
Meeting Date: May 17, 2023
Staff Contact: David Morris, Public Affairs Manager

TITLE: C-23-8 – Approval of Contract with CWA Strategic Communications, Inc. as a result of P2023000005

ACTION: Recommend Approval

Summary:

The Albuquerque Bernalillo County Water Utility Authority issued the Request for Proposals (RFP) P20232000005, Public and Media Relations, to solicit proposals from qualified vendors to provide as needed public relations services.

The RFP was posted on BidSync and advertised in the local newspaper. Five (5) responsive Offers were submitted for evaluation. The Ad-Hoc Committee reviewed, evaluated, and scored the responses in accordance with the evaluation criteria published in the RFP.

Based on the recommendation of the Ad-Hoc Committee, the Executive Director recommends the award of a contract to CWA Strategic Communications, Inc., as this vendor has the highest composite score, is qualified to perform the work, and meet the requirements of the RFP. The highest total composite score possible, without preferences applied, is one thousand. All scores listed are the combined average of all Committee members with applicable preferences applied.

<u>Offers</u>	<u>Total Composite Score</u>
CWA	1070
Great Big Graphics LLC DBA LOKA Creative LLC	628
Griffin & Associates dba Sunny505	813
HDR Engineering, Inc.	912
Single Space Strategies	613

Approval of this item will serve as delegation of authority for the Executive Director to enter into an agreement for CWA Strategic Communications, Inc. to provide public relations services as well as approve all future amendments to this agreement, if any.

FISCAL IMPACT:

The fiscal impact is expected to be \$460,000 (excluding NM GRT) per year for the term of the Agreement and is budgeted.

Memo

To: Mark S. Sanchez, Executive Director
David Morris, Public Affairs Manager

From: Lisa Molina, Administrative Specialist *Lmm*

Through: Jonathan Daniels, Purchasing Officer *JD*
Candida Kelcourse, Purchasing Administrator *OK*

Date: April 28, 2023

Re: Ad Hoc Committee for P202300005, "Public and Media Relations"

The Albuquerque Bernalillo County Water Utility Authority issued the referenced Request for Proposals (RFP) to solicit proposals from qualified vendors for Public and Media Relations.

The RFP was posted on BidSync and advertised in the local newspaper. Five (5) responsive offers were received and submitted for evaluation. The Ad Hoc Evaluation Committee reviewed, evaluated, and scored the responses in accordance with the evaluation criteria published in the RFP.

Listed are all the respondents' average composite scores with all applicable preferences applied as indicated in the scoring details. The largest total composite score possible without preferences applied is 1000.

<u>Offeror</u>	<u>Total Composite Score</u>
CWA	1070
Great Big Graphics LLC DBA LOKA Creative LLC	628
Griffin & Associates dba Sunny505	813
HDR Engineering, Inc.	912
Single Space Strategies	613

The Committee recommends the award of contract to **CWA** as that company had the highest average composite score after final scoring and is qualified to perform the work. The Purchasing Department concurs with the Committee's recommendation.

Water Authority Board approval is required for this procurement.

Approved:

Mark S. Sanchez

5/1/23

Mark S. Sanchez
Executive Director

Date

Recommended:

