



**San Jacinto River Authority
Purchasing Department
1577 Dam Site Road
Conroe, Texas 77305**

**REQUEST FOR QUALIFICATIONS
RFQ #18-0004-A**

**Professional Engineering Design, Procurement Assistance,
and Construction Phase Services
for the
WWTF No. 1 Replacement of Aeration Basin Nos. 1 and 2
Project**

NIGP CLASS and ITEM

925	00
925	97

**Issue Date: May 2, 2019
Response Due Date and Time (CDT):
May 31, 2019 @ 11:00 a.m.
Location for Delivery: as stated above**

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1. INTRODUCTION

In accordance with the provisions of Chapter 49 of the Texas Water Code, Texas Government Code 2254 (Professional Services Procurement Act), and Title 40 Code of Federal Regulations, Part 31 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), the San Jacinto River Authority (SJRA) is requesting qualifications based responses to contract with a Professional Engineering Design Consultant (“Consultant”), which must be a sole proprietorship, partnership, corporation, or other legal entity registered to do business in the State of Texas, that includes a Texas Licensed Professional Engineer, with considerable experience in providing professional engineering services associated with the development and implementation of the “WWTF No. 1 Replacement of Aeration Basin Nos. 1 and 2” project.

This Request for Qualifications (RFQ) solicits information that will enable SJRA to determine the highest qualified Consultant that shall provide the professional engineering services for the project, which is funded in part through a loan from the Texas Water Development Board (TWDB) Clean Water State Revolving Fund (CWSRF), through the United States Environmental Protection Agency (EPA). CWSRF project funding (loan award) is contingent upon release of funds from the TWDB.

Any contract or contracts awarded from this solicitation are funded in part by a loan from TWDB. Neither the State of Texas, nor any of its Departments, Agencies, or Employees are or will be a part to this solicitation, or any resulting contract.

The San Jacinto River Authority is exempt from Federal Excise and State Sales Tax.

2. OVERVIEW OF SAN JACINTO RIVER AUTHORITY

The San Jacinto River Authority (SJRA) was originally created by the Texas Legislature as the “San Jacinto River Conservation and Reclamation District” by House Bill No. 832, Chapter 426, of the General and Special Laws of the 45th Texas Legislature, Regular Session, 1937. In 1951, the Texas Legislature changed the name of the “San Jacinto Conservation and Reclamation District” to the “San Jacinto River Authority.” SJRA is a government agency whose mission is to develop, conserve, and protect the water resources of the San Jacinto River basin. Covering all or part of seven counties, the organization’s jurisdiction includes the entire San Jacinto River watershed, excluding Harris County. This includes all of Montgomery County and parts of Walker, Waller, San Jacinto, Grimes, and Liberty Counties. SJRA is one of 10 major river authorities in the State of Texas, and like other river authorities, its primary purpose is to implement long-term, regional projects related to water supply and wastewater treatment.

SJRA’s general offices are located at 1577 Dam Site Road, Conroe, Texas 77305. SJRA has six (6) separate divisions, the General and Administrative Division, Flood Management Division, Lake Conroe Division, Woodlands Division, Highlands Division, and Groundwater Reduction Plan (GRP) Division. More information can be accessed here: <http://www.sjra.net/about/>

3. PROJECT REQUIREMENTS AND PROJECT DESCRIPTION

The San Jacinto River Authority (SJRA) has identified the need for a Consultant to provide professional engineering design phase services, procurement phase assistance, and construction phase services for the WWTF No. 1 Replacement of Aeration Basin Nos. 1 and 2 project.

The Consultant shall furnish all required labor, materials, supplies and travel required in connection with the project. SJRA expects that the project staff will include individuals with expertise in project design, including design of projects at wastewater treatment facilities involving civil, structural, mechanical, electrical, instrumentation and control, demolition, and pavement work. It shall be each prospective firm's responsibility to assemble a team of qualified professionals as needed to meet resource and discipline/area services requirements, along with the stated "fair share" goals, as required in Item #23 – Disadvantaged Business Enterprise (DBE) Goals.

Background

Since 1975, SJRA's Woodlands Division has provided wholesale regional water and wastewater utility services to The Woodlands, Texas. The area served includes 11 municipal utility districts (MUDs) and a population of over 100,000 residents. The wastewater treatment system consists of three wastewater treatment facilities that are owned, operated, and maintained by SJRA. Wastewater Treatment Facility No. 1 (WWTF No. 1) is the oldest of the treatment facilities, originally constructed in 1975, and is the location of the proposed project described in this RFQ.

WWTF No. 1 includes four aeration basins, two of which are equipped with mechanical aerators (Aeration Basin Nos. 1 and 2), while the remaining two employ a fine bubble diffused aeration system (Aeration Basin Nos. 3 and 4). Aeration Basin No. 1 was constructed in 1975 with the original plant construction and Aeration Basin No. 2 was added in 1978. The original design of Aeration Basin Nos. 1 and 2 provided pure oxygen and fixed mechanical surface aerators as the method of aeration. Later, both basins were converted for use with mechanical aeration under atmospheric conditions. Aeration Basin No. 1 is currently out of service and would require significant structural repairs to be utilized. In January 2015 CDM Smith completed a comprehensive evaluation of WWTF No. 1 which included recommendations for the aeration system, including an alternative for replacing Aeration Basin Nos. 1 and 2 with a new basin with a fine bubble aeration system and new blowers. In 2017 as part of master planning, Freese and Nichols and Ardurra Group completed a wastewater system optimization study that provided additional analysis of the recommendations that were made in the 2015 evaluation. The 2017 optimization study recommendations included demolishing Aeration Basin Nos. 1 and 2, building a new structure for two new aeration basins each with a capacity of 1.5 MGD matching Aeration Basin Nos. 3 and 4, and adding blowers, air piping, and equipment.

