

**REQUEST FOR COMPETITIVE PROPOSAL**  
**For**  
**ULTRASONIC TRANSIT TIME FLOW METERS**

**For**  
**HARLINGEN IRRIGATION DISTRICT**  
**CAMERON COUNTY NO. 1**

**Bid Document Version 25 May 2005**

**United States of America**

**Harlingen Irrigation District No. 1, Cameron County, Texas**

**Water 2025 On-Farm Metering Project**

**REQUEST FOR PROPOSALS**

**Ultrasonic Transient Time Flow Meters**

Harlingen Irrigation District (the District) has applied for a grant from the Bureau of Reclamation (BOR) under the Western Water Initiative and intends using part of the proceeds towards the cost of purchasing materials for the On-Farm Metering Project. The Purchaser now invites competitive proposals from suppliers for the following material to be funded from part of the proceeds of the grant:

- Approximately 90 High Technology, On-Farm Ultrasonic Transit Time Flow Meters as specified in the Request for Proposal document for delivery in the vicinity of Harlingen, Texas.

Purchase Order Contracts to be financed with the proceeds of a grant from the BOR are open to firms which can qualify for the award of a purchase order with submittal of their proposal by satisfying the following minimum criteria:

- Manufacturers or Vendors of Ultrasonic Transient Time Flow Meters meeting the specifications in the Request for Proposal.

The Request for Competitive Proposals may be obtained from the office of Axiom-Blair Engineering 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 respondents upon receipt of payment of the Request for Competitive Proposal document fee, but no liability can be accepted for loss or late delivery. Alternately, the Request for Competitive Proposals may be downloaded after 11 am on May 31<sup>st</sup>, 2005 using the internet at <http://axiomblairengineering.com/awbprojs/hidcc1/bnsindex>.

Prospective proposal respondents may obtain further information from, and inspect and acquire the Request for Competitive Sealed Proposals at the following office:

Axiom-Blair Engineering  
3690 Hwy 290 E, Suite B-2.  
Dripping Springs, Texas 78620  
Cell: 512/736-4822, Office: 512-394-1011, Fax: 512-394-1016  
Attn: Tim Stanley

## **NOTICE TO SUPPLIERS**

Harlingen Irrigation District Cameron County No. 1 (“the District”) is requesting responses to a Request For Competitive Proposal (RFP) from qualified firms interested in supplying approximately 90 On-Farm Ultrasonic Transient Time Flow Meters for use with irrigation pipe that varies from 15 inches to 42 inches for On-Farm Irrigation sites located in Cameron County, Texas. Proposal solicitation packages will be available beginning May 31<sup>st</sup>, 2005 at the Office of Axiom-Blair Engineering located at 3690 Hwy 290 E Suite B-2 Dripping Springs Texas 78620, by first contacting Debbie Schaefer at 512/394-1011. Alternatively, the proposal solicitation package may be downloaded after 11 a.m. on May 31<sup>st</sup>, 2005 using the Internet at <http://axiomblairengineering.com/awbprojs/hidcc1/bnsindex>.

The proposals 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 Proposals or to waive any informalities and irregularities

Proposals must be received no later than 11:00 a.m. local time on June 22<sup>nd</sup>, 2005 at the Axiom-Blair Engineering office at 3690 Hwy 290 E West, Suite B-2, Austin, Texas 78620. The Engineer for this project is Al Blair. He can be reached at (512) 415-1421 or [awblair@texas.net](mailto:awblair@texas.net). All communications regarding this proposal should be addressed to either Tim Stanley or Debbie Schaefer at the above address and telephone numbers.

# **Request for Competitive Proposal (Request for Proposal or RFP)**

## **Harlingen Irrigation District Cameron County No. 1**

### **Water 2025 On-Farm Metering Project**

#### **1 Preparation of Bid**

Each response shall be prepared in the vendor's format that accurately describes the products capability, specifications, performance, pricing, delivery, warranty, support, and training. Proposals shall provide pricing and delivery, and those prices shall not include sales tax or materials, supplies, or equipment used or consumed in performance upon the receipt of a District's Purchase Order for proposed equipment. RFP responses tendered after due date and time designated in the RFP will not be accepted. Persons desiring further information or interpretation of the RFP shall make a request for such information to the District's Representative no later than seven working days before the RFP response due date. District will not be responsible for any other interpretations of the RFP.

