

NOTICE TO BIDDERS

El Paso County Water Improvement District No. 1 (“the District”) is requesting sealed bids from qualified contractors interested in excavating and disposing of approximately 25,000 cubic yards of sandy sediment in the Franklin Canal between First Avenue (heading of the canal) and South Latta Street in the City of El Paso, Texas, between November 20, 2023, and March 15, 2024.

Solicitation packages will be available beginning October 30, 2023, at the District Office, 13247 Alameda Avenue, Clint, Texas, 79836, between 10 a.m. and 4 p.m., during regular business days. Alternatively, the solicitation package may be downloaded after 10 a.m. on October 30, 2023, using the internet at <http://www.epcwid1.org>.

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.

Sealed bids must be received by the District at the District’s office no later than 12:00 noon (as shown on the District’s wall clock in the District tax office) on November 14, 2023. Bids shall be opened on November 14, 2023, at 12:15 pm at the District Office (Board Room). The District contact for this bid is Al Blair, District Engineer, who can be reached at ablair@epcwid1.org. All inquiries must be in writing and sent to this email or mailed to the District Office.

El Paso County Water Improvement District No. 1

Maintenance of Franklin Canal Flow Channel

INSTRUCTIONS TO BIDDERS

Project Name: Excavation and Disposal of Sandy Sediment from Franklin Canal

Project Location: Franklin Canal from

Delivery Dates: November 20, 2023 and March 15, 2024

Each Bidder shall prepare Bid in ink on forms furnished by District. Blank spaces for each item in Bid shall be filled. Bidder shall submit a price for each item in Bid. The Bid shall be executed with 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.

Any corrections to Bid shall be initialed by the person signing the Bid. Bids tendered after 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 in writing 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. District Representatives

Construction Manager: Bidder shall address all bid questions in writing to Construction Manager at:

Pete Rodriguez
P. O. Box 749
El Paso, Texas 79836-0749
Phone: 915-872-4000 Cell: 915-497-2731
Email: prodriguez@epcwid1.org

District Engineer: Bidder shall address all technical questions in writing to the District Engineer at:

Al Blair
P. O. Box 749
El Paso, Texas 79836-0749
Phone: 915-872-4000 Cell: 512-415-1421
Email: ablair@epcwid1.org

3. 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.

4. 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 12 x 15 ½ non-transparent 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.

5. 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.

6. 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 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 the experience, knowledge and readily available equipment necessary to meet the requirements of Purchase Order Documents.
- (i) District reserves the right to reject any or all Bids or to waive any informalities and irregularities.

7. Submission of Post Bid Information: The Bidder that submits the Bid which 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 low Bidder has been named. If low 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 low Bidder, and either re-Bid the project or pursue awarding of the Bid to the next Bidder with the bid the most advantageous to the District.

8. 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.

9. 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.

10. Purchase Order Documents: The Purchase Order Documents consist and includes as a part of the Purchase Order the following documents:

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

12. 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 through the internet at <http://www.epcwid1.org>. It is the Bidder's responsibility to periodically check with the District or at the above internet site for such addenda.

13. 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.

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

15. Ordering Concrete to be Delivered: Bid price shall include delivery of the concrete to the job site in quantities and times as directed by the District's construction supervisor. The District desires that all concrete delivered pursuant to this bid be delivered to the District during the period November 20, 2023, and April 1, 2024.

Bid Form

(see Purchase Order Specifications)

Seller must complete all blank portions of form shown below.

| Bid Item | Item | Quantity | Price per Yard | |
|-----------------|-------------|--------------------------------|-----------------------|--|
| 1 | 1 | 20,000 -30,000 cyds | | |
| | | | | |
| | | | | |

Bid Submitted By: _____
Company Name, showing entity status: _____
Phone Number: _____
Fax Number: _____
Email address: _____
Signature of Bidder: _____
Printed Name: _____
Date: _____
Number & Date of Each Addendum Received: _____

List all Deviations from Specification

Purchase Order Specifications for Maintenance of Franklin Canal Flow Channel - Excavation and Disposal of Sandy Sediment from Franklin Canal

Jurisdiction Area: City of El Paso

Pre-Bid Meeting: Mandatory 1 pm to 2 pm on Thursday, November 9, 2023, meeting on the Project located on the O&M road of the Franklin Canal adjacent to First Street near Delta Drive, approximately 1 mile east of downtown El Paso.

Maintenance of Typical Cross-Sections: The selected bidder shall only excavate sediment from the flow channel of the canal. No sediment removal is required of areas where sediment is occluded or within culverts, pipes, or under bridges.

Protection of Canal Structures, OM Road, and Canal Banks: The selected bidder shall protect all concrete or metal structures, such as canal check gates and farm turnout gates, from damage when excavating sediment. The selected bidder must promptly repair any damage to canal banks or O&M roads.

Post Award – Pre Work Deliverables: Selected bidder shall submit a list of all models and capacities (cubic yards) of excavators, haul trucks, or other construction equipment anticipated for use on the project, and a schedule listing dates for each 1 mile segment of the canal to be excavated.

Quantity Measurement and Payment for Removed Sediment: Payment shall be by volume of material removed as measured by the District. The selected bidder shall cooperate with the District in the measurement of the volume removed and verification of the number of truckloads loaded with sediment and the quantity of each load. No payment shall be made for material excavated until after it is properly disposed of. Bidder is encouraged to use GPS monitoring of all excavators and haul trucks to document the time, dates, and locations of when the material was excavated and hauled.

