

# COASTAL WATER AUTHORITY

## INVITATION TO BID

The Coastal Water Authority (herein also referred to as “CWA” or the “Authority”) invites qualified sellers or parties (each “Bidder” or collectively “Bidders”) to bid on:

### Aqua Ammonia

#### Bid Method:

Sealed bids will be received in duplicate by the Coastal Water Authority at 1801 Main Street, Suite 800, Houston, TX 77002, until **10:00 AM local time, Friday, August 20, 2021**, which will be the Bid Opening time. Bids mailed before this date but not actually received by the above time may be deemed non-responsive.

#### Bid Opening:

Bids will be opened in public by the Executive Director of the Coastal Water Authority, or his designated representative, at the time, date and place stated above (the “Bid Opening”). Bidders, interested parties, and the general public are allowed but not required to attend the Bid Opening. At the Bid Opening, the Bidder’s name and amount of each bid will be read aloud and recorded. No decisions relating to the award of the Contract will be made at the Bid Opening.

The Authority reserves the right to reject in whole or in part any or all bids, or to accept any bid, in whole or in part, or any combination of bids it deems most advantageous to the Authority and that will, in the judgment of the Authority, result in the best and most economical completion of the Authority’s work. The Authority also reserves the right to waive any technicalities or formalities in bids or the Bid Documents in the best interest of the Authority.

#### Official Bid Form:

To be considered for award please submit two (2) copies (one (1) original and one (1) photocopy) of all pages comprising the Official Bid Form which is attached hereto, including the signature page. The signature page must be signed by a company official authorized to bind the company. If awarded the Contract, such signature will bind the Bidder to the Contract, without any further action by the Bidder. Bidder must also provide two (2) copies of any other information submitted including without limitation, technical literature.

Notwithstanding anything to the contrary herein, submission or attachment of Bidder’s “quotation forms” or the like, containing alternative terms and/or conditions, may result in the bid being deemed non-responsive.

Any revisions to be incorporated into the Bid Documents will be confirmed in writing, by addendum, prior to the Bid Opening. No oral responses or statements will alter any specifications, terms or conditions stated herein.

Contact:

Should you have any questions or comments regarding the Bid Documents contact Jonathon Jung, at (832) 571-7045; for Technical Specifications contact Mike Kent, at (281) 424-2312.

Entirety of Bid Documents:

The Bid Documents consist of:

1. Invitation to Bid (2 pages)
2. Instructions to Bidders (3 pages)
3. Official Bid Form (2 pages)
4. Technical Specifications (8 pages)
5. CWA Standard Terms & Conditions (8 pages)
6. Any addenda

# COASTAL WATER AUTHORITY

## INSTRUCTIONS TO BIDDERS

### 1.0 GENERAL, BIDDING and AWARD:

- 1.1 Competitive Bidding. It is the intent of the Coastal Water Authority (herein also referred to as “CWA” or the “Authority”), through a competitive bidding process, to solicit a bid that will, in the Authority’s judgment, be most advantageous to the Authority and will result in the best and most economical completion of the Authority’s work, such bid coming from a responsible Bidder. All equipment and/or materials shall be new unless otherwise specified. Prospective Bidders are advised that the specifications within these Bid Documents (as defined in Section 3.0) are not to be considered restricted to any referenced manufacturer. Each Bidder, by making a bid, represents that the Bidder has read and understood the Bid Documents and has bid in accordance therewith.
- 1.2 Bid Opening. Bids will be opened in public by the Executive Director of the Authority, or his designated representative, at the stated time, date and place specified in the Invitation to Bid. Bidders, interested parties, and the general public are allowed but not required to attend the Bid Opening. Mark the exterior of the sealed bid envelope or email subject as: SEALED BID, AMMONIA. At the Bid Opening, the Bidder’s name and amount of each bid will be read aloud and recorded. No decisions relating to the award of the Contract will be made at the Bid Opening.
- 1.3 Award. The Authority may accept a bid offer by issuance of a Notice of Award Letter and/or Purchase Order any time on or before the 90<sup>th</sup> day following the day of the Bid Opening. Each Bid Package (as defined in Section 1.8) shall for 90 days after Bid Opening constitute an irrevocable offer by the Bidder, but such period may be extended by written agreement of the Authority and the Bidder.
- 1.4 Qualifications. In addition to more specific requirements that may be stated in the Technical Specifications, the successful Bidder shall present satisfactory evidence, if requested by the Authority, that Bidder has regularly engaged in the manufacture, selling, or furnishing of supplies, equipment, work, and/or services as proposed in the Bid Package and has the capital, labor, equipment, suppliers, and materials to fulfill the requirements of the Bid Documents.

The Authority may make such investigations as it deems necessary to determine the capability of the Bidder to perform. The Bidder shall furnish to the Authority all such information, references, and data for this purpose as the Authority may request.

- 1.5 Right to Accept, Reject, and Waive Formalities. The Authority reserves the right to reject in whole or in part any or all bids, or to accept any bid, in whole or in

part, or any combination of bids it deems most advantageous to the Authority and that will, in the judgment of the Authority, result in the best and most economical completion of the Authority's work. The Authority also reserves the right to waive any technicalities or formalities in bids or the Bid Documents in the best interest of the Authority.

