 Mil	240,000 (SF) 24 ft width		

***Lengths of roles of 200 feet.**

BID FORM (continued)

Total Bid Price in Number: _____

Total Bid Price in Words: _____

Bid Submitted By: _____

Company Name, showing entity status: _____

Phone Number: _____

Fax Number: _____

E-mail address: _____

Signature of Bidder: _____

Printed Name: _____

Date: _____

Number & Date of Each Addendum Received: _____

List all Deviations from Specification

Harlingen Irrigation District Cameron County No. 1
Purchase Order Specifications
for
EPDM Impervious Canal/Pond Liner

General Requirements

The EPDM Impervious Canal Liner (“EPDM Liner”) shall be installed by others in various locations in the vicinity of Harlingen, Texas. The EPDM Liner shall meet the following specifications:

All specification for Firestone Building Products Pondgard – not-reinforced rubber geomembrane liner, or equivalent including the following:

Thickness - nominal	ASTM D-5199	mil	45
Specific Gravity (min.)	ASTM D-792		1.10
Unit Weight – nominal	ASTM D-5261	lb/ft.2	.28
Tensile Properties:			
Break Strength (min.)	ASTM D-882	lb./in.	50
Break Elongation (min.)	ASTM D-882	%	500
Tear Resistance (min.)	ASTM D-1004	lb.	9
Puncture Resistance (min.)	ASTM D-4833	lb.	35
Multiaxial Elongation (min.)	ASTM D-5617	%	100
Oven Aging – 100°C for 170 hours	ASTM D-573		
% Retained Tensile Break Strength	ASTM D-882	%	90
% Retained Tensile Break Elongation	ASTM D-882	%	75
Resistance to ozone	ASTM D-1149	No Cracks	
Brittleness Temp.	ASTM D-2137	°F	-49
Water Resistance	ASTM D-471	%	8
Water Vapor			
Permeability (max.)	ASTM E-96	perm-mils	2.0 (max)
Dimensional Stability (max.)	ASTM D-1204	%	1.0 (max)

Warranty

In addition to the Terms and Conditions of Purchase Orders attached hereto, the Seller shall, for period no less than 10 years from the date of installation or 11 years from the date of delivery, whichever occurs first, make any repairs or replacements reasonably necessary to the goods

furnished under the Purchase Order and manufactured by Seller within 10 working days after notice to Seller from Purchaser of a needed repair or replacement, at the expense of Seller and without regard to whether such needed repair or replacement is a result of any defect in the goods, provided however that damages to the goods resulting from misuse or vandalism of such goods are not subject to this warranty.

Delivery

Delivery of EPDM Liner by the Seller will be to the Project Sites located in Cameron County, Texas at a schedule according to the table below. All deliveries shall be coordinated with the District Representative at least 5 calendar days in advance and no more than 7 calendar days so that the District may have equipment available to unload trucks. The Purchaser shall specify the quantity, size and type of pipe when the Purchase Order is executed. A bill of materials shall be shipped with each delivery and sent to both the District's Representative and Project Engineer at least 72 hours prior to shipment arriving at delivery point (notice by e-mail or facsimile is acceptable).

Delivery No:	1	2	3
Delivery Location:			
Est. Purchase Order Date:	08-Jan-04	15-Jul-04	15-Sep-04
Est. Delivery Date:	Immediate	01-Sep-04	01-Nov-04
	Approximate	Approximate	Approximate
Item Description	Quantity	Quantity	Quantity
EPDM Liner (SF)*	100,000	100,000	<50,000

Terms and Conditions of Purchase Orders

Harlingen Irrigation District Cameron County No. 1

(herein after known as “Purchaser”)

1.0 Agreement for Sale and Purchase

These terms and conditions are attached to, and made a part of, the Purchase Order from Purchaser to Seller, and the Seller and Purchaser agree to all terms and conditions of Purchase Order which consist of and includes as a part of the following documents:

- a. Notice to Bidders
- b. Instructions to Bidders
- c. Purchase Order Form
- d. Purchase Order Specification
- e. Purchase Order Terms and Conditions

Any provision contained in any form or document submitted by Seller are rejected.