A Preliminary Engineering Report is currently underway to evaluate options and alternatives for replacing Aeration Basin Nos. 1 and 2 and providing a complete and fully operational aeration system, including evaluation of potential future biological nutrient removal, aeration basin location and layout, blower location and layout, blower types, diffused aeration layout, and electrical and instrumentation.

Anticipated Consultant Scope of Work

It is anticipated that the Preliminary Engineering Report (PER) by Ardurra Group, currently in progress, will be complete prior to procuring the Consultant, and upon completion shall be made available to the *highest qualified* Consultant for review and subsequent project pricing.

The Consultant shall review and evaluate the PER, including the options presented therein, and shall evaluate design considerations such as construction costs, lifecycle costs, regulatory compliance, operation and maintenance, and constructability. Following evaluation of the PER, the Consultant shall provide a Design Technical Memorandum (TM) indicating the Consultant's recommendations for final design. After receiving SJRA's agreement with the recommendations in the Design TM, the Consultant shall perform final design of the project, and shall assist SJRA with procurement phase services so that SJRA can procure a construction contract. Following procurement of a construction contract, the Consultant shall perform certain professional engineering construction phase services during construction of the project. Construction management and inspection (CM&I) is outside the scope of this RFQ, and will either be performed either by SJRA staff or by an external company.

It shall be each prospective firm's responsibility to assemble a team of qualified professionals as needed to meet resource and discipline/area services requirements, along with the stated "fair share" goals, as required in Item #23 – Disadvantaged Business Enterprise (DBE) Goals. SJRA has no objection to firms who may wish to consider teaming with subconsultants so that the prospective firm's team has the ability and the depth of resources to offer the required level of services within SJRA's required schedule and budget.

The anticipated Scope of Work will generally include, but not necessarily be limited to, the following elements (final Scope of Work is subject to change):

Task 1101 – Project Management

1. Project Initiation Meeting: Conduct one (1) project initiation meeting with SJRA and other interested parties regarding the project to discuss project expectations, schedule, and deliverables and confirm Project goals. The project initiation meeting will include not only administrative and management topics, but will also include a discussion of the proposed design approach. The Consultant shall prepare a full meeting agenda/presentation. Record, prepare and distribute or cause to be distributed to all meeting attendees, a summary of the discussions and activities of the meeting.
2. Project coordination, management, and communication shall include, but is not limited to, the following items:
 - a. Review, become familiar with and incorporate the policies, procedures and practices of SJRA.
 - b. Project Management Plan (PMP): Develop and submit for SJRA review and approval, a Project Management Plan (PMP).
 - c. Quality Assurance and Quality Control (QA/QC): Develop and submit for SJRA review and approval, a Quality Assurance and Quality Control (QA/QC) Plan. Implement

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approved QA/QC Plan to check, as a minimum, document management systems compliance, planning methods, design methods, calculations, cost estimates, field investigations, measurements, drawings, specifications, addenda, and other technical issues associated with Project planning and design.

The PMP and QA/QC Plan documents may be combined into a single deliverable covering both items.

- d. Ensure compliance to all contractual terms and conditions including adherence to budget, schedule, scope, and quality.
- e. Plan and ensure proper qualified and experienced personnel are timely assigned to project activities and coordinate the efforts of such personnel to ensure budget, schedule, scope, and quality compliance. Ensure other required equipment and material resources are readily available for proper project execution.
- f. Baseline Schedule Development and Updates: Prepare, provide, and maintain an electronic project schedule using Microsoft Project® for SJRA approval. Periodically update schedule at all phases of the Project. Schedule shall include critical activity start and/or completion dates as milestones, including monthly progress meetings, draft and final report due dates, 60%, 90%, and final design submittal due dates, and all other SJRA Project deliverable due dates, as a minimum.
- g. Project Status Reports: Prepare and submit monthly progress/status reports to support monthly billings, and additional progress/status reports as requested by SJRA. As a minimum, monthly progress/status reports shall include a summary description of tasks completed as of status report date, description of activities planned for next 30 days, financial status of project, status of schedule for project, and identification of any technical or other issues which may have an impact to the overall project budget and/or schedule.
- h. Project Update Meetings: Attend project progress/coordination meetings. Identify and facilitate all meetings. Record, prepare and distribute or cause to be distributed to all meeting attendees, a summary of the discussions and activities of each meeting attended.
- i. Sub-Consultant Coordination: Manage, administer and coordinate the work of all sub-consultants. Review and become familiar with reports, documents, studies, and other information obtained and developed by the sub-consultants and incorporate into the Work. Identify potential impacts to the work, develop alternatives to eliminate, minimize and/or mitigate those impacts and present those alternatives to SJRA for consideration. Incorporate the alternative selected by SJRA into the Work.
- j. Facilitate document control and document sharing by utilizing the Project SharePoint® site for distribution and electronic filing of all Project documents. Attend up to a ½-day SharePoint® training session with SJRA staff.
- k. Implement SJRA standard forms as required by the SJRA Project Management Plan.

