

AUGUSTA WATER GENERAL TERMS AND CONDITIONS

1. **DEFINITIONS:** The terms “Bid” and “Proposal” shall be deemed equivalent. The term “Bidder” shall include proposers responding to a Request for Proposals (RFP).
2. **PRECEDENCE OF TERMS:** In the event there is a conflict between the general terms and conditions and any special terms and conditions which may be included in this solicitation, the special terms and conditions shall apply.
3. **CLARIFICATION OF TERMS:** If any prospective Bidder has questions about the specifications or other solicitation documents, the prospective Bidder should contact the Technical person whose name appears on the first page of the Invitation to Bid. Any revisions to the solicitation will be made only by addendum, issued by OWNER.
4. **ADDENDA:** In the event there are any addenda, they will be posted to the OWNER’s website at www.augustawater.com/bids. It is the Bidder’s responsibility to check the website prior to the submittal deadline to ensure the Bidder has a complete, up-to-date package.
5. **PAYMENT TERMS:** Payments will be made upon verification of delivery and receipt of materials. All pay requests and supporting documentation must be approved by OWNER and will be submitted for payment in accordance with OWNER’s payment policies. Approvals for payment under this procurement will be by the OWNER’s designated technical representative, or their designee, as noted on Page 1 of this solicitation.
6. **QUALIFICATIONS OF BIDDERS:** OWNER may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder to perform the work and the Bidder shall furnish to OWNER all such information and data for this purpose as may be requested. OWNER reserves the right to inspect Bidder’s physical facilities prior to award to satisfy questions regarding the Bidder’s capabilities. OWNER further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such Bidder fails to satisfy OWNER that such Bidder is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.
7. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Bidder in whole or in part without the written consent of OWNER.
8. **INDEPENDENT CONTRACTORS:** The parties hereto are independent contractors and are not agents, partners, or joint venturers. Neither party shall have the ability to bind the other to any contract with a third party and neither party shall hold itself out to any third party as having the right to bind the other party to any contract.
9. **ANTITRUST:** By entering into a contract, Contractor conveys, sells, assigns, and transfers to Owner all rights, title and interest in and to all causes of action you may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by Owner under this contract.
10. **SCC REGISTRATION:** Pursuant to Virginia Code § 2.2-4311.2, the Contractor must be registered with the State Corporation Commission if so required by Title 13.1 or Title 50 of the Virginia Code or otherwise required by law.
11. **ESCROW:** In accordance with Virginia Code §2.2-4334, for bids of \$200,000 or more for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and

pumping stations, the Bid Form will include a space for the bidder to indicate an option to use the escrow account procedure in order to have retained funds paid to an escrow agent.

12. **SUBROGATION:** Any and all waivers of subrogation by Owner contained in the Contract Documents, including without limitation the General Conditions, are hereby deleted. Any and all binding arbitration provisions contained in the Contract Documents are hereby deleted.
13. **GOVERNING LAW:** This Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation between the parties arising under this Contract shall be brought in a court of competent jurisdiction in Augusta County, Virginia. The Contractor shall comply with all applicable federal, state and local laws, codes, rules and regulations.
14. **ANTI-DISCRIMINATION:** By submitting their proposals, all Bidders certify to OWNER that they will conform to the provisions of the Presidential Order #11246, the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, and Section 2.2-4311 of the Virginia Public Procurement Act and that during the performance of this contract, the Bidder agrees as follows:

The Bidder will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by the state law relating to discrimination in employment, except when there is bona fide occupational qualification reasonably necessary to the normal operation of the Bidder. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

Notices, advertisements and solicitations placed by or on behalf of the Bidder will state that such contractor is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

The Bidder will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

15. **NONDISCRIMINATION AGAINST FAITH-BASED ORGANIZATION:** In accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, the OWNER will not discriminate against faith-based organizations. The bidder also agrees to abide by § 2.2-4343.1 of the Virginia Public Procurement Act.
16. **MINORITY AND WOMEN-OWNED BUSINESSES:** In accordance with Presidential Executive Orders #12138 & #11625 OWNER actively solicits both minority and women-owned businesses to respond to all Invitations to Bid and Requests for Proposal, and if not already on the Authority's mailing list, you may request application for inclusion on the list. Should you be interested, please contact the Authority at (540) 245-5670 and request information.

Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees.

