

CERTIFICATE FOR ORDER ADOPTING ELECTRONIC BIDDING RULES

THE STATE OF TEXAS §
COUNTY OF HARRIS §
HARRIS COUNTY UTILITY DISTRICT NO. 109 §

We, the undersigned officer of the Board of Directors (the "Board") of Harris County Municipal Utility District No. 109 (the "District"), hereby certify as follows:

1. The Board convened in regular session, open to the public, on February 16, 2021, at 6:00 p.m., via teleconference, in compliance with the guidelines approved by the Office of the Governor of the State of Texas upon request of the Office of the Attorney General, temporarily suspending a limited number of open meeting laws to allow telephonic meetings and to avoid congregate settings in physical locations in response to the coronavirus disaster. The roll was called of the members of the Board, to-wit:

Owen Parker President
Chris Green Vice President
Cheryl Moore Secretary
Robin Sulpizio Assistant Secretary
Nancy Frank Assistant Secretary

All members of the Board were present, except Director(s) _____ thus constituting a quorum. Whereupon among other business, the following was transacted at such Meeting: A written

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Was duly introduced for the consideration of the Board and read in full. It was then duly moved and seconded that such Order be adopted; and, after due discussion, such motion, carrying with it the adoption of such Order, prevailed and carried by the following votes:

AYES: _____ NOES: _____

2. A true, full, and correct copy of the aforesaid Order adopted at the Meeting described in the above and foregoing paragraph is attached to and follows this Certificate; such Order has been duly recorded in the Board's minutes of such Meeting; the above and foregoing paragraph is a true, full, and correct excerpt from the Board's minutes of such Meeting pertaining to the adoption of such Order; the persons named in the above and foregoing paragraph are the duly chosen qualified, and acting officers and members of the Board as indicated therein; each of the officers and members of the Board was duly and sufficiently notified officially and personally, in advance, of the time, place, and purpose of such Meeting, and that such Order would be introduced and considered for adoption at such Meeting; and such Meeting was open to the public, and public notice of the time, teleconference number, and purpose of such Meeting was given, all as required by the guidelines approved by the Office of the Governor of the State of Texas upon request of the Office of the Attorney General, temporarily suspending a limited number of open meeting laws to allow telephonic meetings and to avoid congregate settings in physical locations in response to the Corona virus disaster.

SIGNED AND SEALED this ____ day of _____, 2021.

Harris County Municipal Utility District No.
109

President, Board of Directors

ATTEST:

Secretary, Board of Directors

(DISTRICT
SEAL)

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WHEREAS, Section 49.2731 of the Texas Water Code, as amended, permits a district to receive bids under Section 49.273 of the Texas Water Code, as amended, through electronic transmission, provided that the district adopts rules to ensure the identification, security, and confidentiality of electronic bids and to ensure that the electronic bids remain effectively unopened until the proper time;

WHEREAS, the Board of Directors (the "Board") of Harris County Municipal Utility District No. 109 (the "District") has considered the District's operations and activities and has determined that the adoption of Section 49.2731, Texas Water Code, as may be amended from time to time, Electronic Bidding Rules set forth in Exhibit "A" to this Order (the "Rules") will benefit the District; and

WHEREAS, the Board desires to evidence its approval of the Rules and to adopt the Rules;

NOW, THEREFORE, BE IT ORDERED BY THE BOARD OF DIRECTORS OF THE DISTRICT THAT:

Section 1. Approval and Adoption of the Rules. The Board of the District hereby approves and adopts the Rules set forth in Exhibit "A" to this Order, to be effective on the date below and to remain in force and affect until an express contrary action of the Board.

Section 2. Declaration of Policy, Purpose and Intent. The policy, purpose, and intent of the Rules is to ensure the identification, security, and confidentiality of electronic bids, to ensure that the electronic bids remain effectively unopened until the proper time, and to ensure that an electronic bid received pursuant to the Rules is treated as a sealed bid as required by Section 49.273, Texas Water Code, as may be amended from time to time.

PASSED AND APPROVED this ____ day of _____, 2021.

President, Board of Directors

ATTEST:

Secretary Board of Directors

(DISTRICT SEAL)

EXHIBIT "A"

SECTION 49.2731 ELECTRONIC BIDDING RULES

Section 1. Policy, Purpose and Intent. The Board of Directors ("Board") of Harris County Municipal Utility District No. 109 ("District") has developed these Electronic Bidding Rules ("Rules") as allowed by Section 49.2731 of the Texas Water Code ("TWC Section 49.2731") to permit the receipt of bids under Section 49.273 of the Texas Water Code ("TWC Section 49.2731" and together with TWC Section 49.2731, the "Applicable Electronic Bidding Statutes") through electronic transmission. The Board has determined that adoption of the Rules is a benefit to the District and that the Rules are sufficient to ensure (1) the identification, security, and confidentiality of electronic bids; (2) that the electronic bids remain effectively unopened until the proper time; and (3) that any provision of Chapter 49 of the Texas Water Code that applies to a sealed bid applies to electronic bids.

Section 2. Definitions. Unless otherwise noted, the following definitions apply throughout these Rules:

- A. "Bid" means any bid tendered to the District pursuant to the Applicable Electronic Bidding Statutes.
- B. "Bid Invitation" means the bidding documents, plans, specifications, and other data, prepared in connection with inviting potential Bids by the Procurement Officer pursuant to the Applicable Electronic Bidding Statutes.
- C. "Electronic Signature" has the meaning ascribed to such term in the Texas Uniform Electronic Transactions Act, Tex. Bus. & Com. Code Ann. Section 322.002(8), as amended from time to time, which as of the date of the adoption of this Order reads as follows: an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- D. "Electronic Bid" means a Bid submitted to the District's Procurement Officer via the internet or other permitted electronic means.
- E. "Procurement Officer" means the District's engineer or landscape architect, or their respective designees.