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- l. A QA/QC Audit will be performed by SJRA. Assist SJRA in performing audit and make readily available all files and documents necessary for the time when SJRA will be present. Audit date/time will be scheduled in advance of the audit.
- m. Consultant shall notify assigned SJRA Project Manager in writing that Consultant has expended eighty percent (80%) of the currently approved SJRA Professional Services Agreement and/or Work Order amount within seven (7) calendar days of Consultant reaching this expenditure milestone (80% expenditure milestone). Written notification shall be provided regardless of compensation type (i.e., lump sum, cost-plus multiplier, time-and-materials, etc.). Written notification shall include a statement by Consultant indicating whether remaining amount is adequate to complete current SJRA approved Professional Services Agreement and/or Work Order Scope of Work.

Deliverables:

- a. PMP
- b. QA/QC Plan
- c. Project Schedule
- d. Monthly Progress Reports
- e. Project Initiation Meeting Minutes
- f. Project Coordination Meeting Minutes

Due Dates:

- 14 Calendar Days after NTP
- 14 Calendar Days after NTP
- 14 Calendar Days after NTP
with Invoice Submittal
- 7 Calendar Days after Meeting
- 7 Calendar Days after Meeting

Task 1102 – Technical Review and Analysis

The Consultant shall become familiar with the project and perform a technical review and analysis of the 2019 Preliminary Engineering Report (PER) and other available data to determine, assess, and evaluate options and alternatives, present the options and alternatives to SJRA, and based on concurrence from SJRA provide a recommended alternative in a Design Technical Memorandum.

Technical Review and Analysis shall include, but not be limited to, the following:

1. Conduct one (1) site visit with SJRA staff to adequately and thoroughly understand and appreciate all physical aspects of the project site, to understand the operation of the existing treatment facility, and to discuss operational difficulties, remedial opportunities and solutions. The Consultant shall prepare a full meeting agenda/presentation. The Consultant shall record, prepare and distribute or cause to be distributed to all meeting attendees, a summary of the discussions and activities of the meeting.
2. Review and evaluate the 2019 PER by Ardurra Group, including the options presented therein. Evaluate the following design considerations, at a minimum:
 - a. Impacts of identified options on wastewater treatment facility capacity, treatment, water quality, operation, and maintenance;
 - b. Engineer's Opinion of Probable Construction Cost (EOPCC);
 - c. Regulatory requirements/compliance;
 - d. Constructability, including construction phasing and duration, and ability to keep the existing treatment facility in operation and in compliance during construction;
 - e. Proposed electrical system improvements, including capability of existing standby power system;

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- f. Proposed instrumentation and SCADA improvements;
 - g. Existing and planned future treatment facility improvements and their potential effects on the project;
 - h. Additional efforts needed during final design including additional survey and geotechnical investigation.
3. Following review of the 2019 PER, if Consultant requires additional data to proceed with design, SJRA will provide available data to the Consultant for review. Available data includes but is not limited to:
- a. Existing WWTF flow data and other operational WWTF data.
 - b. Existing record drawings, for additional detail not previously investigated in previous reports/studies that will have a direct influence on the proposed work;
 - c. Planned/designed improvements to the WWTF, currently in construction or not yet constructed, for the purposes of identifying any possible conflicts and/or site constraints for the proposed work;
 - d. Existing studies and reports, including but not limited to the 2015 evaluation report by CDM Smith, and 2017 wastewater system optimization study report by Freese and Nichols and Ardurra Group.
4. Review and utilize SJRA design standards and guides for design.
5. Identify and coordinate with all State, Federal and local entities that may have permitting, regulatory, and/or similar approval authority over the project, including but not limited to the Texas Commission on Environmental Quality (TCEQ) and the Texas Water Development Board (TWDB). Contact the agencies to understand permit submittal requirements, process expectations, and typical approval timelines. Coordination may include conference calls, meetings, and site visits. Provide documentation of coordination including agencies contacted, dates contacted, items discussed, and agency responses. Provide documentation of coordination including agencies contacted, dates contacted, items discussed, and agency responses. The scope does not include coordination with local, state or federal agencies with specific regard to TWDB environmental review and clearance because a Categorical Exclusion (CE) has been granted by the TWDB.
6. Prepare and provide a Design Technical Memorandum (TM) that summarizes the Consultant's research during Technical Review and Analysis, and includes Consultant's recommendations for final design. The Design TM shall include the following, at a minimum:
- a. Provide recommendations for design considerations identified in Task 1102, Item No. 2.
 - b. If the Consultant's recommendations for final design differ from those presented in the 2019 PER, prepare and provide preliminary design drawings including but not limited to a project location map, preliminary design drawings which portray the general layout and design concepts, and cross sections and/or details at specific locations of potential conflict or areas/locations of specific interest that may impact execution of the work.
 - c. Provide an Engineer's Opinion of Probable Construction Cost (EOPCC) for the recommended option for final design. Provide the methods used for preparation of EOPCC.