- 1.6 **QUOTED PRICES FIRM.** All prices quoted are firm and fixed for the duration of the Contract Period (twelve (12) months). Prices shall not be subject to any increase (or supplemented on Seller's invoice(s) for payment). For the avoidance of confusion, Bidder understands that CWA will be entitled to purchase from Seller (as defined in Section 1 of the CWA Standard Terms and Conditions) and Seller will be obligated to sell to CWA the Goods at the unit price set forth in the initial Purchase Order, for the duration of the Contract. Prices include, but are not limited to, the cost of the product, containers, shipping and transportation, cost of doing business, any applicable taxes and fees, and cost for compliance with all applicable regulations and laws.
- 1.7 Quantity Adjustments; Line Item Award. The Authority reserves the right to adjust the quantities listed on the Official Bid Form upward or downward, subject to the availability of funds, and/or make award by line item. Bidder accepts the risk that the Authority may adjust any such quantity or make award by line item and the Authority shall not be liable for any obligations that Bidder undertakes toward any third party based on Bidder's expectation that the Authority will purchase any particular quantity.
- 1.8 Technical Literature. If the Bidder is bidding the exact item or service specified, technical literature is not required but may be provided with the Official Bid Form and any other materials submitted (collectively, the "Bid Package"). However, the Authority may request product literature, specification sheets, or particular submittals to assist in evaluating the bid.

If the Bidder does not bid the exact item or service but instead bids an "equivalent," then along with the Official Bid Form, the Authority requires the submission of technical literature or specifications sheets. The burden of proof shall rest with the Bidder to prove that the proposed items(s) are equivalent to the performance, materials, processes, or items specified. Determination as to whether the item(s) bid is/are equivalent to those specified shall rest solely with the Authority. The Authority reserves the right to request additional literature or clarifications, as needed, after the Bid Package is submitted. Failure of Bidder to submit the requested literature or clarifications within three (3) business days of the Authority's request may be grounds for rejection of Bidder's bid.

Upon delivery of the item or service, the successful Bidder will submit owner's manuals, operation and maintenance manuals, parts manuals, etc. identified in the Technical Specifications.

## 2.0 TAXES:

2.1 The Authority is exempt from payment of Texas sales, excise, and use taxes under the Texas Tax Code Section 151.309 as a political subdivision of the State of Texas. Unless the Official Bid Form or Instructions to Bidders specifically indicate otherwise, any unit prices quoted and the Total Bid Amount must be exclusive of such taxes and will be so construed.

## 3.0 BID DOCUMENTS:

3.1 The Bid Documents consist of: "Invitation to Bid," "Instructions to Bidders," "Official Bid Form," "Technical Specifications," "CWA Standard Terms and Conditions" and any addenda.

## 4.0 CONTRACT DOCUMENTS

4.1 The Contract Documents consist of: the Bid Documents, the Notice of Award Letter, and any Purchase Order(s) referencing the Bid Documents. The Contract consists of the Contract Documents.

## 5.0 CONFLICT IN TERMS:

5.1 In the event of any conflict in any Contract Document, the provisions incorporated in the Technical Specifications and drawings (if any) shall control over the provisions of the Instructions to Bidders and the CWA Standard Terms and Conditions; provided, however, to the maximum extent possible all provisions of the Contract Documents shall be construed as supplementing, and not as conflicting with each other.

**COASTAL WATER AUTHORITY**

**OFFICIAL BID FORM**

**FORMAL ONE-TIME BID**

**Aqua Ammonia**

TO: Executive Director, Coastal Water Authority, 1801 Main Street, Suite 800, Houston, TX 77002

CONTRACT PERIOD: Twelve (12) months, beginning October 1, 2021

PRICE SHEET					
Item	Description of material and/or services	Quantity	Unit	Unit Price	Extended Price
1.	Furnish and deliver Ammonium Hydroxide (Aqua Ammonia) <b>19% Solution</b> , bulk truckload, approx. 6000 gal. per delivery, to Coastal Water Authority, Lynchburg Pump Station, 908 Independence Parkway North, Baytown, TX 77520, per CWA's Technical Specifications	3,293 (ESTIMATED ANNUAL QUANTITY*)	TONS	\$ _____ (Per wet ton, <b>19% Solution</b> )	\$ _____
	<b>TOTAL BID AMOUNT</b>				\$ _____

\*This quantity is only an estimate. CWA does not guarantee to purchase any specific quantity during the Contract Period.

The undersigned (“Bidder”) hereby offers to furnish and deliver the goods and/or services as specified for the Total Bid Amount and upon the terms herein stated and in strict accordance with the Invitation to Bid, Instructions to Bidders, Technical Specifications and CWA Standard Terms & Conditions, and any addenda, all of which are incorporated by reference and made a part of this offer.

Bidder Company Name: \_\_\_\_\_

Bidder understands that CWA may accept the bid offer by issuance of a Notice of Award Letter and/or Purchase Order signed by CWA to the successful Bidder at any time on or before the

ninetieth (90th) day after the day of the Bid Opening. Bidder's offer shall be irrevocable by Bidder for ninety (90) days after the Bid Opening, but this period may be extended by written agreement of CWA and the Bidder. Bidder further understands that if CWA accepts the bid, upon issuance of a Notice of Award Letter and/or Purchase Order signed by CWA, the Bidder will be bound by the Contract without any further action on the part of Bidder.

Bidder certifies that the only person or parties interested in this proposal as principals are those named herein. Bidder has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken action to restrain the competitiveness of the bidding for the award of the Contract.

**NOTE: BID MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE BIDDER, WHICH MUST BE THE ACTUAL LEGAL ENTITY THAT WILL PERFORM UNDER THE PURCHASE ORDER IF AWARDED.**

Respectfully Submitted:

Bidder: \_\_\_\_\_  
(Print or type name of Bidder-Full Company Name)

Employer Identification Number: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature of Authorized Officer or Agent)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Address (Street or P.O. Box)

\_\_\_\_\_  
City-State-Zip Code

\_\_\_\_\_  
City and State of principal place of business  
(if different from above)

Telephone: (\_\_\_\_) \_\_\_\_\_

Fax: (\_\_\_\_) \_\_\_\_\_

E-Mail: \_\_\_\_\_

# COASTAL WATER AUTHORITY

## TECHNICAL SPECIFICATIONS

### Aqua Ammonia

#### 1.0 GENERAL:

- 1.1 This specification describes the furnishing and delivery of Ammonium Hydroxide (Aqua Ammonia), **19% Solution**, bulk wet truckload to Coastal Water Authority, Lynchburg Pump Station, 908 Independence Parkway-North, Baytown, TX 77520.
- 1.2 Aqua Ammonia to be delivered complete and ready for immediate use, with all safety equipment and documentation required by these specifications and applicable law.
- 1.3 The Contract Period shall be for twelve (12) consecutive months, beginning on October 1, 2021.
- 1.4 Payment of undisputed invoices shall be due thirty (30) days after (1) the date CWA receives the Goods, or (2) the date CWA receives the invoice for the Goods, whichever occurs later.
- 1.5 The "Location" shall mean the Delivery Location listed below in Section 2.1 of the Technical Specifications.