David Morris

5/2/23

David Morris
Public Affairs Manager

Date

Enclosures: Composite Score Sheet

**Composite Score Tabulation
P2023000005 Public and Media Relations**

EVALUATION CRITERIA	EVALUATION FACTORS (Max pts)	Offerors				
		CWA	Great Big Graphics LLC DBA LOKA Creative LLC	Griffin & Associates dba Sunny505	HDR Engineering, Inc.	Single Space Strategies
The overall ability of the Offeror, as judged by the evaluation committee, to successfully complete the tasks and functions as outlined in the Scope of Services. This judgment will be based upon factors such as references, experience, availability of staff and resources, qualification and experience of staff, and past performance in development and execution of public relations/marketing campaigns. Quality of work and documented outcomes will be considered.	300	278	200	250	267	183
The Offeror's demonstration of successful past performance in construction-related community outreach and education.	200	200	58	58	200	42
The Offeror's demonstration of successful past performance in serving public sector (i.e., governmental) clients.	200	183	167	183	183	167
The Offeror's demonstration of successful past performance in public outreach and communications regarding natural resource conservation.	200	178	108	150	125	150
Cost Proposal – The costs proposed by the Contractor.	100	100	45	72	37	72
TOTAL COMPOSITE SCORES		940	578	713	812	613
Resident/Native American Resident Business Preference	Up to 8%	80				
Resident Veteran/Native American Veteran Business Preference	Up to 10%				50	
Recycled Content Goods Preference	Up to 5%					
Local Business Preference	Up to 5 %	50		50	50	
Small Business Preference	Up to 5%			50		
Pay Equity Preference	Up to 5%		50			
15% Preference Max		130	50	100	100	0
TOTAL COMPOSITE SCORES WITH PREFERENCES		1070	628	813	912	613
RANKING		1	4	3	2	5
		CWA	Great Big Graphics LLC DBA LOKA Creative LLC	Griffin & Associates dba Sunny505	HDR Engineering, Inc.	Single Space Strategies

Cost Proposal



III. COST INFORMATION

CWA Strategic Communications proposes the following fee schedule to provide services to the Albuquerque Bernalillo County Water Utility Authority:

Strategic Management & Project Manager (Patti Watson)	\$	115.00 per hour
Senior Account Executive Service (Dana Bloomquist)		105.00 per hour
Social Media/Account Executive Service (Ty Stevers)		90.00 per hour
Finance/Contract/Accounting (Maita Swartz)		80.00 per hour
Freelance Graphic Design & Artwork		80.00 per hour
Website Design & Production		85.00 per hour
Administrative Support (<i>includes admin fees, see below</i>)		50.00 per hour
Travel Time (<i>discounted</i>)		15.00 per hour

Direct Costs

Printing / Specialty / Other Collateral Materials Actual cost + 10%

Direct Media Buy

15% agency commission taken on media

Web Hosting Services:

PRE-PAID accounts only: Every 6 or 12 months (discounted) Actual cost
Monthly services Actual cost + 10%

Social Media Marketing for Email Newsletters & Surveys

Database charge (up to 5,000 contacts with unlimited emails & surveys) Actual cost + 10%

Administrative Fees included in Admin Support Rate

In-house printing & copies (grayscale & color), photos, Creative Cloud, courier, shipping, postage, long-distance calls, travel expenses (out-of-pocket / mileage), supplies, etc. (if applicable)

Sales Tax Current NMGRT
Exemption from NMGRT Type 9 NTTC on-file

Note: Any additional client-related charges that are NOT listed will be at ACTUAL COST + 10%, unless otherwise stated.

APPENDIX A

SCOPE OF SERVICES

1. Project Management

The contractor will attend and prepare for client and planning meetings; provide production planning and supervision; write conference reports; conduct research; develop schedules; and perform administrative functions as necessary for the development and implementation of communication projects.

2. Media Relations

The contractor shall interface with the media and produce and place for publication news releases, fact sheets, media alerts, Web announcements, feature stories, and other communications materials as directed and requested by the Water Authority.

3. Community Relations

The contractor shall serve as a communications liaison between Water Authority staff/crews/construction contractors and members of the public potentially impacted by Water Authority initiatives, policies and construction projects. Duties may include but are not limited to organizing public meetings, attendance at planning meetings, production and distribution of maps and flyers, and serving as public point of contact for Water Authority projects.

4. News Conferences and Special Events

The contractor shall, as requested by the Water Authority, plan and implement news conferences and special events such as public meetings, panel discussions, etc. This may involve the rental or purchase or necessary equipment and signage, location scouting, invitation preparation and mailing, event set-up and tear-down, and catering. The contractor will also provide support as needed in setting up and manning booths and displays at community events, and will prepare and make presentations at community meetings and special events as requested.

5. Specialty Items

The contractor shall design and purchase specialty items (e.g., magnets, pencils, stickers, hats, t-shirts, etc.) as requested to promote various Water Authority initiatives.

6. Market Research

The contractor shall plan and conduct market research as requested to determine audience attitudes, facilitate strategy development, and evaluate effectiveness of communications initiatives.