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- d. Prepare and submit a Draft Design TM for SJRA review and comment. One Draft Design TM review meeting with SJRA will be conducted after the Draft Design TM is submitted, but before the Final Design TM is submitted.
- e. Prepare and submit a Final Design TM for SJRA review and approval. All review comments from the Draft Design TM shall be incorporated into the Final Design TM.

Deliverables:

- a. *Draft Design TM*
- b. *Final Design TM*
- c. *Project Coordination Meeting Minutes*

Due Dates:

- TBD– as agreed upon in Project Schedule*
- TBD– as agreed upon in Project Schedule*
- 7 Calendar Days after Meeting*

Task 1103 – Final Design

1. Based on the recommendations provided in the Design Technical Memorandum, prepare and provide 60%, 90% and final plans, specifications, front-end documents, and contract documents. These documents shall conform to the SJRA Design Standards & Criteria Manual, Project Management Plan, and other manuals located on SJRA’s SharePoint® site. Address all review comments from prior design submittals, and return prior review comments when making the next required design submittals. It is anticipated that the competitively sealed proposal delivery methodology will be utilized to procure construction contractor services. Accordingly, include compatible front-end bidding documents provided by SJRA when preparing specifications. For the interim submittals of the contract documents, the Consultant will prepare and submit three (3) full size (22”x34”) and two (2) half size (11”x17”) drawings and two hard copies of the specifications for the 60%, 90%, and Final Milestone Submittal for SJRA review and approval. After each milestone submittal, SJRA will consolidate its submittal review comments via a comment matrix and provide to the Consultant within fourteen (14) calendar days of receipt of the design submittal. The Consultant shall attend a comment review workshop with SJRA to review these comments. The Consultant shall respond to and complete comment matrix by providing responses/answers to each item in the matrix and documenting were addressed. The plans and specifications must conform to SJRA Design Standards. The scope of the project shall include the preparing construction documents including plans, details, and specifications for civil/site, structural, architectural, mechanical, electrical, and SCADA/instrumentation design elements.
2. Coordinate with SJRA staff and other stakeholders during final design. Coordination may include site visits with SJRA staff, conference calls, and meetings including milestone meetings at key stages of design.
3. Identify and coordinate with all State, Federal and local entities that may have permitting, regulatory, and/or similar approval authority over the project, including but not limited to the Texas Commission on Environmental Quality (TCEQ) and the Texas Water Development Board (TWDB). Contact the agencies to understand permit submittal requirements, process expectations, and typical approval timelines. Coordination may include conference calls, meetings, and site visits. Provide documentation of coordination including agencies contacted, dates contacted, items discussed, and agency responses. Provide documentation of coordination including agencies contacted, dates contacted, items discussed, and agency responses. The scope does not include

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coordination with local, state or federal agencies with specific regard to TWDB environmental review and clearance because a Categorical Exclusion (CE) has been granted by the TWDB.

4. Determine physical site investigations required to verify location of known existing subsurface utilities at critical locations. Identify potential impacts to the Work, develop alternatives to eliminate, minimize and/or mitigate those impacts, including potential relocations, and present alternatives to SJRA for consideration. Incorporate the alternative selected by SJRA into the work.
5. Consultant shall review existing geotechnical information provided with the PER to address subsurface conditions, groundwater observations, and provide foundation and paving recommendations. If Consultant and SJRA determine that additional existing geotechnical information is required for final design, perform geotechnical investigation. Submit a draft geotechnical report to SJRA for review and comment. Incorporate comments from SJRA and submit a final geotechnical report.
6. Consultant shall review existing topographic survey provided with the PER. If Consultant and SJRA determine that additional survey data is required for final design, perform topographic survey. The survey shall be on the same datum and compatible with previously surveyed areas. Submit draft topographic survey data to SJRA for review and comment. Incorporate comments from SJRA and submit final topographic survey data. Typical deliverables include a survey control map, topographic survey, survey data in electronic format, and surveyor field books and notes. If applicable, the Consultant shall also provide GIS data in electronic format.
7. Perform site visits as required by the SJRA Design Standards and Criteria Manual and additional visits as the Consultant deems necessary upon approval by SJRA.
8. Prepare and provide an Engineer's Opinion of Probable Construction Cost (EOPCC) at the 60%, 90%, and final submittal milestones.

Deliverables:

- a. 60% Design Submittal Package
- b. 90% Design Submittal Package
- c. Final Design Submittal Package
- d. 60%, 90%, and Final EOPCC
- e. Draft Geotechnical Report (if necessary)
- f. Final Geotechnical Report (if necessary)
- g. Draft Topographic Survey Data (if necessary)
- h. Final Topographic Survey Data (if necessary)

Due Dates:

- TBD – as agreed upon in Project Schedule
- TBD – as agreed upon in Project Schedule
- TBD– as agreed upon in Project Schedule
- With Submittal Packages
- TBD– as agreed upon in Project Schedule

Task 1104 – Procurement Phase Assistance

Consultant shall assist SJRA to obtain proposals for construction of the project via the competitive sealed proposal process.