#### 2.0 BID ITEM(S):

- 2.1 **BID ITEM – 1:** Ammonium Hydroxide (Aqua Ammonia) **19% Solution**, bulk truckload, approx. 6000 gal. per delivery.

ESTIMATED ANNUAL QUANTITY: \*

3,293 wet tons. (Minimum lot: one truckload, approx. 6000 gal)

Delivery Location: Coastal Water Authority  
Lynchburg Pump Station  
908 Independence Parkway-North  
Baytown, TX 77520

FOB destination, freight allowed (to be included in amount bid).

\*This quantity is only an estimate. CWA does not guarantee to purchase any specific quantity of the Goods during the Contract Period.

### 3.0 MANUFACTURER INFORMATION AND TECHNICAL LITERATURE:

#### 3.1 Safety Data Sheet

All Bidders are required to submit, with their bid, a Safety Data Sheet, manufacturer's Safety Data Sheet, or such other document which contains the information required by OSHA.

Each document submitted should be identified by Bidder's complete company name.

#### 3.2 Source of Supply

3.2.1 If Bidder is not the original manufacturer of the Goods (as defined in Section 1 of the CWA Standard Terms and Conditions) to be supplied, Bidder must supply the following with Bidder's bid:

3.2.1.1 Name, address, phone number, and contact person for the original manufacturer;

3.2.1.2 Actual site or sites of original manufacturer;

3.2.1.3 Shipping point or points of origin of the Goods to be supplied;

3.2.1.4 Whether original manufacturer produces the Goods to be supplied as a primary product or as a by-product; and

3.2.1.5 If the Goods are a by-product, the nature of the original process and any potential danger of contamination. (This section is not to be interpreted as a requirement for exhaustively detailed proprietary process information disclosure. Basic information as to the safety and nature of the process is all that is required by this Section 3.2.1.5.)

3.2.2 In the event that Bidder is an original manufacturer of the type of material to be supplied, but will not supply all (or any portion) of the Goods from his manufacturing process, Bidder must supply the following with Bidder's bid.

3.2.2.1 The information listed above in Sections 3.2.1.1 through 3.2.1.5.

3.2.2.2 The proportion of the Goods that is to be supplied from another manufacturer or supplier and the proportion that is to be supplied by the Seller's manufacturing process.

3.2.3 In the event that Bidder is the original manufacturer of the Goods to be supplied and will supply all (or any portion) of the Goods from Bidder's own manufacturing process, Bidder must supply the following with Bidder's bid:

3.2.3.1 Actual site or sites of Seller's manufacturing;

3.2.3.2 Shipping point or points of origin of the Goods to be supplied;

3.2.3.3 Whether Bidder produces the Goods to be supplied as a primary product or by-product.

3.2.4 Notification of any transfer of ownership of any manufacturer supplying the Goods during Contract Period, whether Seller or another manufacturer, must be reported to the CWA Purchasing Agent at least sixty (60) days in advance of such transfer of ownership.

3.2.5 IF SELLER IS NOT THE ORIGINAL MANUFACTURER OF THE GOODS TO BE SUPPLIED PURSUANT TO THIS CONTRACT, OR ANY PORTION THEREOF, SELLER SHALL COMMUNICATE THE NATURE OF THE TECHNICAL SPECIFICATIONS TO SELLER'S SUPPLIER(S) AND ASSURE THAT SUCH GOODS MEET OR EXCEED THE TECHNICAL SPECIFICATIONS.

#### 4.0 CONTRACT PERIOD:

4.1 The Contract Period shall be for twelve (12) consecutive months, beginning on October 1, 2021. During the Contract Period, CWA will issue purchase orders for the Goods as needed. It is emphasized that CWA does not guarantee to purchase any specific quantity of any of the Goods during the Contract Period; rather, the quantities may vary depending upon the actual needs of the Location.

4.2 CWA shall purchase from the Seller any and all of the Goods listed herein necessary for use in the normal day-to-day operations of the Location for the duration of the Contract Period. Seller agrees that (1) the administrative and/or operations personnel of the Location shall be the sole judge of if and when the Goods are necessary for use in the normal day-to-day operation of the Location, and (2) that CWA may declare an exceptional process situation and/or an experimental testing situation and purchase from another vendor, on an emergency purchase basis, any similar or identical product, either in addition to or instead of the Goods, without prior approval or notification of Seller. Such purchases for exceptional or experimental situations are to be at no extra cost to the Seller unless the cause of the exceptional or experimental situation is due to Seller's failure to comply with any terms or conditions of the Contract.

#### 5.0 MATERIALS:

5.1 All Goods furnished under this Contract shall be new/unused materials of the latest product in production to the commercial trade, and shall be of the highest quality as to materials used in workmanship. Manufacturer(s) furnishing the Goods shall be experienced in design and construction of such Goods and shall furnish evidence of having supplied similar items, which have been in successful operation, for not less than four (4) years. Bidder shall be an established supplier of the Goods bid upon.