7. Printed Materials

The contractor shall write, design and produce printed communication materials as needed in support of Water Authority initiatives. These materials may include (but are not limited to) brochures, fliers, bill inserts, banners, posters, issue papers, newsletters, display ads, legal announcements, calendars and annual reports.

8. Reporting and Analysis

The contractor shall provide regular reports on media coverage regarding the Water

Authority, including provision of transcripts of television coverage. Quarterly analyses of media coverage with respect to tone and accuracy will be required.

9. Campaign and Program Development

The contractor shall work in concert with the Water Authority and its other marketing agencies in the development of campaigns and programs to promote various initiatives as deemed necessary by the Water Authority. Campaign and program development may require the contractor to meet with local businesses and other groups to develop promotional partnerships.

10. Graphic Design

The contractor will provide graphic design services as required by the Water Authority.

11. Advertising

The contractor will assist in the development and production of advertising campaigns to appear across a variety of platforms that may include print, outdoor, radio, television and the Internet.

12. Translation

The contractor shall arrange for translation services for communications materials as requested by the Water Authority.

13. Media Buying and Trafficking

The contractor shall recommend media buys and negotiate and purchase media (e.g., newspaper space, television and radio airtime) as requested by the Water Authority, and traffic ads to media outlets as necessary. The contractor will be expected to negotiate for free placement of public service announcements.

14. Website Content and Presentation Materials

The contractor will produce website content and multimedia presentation materials as requested by the Water Authority.

15. Advice and Counsel

The contractor shall provide tactical and strategic advice and counsel to the Water Authority on matters relating to public and media relations.

16. Audio and Video Production

The contractor will produce audio and video materials including radio and television announcements and advertisements as directed by the Water Authority.

17. Other Duties

The contractor shall perform other duties as necessary when requested by the Water Authority, including serving as emergency PR backup/media liaison when Water Authority staff is not available.

GENERAL TERMS AND CONDITIONS
PUBLIC MEDIA AND RELATIONS
P2023000005

1. **Contract Documents and Precedence:** A contract resulting from the RFP (hereafter the “Contract”) shall consist of the following (the “Contract Documents”) and shall have precedence and be applied in the following order: the purchase order and any terms and conditions written into, referenced and incorporated in or attached to the purchase order, the RFP Documents, and the Offer of the successful Offeror (the “Contractor”). Any exceptions taken to the RFP Documents in the Offer which have not been written into the purchase order, have not been accepted by the Water Authority and are not part of the Contract. The RFP Documents shall have precedence in the order specified in Part I, Section 5 of the RFP.

2. **Contract Price, Payments and Title:** The Contract Price and Payment Terms for a contract resulting from the RFP shall be set out in a document referenced in or attached to the purchase order issued by the Water Authority, unless otherwise provided in the Specifications.

2.1 *Invoices and Payments.* The Contractor shall submit an accurate invoice for each purchase. Invoices shall refer to the Purchase Order Number and the Blanket Release (“BR”) or Blanket Encumbrance (“BE”) Number, if applicable, and shall be itemized unless otherwise specified in the RFP.

Applicable taxes shall be stated separately and will be paid by the Water Authority at current rates. Applicable taxes shall be shown as a separate amount on each billing or request for payment made under the Contract and may not be billed more than sixty (60) days after providing the goods and services to which the taxes apply.

Invoices must be emailed to: vendorinvoices@abcwua.org and a copy may also be sent to the applicable department.

Invoices mailed or provided to any other address will result in a delay in making payment. The Contractor is encouraged to inquire if payments due are not received within thirty (30) calendar days after delivery of goods or completion of the services under the Contract and submittal of invoice, by contacting the Accounting Division at (505) 289-3008.

Unless otherwise stated in the Specifications, the Contractor shall not receive any compensation until all goods have been delivered and the services have been completed, final inspection has been made, the goods and services have been accepted by an authorized representative of the Water Authority and complete and correct invoices have been received by the Water Authority in accordance with the invoicing process detailed herein. Progress payments will not be made to the Contractor unless otherwise specified in the RFP.

2.2 *Title.* Title to all goods and services provided under the Contract shall pass to the Water Authority at the time of payment, free and clear of all liens, claims, security interests and encumbrances.