1. Provide assistance to SJRA project team during the procurement process. This will include, but is not limited to the following:
 - a. Provide electronic proposal documents (plans, specifications, and contract documents) to SJRA via SharePoint®

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- b. Prepare for and attend a pre-proposal conference for prospective proposers at the office of SJRA.
 - c. Respond to questions from prospective proposers and suppliers during the proposal preparation period as necessary.
 - d. Prepare addenda, as required.
 - e. SJRA will advertise the project, post electronic proposal documents on the SJRA bidding website, and issue all addenda.
2. Prepare and provide final drawings, specifications and addenda in both hard copy form (three (3) full size sets) and electronic format (PDF) on two (2) CDs/DVDs. Labels shall be placed on each CD/DVD which clearly identifies SJRA, Project name, Project number, Consultant name, and date.
- a. Provide all CAD files in accordance with the requirements of the SJRA Design Standards and Criteria Manual. Provide all CAD data from the project in the format of AutoCAD Civil 3d (AutoCAD 2012 or more recent) .dwg files with the projection specified in accordance with the requirements of the SJRA Design Standards and Criteria Manual. Provide all CAD and other electronic files as necessary to facilitate implementation of SJRA's GIS system.
 - b. Provide all GIS data from the project in the format of either shapefiles (.shp) or geodatabase (.gdb). Projection to be NAD83 StatePlane Texas Central FIPS 4203 (US Feet). Please reference the GIS Spatial Data Standards document (hard copy provided or located on the SJRA Specification site in SharePoint®) for further details.
 - c. Provide complete SJRA Contract Documents in .pdf and .doc formats, and provide a complete set of conformed drawings in both .pdf format and .dwg format using AutoCAD 2012 or newer.

Deliverables:

- a. *Electronic Proposal Documents*
- b. *Addenda*
- c. *Conformed Documents*
- d. *CAD Files*

Due Dates:

- TBD– as agreed upon in Project Schedule*
1 Week Before Proposal Opening
2 Weeks After Proposal Opening
2 Weeks After Proposal Opening

Task 1105 – Construction Phase Services

The Consultant shall provide professional services during construction to assist SJRA in obtaining a completed project in accordance with the purpose and intent of the Construction Documents. Construction Phase Services shall include, but not be limited to the following:

1. Participate in SJRA's pre-construction conference and construction progress meetings and prepare meeting minutes within five (5) calendar days and submit them to SJRA electronically via SharePoint®;
2. Make visits to the Project site at least once a month as construction proceeds to observe and report on the progress and the quality of the executed Work;

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3. Prepare monthly Project progress meeting reports. The reports shall be in writing, and include all referenced supporting documents and shall advise SJRA of deviations from the Construction Documents or the contractor's construction schedule observed by or brought to the attention of the Consultant. Such reports shall be submitted in a timely manner so as not to cause delay in the progress of the Work and signed by the personnel making the site visit. In performing these services, the personnel provided by the Consultant shall be experienced in the administration of construction contracts and shall be under the supervision of a professional engineer registered by the State of Texas and approved by SJRA. Supporting personnel shall be provided from the Project design team when specialized knowledge of the Project design is required as determined by SJRA;
4. Review and take appropriate action upon the shop drawings, samples, and other submissions furnished by the construction contractor and submitted to Consultant by SJRA. Submittals reviewed by Consultant will be performed electronically via SharePoint®. Consultant shall coordinate with SJRA prior to the pre-construction meeting to determine the preliminary list of submittals expected to be reviewed by the Consultant based on the requirements in the Construction Documents and so Consultant can schedule future reviews and their manpower. Such action(s) shall be taken within fourteen (14) calendar days of receipt of the submittal unless an extension is approved in advance by SJRA. Consultant and SJRA shall maintain a log of all contractor submittals which shall include the date the submittal was received, the action taken, and the date returned by the Consultant;
5. Provide assistance/input to SJRA's construction manager in connection with change orders and work change directives during construction, when such change orders are required either:
 - a. To make clarifications or to correct discrepancies, errors, or omissions in the Construction Documents, or
 - b. To conform the Construction Documents to the requirements of all applicable laws and codes as they were in effect at the time of execution of this Contract, or
 - c. During the Construction Phase, make revisions to Construction Documents to reflect Project scope changes requested by SJRA, as required to address changed conditions or change in direction previously approved by SJRA, as mandated by changing governmental laws, or as necessitated by SJRA's acceptance of substitutions proposed by the contractor.
6. Review laboratory, shop, and mill tests of material and equipment for general conformance with Contract Document requirements and report to the Owner in writing on such matters using the standard form;
7. Provide responses to Requests for Information (RFIs) and design clarifications within three (3) calendar days and recommendations to assist the Owner in resolving field issues relating to the construction;
8. Perform, together with SJRA's representatives, observations of the construction site to determine the dates of the substantial and final completion of the Work. Consultant shall attend the substantial and final walkthroughs and provide Consultant-observed punch list items to SJRA;
9. To avoid misunderstandings or questions, Consultant understands and agrees that SJRA shall have the responsibility for the general administration of the construction contract. Accordingly,

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Consultant shall not have the authority or responsibility to issue direct instructions to the contractor, to reject work done by the contractor, or to require special inspections or tests. Consultant, however, shall provide continuing counsel to SJRA throughout the construction of the Project;

10. Post changes on original “Record Drawings” in electronic format (.pdf and AutoCAD 2012 or more recent - .dwg files only) that shall become the property of SJRA and shall show significant changes made in the Work during the construction of the Project. Such changes shall be based upon marked-up “record drawings”, prints, field sketches, and other data furnished to Consultant by SJRA and the contractor, upon change orders issued during construction, and upon on-site observations of Consultant. Consultant shall deliver one electronic draft copy for review and one final copy incorporating SJRA’s review comments. One full-scale hard copy and the original CAD files will be turned over with the final submittal.