#### **2 Source of Funds**

The Purchaser intends using part of the proceeds of a grant from the Bureau of Reclamation (BOR) for eligible payments under the Contract(s) for which this invitation for bids is issued. Payment by the District will be made only at the request of the Purchaser and upon approval by the BOR 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.

#### **3 Eligibility and Qualifications**

3.1 Subject to paragraph 2 above, this request for proposal 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 submit an RFP or participate in the submittal of an RFP 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 respondent may submit or participate in any capacity whatsoever in only one proposal for each contract. Submission or participation by a respondent in more than one proposal for a contract (other than alternatives which have been permitted or requested) will result in the disqualification of all proposals 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 respondents has been undertaken, only proposals from pre-qualified respondents will be considered for award of the contract. A pre-qualified respondent should submit with its proposal any information updating its original prequalification application or, alternatively, confirm in its proposal that the original prequalification information submitted, remains essentially correct as of the date of proposal submission.

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

#### **4 Cost of Proposal**

The person submitting the proposal 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 RFP process.

#### **5 District Representatives: Receiving Agent and Technical Representative**

Those responding to the RFP shall limit all conversations to Tim Stanley, representing the project activities for the District. Responders shall address all quote and technical questions in writing to the Technical Representative:

Tim Stanley.  
P.O. Box 150069  
Austin, Texas 78715-0069  
Phone: 512/394-1011  
Cell: 512/736-4822  
Fax: 512/394-1016  
E-mail: [tstanley@axiomblair.com](mailto:tstanley@axiomblair.com)

#### **6 Submission of Proposal**

Each proposal, completed and signed by person(s) authorized to bind individual, partnership, firm, or corporation or any other legal entity, shall include the following information in a sealed envelope of size necessary to accommodate the proposal response. As a minimum, the response to the RFP shall include:

- a) Brief overview (two pages maximum) of the proposed equipment,
- b) Product description,
- c) Detailed specifications,
- d) Installation and installation planning requirements,
- e) Description of operation,
- f) Necessary programming requirements,
- g) Possible trouble shooting techniques,
- h) Operating principles and configuration items,
- i) Other technical references,
- j) Pricing for quantity breakouts as indicated in this document,
- k) Delivery schedule (in quantity breaks)
- l) Training (if required),
- m) Support or Technical Assistance,
- n) Warranty.

The Proposal, while in the vendor's format, should include as a minimum the following sections:

- i. System overview
- ii. System specifications and features
- iii. Business related information
- iv. Support
- v. Pricing
- vi. References
- vii. Taxpayer Identification Number and Certification

## **7 Period of Validity of Proposals**

The vendor must certify that its proposal will remain in effect for at least 150 days after the proposal due date. The District may request an extension beyond the initial 150 days. The proposals must contain a statement that satisfies this requirement.

## **8 Proposal Response Date and Location**

Proposed response date and submittal location are as shown on the "Notice to Supplier".

## **9 Selection Process**

The district will analyze the proposals and may request that vendors provide additional information and documentation.

The successful vendor or vendors must meet the functional requirements described in this RFP. The intent of the RFP is to determine which vendors provide a product that is most advantageous to the District based upon the evaluation factors identified in this RFP. If a

product demonstration is required, each vendor selected will be required to demonstrate specific functional requirements.

Vendor proposals will be scored based upon the following evaluation factors, after which the District may select the most responsible vendor whose proposal is determined to be the most advantageous to the District:

<b>Evaluation Factor</b>	<b>Evaluation Criteria Points</b>
Unit Cost	35
Unit Specification	50
Business Experience/References	5
Support	5
Delivery Schedule	5
Total Possible	100

Unit cost should be determined as the total proposed cost divided by the number of units. (i.e. support or other training and warranty cost should be included in the unit cost.)

The highest ranked proposal may be considered for further evaluation. In that event, finalist will be notified by telephone and mail, and arrangements will be made for unit demonstration and evaluation. A mutually acceptable time and date for a demonstration at the District’s headquarters in Harlingen may be scheduled. If such demonstration is warranted, all selected vendors will be required to demonstrate the same set of functional requirements. The District will evaluate the ability of each system to meet the unit specifications described in this RFP.

The District Representative will notify vendors of the responsible vendor whose proposal is determined to be the most advantageous to the District based upon the factors outlined in this RFP. The District reserves the right to negotiate the final price, package and contract with the vendor or vendors identified through the process.