3. **Personnel, Subcontractors, and Suppliers:**

The Contractor represents that it has, or will secure at its own expense, all personnel required to perform the Contract. Such personnel shall not be employees of or have any contractual relationships with the Water Authority. All the work required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform the work. None of the work described in the RFP shall be subcontracted without the prior written approval of the Water Authority. Any work subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of the Contract.

4. Delivery and Acceptance:

4.1 No Delivery before Purchase Order is Issued. The Contractor shall not deliver any goods or commence services prior to the issuance of a purchase order or other notice to proceed issued by the Water Authority Central Purchasing Office.

4.2 Cancellation for Non-Delivery. The Water Authority reserves the right to cancel any order not delivered by a guaranteed date stipulated in the Contract without liability on the Water Authority's part.

4.3 Acceptance of Delivery. Acceptance by the Water Authority of any delivery shall not relieve the Contractor of any guarantee or warranty, expressed or implied. Such acceptance of delivery shall not be considered an acceptance of goods or services not in accordance with the Specifications or the Contract Documents. Such acceptance of delivery shall not waive the Water Authority's right to require replacement of defective goods or correction of inadequate services.

5. Quality of Materials:

5.1 New Material. All goods, materials, supplies, equipment, vehicles, and the like provided under the Contract shall be new, the latest in production and manufactured within the last twelve (12) months (computed from the date and time of issuance of a BR) unless otherwise indicated in the Specifications. This does not apply to equipment or vehicles used by the Contractor to provide the required goods and services.

5.2 Inspection of Materials. The Water Authority reserves the right to inspect materials provided by the Contractor to determine their quality, fitness and suitability. Inspection of these materials may be conducted whenever the Water Authority considers it necessary. All goods and services found inferior to the quality specified in the RFP, deficient or incorrect in weight, measurement, workmanship, handicraft or otherwise, may be rejected as a whole or in part and then shall be removed by the Contractor at the Contractor's own risk and expense promptly after notice of rejection. The Contractor shall assume responsibility for taking the necessary action to correct or replace the rejected items or services within the time frame specified in the notice of rejection.

5.3 Right to Inspect Plant. The Water Authority's Chief Procurement Officer, or designee, may inspect, at any reasonable time, the Contractor's or any subcontractor's plant or place of business related to the performance of the Contract.

5.4 Warranties. All goods and materials furnished by the Contractor shall be free from defects and imperfections and workmanship shall be in accord with the best industry standards and practices. All goods, materials and workmanship shall be subject to the approval of the Water Authority.

Goods and materials furnished by the Contractor shall be accompanied by the manufacturer's written warranty against defects in quality and craftsmanship and covered by the most favorable commercial warranties the Contractor gives to any customer for such items. Further, the Contractor agrees that the rights and remedies provided in such warranties shall extend to the Water Authority and are in addition to and do not limit any rights afforded to the Water Authority by any other provision of the RFP.

THE CONTRACTOR AGREES NOT TO DISCLAIM WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY. Warranties shall become effective at the time of acceptance of the goods and services provided.

The Contractor guarantees that the goods and services supplied meet the performance required in the Specifications and elsewhere in the RFP and agrees to make such changes, adjustments or replacements as immediately necessary in order to meet the requirements at no cost to the Water Authority. If defects or specification failures are discovered, the Water Authority shall have the right, notwithstanding acceptance and payment, to require the noncompliant unit or item to be properly furnished in accordance with the Specifications and applicable drawings at the cost and expense of the Contractor or the Contractor's surety.

6. Site Conditions:

6.1 *Removal of Debris and Cleaning the Area.* The Contractor shall, during the progress of any work required under the RFP, remove and dispose of all debris and keep the work premises clean and safe. When the work is complete, the Contractor shall remove all construction equipment and surplus materials (except materials that are to remain the property of the Water Authority as provided in the Specifications) and leave the premises in a clean condition satisfactory to the Water Authority.

6.2 *Working Conditions.* The Water Authority is not responsible for obstacles, unfavorable conditions, or hazards, which may be encountered by the Contractor in performing the Contract, both above and below ground. These conditions are part of the risk and responsibility of the Contractor.