Haul Route and Ingress/Egress to Canal: The District shall work with the selected bidder to provide access to excavation areas and use of District O&M roads to haul sediment.

Hours of Operations: All excavation shall occur between the first and last light of the day. The selected bidder shall obtain written approval from the District Representative for any excavation work and/or job site lighting during the dark.

Dust Control: The selected bidder shall make all reasonable efforts to limit dust generation or wind blow sediment, including but not limited to:

- 1) covering all sediment during any hauling on public roads;
- 2) not exceeding a maximum vehicular speed of 25 mph on all district roads;
- 3) piles of excavated sediment shall not exceed 5 feet in height for more than 24 hours; and
- 4) water trucks shall be used daily on all active haul routes that generate dust from the haul vehicles.

Noise Control: The selected bidder shall meet noise control requirements of the City of El Paso, if any.

District Disposal Location Available to Bidder: Figure 1 below shows the approximate location of a 15-acre area (white rectangle) near Socorro Road and the Franklin Feeder Canal available to the selected bidder for final disposal of the sediment at no additional payment or charge to the District or the bidder. The District Representative shall designate the exact locations to pile sediment before the sediment is hauled.

Permits: No permits are anticipated to be needed for the proposed maintenance work, but it is the selected bidder's responsibility to meet all requirements of the:

- 1) City of El Paso and/or TCEQ for dust control, and piling, storing, or disposal of sandy sediment, and
- 2) City of El Paso and/or Texas DOT for traffic control, if any.

Non-Interference with District Operations: No interference with District operations or construction is allowed by selected bidders on District O&M roads.

Submittals: Any written submittal required of the selected bidder shall be submitted to the District Engineer and Construction Manager by email at ablair@epcwid1.org and prodriques@epcwid1.org for approval 72 hours prior to any action proposed in the submittal be taken by the selected bidder.



Figure 1: District Disposal Location (white rectangle)

Purchase Orders Terms and Conditions

El Paso County Water Improvement District No. 1

Agreement for Sale and Purchase

These terms and conditions are attached to, and made a part of, the Purchase Order from El Paso County Water Improvement District No. 1 (District or 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:

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

Any provision contained in any form or document submitted by Seller maybe rejected by the District.

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 any 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 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.

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 noninfringing equivalent, or modify it so it becomes noninfringing.

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 last day of 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 \$50,000, 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. Notwithstanding any criteria adopted under this subsection, for a contract for more than \$250,000, the district must accept a bid bond in the amount required by the district as a bid deposit if the bid bond meets the other requirements of this subsection. 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.

Added by Acts 1995, 74th Leg., ch. 715, § 2, eff. Sept. 1, 1995.

Amended by Acts 2001, 77th Leg., ch. 1423, § 16, eff. June 17, 2001.

§ 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.

Added by Acts 1995, 74th Leg., ch. 715, § 2, eff. Sept. 1, 1995.

§ 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 over \$75,000, the board shall advertise the letting of the contract, including the general conditions, time, and place of opening of sealed bids. The notice must be published in one or more newspapers circulated in each county in which the district is located. 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 must be published once a week for two consecutive weeks before the date that the bids are opened, and the first publication must be not later than the 14th day before the date of the opening of the sealed bids.

(e) For contracts over \$25,000 but not more than \$75,000, the board shall solicit written competitive bids on uniform written specifications from at least three bidders.

(f) For contracts of not more than \$25,000, 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, specifications, or scope of work are necessary or beneficial to the district, as determined by the board, after the performance of the contract is begun, or if it is necessary or beneficial to the district, as determined by the board, 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 board may grant authority to an official or employee responsible for purchasing or for administering a contract to approve a change order that involves an increase or decrease of \$50,000 or less. The aggregate of the change orders that increase the original contract price by more than 25 percent 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. A change order is not subject to the requirements of Subsection (d) or (e).

(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.

Added by Acts 1995, 74th Leg., ch. 715, § 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1070, § 19, eff. Sept. 1, 1997.

Amended by Acts 2001, 77th Leg., ch. 436, § 9, eff. May 28, 2001; Acts 2001, 77th Leg., ch. 1423, § 17, eff. June 17, 2001.

§ 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.

Added by Acts 1995, 74th Leg., ch. 715, § 2, eff. Sept. 1, 1995.

§ 49.275. Contractor's Bond

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.

Added by Acts 1995, 74th Leg., ch. 715, § 2, eff. Sept. 1, 1995

§ 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.

Added by Acts 1995, 74th Leg., ch. 715, § 2, eff. Sept. 1, 1995

§ 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.

Added by Acts 1995, 74th Leg., ch. 715, § 2, eff. Sept. 1, 1995

§ 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.

Added by Acts 1997, 75th Leg., ch. 1070, § 20, eff. Sept. 1, 1997

Amended by Acts 2001, 77th Leg., ch. 1423, § 18, eff. June 17, 2001

§ 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.

Added by Acts 2001, 77th Leg., ch. 1423, § 19, eff. June 17, 2001

[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 El Paso County Water Improvement District No. 1 projects.
2. The company has a written policy that clearly prohibit 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. The company nor any of its employees, agents, or officers have participated in any form of collusion with regard to other bidder(s) 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