## **10 Rejection of Proposal Response.**

The following may be cause to reject a response to the RFP:

- (a) Responses containing omissions, qualifications or conditions not called for by the District, and/or incomplete responses, may be considered in

noncompliance and may be rejected. In any case of ambiguity or lack of clarity in the response, the District reserves right to determine most advantageous response or to reject the response.

- (b) Unreasonable or unbalanced unit response prices.
- (c) More than one response for same Work from an individual, firm, partnership or corporation.
- (d) Collusion among those responding to the RFP.
- (e) Poor performance in execution of work under previous Purchase Order(s) with the District.
- (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) The provided response has not adequately demonstrated to the District that the provider of the response has experience, knowledge and readily available equipment necessary to meet requirements of Purchase Order Documents.
- (i) District reserves right to reject any or all responses or to waive any informalities and irregularities.

## **11 Award and Execution of Purchase Order**

The District will review and process RFP submissions expeditiously. The District, at its sole option, may select to not issue any Purchase Order. If the District does decide to issue a Purchase Order, it 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.

## **12 Subchapter B of Statutes for State of Texas, Local Governments, Title 8, Section 252.**

Subchapter. B. Competitive Bidding or Competitive Proposals Required is attached and is made a part of this document. All Proposal responses shall be submitted in accordance with the requirements and provisions of Subchapter B

## **13 Purchase Order Documents**

The Purchase Order Documents consists and includes as a part of the Purchase Order the following documents:

1. Invitation to Suppliers
2. Notice to Suppliers
3. Request for Competitive Sealed Proposals
4. Specification for Insertion Magnetic Flow Meter
5. Purchase Order Terms and Conditions

#### **14 Addenda to Purchase Order Documents**

The District may issue addenda to the Purchase Order Documents from time to time during the RFP period. Such addenda shall be available at the Axiom-Blair Engineering office at 3690 Hwy 290 E, Suite B-2, Dripping Springs, Texas, 78620 by first contacting Debbie Schaefer at 512/394-1011 and through the internet at <http://axiomblairengineering.com>. It is the Responsibility of the person submitting the proposal to periodically check with the District's Representative or at the above internet site for such addenda.

#### **15 Entity Preparing Proposal and Seller**

The entity preparing and submitting the RFP response to the District 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.

#### **16 Quoted Quantities**

The District reserves the right to order between 10 and 25 Transit Time Flow Meters at any time and proposals should include pricing and delivery times for lots of 10, 25, and 50.

## **Specifications for Ultrasonic Transient Time Flow Meter**

This is the Purchasing Specification for an Ultrasonic Transient Time Flow Meter designed for closed conduit flow measurements within irrigation pipe measuring 15 inches to 42 inches. The unit shall produce a signal proportional to the velocity of the flow (flow rate) as the liquid flows across the sensors. The meter's output flow rate shall be measured and translated into a digital signal that can be sent directly to a PLC/RTU. The transmitter electronics package shall be capable of programming the flow meter characteristics and output signal(s) format, and be battery operated with an operational life for approximately 4 years.

### **General Requirements**

The Ultrasonic Transient Time Flow Meter shall be installed by either the district or by others in various locations in the vicinity of Harlingen, Texas. General features for the Transit Time Flow Meter shall include:

- The meter shall be composed of ultrasonic sensors and transmitter.
- The meter shall be able to measure with one or two ultrasonic sensor sets to give optimum reading of the average flow rate.
- The sensors shall be able to be installed in pipe sizes between 15" and 42". The pipe can be one of the following material types: concrete; PIP80; A2000; Pro21.
- Minimum flow reading, at full accuracy, shall be 0.25 ft/sec or better.
- Maximum flow reading, at full accuracy, shall be 20 ft/sec or better.
- Pressure rating shall be a minimum of 80 psi.
- Ambient temperature rating shall cover a nominal range from 0 to 200° F for the sensors and 0 to 140° F for the transmitter.
- Fluid temperature rating shall be over a nominal range from 32° to 200° F
- The meter shall be accurate to 5% in the specified flow range.
- The flow meter shall be equipped with an internal battery source that can operate the flow meter for at least 4 years.
- Sensor body material shall be stainless.
- The transmitter electronics packaging shall be weatherproof.
- Output shall be square wave pulse, opto isolated, 15 Hz @ 1 ft/sec.