6.3 *Risks.* All risks of deterioration, destruction, and loss of materials and equipment stored at the site of the work required under the Contract shall be borne by the Contractor.

6.4 *Responsibility for Damage.* The Contractor shall be responsible for any damage caused during removal or installation services or at any time during the performance of the Contract. Damage shall be reported immediately to the designated Water Authority representative.

7. Indemnity:

7.1 *General Indemnity.* The Contractor expressly agrees to defend, indemnify and save harmless the Water Authority and its officers, agents and employees from and against any and all claims, suits, demands, actions, or proceedings of every nature and description brought because of any injury or damage received or sustained by any person, persons, or property arising out of the Contractor's performance of the Contract or by reason of any act or omission, neglect or misconduct of the Contractor, or its agents, employees or subcontractors or the agents or employees of any subcontractor of the Contractor. The indemnity required herein shall not be limited by reason of the specification of any particular insurance coverage.

7.2 *Patent Indemnity.* If any item furnished pursuant to the Contract shall be covered by any patent, copyright, or application for patent or copyright, the Contractor shall defend, indemnify and save harmless the Water Authority from any and all loss, cost or expense or any and all claims, suits, or judgments as a result of the use of such item in violation of rights under such patent, copyright, or application for patent or copyright.

8. Records and Audits:

8.1 *Establishment and Maintenance of Records.* Records shall be maintained by the Contractor in accordance with applicable law and requirements prescribed by the Water Authority with respect to all matters covered by the Contract. Except as otherwise authorized by the Water Authority, such records shall be maintained for a period of six (6) years after receipt of final payment under the Contract.

8.2 *Audits.* At any time during normal business hours and as often as the Water Authority may deem necessary, there shall be made available to the Water Authority for examination all of the Contractor's records with respect to all matters covered by the Contract. The Contractor shall permit the Water Authority to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by the Contract.

9. **Ethical Conduct:** The Contractor warrants that it will perform the Contract in compliance with the Ethical Conduct provisions (§2-390) and Unfair Business Practices provisions (§2-376) of the Water Authority Procurement Ordinance and Rules (Section 37), the Water Authority Code of Conduct, Sections 10-16-1 through 10-16-18, NMSA 1978, the New Mexico criminal statutes prohibiting bribes, gratuities and kickbacks, Sections 30-41-1 through 30-41-3, and any other Water Authority or New Mexico laws, ordinances, rules and regulations, policies, procedures and administrative instructions applicable to ethical conduct. The Contractor warrants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Contract.

10. Changes:

10.1 *Contract Changes.* In no case shall a Contract be changed without the prior written approval of the Chief Procurement Officer.

10.2 *Increase of Quantities:* The Water Authority reserves the right to increase the quantity of the goods and services to be provided under the terms of the Contract, at the same prices, with the consent of the Contractor.

10.3 *Decrease of Quantities.* The Water Authority reserves the right to decrease the quantity of goods and services to be provided under the terms of the Contract. However, the Contractor shall be offered an opportunity to cancel the portion of the Contract affected by such a decrease if the Contractor is not able to meet the contracted prices by delivering the decreased amount. This opportunity shall not be afforded the Contractor if the Contract was originally awarded based on estimated quantities.

10.4 *Debarment/Cancellation of Contract.* Upon receipt of notice of debarment of the Contractor, or other ineligibility of the Contractor to receive funds from any agency of the federal government, the State of New Mexico, or any local public body of the State, the Water Authority

shall have the right to cancel the Contract with the Contractor for cause, as provided below in Section 15.

10.5 *Additions/Deletions of Items.* The Water Authority reserves the right to add ancillary items or services or delete such items or services specified in the Contract as requirements change during the term of the Contract. Items may only be added or deleted by written approval from the Chief Procurement Officer or designee.

Prices and/or discounts for such additional items or services will be mutually agreed to by the Water Authority and the Contractor either:

- Under the price structure of the Contract, to include, but not by way of limitation, price margin above Contractor cost; or
- By quotation from the Contractor, which quotation is validated to be competitive by solicitation of comparable quotes within the market if necessary; or
- As otherwise determined by the Chief Procurement Officer.