2.0 Termination for Convenience of Purchaser

Purchaser reserves the right to terminate the Purchase Order, or any part of it, for Purchaser's sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause any and all suppliers and subcontractors to do the same. Seller shall be paid a reasonable termination charge consisting of a percentage of the Purchase Order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided. Seller shall not unreasonably anticipate the requirements of this Purchase Order.

3. 0 Termination for Cause

Purchaser may also terminate the Purchase Order, or any part of it, for cause in the event of any default by Seller, or if Seller fails to comply with any of the terms and conditions of this Purchase Order. Late deliveries, deliveries of products which are defective or which do not conform to the Purchase Order, and failure to provide Purchaser, upon request, with adequate assurances of future performance shall all be non-exclusive causes allowing Purchaser to terminate the Purchase Order for cause. In the event of termination for cause, Purchaser shall not be liable to Seller for any amount (except for products and/or services already received and accepted by the Purchaser as satisfactory), and Seller shall be liable to Purchaser for any and all damages sustained by reason of the default, which gave rise to the termination. If it should be determined that Purchaser has improperly terminated the Purchase Order for default, such termination shall be deemed a termination for convenience.

4.0 Warranty

Seller expressly warrants that all equipment, parts, or materials furnished under the Purchase Order (hereinafter referred to as “goods”) shall conform to all terms, conditions, specifications, and standards contained in the Purchase Order, are new and have never been previously used, and are free from defect in material or workmanship. Seller warrants that all such goods will conform to any statements or representations made to Purchaser, or appearing on the containers or labels or advertisements for such goods and that any goods will be adequately contained, packaged, marked and labeled. Seller warrants that all goods furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods of that kind are normally used. If Seller knows or has reason to know the particular purpose for which Purchaser intends to use the goods, Seller warrants that such goods will be fit for such particular purpose. Seller warrants that goods furnished will conform in all respect to samples. Inspection, test, acceptance or use of the goods furnished hereunder shall not affect the Seller's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Seller's warranty shall run to Purchaser, its successors, and assigns. Seller agrees to replace or correct defects of any goods not conforming to the foregoing warranty promptly, without expense to Purchaser, when notified to such nonconformity by Purchaser, provided Purchaser elects to provide Seller with the opportunity to do so. If Seller fails to correct defects in or replace nonconforming goods promptly, Purchaser, after reasonable notice to Seller, may make such corrections or replace such goods and charge Seller for the cost incurred by Purchaser in doing so. Seller recognizes that Purchaser's production requirements may require immediate repairs or reworking of defective goods, without notice to the Seller. In such event, Seller shall reimburse Purchaser for the costs, delays, or any other damages, which Purchaser has incurred.

5.0 Price Warranty

Seller warrants that the prices for the goods sold to Purchaser hereunder are not less favorable than those currently extended to any other customer for the same or similar goods in similar quantities. If Seller reduces its price for such goods during the term of the Purchase Order, Seller agrees to reduce the prices hereof correspondingly. Seller warrants that prices shown on the Purchase Order Form shall be complete, and no additional charges of any type shall be added without Purchaser's written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, and crating.

6.0 Force Majeure

Purchaser may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such goods at the direction of the Purchaser and shall deliver them when the cause affecting the delay has been removed. Purchaser shall be responsible only for Seller's direct additional costs in holding the goods or delaying the performance of this agreement at Purchaser's request. Seller shall also be excused if delivery is delayed by the occurrence of unforeseen and unforeseeable events, provided Seller notifies Purchaser of such events as soon as they occur, and gives Purchaser its best estimate of revised delivery dates.

7.0 Cancellation of Purchase Order by Purchaser

If any delay exceeds 30 days from the original delivery date, Purchaser may cancel the Purchase Order without any liability. If Seller's production is only partially restricted or delayed, Seller

shall use its best efforts to accommodate Purchaser's requirements, including giving the Purchase Order preference and priority over those of other customers which were placed after the Purchase Order.