Provide all GIS data from the Project in the format of either shapefiles (.shp) or Geodatabase (.gdb). Projection to be NAD83 StatePlane Texas Central FIPS 4203 (US Feet). Please reference the GIS Spatial Data Standards document (hard copy provided or located on the SJRA Specification site in SharePoint®) for further details.

Provide all CAD data from the Project in the format of either AutoCAD AutoCAD 2012 (or more recent) .dwg files with the projection specified in accordance with the requirements of the SJRA Design Standards and Criteria Manual. Provide all CAD and other electronic files as necessary to facilitate implementation of SJRA’s GIS system.

Deliverables:

- a. Monthly Progress Reports
- b. List & Log of Submittals
- c. Response to Submittals
- d. Response to Change Orders
- e. Response to RFIs
- f. Monthly Pay Requests
- g. Consultant-Observed Punch List
- h. As-Built Drawings

Due Dates:

- Monthly During Construction
- 14 Calendar Days After NTP
- 14 Calendar Days After Receipt
- 14 Calendar Days After Receipt
- 3 Calendar Days After Receipt
- Monthly During Construction
- 5 Calendar Days After Walkthrough
- 14 Calendar Days After Approval of Record Drawings

Anticipated Schedule

The anticipated schedule for the project is as follows. Please note schedule below is subject to change. In the event of a schedule change, the Consultant will be notified as changes are anticipated.

- Final Design Contract Award by SJRA – September 2019
- Final Design/Procurement Completion – July 2020
- Construction Contract Award by SJRA – August 2020
- Construction Substantial Completion – March 2022

All of the services shall be accomplished per Item #3 Project Requirements and Project Description, and as further clarified and negotiated once a Consultant has been selected. A detailed Scope of Work will be developed at that time.

4. MINIMUM QUALIFICATIONS

The following minimum requirements must be demonstrated in order for the submission to be **considered responsive** to the San Jacinto River Authority. Any submission received, which is determined to not meet these mandatory requirements *may be* disqualified and rejected as non-responsive. Refer to Item #22 for general provisions and SJRA reservations of rights, in regards to this solicitation.

- A demonstrated competence in providing Professional Engineering Services related to projects at wastewater treatment facilities involving civil, structural, mechanical, electrical, instrumentation and control, demolition, and pavement work.
- SJRA requires three (3) references from customers for the services requested.
- Licensed by the State of Texas as a licensed Professional Engineer to perform the services and possess a satisfactory record of integrity and ethics, as evidenced by no actions taken by the Texas Board of Professional Engineers against the team or individual(s).
- The responding individual or business including sub-Consultants must be registered within the State of Texas to provide the products or services required in the solicitation, and the individual or business must have all licensure required by the State to provide any services required under this contact.

To learn how to obtain information about filing with the State of Texas, or obtaining copies or certificates from the Secretary of State visit Webpage: <http://www.sos.state.tx.us/corp/copies.shtml>; Phone 512-463-5578; or email corpcert@sos.state.tx.us.

- Submittal documents including a coversheet, Solicitation Checklist, Attachments A - F and any additional requirements, per the method described in Item #17 - SUBMITTAL INSTRUCTIONS.

5. SCHEDULE OF EVENTS

The San Jacinto River Authority reserves the right to change the dates indicated below:

Issue Solicitation:	05/02/2019
Non-mandatory pre-submittal conference:	05/14/2019 at 10:00 AM CDT
Deadline for submission of questions:	05/22/2019 at 11:00 AM CDT
Deadline for submission of responses:	05/31/2019 at 11:00 AM CDT
Evaluate and rank initial results (shortlist):	06/03/2019 – 06/14/2019
Interview(s) with top ranked teams:	06/27/2019
Evaluate and rank shortlisted teams:	06/28/2019 – 07/05/2019

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Negotiation with top ranked team: 07/08/2019 – 08/28/2019
Official award by SJRA Board of Directors: 09/26/2019

6. PRE-SUBMITTAL CONFERENCE

A *non-mandatory* pre-submittal conference will be available to interested consultants. Attendance at the pre-submittal conference is strongly encouraged prior to submission of a response. The conference will be held on **May 14, 2019 at 10:00 am** in the Woodlands Executive Conference Room, 2436 Sawdust Road, The Woodlands, Texas 77380.

7. CONTRACT TERM

Award of WWTF No. 1 Replacement of Aeration Basin Nos. 1 and 2 Project

It is the intention of the San Jacinto River Authority (SJRA) to award a Professional Services Agreement (PSA) work order contract for this project to a Texas Licensed Professional Engineer or Engineering Team, with an individual work order to perform the negotiated services described herein and as detailed in Item #3 Project Requirements and Project Description. The project shall include, without limitation, professional engineering design services in support of the WWTF No. 1 Replacement of Aeration Basin Nos. 1 and 2 project, which is anticipated to include tasks for Project Management, Technical Review and Analysis, Final Design, Procurement Phase Assistance, and Construction Phase Services. The PSA work order contract shall commence upon the issuance of a Notice to Proceed (NTP) by SJRA and shall automatically expire upon acceptance by SJRA following completion of the work.