An amended Contract (by purchase order or otherwise) will be issued for each addition or deletion, prior to the change taking effect.

The Water Authority reserves the right to award these ancillary items to the primary Contractor, another vendor based on the lowest price quoted, or to acquire the items through a separate solicitation.

10.6 *Price Escalation.* A request for escalation of Contract pricing may be made under the following conditions:

- Offered prices must be firm for a least ninety (90) consecutive calendar days after written notification of the effective date of a Contract.
- The Contractor shall provide written notice to the Water Authority of any requested price increases.
- All requests for price increases shall be accompanied by: (1) a letter from the Contractor's supplier certifying the increases in cost to the Contractor; or (2) evidence of verifiable market conditions resulting in increased costs such as mandated labor rate increases and significant fuel or energy cost increases.
- All revisions to Contract pricing shall become effective when they are approved by the Water Authority.
- As provided in Section 11.2, *Audits*, above, all supplier invoices for the offered items shall be subject to auditing by the Water Authority and furnished without delay upon request.
- The Water Authority reserves the right to cancel a Contract and solicit a new contract if a requested price escalation is unacceptable to the Water Authority. Cancellation of the Contract shall not affect any outstanding orders.
- All approved price changes resulting from this escalation clause shall be firm for a minimum of ninety (90) calendar days after approval by the Water Authority.
- Contractor shall notify the Water Authority within seven (7) calendar days of subsequent price de-escalations from its supplier or cost reductions in areas where pricing increases were previously implemented. The Contractor will reduce its pricing to the Water Authority immediately to pass on such de-escalations and reductions unless otherwise agreed to by the parties.

- The Water Authority reserves the right to approve pricing increases requested by the Contractor which may be requested for reasons other than an increased cost to the Contractor from an outside source, if it is in the best interest of the Water Authority.
- All approvals required by this subsection must be in writing by the Water Authority Chief Procurement Officer.

- 11. Force Majeure:** Neither the Contractor nor the Water Authority shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government not directly related to this Contract, acts or omissions of a military authority, acts of God, material shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party is using its best efforts to remedy such failure or delays.
- 12. Termination for Cause:** If, through any cause, the Contractor fails to fulfill the Contractor's obligations under the Contract in a timely and proper manner, or if the Contractor violates any of the covenants, agreements or stipulations of the Contract, the Water Authority shall notify the Contractor of such violations in writing and allow the Contractor a reasonable time, set out in the notice, to correct the default. If the default is not corrected within the specified time period the Water Authority shall have the right to cancel the Contract and any or all other current contracts with the Contractor, and, if applicable, to purchase the required goods and services from another source or sources. The Water Authority shall provide written notice to the Contractor specifying the effective date of cancellation which may be contained in the notice of default.

If the Contract is cancelled, the Contractor shall not be relieved of liability to the Water Authority for damages caused by its breach of the Contract. The Water Authority reserves the right to recover such damages, including but not limited to any excess cost incurred in having to purchase Contract goods and services from other sources, by a deduction from an unpaid balance due to the Contractor, collection against a performance or labor and materials payment bond, a combination of these remedies, or any other legal method available. In addition, the Contractor may be removed from the Central Purchasing Office vendor list or determined to be ineligible to respond to future solicitations, as being not responsible.

- 13. Termination for Convenience:** The Water Authority may terminate the Contract at any time by giving at least thirty (30) consecutive calendar days' notice in writing of such termination to the Contractor. In such event, the Contractor shall be paid under the terms of the Contract for all goods and services provided to and accepted by the Water Authority, if ordered or accepted by the Water Authority prior to the effective date of termination.
- 14. Termination for Lack of Appropriations:** Funding for the Contract has been appropriated by the Water Authority Board for the Water Authority's current fiscal year. Notwithstanding any other provisions in the Contract, its continuation beyond the end of the fiscal year is contingent on the Water Authority Board making the appropriations necessary to fund the Contract. If sufficient appropriations are not made the Contract may be terminated at the end of the Water Authority's then current fiscal year upon written notice given by the Water Authority to the Contractor. Such termination shall not constitute a default. All payment obligations of the Water Authority and all of its interest in the Contract will cease upon date of termination. The Water Authority's decision as to whether

sufficient appropriations are available shall be accepted by the Contractor and shall be final.