## 6.0 DELIVERY:

- 6.1 All delivery tickets must have a description of the Goods delivered.
- 6.2 Seller guarantees to assure that before loading the Goods for shipment, the transport vessel(s), containers, and trucks shall be free of any substance that may be harmful to the health of those drinking the water treated with the Goods. All Goods shall be in bulk and shipped in weather tight motor freight transport carriers. Seller shall acquire and maintain all equipment necessary to unload tank trucks, except for air supply.
- 6.3 Seller agrees to make deliveries only upon receipt of duly signed and approved Purchase Orders issued by the CWA Purchasing Agent. Delivery made without such Purchase Order shall be at Seller's risk.
- 6.4 Deliveries shall be on the date and time specified on the Purchase Order. Delivery shall be made within twenty-four (24) hours if requested by CWA. A bill of lading listing container serial numbers and Safety Data Sheet shall be provided with all deliveries.
- 6.5 Normal delivery times to the Location are between the hours of 7:00 A.M. and 1:30 P.M., Monday through Friday. However, Seller should be prepared for unusual demand needs and emergency deliveries outside these normal delivery times and days. Any and all unloading charges shall be included in the price(s) bid.
- 6.6 CWA will be responsible for demurrage on trucks only when such charges occur because of CWA's sole negligence in their responsibilities related to the unloading of the Goods and when the unloading time exceeds three (3) hours in total plant time.
- 6.7 Seller agrees that if for any reason, at any time, Seller is unable to deliver the Goods in the quantities and/or quality ordered by CWA in a Purchase Order, and if Seller, after having been notified to make a shipment has failed to deliver such shipment as specified, CWA shall have the right to purchase the Goods wherever available, and the Seller agrees to pay CWA the amount, including freight charges, paid by it over the price specified in the Purchase Order, including all administrative costs. This right and remedy shall be in addition to all other rights and remedies CWA may have under the Contract.
- 6.8 Seller certifies that all drivers that deliver to CWA facilities have been trained in the use of all equipment necessary to properly load and unload ton containers. Seller's training records will be made available for review by CWA, if requested.
- 6.9 All of the delivery trucks, trailers, and equipment will comply with and properly maintained in accordance with all applicable DOT regulations. Such maintenance records will be made available by Seller for review by CWA, if requested

7.0 WEIGHING:

7.1 The weight of the material shall be ascertained from the Certified Weight Ticket attached to the bill of lading from the originating line. CWA reserves the right to re-weigh at the nearest available scales and adjust the cost accordingly.

8.0 TERMINATION OF CONTRACT:

8.1 Sellers right to perform under this Contract may be terminated by CWA, at its option, upon fifteen (15) days notice in writing, if the materials furnished do not conform to the specifications set forth herein; or if the delivery, pricing, and performance by Seller does not conform to the specifications detailed herein. This right to terminate shall be in addition to all other rights and remedies CWA may have under the Contract, including without limitation, CWA's right to terminate for cause under Section 5 of the CWA Standard Terms and Conditions.

9.0 QUALITY OF AQUA AMMONIA:

9.1 The Goods supplied pursuant to the Contract shall not contain any mineral or organic substances in quantities capable of producing deleterious or injurious effects upon the health of those consuming the water which has been treated with it and shall in all respects meet, as a minimum, the current minimum standard specifications of the American Water Works Association or the current Water Chemicals Codex (as published by the National Academy of Sciences), whichever is the more restrictive specification, unless otherwise specified in the Technical Specifications, for materials used in the purification of municipal potable water supplies.

9.2 The material shipped shall be free of dirt and debris.

9.3 Typical physical and chemical properties shall be as follows:

Total Heavy Metals (as lead) .....	0.02% (MAX.)
Organics.....	Nil
Physical State.....	Aqueous Soln of NH4OH
Weight or 19% NH3 Soln.....	7.74 lbs./gal.
Amount of Ammonia in Solution.....	19%
Specific Gravity .....	0.9275 @ 60 deg. F.
Suspended Material.....	None

10.0 TESTING OF DELIVERIES:

10.1 The quality of the Goods in each truckload lot shall be determined from the analysis provided by Seller at the time of delivery. CWA reserves the right to take samples of the Goods at any time and to have an independent analysis performed. A representative of Seller may be present at the time such sample is taken.

11.0 BASIS FOR REJECTION:

11.1 Each of the following shall be a basis for rejection of a shipment of Goods:

11.1.1 Ammonia (NH<sub>3</sub>) less than 19.0% by weight or more than 19.5% by weight;

11.1.2 Visible suspended material present;

11.1.3 Non-compliance with the above Section 9.0 QUALITY;

11.1.4 Total heavy metals in excess of .02% by weight expressed as lead; and

11.1.5 Lack of a Certificate of Analysis and/or proper weight tickets.

11.2 The bases for rejection described above are not exhaustive. CWA reserves the right to reject the Goods for any other reason provided for by the Contract or applicable law.

12.0 REJECTION OF SHIPMENT NOT MEETING SPECIFICATION:

12.1 CWA has the right to reject and refuse delivery of any or all of the Goods that do not comply with the above Sections 9.0 and 11.0 of the Technical Specifications, including without limitation those Goods which are not within the specific maximum and minimum limits of the listed parameters.

12.2 CWA shall not be held to have accepted any truckload shipment until after Seller provides an analysis of the Goods and CWA has had an opportunity to exercise CWA's right of rejection. Acceptance of the material analysis is on a "good faith" basis.

12.3 CWA reserves the right to test the Goods after they has been off-loaded and to exercise CWA's right of rejection, thereafter, if the Goods are do not comply with the Technical Specifications.

12.4 If a shipment of the Goods is rejected prior to off-loading, for failure to meet specifications, Seller shall, within twenty-four (24) hours, furnish and deliver an emergency shipment, at the sole expense of Seller, to replace the rejected load. If a shipment is rejected after off-loading, Seller shall remove the rejected Goods and, within twenty-four (24) hours, shall furnish and deliver an emergency shipment, at the sole expense of Seller, to replace the rejected load.