SJRA may terminate the PSA work order contract, individual work order, and Purchase Order, for any reason, with or without cause in accordance to the terms and conditions of Exhibit “A” – Professional Services Agreement. SJRA reserves the right to negotiate final terms and conditions of the contract. SJRA also retains the right to revise the Professional Services Agreement (PSA) based on review of laws passed by the Texas Legislature.

8. PRICING

Do not submit pricing information with your initial proposal submission.

This contract is for professional services as defined in the Texas Government Code 2254 (TGC 2254) and price *shall not* be solicited. The San Jacinto River Authority will select a team on the basis of demonstrated competence and qualifications to perform the services described in this RFQ. Once the most qualified team has been selected, a fair and reasonable fee will be negotiated. The professional fees under this contract may not exceed any maximum provided by law.

In accordance with TGC 2254, **after negotiation with the top ranked team and award of the contract**, a “Raw Salary times Raw Salary Multiplier” for the professional services shall be submitted for review by SJRA, along with any project reimbursable expenses, Consultant sub-consultant Costs – plus Awarded Consultant markup, and any reasonable fees paid to contract

personnel assigned to the project, which in total ***shall include all fees and costs*** to provide the engineering services to SJRA.

Firm Rate – Pricing for Award of WWTF No. 1 Replacement of Aeration Basin Nos. 1 and 2 Project

The individual project pricing to be negotiated with the top-ranked team, shall be firm, fixed, without any adjustments unless changes to the project scope of work are requested by SJRA.

9. ADDENDA

Respondents are required to acknowledge addenda with their submission. Respondents will be responsible for monitoring the San Jacinto River Authority website at <http://www.sjra.net/purchasing/bidopportunities/> to ensure they have downloaded and signed all addenda required for submission with their submission.

10. BUSINESS OVERVIEW

Respondent shall complete *Attachment A - Business Overview Questionnaire and Form*.

11. INSTRUCTIONS TO PROPOSERS / STATEMENT OF QUALIFICATIONS

SJRA is requesting a Statement of Qualifications (SOQ) from qualified Consultants to provide professional engineering design services. The Consultant shall include appropriately qualified, experienced and licensed professionals to provide these, as well as other services required within the proposed schedule.

1. SOQs shall not exceed fifty (50) pages total. ***Provide no more than 15 pages for sub-items #6 through #14 below; provide no more than 35 pages for the remainder of the RFQ including coversheet, Transmittal Letter, attachments, and plain section dividers.*** SOQs shall be printed on single side 8 ½” by 11” pages with not less than 1-inch margins, not less than 1.25 line spacing and not less than 12 point font.
2. Transmittal Letter – Provide a transmittal letter signed by an officer of the team who has the authority to commit the firm to the project.
3. General Information of the Team (prime firm and subconsultant firm(s), if any) to be included – ***Complete Attachment A- Business Overview and Questionnaire Form***
4. Project Schedule and Budget Compliance history – Provide specific details regarding the budget and schedules for a minimum of three (3) recent projects at wastewater treatment facilities involving civil, structural, mechanical, electrical, instrumentation and control, demolition, and pavement work – ***Complete Attachment C – Schedule and Budget Compliance Forms.***
5. References – Provide a minimum of three (3) references from the three projects assignments identified within ***Attachment C – Schedule and Budget Compliance Forms***, by completing ***Attachment D – References Form.***

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6. List of Past Projects Completed – For the prime firm *and subconsultant firm(s), if any*, provide a complete history listing of all projects at wastewater treatment facilities involving civil, structural, mechanical, electrical, instrumentation and control, demolition, and pavement work, in Texas for which the team(s) completed within the last five (5) calendar years. The listing shall provide client contact name, current phone number, and email address of the project owner. The team(s) will highlight all project and key personnel who participated in those projects and who are proposed to perform similar services for this proposed project effort.
7. List of Current Projects under Contract – Provide a list of all projects for which the prime team is currently under contract.
8. Team Organization Chart – Provide a Team Organizational Chart proposed for the project.
9. Experience of the Project Manager proposed on the project:

The qualifications, experience, and capabilities of the Project Manager who will be directly assigned to the project are major evaluation factors to be considered. Experience with other Texas local governmental funded projects and familiarity with Texas local governmental requirements and procedures will also be considered in the evaluation process. The personnel cited shall be designated as to whether they are an employee, or contract employee of the RFQ respondent. Provide the following information:

 - a. Name
 - b. Position/title within the team
 - c. Role/responsibility for this project, including availability and time commitment to the project
 - d. Current location and location during execution of the project
 - e. Education
 - f. Applicable registrations or certifications
 - g. Years of experience directly related to projects at wastewater treatment facilities involving civil, structural, mechanical, electrical, instrumentation and control, demolition, and pavement work.
 - h. Experience relevant to the specific aspects and anticipated services for the project, to include a summary of experience and qualifications, and detailed descriptions of no more than three (3) assignments of similar nature using the following format:
 - 1) Assignment Name/Location/Client
 - 2) Project description
 - 3) Work/services performed under direct supervision of the individual
 - 4) Subconsultants utilized on the project and nature of work of those subconsultants
 - 5) Involvement required by the Owner
 - 6) Original project schedule including all key deliverables (Reports, specifications, plans, contract documents, etc.)
 - 7) Actual completion date of project including all key deliverables
 - 8) Budget and schedule management and adherence
 - 9) Client contact name, title/position, current phone number and email address