17. **DRUG-FREE WORKPLACE:** During the performance of this contract, the Bidder agrees to (i) provide a drug-free workplace for the Bidder's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or

marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Bidder that the Bidder maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Bidder in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

18. ETHICS IN PUBLIC CONTRACTING: By submitting their proposals, all Bidders certify that their proposals are made without collusion or fraud and they have not offered or received any kickbacks or inducements from any other Bidder, supplier, manufacturer or subcontractor in connection with their proposal.
19. DEBARMENT: By submitting a proposal the Bidder certifies neither it (nor he or she) nor any person or firm which has an interest in the Bidder's firm is disbarred or suspended from bidding or working on a state or federally funded project. No part of this contract will be subcontracted to any person or firm who has been debarred or suspended from bidding or working on a state or federally funded project.
20. PUBLIC INSPECTION OF PROCUREMENT RECORDS: Proposals submitted shall be subject to public inspection only in accordance with Virginia Code § 2.2-4342.
21. COSTS OF PROPOSAL PREPARATION: Any costs incurred by the Bidders in preparing or submitting proposals are the Bidders' responsibility. OWNER will not reimburse any Bidder for any costs incurred as a result of a response to this Invitation to Bid.
22. OWNERSHIP OF MATERIAL: Ownership of all data, material and documentation originated and prepared for OWNER, including any electronic media, shall belong exclusively to OWNER and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by a Bidder shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Bidder must invoke the protection of this section prior to, or upon submission of, the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary to the extent that such protected material is separately packaged and so identified in the Bid Submittal envelope.
23. CANCELLATION OF CONTRACT: Unless otherwise specified in the RFP/ITB, the OWNER may terminate the resulting contract for its convenience upon thirty (30) days written notice to the Bidder. The Bidder shall not be paid for any service rendered or expense incurred after receipt of such notice except such fees and expenses incurred prior to the effective date of termination that are necessary for curtailment of the Bidder's work under this contract.
24. OBLIGATION OF BIDDER: By submitting a proposal, the Bidder covenants and agrees he has satisfied himself, from his own investigation of the conditions to be met, he fully understands his obligation and he will not make any claim for, or have right to cancellation or relief from the contract because of any misunderstanding or lack of information.
25. UNAUTHORIZED ALIENS: In accordance with Virginia Code § 2.2-4311.1. Compliance with federal, state, and local laws and federal immigration law requires that the Bidder does not, and shall not

during the performance of any awarded contract, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

26. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that OWNER shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement. Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that, if the bid from the lowest responsible bidder exceeds available funds, the OWNER may negotiate with the apparent low bidder to obtain a contract price within available funds in accordance with General Condition Section "NEGOTIATION WITH THE LOWEST BIDDER."
27. NEGOTIATION WITH THE LOWEST BIDDER: Unless all bids are cancelled or rejected, OWNER reserves the right granted by § 2.2-4318 of the Code of Virginia to negotiate with the lowest responsive, responsible bidder to obtain a contract price within the funds available to the OWNER whenever such low bid exceeds OWNER'S available funds. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds which were budgeted by OWNER for this contract prior to the issuance of the written Invitation to Bid. Negotiations with the low bidder may include both modifications of the bid price and other items required to be performed. The OWNER shall initiate such negotiations by written notice to the lowest responsive, responsible bidder that its bid exceeds the available funds and that the OWNER wishes to negotiate a lower contract price. The times, places, and manner of negotiating shall be agreed to by OWNER and the lowest responsive, responsible bidder(s).
28. INSURANCE COVERAGE: Unless otherwise specified in the RFP/ITB, the Bidder shall maintain the following insurance to protect it from claims under the Workmen's Compensation Act, and from any other claims for personal injury, including death, and for damage to property that may arise from operations under the Contract, whether such operations be by itself or by any subcontractor, or anyone directly or indirectly employed by either of them.

<u>TYPE OF COVERAGE</u>	<u>LIMITS</u>
Workers' Compensation and Employer's Liability including coverage under United States Longshoremen's and Harbor Worker's Act where applicable	Statutory, including Employer's Liability of \$100,000.00 Each Accident \$500,000.00 Disease-Policy Limit \$100,000.00 Disease-Each Employee
Comprehensive General Liability endorsement coverage.	Including the Broad Form C.G.L.
Premises – Operations Bodily Injury Liability and Property Damage Liability Combined	\$1,000,000 Each Occurrence \$1,000,000 Aggregate

Automobile Bodily Injury Liability
and Property Damage Liability
Combined covering all automobiles,
trucks, tractors, trailers, or other
automobile equipment, whether
owned, non-owned, or hired by the
Bidder

\$1,000,000 Per Accident

Umbrella/Excess Liability

\$1,000,000 Each Occurrence
\$2,000,000 Aggregate

The Bidder shall purchase and/or maintain insurance coverage on his tools, equipment and machinery and shall waive subrogation to the OWNER for damage thereto.

The OWNER reserves the right to require insurance of any Bidder in greater amounts provided notice of such requirements is stated in the Solicitation.