13.0 SILENCE OF SPECIFICATIONS:

13.1 The apparent silence of the Technical Specifications as to any detail, or the apparent omission from it of a detailed description concerning any matter, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of the Technical Specifications shall be made on the basis of this statement.

14.0 CERTIFICATE OF GUARANTEE:

- 14.1 The Certificate of Guarantee attached to the Technical Specifications (the "Certificate") shall be completely filled out by Bidder and must be submitted with the Official Bid Form. The Certificate will be retained by CWA and used for comparison of the quality of the Goods delivered under the Contract. Seller shall furnish to CWA, by mail, Seller's laboratory reports showing the quality of the Goods delivered and any other information required for the safe usage of the Goods, as may be requested by CWA.
- 14.2 If the Goods to be supplied are a by-product, Bidder shall make this fact known in writing on the Official Bid Form along with pertinent information about the source of supply and the quality of the Goods to be supplied.

CERTIFICATE OF GUARANTEE

**AQUA AMMONIA CONTRACT**

This sheet must be completely filled out and submitted in duplicate with the bid. The foregoing is a mandatory requirement, even if bidding as specified.

The undersigned hereby proposes to meet the following quality standard for the Aqua Ammonia to be supplied to Coastal Water Authority.

Ammonia Contained (NH<sup>3</sup>) \_\_\_\_\_ % By Wt. (Max.)

\_\_\_\_\_ % By Wt. (Min.)

Specified Gravity \_\_\_\_\_ (Min.)

(corrected to 20 degrees  
centigrade)

\_\_\_\_\_ (Max.)

Suspended Material \_\_\_\_\_ (Max.)

Total Heavy Metals (as lead) \_\_\_\_\_ % By Wt. (Max.)

Total Organic Carbon \_\_\_\_\_ (Max.)

Source of Supply: \_\_\_\_\_

Address: \_\_\_\_\_

Supplier: \_\_\_\_\_

Supplier Representative: \_\_\_\_\_

Certifying Laboratory: \_\_\_\_\_

Analyzed by: \_\_\_\_\_

Certified By: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

# COASTAL WATER AUTHORITY

## CWA STANDARD TERMS AND CONDITIONS

These CWA Standard Terms and Conditions (these “Terms and Conditions”) are referenced in purchase orders issued by the Coastal Water Authority (“CWA”) for the purchase of various goods and services. These Terms and Conditions are hereby incorporated by reference into each purchase order that references them, as if set out fully therein. The “Purchase Order” as used in these Terms and Conditions means the purchase order issued by CWA which incorporates by reference these Terms and Conditions, together with any specifications, attachments, exhibits and other documents incorporated by reference in the Purchase Order and these Terms and Conditions.

### **1. Definitions.**

The Bidder who is awarded the Purchase Order shall be hereinafter referred to as “Seller.” “Goods” means the goods and/or services described in and to be furnished under the Purchase Order.

### **2. Contract Formation and Conflicting Terms.**

The Purchase Order, upon issuance by CWA, constitutes a binding contract between CWA and Seller on the terms and conditions of the Purchase Order and these Terms and Conditions. The Purchase Order is hereby expressly limited to its terms and these Terms and Conditions. Any additional, inconsistent or conflicting terms proposed by Seller are rejected unless expressly assented to in writing by CWA. If the Purchase Order is made in response to an offer or counteroffer by the Seller, CWA does not accept the Seller’s offer or counteroffer unless the Seller assents to any and all terms in the Purchase Order that are in addition to or different from the Seller’s offer or counteroffer. No agreement or understanding to modify or rescind the Purchase Order or these Terms and Conditions shall be binding upon CWA unless in writing and signed by CWA.

### **3. Invoices, Liens, Offset and Withholding.**

Invoices shall be mailed to:

Coastal Water Authority  
ATTN: Accounts Payable  
1801 Main Street, Suite 800  
Houston, TX 77002

To the maximum extent allowed by law, Seller agrees to release, defend, indemnify, and hold harmless CWA from and against any and all laborers’, materialmen’s, mechanic’s or other liens arising from, alleged to arise from, or in any way associated with Seller’s performance or nonperformance under the Purchase Order. Seller waives all rights of lien against the Goods and against CWA’s premises, facilities, equipment and other property. Any sums due Seller under the Purchase Order may be applied by CWA as a set off against any sums owed by Seller to

CWA, or against any claims of third parties against CWA arising from Seller's performance, whether under this or any other purchase order or other document. Further, CWA shall have the right to withhold from any payment due Seller an amount to protect CWA from any actual or expected loss arising from: (i) any failure by Seller to provide Goods in accordance with the requirements of the Purchase Order; (ii) any failure by Seller to timely deliver Goods; or (iii) any failure by Seller to honor any aspect of these Terms and Conditions, including without limitation any indemnity obligation of these Terms and Conditions.

#### **4. Termination for Convenience of CWA.**

CWA has the right to terminate for CWA's convenience at any time all or any part of the Purchase Order or Seller's right to provide Goods in connection with the Purchase Order. In the event of such termination for convenience, Seller shall immediately stop all work hereunder, and shall immediately terminate all related supplier and subcontractor contracts. In the event of such a termination, CWA shall be responsible to compensate Seller only for that portion of the Purchase Order price as the work satisfactorily performed to the date of the termination bears to the entire work contracted for, less any amounts theretofore paid to Seller. Upon CWA's instructions, Seller will identify for the benefit of CWA and preserve and protect the Goods, work in progress, supplier data, and completed work, both in Seller's own and in its suppliers' facilities. If the Goods have been paid for in whole or in part, then CWA has the immediate right to enter Seller's or any of its supplier's premises to take possession of and remove the Goods and all drawings, records, materials and equipment to be incorporated into the Goods. Seller shall not be paid for any work performed or obligations Seller incurs after receipt of the notice of termination, nor shall Seller be paid for any costs or other obligations incurred by any of Seller's suppliers or subcontractors which Seller could reasonably have avoided.