8.0 Patents, Copyrights, and Trade Secrets

Seller agrees upon receipt of notification to promptly assume full responsibility for defense of any claim, demand, suit, or proceeding which may be brought against Purchaser or its directors, officers, agents, consultants, or employees for alleged infringement of any patent, copyright, trade secret, or any other intellectual property right, as well as for any alleged unfair competition resulting from similarity in design, trademark or appearance of goods or services furnished hereunder, and Seller further agrees to indemnify Purchaser, its directors, officers, agents, consultants, and employees against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from any such suit or proceeding, including any settlement. Purchaser may be represented by and actively participate through its own counsel in any such suit or proceeding if it so desires, and the costs of such representation shall be paid by Seller. If any good, service, or intellectual property furnished or used under this Purchase Order is adjudged infringing and its use enjoined, Seller shall, at its own expense, secure for Purchaser the right to continue using it, or replace it with a non-infringing equivalent, or modify it so it becomes non-infringing.

9.0 Indemnification

Seller agrees to indemnify and hold harmless Purchaser, its directors, officers, agents, consultants, and employees against all suits at law or in equity and from all damages, claims and demands arising out of the death or injury of any person or damage to any property alleged to have resulted from the goods ordered through the Purchase Order, and/or resulting from any act or omission of Seller, its agents, servants, employees and/or subcontractors, and upon the tendering of any suit or claim to seller, to defend the same at seller's expense as to all costs, fees and damages. The foregoing indemnification will apply to the extent that the death, injury, or property damage is caused by the sole or concurrent negligence of Seller and whether Seller or Purchaser defends such suit or claims. To the extent that Seller's agents, servants, employees or subcontractors enter upon premises occupied by or under the control of Purchaser, in the course of the performance of the Purchase Order, Seller shall take all necessary precautions to prevent the occurrence of any injury (including death) to any persons, or of any damage to any property, arising out of acts or omissions of such agents, servants, employees, or subcontractors, and except to the extent that any such damage is due to Purchaser's comparative and direct negligence, and seller shall indemnify, defend and hold Purchaser, its directors, officers, employees, consultants, and agents harmless from any and all costs, losses, expenses, damages, claims, suits, or any liability whatsoever, including attorney's fees arising out of any act or omission of Seller, its agents, servants, employees or subcontractors.

10.0 Insurance

Seller shall maintain and require its subcontractors to maintain (1) public liability and property damage insurance including contractual liability (both general and vehicle) in amounts sufficient to cover obligations set forth in above, and (2) workers' compensation and employer's liability insurance covering all employees engaged in the performance of the Purchase Order for claims arising under applicable workers' compensation and occupation disease acts. Seller shall furnish

certificates to the Purchaser evidencing such insurance, which expressly provides that no expiration, termination or modification will take place without thirty- (30) days prior written notice to Purchaser.

11.0 Waste Transportation and Disposal.

Goods, materials, and chemicals supplied hereunder shall be accompanied by a Material Safety Data Sheet (MSDS) if required by applicable federal, state or local law, regulation, rule or ordinance.

12.0 Changes

Purchaser shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for the performance, Seller shall send, prior to delivery, a written claim for any adjustment in price due to the change. If a claim for adjustment is not received prior to delivery Seller waives any such claim.

13.0 Inspection and Testing

Payment for the goods delivered hereunder shall not constitute acceptance thereof. Purchaser shall have the right to inspect the goods and to reject any or all goods that are in Purchaser's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for may be returned to Seller at Seller's expense and in addition to Purchaser's other rights. Purchaser may charge Seller all expenses of unpacking, examining, repacking and reshipping of such goods. In the event Purchaser receives goods whose defects or nonconformity is not apparent on examination, Purchaser reserves the right to request replacement, as well as payment of damages. Nothing contained in the Purchase Order shall in any way relieve Seller from the obligation of testing, inspection and quality control.