Section 3. Bid Invitation. If Electronic Bids are to be accepted for a project, the Procurement Officer is responsible for including in the Bid Invitation proper notice to potential bidders of the option to submit an Electronic Bid. Although the Bid Invitation shall be prepared and implemented by the Procurement Officer as an independent contractor, at a minimum such notice shall advise prospective bidders that:

- Electronic bidding is available and the address or point of electronic receipt to which the Electronic Bid must be sent.

- Electronic Bids shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation or an addendum.
- Electronic Bids and related bid security(ies) shall contain all required Bid information and certifications, in each case in accordance with till applicable competitive bidding requirements.
- If, upon being opened, an Electronic Bid is unreadable to the degree that material conformance to the requirements of the Bid Invitation cannot be ascertained, such Electronic Bid will be rejected without liability to the District or the Procurement Officer, unless such bidder provides clear and convincing evidence (a) of the content of the Electronic Bid as originally submitted and (b) that the unreadable condition of the Electronic Bid was caused solely by error or malfunction of the District's or the Procurement Officer s software or hardware, or by other District or Procurement Officer mishandling.
- Electronic Bid submission is subject to electronic interface latency, which can result in transmission delays; and bidders assume the risk of late transmission/ submission; and neither the District nor the Procurement Officer shall be held liable if an interested bidder is unable to submit a complete Electronic Bid prior to the published deadline due to technical issues or obstructions.
- Any tampering with the electronic bidding system, the electronic bidding process or Electronic Bid documents by an interested bidder shall result in the bid of such bidder being rejected.

Section 4. Electronic Bid Acceptance Program. Prior to accepting Electronic Bids, the Procurement Officer shall establish a program (an "Electronic Bid Acceptance Program") that ensures: (1) the identification, security, and confidentiality of Electronic Bids, (2) that Electronic Bids remain effectively unopened until the proper time, and (3) that any provision of Chapter 49 of the Texas Water Code that applies to a sealed bid applies to an Electronic Bid. Although the Electronic Bid Acceptance Program shall be designed and implemented by the Procurement Officer as an independent contractor to achieve these goals, it shall in any event meet the following minimum criteria:

- Each bidder must be able to transmit an Electronic Bid and bid securities securely and confidentially through bid encryption or other protection measures.
- If the District has adopted an Order Adopting Electronic Signature Rules for Construction Contracts, the Electronic Bid Acceptance Program must provide bidders with the ability to submit Electronic Signatures on bid securities.
- Establish a process for interested bidders to electronically certify their identity and the validity of their submitted Bid.

- Procurement Officer shall include notice of the availability of electronic bidding in any legal notice or advertisement of the project or an addendum and shall include any registration deadlines.
- Each bidder must receive prompt confirmation of the timely electronic filing of the bidder's Electronic Bid, including securities.
- Each bidder must be able to submit, resubmit, replace, or withdraw the bidder's filed Electronic Bid and securities prior to the time Bids are opened.
- Each Electronic Bid must be inaccessible or unreadable to all others except for the bidder prior to the time Bids are opened.
- The portal for filing Electronic Bids must have a mechanism to block any additional Bids or modifications to Bids at and after the time at which Bids are scheduled to be opened.
- Procurement Officer must have full and immediate access to the Bids and bid bonds at the time Bids are designated to be opened, but not prior to that time.
- Only Bids (Electronic Bids or otherwise) received prior to the published deadline shall be considered.
- All modifications to the Invitation to Bid shall be announced in an addendum published through the applicable electronic bidding system.
- Electronic Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the Invitation for Bids.
- Procurement Officer must be able to verify when Bid information and other relevant data are received in order to address any bid protests due to technical issues encountered in submitting Electronic Bids.

Section 5. Procurement Officer's Certification. If Electronic Bids are submitted for a project, the Procurement Officer shall include a certification in his/her recommendation of award that the Rules and Section 49.2731 of the Texas Water Code have been followed in soliciting, opening, reviewing and recommending award of the winning Bid. The certification shall be in substantially the same form as Exhibit 1 attached hereto.

Section 6. Reports and Updates. The Rules shall be evaluated by the Procurement Officer as necessary from time to time and the Procurement Officer shall recommend changes to the Rules to the Board as appropriate. If presented with proposed changes by the Procurement Officer, the Board will determine whether to accept, modify or reject such changes.

EXHIBIT 1
TO SECTION 49.2731 ELECTRONIC BIDDING RULES

**ENGINEER'S OR LANDSCAPE ARCHITECT'S CERTIFICATE
TEXAS WATER CODE SECTION 49.2731 ELECTRONIC BIDDING RULES
COMPLIANCE**

I, the undersigned, a duly registered professional engineer or landscape architect under the laws of the State of Texas, and authorized representative of _____, the duly appointed and acting consulting engineer or landscape architect for Harris County Municipal Utility District No. 109 ("District") do hereby certify that:

I am familiar with and have examined Texas Water Code Sections 49.273 and 49.2731, the District's Electronic Bidding Rules ("Rules"), and the software under which the District received bids for the following project through electronic transmission: [*insert project description*].

I hereby certify (i) compliance with Texas Water Code Section 49.2731 and the Rules, (ii) that, to the best of my knowledge, said software is designed to assure the identification, security and confidentiality of the bids; and (iii) that electronically submitted bids remain effectively unopened until the proper time.

WITNESS MY HAND AND PROFESSIONAL SEAL this ___ day of _____,
20__.

_____,
Registered Professional Engineer
Registration No. _____

(SEAL)