#### **5. Termination for Cause.**

CWA may terminate for cause all or any part of the Purchase Order or Seller's right to provide Goods in connection with the Purchase Order in the event of any default by Seller. Without limiting the generality of the foregoing, Seller's (a) failure to comply with any of the terms or conditions of the Purchase Order; (b) late delivery of Goods; (c) delivery of Goods which are defective or which do not conform to the requirements of the Purchase Order; (d) bankruptcy, reorganization, receivership, insolvency, or making an assignment for the benefit of creditors; and (e) failure to provide CWA, upon request, with adequate assurances of future performance, shall each be a default entitling CWA to terminate the Purchase Order for cause. Upon such a termination, Seller will be liable to and will immediately reimburse CWA for all costs, losses and damages of any nature resulting from Seller's default.

#### **6. Warranty and Warranty Remedies.**

Seller warrants to CWA that the Goods furnished under the Purchase Order, whether manufactured, fabricated, or otherwise produced or provided by Seller or others, will:

(a) meet or exceed the descriptions, data, drawings, plans, specifications, performance criteria, and samples if any, and other requirements referred to in the Purchase Order;

(b) conform with all applicable laws, ordinances, codes and regulations, including without limitation, not infringing any intellectual property right of another; and

(c) be free from defects in materials, performance, operation, and workmanship.

All work on the Goods or otherwise in the performance of the Purchase Order will be performed in a good and skilled manner and will be of first-class quality and workmanship in every respect. If required by CWA, Seller will supply satisfactory evidence of the origin, composition, manufacture, kind and quality of the Goods or components or materials thereof. Seller will apply for and submit all documents necessary to effect the above warranties.

Inspection, test, acceptance or use of the Goods furnished hereunder, regardless of the location of any such inspection, test, acceptance or use, shall not affect the Seller's obligations under the above warranties, and such warranties shall survive any such inspection, test, acceptance and use. Seller's warranties shall run to CWA and its successors and assigns. Seller shall correct or replace the Goods without cost to CWA if it is discovered that during the last to expire of (i) one (1) year after the Goods are placed in service by CWA, (ii) twenty-four (24) months after date of acceptance of the Goods by CWA or (iii) any longer period of time required by the Technical Specifications or provided pursuant to Seller's standard or extended warranties for the Goods, any Goods that do or did not conform to the above warranties. If Seller fails to correct defects in or replace nonconforming Goods promptly, CWA, after notice to Seller, may make such corrections or replace such Goods and charge Seller for all costs incurred by CWA in doing so, without voiding the above warranties and without CWA waiving any other rights or remedies it may have under the Purchase Order or applicable law. Seller also recognizes that CWA's operation, maintenance or other requirements may necessitate immediate repairs or reworking of defective Goods, without prior notice to the Seller. In such event, upon written notice to Seller, Seller shall reimburse CWA for all costs incurred by CWA in doing so, without voiding the above warranties and without CWA waiving any other rights or remedies it may have under the Purchase Order or applicable law.

For the avoidance of doubt, the period(s) during which Seller is obligated to correct or repair Goods does not limit the time by which CWA may institute any legal or equitable proceeding against Seller for any failure to fulfill Seller's obligations under the Purchase Order and all remedies afforded CWA pursuant to this Section 6 shall be cumulative of all other remedies available to CWA under the Purchase Order and applicable law.

## **7. No Damages for Delay.**

Notwithstanding anything in the Purchase Order to the contrary, Seller shall receive no financial compensation for any delay, interference or hindrance by CWA or its consultants to the performance of the Purchase Order. In no event shall CWA be liable to the Seller, or any subcontractor of any tier, or supplier, or any other person, or any surety for, or any employee or agent of any of them, for any damages arising out of or associated with any such delay, interference or hindrance, regardless of the source of the delay, interference or hindrance, including events of Force Majeure, AND EVEN IF SUCH DELAY, INTERFERENCE OR HINDRANCE RESULTS FROM, ARISES OUT OF OR IS DUE, IN WHOLE OR IN PART, TO THE NEGLIGENCE, BREACH OF CONTRACT, VIOLATION OF STATUTE OR OTHER FAULT OF ANY INDEMNITEE (as defined in Section 9 below). Seller's sole remedy

in any such case shall be an extension of time. For the purposes of this paragraph, the term “Force Majeure” means fire, flood, act of God, earthquakes, epidemic, war, riot, civil disturbance, sabotage, terrorism or judicial restraint, but only to the extent such event (i) is beyond the control of and cannot be reasonably anticipated by or the effects alleviated by the Seller and (ii) prevents the performance of the Purchase Order. Events not specifically listed herein shall not constitute events of Force Majeure. By way of example only, weather which is not abnormal, even if such weather could not be reasonably anticipated and even if such weather prevents the delivery of the Goods, shall not be an event of Force Majeure.

If Seller’s delay due to an event of Force Majeure exceeds thirty (30) days from the original delivery date, CWA may cancel the Purchase Order without any liability other than for payment of work performed for and delivered to CWA prior to such event of Force Majeure. If Seller’s production is only partially restricted or delayed, it shall use its best efforts to accommodate CWA’s requirements, including giving the Purchase Order preference and priority over those of other customers which were placed after the Purchase Order.

## **8. Intellectual Property Indemnification.**

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 any Indemnitee (as defined in Section 9 below) for alleged or actual infringement of any patent, copyright, trade secret, or other intellectual property right, as well as for any alleged or actual unfair competition resulting from similarity in design, trademark or appearance of Goods furnished hereunder, and Seller further agrees to defend and indemnify the Indemnitees against any and all Losses (as defined in Section 9 below) resulting from any such claim, demand, suit or proceeding, including any settlement resulting therefrom. If any Goods or intellectual property furnished or used in connection with the Purchase Order is adjudicated as infringing or its use enjoined, Seller shall, at its own expense, secure for CWA the right to continue using it or replace it with a non-infringing equivalent.