14.0 Shipment

If, in order to comply with Purchaser's required delivery date, it becomes necessary for Seller to ship by a more expensive way than specified in the Purchase Order, any increased transportation costs resulting there from shall be paid for by Seller unless the necessity for such rerouting or expedited handling has been caused by Purchaser. Seller shall bear all risk of loss of all merchandise covered by the Purchase Order until such merchandise has been delivered to the designated location.

15.0 Delivery

Time is of the essence for this Purchase Order, and if delivery of items or rendering of services is not completed by the time promised, Purchaser reserves the right without liability in addition to its other rights and remedies to terminate this Purchase Order by notice effective when received by Seller as to items not yet shipped.

16.0 Limitation on Purchaser's Liability -- Statute of Limitations

In no event shall Purchaser be liable for any anticipated profits of the Seller or for incidental or consequential damages to the Seller. Purchaser's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from the Purchase Order or from the

performance or breach thereof shall in no case exceed the price allocable to the goods or unit thereof which gives rise to the claim. Purchaser shall not be liable for penalties of any description. Any action resulting from any breach on the part of Purchaser as to the goods delivered hereunder must be commenced by the Seller within one year after the date of scheduled delivery.

17.0 Waiver

Purchaser's failure to insist on performance of any of the terms or conditions of the Purchase Order or to exercise any right or privilege or Purchaser's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

18.0 Sales Tax

Pursuant to Section 151.309 of the Texas Tax Code, Purchaser is exempt from Texas sales and use tax.

19.0 Setoff

Purchaser may deduct or setoff any claims for payment against any amounts due Seller by the Purchaser arising out of this or any other transaction with Seller.

20.0 Assignments and Subcontracting

No part of the Purchase Order may be assigned or subcontracted by Seller without the prior written approval of Purchaser.

21.0 Purchase Order

The Purchase Order consists of the information listed on the Purchase Order Form, these terms and agreements, the requirements and specifications contained in the Purchase Order Specifications, the Instruction to Bidders (or Suppliers), and the Notice to Bidders (or Suppliers).

22.0 Entire Agreement

The Purchase Order constitutes the entire agreement between the Seller and the Purchaser.

23.0 Payment for Goods Delivered

All goods meeting the requirements of the Purchase Order and accepted by the Purchaser shall be invoiced by the Seller to the Purchaser no later than the last day of month. The Purchaser shall mail payment to the Seller for all goods meeting the requirements of the Purchase Order and accepted by the Purchaser by the 10th day of the next month. Any invoices received after the last day of the month and before the 10th day of the next month shall be held for payment until the 10th day of the month after the next month.

CHAPTER 49 – TEXAS WATER CODE

SUBCHAPTER I. CONSTRUCTION, EQUIPMENT, MATERIALS, AND MACHINERY CONTRACTS

§ 49.271. Contracts for Construction Work

- (a) Any contract made by the board for construction work shall conform to the provisions of this chapter.
- (b) The contract shall contain, incorporate by reference, or have attached to it the specifications, plans, and details for work included in the contract. All work shall be done in accordance with these plans and specifications and any authorized change orders under the supervision of the board or its designee.
- (c) The district may adopt minimum criteria for the qualifications of bidders on its construction contracts and for sureties issuing payment and performance bonds. For construction contracts over \$25,000, the district shall require a person who bids to submit a certified or cashier's check on a responsible bank in the state equal to at least two percent of the total amount of the bid, or a bid bond of at least two percent of the total amount of the bid issued by a surety legally authorized to do business in this state, as a good faith deposit to ensure execution of the contract. If the successful bidder fails or refuses to enter into a proper contract with the district, or fails or refuses to furnish the payment and performance bonds required by law, the bidder forfeits the deposit. The payment, performance, and bid bonding requirements of this subsection do not apply to a contract for the purchase of equipment, materials, or machinery not otherwise incorporated into a construction project.
- (d) The district may also require attendance by a principal of each prospective bidder at mandatory pre-bid conferences and may make any reasonable additional requirements regarding the taking of bids the district may deem appropriate in order to obtain competitive bids from responsible contractors and to minimize contract disputes.