- The unit shall be able to provide directional output of the flow, and the output shall be Opto-isolated.
- Installation fitting of the sensor shall be for use with pre-formed saddles which can accommodate the various pipe diameters for materials other than concrete, for concrete the sensors shall be for use with pre-formed plug assemblies.
- Installation of the transmitter shall accommodate a volume no greater than 450 cubic inches and should be weather tight and of a NEMA 4X type enclosure with wiring, display, and programming method easily accessible from the front of the transmitter assembly.
- Vendor shall provide full training and technical support .
- Meter shall have a standard minimum two-year warranty.

## **Terms and Conditions of Purchase Orders**

### **Harlingen Irrigation District Cameron County No. 1**

**(herein after known as “Purchaser”)**

#### 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 consists of and includes as a part of the following documents:

- a. Purchase Order Form
- b. Purchase Order Specification
- c. Purchase Order Terms and Conditions

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

#### 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.

#### 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.

#### 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 other damages which Purchaser has incurred.

#### 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.

## 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 effecting 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.

## 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.

## 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.

## 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.

#### 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 paragraph 8 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 provide that no expiration, termination or modification will take place without thirty (30) days prior written notice to Purchaser.

#### 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.

#### 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..

## 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 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.

## 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.

## Delivery

Time is of the essence of 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.

## 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.

## 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.

#### Sales Tax

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

#### 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.

#### Assignments and Subcontracting

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

#### 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, and the Notice to Bidders.

#### Entire Agreement

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

#### 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 10<sup>th</sup> day of the next month. Any invoices received after the last day of the month and before the 10<sup>th</sup> day of the next month shall be held for payment until the 10<sup>th</sup> day of the month after the next month.

## **SUBCHAPTER B. COMPETITIVE BIDDING OR COMPETITIVE PROPOSALS REQUIRED**

### **§ 252.021. Competitive Requirements for Certain Purchases**

Subsection (a) as amended by Acts 2001, 77th Leg., ch. 115, § 1 and Acts 2001, 77th Leg., ch. 436, § 3

(a) Before a municipality may enter into a contract that requires an expenditure of more than \$25,000 from one or more municipal funds, the municipality must:

(1) comply with the procedure prescribed by this chapter for competitive sealed bidding or competitive sealed proposals; or

(2) use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing.

Subsection (a) as amended by Acts 2001, 77th Leg., ch. 115, § 1 and by Acts 2001, 77th Leg., ch. 1409, §1

(a) Before a municipality may enter into a contract that requires an expenditure of more than \$25,000 from one or more municipal funds, the municipality must comply with the procedure prescribed by this subchapter and Subchapter C for competitive sealed bidding or competitive sealed proposals or with a method described by Subchapter H, Chapter 271.

(b) Before a municipality with a population of less than 75,000 may enter into a contract for insurance that requires an expenditure of more than \$5,000 from one or more municipal funds, the municipality must comply with the procedure prescribed by this chapter for competitive sealed bidding.

(c) A municipality may use the competitive sealed proposal procedure for **high technology** procurements and, in a municipality with a population of 75,000 or more, for the purchase of insurance.

(d) This chapter does not apply to the expenditure of municipal funds that are derived from an appropriation, loan, or grant received by a municipality from the federal or state government for conducting a community development program established under Chapter 373 if under the program items are purchased under the request-for-proposal process described by Section 252.042. A municipality using a request-for-proposal process under this subsection shall also comply with the requirements of Section 252.0215.

### **§ 252.042. Requests for Proposals for Certain Procurements**

(a) Requests for proposals made under Section 252.021 must solicit quotations and must specify the relative importance of price and other evaluation factors.

(b) Discussions in accordance with the terms of a request for proposals and with regulations adopted by the governing body of the municipality may be conducted with offerors who submit proposals and who are determined to be reasonably qualified for the award of the contract. Offerors shall be treated fairly and equally with respect to any opportunity for discussion and revision of proposals. To obtain the best final offers, revisions may be permitted after submissions and before the award of the contract. Acts 1987, 70th

[ Bidder's letterhead ]

[ Date ]

[ Name and address ]

Dear :

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

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.

The company has a written policy that clearly prohibits the use of any bribery in any activity.

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.

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.

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*Printed name*

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*Signature*

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*Position in bidding company*

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*Date*