## **9. INDEMNIFICATION AND RELEASE BY SELLER.**

To the maximum extent allowed by law, Seller shall defend, indemnify and hold harmless CWA, its board, directors, officers, elected and appointed officials, employees and agents, and the City of Houston and its officers, elected and appointed officials, employees and agents (collectively, the “Indemnitees”), from and against any and all claims, demands, suits, causes of action, losses, damages, settlements, liabilities, costs, expenses, fines, and judgments (including, without limitation, reasonable and necessary court costs, experts’ fees and attorney’s fees) (collectively, “Losses”), whether arising in equity, at common law, or by statute, including without limitation the Texas Deceptive Trade Practices Act (as amended) or similar statute of other jurisdictions, or under the law of contracts, torts (including, without limitation, negligence and strict liability without regard to fault) or property, of every kind or character (including, without limitation, claims for property damage, personal injury (including without limitation emotional distress), and economic loss), arising in favor of or brought by any of the Seller’s employees, agents, subcontractors, suppliers or representatives, or by any governmental agency or any other third party, based upon, in connection with, relating to or arising out of Seller’s failure to supply Goods that comply with the requirements of the Purchase Order, or the Seller’s actions or inactions under the Purchase Order, including without limitation any failure to pay

taxes or failure to comply with any applicable law, and EVEN IF ANY SUCH LOSSES ARE DUE IN PART TO ANY INDEMNITEE'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE OR OTHER FAULT, BREACH OF CONTRACT OR WARRANTY, VIOLATION OF STATUTE, OR STRICT LIABILITY WITHOUT REGARD TO FAULT, WHETHER INDEMNITEE IS IMMUNE FROM SUIT OR LIABILITY OR NOT.

The foregoing indemnification obligation shall apply regardless of the amount of insurance coverage held by Seller, including without limitation any such coverage under any worker's compensation act, disability act, or other act or law which would limit the amount or type of damages, compensation, or benefits payable by or for Seller, and shall not be limited by any insurance carried or provided by Seller in relation to the Purchase Order or otherwise.

Seller shall and does hereby waive all causes of action it has for, and releases and forever discharges the Indemnitees from, Losses for injuries (including death) to any person or damage to or destruction of any property sustained or alleged to have been sustained in connection with or arising out of or incidental to the Purchase Order.

Other provisions in the Purchase Order containing indemnities shall be deemed to be cumulative of and to operate independently of the indemnities provided above such that all indemnities provided in the Purchase Order shall be construed to grant indemnity to the Indemnitees to the fullest and broadest extent possible.

#### **10. Changes in Goods.**

Seller will make no change, substitution, or revision in or to the Goods without CWA's prior written consent. CWA has the right to make changes in the character or quantity of the Goods, or in the manner or time of performance of the Purchase Order. Notice of such change will be in writing and signed by a duly authorized representative of CWA. If Seller is unable to comply with the change, then Seller will notify CWA in writing, within five (5) days of receipt of such notice, otherwise such change will be deemed accepted. An equitable adjustment in the price and time of performance will be made by CWA and Seller in writing if any change by CWA results in a demonstrated decrease or increase in Seller's cost or time of performance; however, no claim by Seller for an adjustment in the price or in the time of performance resulting from any change required by CWA will be considered unless presented to CWA in writing within ten (10) days after Seller receives the notice of change from CWA. CWA shall not be responsible for costs incurred by Seller related to or arising from unauthorized changes.

#### **11. Inspection and Acceptance.**

Seller will have the obligation and CWA will have the right to inspect the Goods in process of manufacture, in storage, in transit, and upon delivery. Seller will provide CWA reasonable access to Seller's premises and any premises of Seller's suppliers or subcontractors, so that CWA may perform any such inspection of the Goods. CWA will be supplied by Seller, upon request or as needed, with data, drawings, specifications, test results, quality documentation, schedules and other documents and information in accordance with the documentation requirements included in the Purchase Order. CWA's inspection, waiving of inspection, review, approval, or acceptance of the Goods or provision or acceptance of any information, drawings or data under the Purchase Order will not relieve or discharge Seller,

either expressly or by implication, of Seller's responsibilities and obligations under the Purchase Order.

Payment for the Goods delivered hereunder shall not constitute acceptance thereof. The Goods will conform strictly to the description, data, drawings, plans, specifications, performance criteria, and samples if any, and other requirements of the Purchase Order. CWA shall have the right to reject any or all Goods that are, in CWA's reasonable judgment, defective or nonconforming. Goods rejected and Goods supplied in excess of quantities specified by CWA may be returned to Seller at Seller's expense and in addition to CWA's other rights. CWA may charge Seller all expenses of unpacking, examining, repacking and reshipping defective, nonconforming or excess Goods. Nothing contained in the Purchase Order shall in any way relieve Seller from the obligation of providing all testing, inspection and quality control necessary to ensure that Seller meets the requirements of the Purchase Order.