§ 49.272. Reports Furnished to Prospective Bidders

The board shall furnish to any person who desires to bid on construction work, and who makes a request in writing, a copy of the engineer's report or plans and specifications showing the details of the work to be done. The board may charge for each copy of the engineer's report or plans and specifications an amount sufficient to cover the cost of making the copy.

§ 49.273. Contract Award

- (a) The board shall contract for construction and repair and renovation of district facilities and for the purchase of equipment, materials, machinery, and all things that constitute or will constitute the plant, works, facilities, or improvements of the district in accordance with this section. The bidding documents, plans, specifications, and other data needed to bid on the project must be available at the time of the first advertisement and the advertisement shall state the location at which these documents may be reviewed.
- (b) A contract may cover all the work to be provided for the district or the various elements of the work may be segregated for the purpose of receiving bids and awarding contracts. A contract may provide that the work will be completed in stages over a period of years.
- (c) A contract may provide for the payment of a total sum that is the completed cost of the work or may be based on bids to cover cost of units of the various elements entering into the work as estimated and approximately specified by the district's engineers, or a contract may be let and awarded in any other form or composite of forms and to any responsible person or persons that, in the board's judgment, will be most advantageous to the district and result in the best and most economical completion of the district's proposed plants, improvements, facilities, works, equipment, and appliances.
- (d) For contracts for \$25,000 or more, the board shall advertise the letting of the contract, including the general conditions, time, and place of opening of sealed bids. The notice shall be published in one or more newspapers circulated in each county in which part of the district is located. If one newspaper meets both of these requirements, publication in such newspaper is sufficient. If there are more than four counties in the district, notice may be published in any newspaper with general circulation in the district. The notice shall be published once a week for three consecutive weeks before the date that the bids are opened, and the first publication shall be not later than the 21st day before the date of the opening of the sealed bids.
- (e) For contracts for \$15,000 or more but less than \$25,000, the board shall solicit written competitive bids on uniform written specifications from at least three bidders.

- (f) For contracts of less than \$15,000, the board is not required to advertise or seek competitive bids.
- (g) The board may not subdivide work to avoid the advertising requirements specified in this section.
- (h) The board may not accept bids that include substituted items unless the substituted items were included in the original bid proposal and all bidders had the opportunity to bid on the substituted items or unless notice is given to all bidders at a mandatory pre-bid conference.
- (i) If changes in plans or specifications are necessary after the performance of the contract is begun, or if it is necessary to decrease or increase the quantity of the work to be performed or of the materials, equipment, or supplies to be furnished, the board may approve change orders making the changes. The aggregate of the change orders may not increase the original contract price by more than 10 percent. Additional change orders may be issued only as a result of unanticipated conditions encountered during construction, repair, or renovation or changes in regulatory criteria or to facilitate project coordination with other political entities.
- (j) The board is not required to advertise or seek competitive bids for the repair of district facilities if the scope or extent of the repair work cannot be readily ascertained or if the nature of the repair work does not readily lend itself to competitive bidding.
- (k) The board may use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing.

§ 49.274. Emergency Approval of District Projects

If a district experiences an emergency condition that may create a serious health hazard or unreasonable economic loss to the district that requires immediate corrective action, the district may negotiate limited duration contracts to make the necessary repairs. The district shall submit to the executive director details describing the specific serious health hazard or unreasonable economic loss as soon as practicable following the issuance of the contracts. Whenever possible, the district should obtain prior approval of the executive director before authorizing the contract, but failure to obtain prior approval shall not void the contract. This section does not apply to special water authorities.

§ 49.275. Contractors

Any person, firm, partnership, or corporation to whom a contract is let must give good and sufficient performance and payment bonds in accordance with Chapter 2253, Government Code, and any minimum criteria for sureties issuing such bonds adopted by a district in accordance with Section 49.271.