15. Miscellaneous:

15.1 *Assignment, Transfer and Subcontracting.* The Contractor shall not assign, transfer or subcontract any portion of the Contract without the express written consent of the Water Authority's Chief Procurement Officer. Any work subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of the Contract.

15.2 *Construction and Severability.* If any part of the Contract is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of the Contract so long as the remainder is reasonably capable of completion.

15.3 *Compliance with Laws.* The Contractor shall, in performance of the Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including, but not limited to the New Mexico Human Rights Act, Title VII of the federal Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and all federal, State and local statutes, regulations and executive orders relating to civil rights.

15.4 *Enforcement.* The Contractor agrees to pay to the Water Authority all costs and expenses including reasonable attorney's fees incurred by the Water Authority in exercising any of its rights or remedies in connection with the enforcement of the Contract.

15.5 *Entire Agreement.* The Contract Documents comprise the entire agreement between the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

15.6 *Governing Law/Venue.* The Contract is governed by the laws of the State of New Mexico. The parties agree that the state and federal courts sitting in Bernalillo County, New Mexico will have exclusive jurisdiction over any claim arising out of the Contract or this procurement and each party consents to the exclusive jurisdiction of such courts.

16. *Insurance:* The Contractor shall not commence any work under this Agreement until the insurances required have been obtained and the proper certificates, riders or endorsements (or policies) have been submitted to the Water Authority.

16.1 *General Conditions.* The Water Authority will require the successful Offeror, referred to as the Contractor, to procure and maintain at its expense during the term of the Agreement resulting from the RFP, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations of the Contractor under the Agreement. Upon execution of the Agreement and on the renewal of all coverages, the Contractor shall furnish to the Water Authority a certificate or certificates in form satisfactory to the Water Authority as well as the rider or endorsement showing that it has complied with these insurance requirements. All certificates of insurance shall provide thirty (30) days written notice be given to the Risk Program Manager, Albuquerque Bernalillo County Water Utility Authority, P.O. Box 568, Albuquerque, New Mexico 87103, before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. **With respect to all coverages required other than professional liability or workers' compensation, the Albuquerque Bernalillo County Water Utility Authority shall be named an additional insured.** All coverages afforded shall be primary with respect to operations provided.

16.2 *Approval of Insurance.* Even though the Contractor may have been given notice to proceed, it shall not begin any work under the Agreement until the required insurance has been obtained and the proper certificates (or policies) filed with the Water Authority. Neither approval nor failure to disapprove certificates, policies, or the insurance by the Water Authority shall relieve the Contractor of full responsibility to maintain the required insurance in full force and effect. If part of the Agreement is sublet, the Contractor shall include any or all subcontractors in its insurance policies, or require the subcontractor to secure insurance to protect itself against all hazards enumerated herein, which are not covered by the Contractor's insurance policies.

16.3 *Coverage Required.* The kinds and amounts of insurance required are as follows:

16.3.1 Commercial General Liability Insurance. A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

\$1,000,000	Per Occurrence
\$1,000,000	Policy Aggregate
\$1,000,000	Products Liability/Completed Operations
\$1,000,000	Personal and Advertising Injury
\$ 50,000	Fire Legal
\$ 5,000	Medical Payments

Said policy of insurance must include coverage for all operations performed for the Water Authority by the Contractor and contractual liability coverage shall specifically insure the hold harmless provisions of the Agreement.

16.3.2 Automobile Liability Insurance. An automobile liability insurance policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. The policy must include coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off work.

16.3.3 Workers' Compensation Insurance. Workers' compensation insurance policy for the Contractor's employees, in accordance with the provisions of the Workers' Compensation Act of the State of New Mexico, (the "Act"). If the Contractor has determined that it is not subject to the Act, the Contractor will certify, in a signed statement to that effect. The Contractor will notify the Water Authority and comply with the Act if it becomes subject to the Act during the term of the Agreement.

16.3.4 Professional Liability Insurance. Professional liability insurance in an amount not less than \$1,000,000.00 per claim and in the aggregate.