## **12. Shipment; Passage of Title.**

Seller is responsible for properly and carefully packing and shipping the Goods, at its expense, FOB ("Free on Board") to the destination set forth in the Purchase Order (the "Destination"), unless otherwise specified in the Purchase Order. Seller will comply with any documentary requirements as provided for in the Purchase Order. Unless otherwise specified in the Purchase Order, title to the Goods (and in the event that the Goods are made to order, then title to all material, inventory and work in progress, design data, other documentation, and all contractual rights thereto) will vest in CWA immediately upon the earlier of (i) delivery of the Goods to CWA at the Destination or (ii) payment for the Goods by CWA. Seller warrants that upon passage of title, CWA shall have good title, free and clear from any and all liens, restrictions, reservations, security interests and other encumbrances. Notwithstanding vesting of title and any other provision in the Purchase Order to the contrary, Seller will bear the risk of loss and damage to the Goods and will insure or self-insure for the benefit of Seller and CWA the Goods in its care, custody and control, including material supplied to Seller for incorporation into, or work in conjunction with, the Goods, until the same are delivered to the Destination and accepted by CWA. If, in order to comply with CWA's required delivery date, it becomes necessary for Seller to ship by a more expensive method than specified in the Purchase Order, any increased shipment costs resulting therefrom shall be at Seller's sole expense.

## **13. Delivery.**

**TIME IS OF THE ESSENCE TO THE PURCHASE ORDER. SELLER'S FAILURE TO MEET THE DELIVERY DATE(S) WITHOUT CWA'S PRIOR WRITTEN CONSENT TO A LATER DELIVERY DATE OR DATES CONSTITUTES A MATERIAL BREACH OF CONTRACT AND A MATERIAL DEFAULT UNDER THE PURCHASE ORDER.** If delivery or rendering of Goods is not completed by the time promised, CWA reserves the right, without liability and in addition to its other rights and remedies, to terminate the Purchase Order for cause pursuant to Section 5 above.

## **14. Limitation on CWA's Liability.**

To the maximum extent allowed by law, in no event shall CWA be liable for anticipated profits or for any incidental, indirect, exemplary or consequential damages of Seller. CWA's

liability for any damages arising out of, connected with or resulting from the Purchase Order or from the performance or breach hereof shall in no case exceed the portion of the Purchase Order price unpaid by CWA for the Goods or units thereof which give rise to any such liability, AND EVEN IF ANY OF SUCH DAMAGES ARISE OUT OF OR RESULT FROM CWA'S SOLE OR CONCURRENT NEGLIGENCE OR OTHER FAULT, BREACH OF CONTRACT OR WARRANTY, VIOLATION OF STATUTE, OR STRICT LIABILITY WITHOUT REGARD TO FAULT.

**15. Waiver.**

CWA's failure to insist on performance of any of the terms or conditions of the Purchase Order shall not preclude CWA from thereafter insisting upon, or relieve Seller from its responsibilities to strictly comply with, each and every requirement of the Purchase Order. Further, no waiver by CWA of any requirement of the Purchase Order shall be effective unless such waiver is expressly set forth in a writing signed by CWA.

**16. Tax Exempt Status of CWA.**

Pursuant to Section 151.309 of the Texas Tax Code, CWA is exempt from Texas sales, excise, and use tax. CWA will not be responsible for paying any such taxes associated with the Purchase Order and Seller will have no right to invoice CWA or to be paid by CWA for any such taxes.

**17. Assignments and Subcontracting.**

Seller shall not in whole or in part assign, delegate, subcontract or otherwise transfer the Purchase Order or any of Seller's rights or obligations under the Purchase Order, including without limitation any right to payment, without the prior written consent of CWA.

**18. Governing Law**

The Purchase Order and any disputes arising out of or related to it shall be governed and construed in accordance with the laws of the State of Texas, without regard to its conflict of law principles.

**19. Submission to Jurisdiction, Waiver of Right to Remove and Venue**

Seller hereby agrees that the Purchase Order is performable in whole or in part in Harris County, Texas, and hereby submits to the jurisdiction of the state courts within such county, and agrees that such jurisdiction shall be exclusive with respect to any legal or equitable proceeding filed by Seller. Further, Seller hereby expressly, clearly and unequivocally agrees that CWA has the right to choose the forum in which any legal or equitable proceeding arising out of, relating to or connected with the Purchase Order shall be heard; and, having so agreed, Seller hereby irrevocably waives its right to remove any such proceeding to any federal court should CWA choose to bring any proceeding in any state court of Harris County, Texas. Furthermore, to the fullest extent permitted by law, Seller hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any proceeding arising out of, relating to or connected with the Purchase Order in any state court residing in Harris County, Texas. Finally, Seller

hereby irrevocably waives any claim which it may now or hereafter have that any such proceeding brought in any state court in Harris County, Texas, has been brought in an inconvenient forum.

**20. Severability.**

The invalidity, illegality, or unenforceability of any provision of the Purchase Order, or the occurrence of any event rendering any portion or provision of the Purchase Order void shall in no way affect the validity or enforceability of any other portion or provision of the Purchase Order. Any invalid, illegal, unenforceable or void provision shall be deemed severed from the Purchase Order and the balance of the Purchase Order shall be construed and enforced as if the Purchase Order did not contain the particular portion or provision held to be invalid, illegal, unenforceable or void. CWA and Seller further agree to reform the Purchase Order to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Section 20 shall not prevent the entire Purchase Order from being void should a provision which is the essence of the Purchase Order be determined to be invalid, illegal, unenforceable or void.

**21. Notices.**

Notices under the Purchase Order shall be considered received on the date of actual receipt unless sent by certified mail, then upon the earlier of (a) actual receipt or (b) five (5) business days after deposit of such notice in the U.S. mail. Notices under the Purchase Order directed to CWA should be addressed to:

Coastal Water Authority  
ATTN: Purchasing Agent  
908 Independence Parkway-North  
Baytown, TX 77520  
Phone: 281-424-4463  
Fax: 281-424-3992

Notices directed to Seller shall be addressed to the street address, phone number, or facsimile number listed on the Purchase Order.

**22. Headings**

Headings are for convenience of reference only and shall not affect the interpretation of any provision.

**23. Entire Agreement.**

The Purchase Order constitutes the entire agreement between CWA and Seller and supersedes all prior and contemporaneous conditions, agreements, communications or representations, whether oral or written, relating to the subject matter hereof.

[End of Terms and Conditions]