§ 49.276. Payment for Construction Work

- (a) The district shall pay the contract price of construction contracts only as provided in this section.
- (b) The district will make progress payments under construction contracts monthly as the work proceeds, or at more frequent intervals as determined by the board or its designee, on estimates approved by the board or its designee.
- (c) If requested by the district or district engineer, the contractor shall furnish a breakdown of the total contract price showing the amount included for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates, the district engineer may authorize material delivered on the site and preparatory work done to be considered if the consideration is specifically authorized by the contract and if the contractor furnishes satisfactory evidence that he has acquired title to the material and that it will be utilized on the work covered by the contract.
- (d) In making progress payments, 10 percent of the estimated amount shall be retained until final completion and acceptance of the contract work. However, if the board at any time after 50 percent of the work has been completed finds that satisfactory progress is being made, it may authorize any of the remaining progress payments to be made in full. Also, if the work is substantially complete, the board, if it finds the amount retained to be in excess of the amount adequate for the protection of the district, at its discretion may release to the contractor all or a portion of the excess amount. The district is not obligated to pay interest on amounts retained except as provided herein. The district shall not be obligated to pay any interest on the 10 percent retainage held on the first 50 percent of work completed. If the district holds any retainage on the remaining 50 percent of the work completed, the district shall pay interest on such retainage from the date the retainage is withheld to the date of payment to the contractor. The interest rate to be paid on such retainage shall be the rate of interest paid by the district's depository bank on interest bearing accounts of similar amounts during the period of time interest accrues as provided herein.

(e) On completion and acceptance of each separate project, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made without retention of a percentage.

§ 49.277. Inspection of and Reports on Construction Work

(a) The board shall have control of construction work being done for the district under contract to determine whether or not the contract is being fulfilled and shall have the construction work inspected by the district engineer or other designated person.

(b) During the progress of the construction work, the district engineer or other designated person shall submit to the board detailed written reports showing whether or not the contractor is complying with the contract, and when the work is completed the district engineer shall submit to the board a final detailed report including as-built plans of the facilities showing whether or not the contractor has fully complied with the contract.

§ 49.278. Nonapplicability

(a) This subchapter does not apply to:

- (1) equipment, materials, or machinery purchased by the district at an auction that is open to the public;
- (2) contracts for personal or professional services or for a utility service operator;
- (3) contracts made by a district engaged in the distribution and sale of electric energy to the public;
- (4) contracts for services or property for which there is only one source or for which it is otherwise impracticable to obtain competition; or
- (5) high technology procurements.

(b) Sections 252.021(a) and 252.042, Local Government Code, apply to high technology procurements.

§ 49.279. Prevailing Wage Rates

In addition to the alternative procedures provided by Section 2258.022, Government Code:

(1) a district located wholly or partially within one or more municipalities or within the extraterritorial jurisdiction of one or more municipalities may determine its prevailing wage rate for public works by adopting the prevailing wage rate of:

(A) one of the municipalities; or

(B) the county in which the district is located or, if the county in which the district is located has not adopted a wage rate, the prevailing wage rate of a county adjacent to the county in which the district is located; and

(2) a district not located wholly or partially within the extraterritorial jurisdiction of a municipality may determine the district's prevailing wage rate by adopting the prevailing wage rate of the county in which the district is located or, if the county in which the district is located has not adopted a wage rate, the wage rate of a county adjacent to the county in which the district is located.

[Bidder's letterhead]

[Date]

[Name and address]

Dear :

The undersigned party certifies that [name of bidding company] complies with the following criteria:

1. The company nor any of its employees, agents, or officers have not engaged and will not engage in bribery of domestic or foreign officials related to potential or active North American Development Bank projects.
2. The company has a written policy that clearly prohibits the use of any bribery in any activity.
3. The company nor any of its employees, agents, or officers have neither been convicted of (nor found by a civil judgment to have committed) bribery of domestic officials, fraud, embezzlement, theft, forgery, destruction of records, making false statements to government officials, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty, within five years of the date of this certification.
4. Neither the company nor any of its employees, agents, or officers has participated in form of collusion with regard to other bidders or potential bidders regarding the price or other criteria for the bid to which this letter is attached and made a part of.

Printed name

Signature

Position in bidding company

Date