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10. Experience of the lead technical professional(s) (i.e. Project Engineer(s), Design Manager(s) and/or Technical Manager(s)) proposed on the project:

The qualifications, experience, and capabilities of the lead technical professional(s) who will be directly assigned to the project are major evaluation factors to be considered. Experience with other Texas local governmental funded projects and familiarity with Texas local governmental requirements and procedures will also be considered in the evaluation process. The personnel cited shall be designated as to whether they are an employee, or contract employee of the RFQ respondent. Provide the following information:

- a. Name
 - b. Position/title within the team
 - c. Role/responsibility for this project, including availability and time commitment to the project
 - d. Current location and location during execution of the project
 - e. Education
 - f. Applicable registrations or certifications
 - g. Years of experience directly related to projects at wastewater treatment facilities involving civil, structural, mechanical, electrical, instrumentation and control, demolition, and pavement work.
 - h. Experience relevant to the specific aspects and anticipated services for the project, to include a summary of experience and qualifications, and detailed descriptions of no more than three (3) assignments of similar nature using the following format:
 - 1) Assignment Name/Location/Client
 - 2) Project description
 - 3) Work/services performed under direct supervision of the individual
 - 4) Subconsultants utilized on the project and nature of work of those subconsultants
 - 5) Involvement required by the Owner
 - 6) Original project schedule including all key deliverables (Reports, specifications, plans, contract documents, etc.)
 - 7) Actual completion date of project including all key deliverables
 - 8) Budget and schedule management and adherence
 - 9) Client contact name, title/position, current phone number and email address
11. Support Resources:

The qualifications, experience, and capabilities of support resources who will be directly assigned to the project are major evaluation factors to be considered. Experience with other Texas local governmental funded projects and familiarity with Texas local governmental requirements and procedures will also be considered in the evaluation process. The personnel cited shall be designated as to whether they are an employee, contract employee, or sub-consultant of the RFQ respondent. Provide the following information:

- a. Name
- b. Position/title
- c. Team name
- d. Role/responsibility for this project

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- e. Current location and location during execution of the project
 - f. Education
 - g. Applicable registrations or certifications
 - h. Years of experience directly related to the aspects of the project
 - i. Experience relevant to the specific aspects and anticipated services for this project.
12. Project Understanding and Approach
- Clearly and concisely provide a thorough discussion of the team’s approach to the planning and performance of engineering design services for this project, including an outline of the purpose and objectives for all major tasks, key issues requiring resolution, major deliverables, and anticipated schedule for completion. Highlight when possible how this project is similar to previous projects the team has conducted and how the team would ensure the successful execution of the work, including the team’s plan for QA/QC of the project.
13. Submit information regarding the team’s ability to meet the “fair share” goals, as required in Item #23 – Disadvantaged Business Enterprise (DBE) Goals. This will be further negotiated with the top ranked team, and become a requirement within the professional services agreement.
14. Other Information - Provide other information pertinent to the project regarding the team and its support resources.

12. EXCEPTIONS

The Request for Qualifications (RFQ) process allows for negotiation of the, final submitted pricing, and requirements of this proposal, however, the terms and conditions of the Professional Services Agreement (PSA) are ***not negotiable***. The respondent shall note any exceptions to the solicitation document, on **Attachment B – Submission Exceptions Form**. The exceptions will be reviewed to ensure they meet the minimum specifications and requirements and the proposal submission shall be ranked in accordance with the evaluation criteria. The San Jacinto River Authority reserves the right to accept, reject or negotiate the exceptions provided.

Complete, sign and return **Attachment B – Submission Exceptions Form**. Additional pages may be added as necessary, and will not count against the page limitations. **Do not mark or change the text of the solicitation document, exceptions shall be noted only on Attachment B – Submission Exceptions Form**. If no exceptions are taken, the respondent shall sign in the appropriate signature block and return **Attachment B – Submission Exceptions Form**, with their proposal submission.

13. SCHEDULE AND BUDGET COMPLIANCE

Respondents shall provide schedule and budget compliance for three (3) projects of similar scope to this RFQ. Complete the **Attachment C – Schedule and Budget Compliance Forms**.

14. REFERENCES

Respondents shall provide a list of a minimum of three (3) references as required in **Attachment D – References**. These references shall be consistent with the owners for the projects detailed in **Attachment C – Schedule and Budget Compliance Forms**.

15. DISCLOSURES

The individual or business must disclose any business relationship that would have an effect, of a conflict of interest. A conflict of interest statement must be signed as part of the contract negotiated with the awardee(s). Complete, sign, and return **Attachment E – Conflict of Interest Form**.

16. ACKNOWLEDGEMENT

Submit a signed acknowledgement by authorized agent of the responding team; complete sign, and return **Attachment F – Acknowledgement Form**.

17. SUBMITTAL INSTRUCTIONS

The San Jacinto River Authority will accept submissions until the date and time on the cover sheet of this solicitation. Any submission received after the date and/or hour set for solicitation opening will be returned unopened, and rejected.

The Qualifications Statement Response should be in a sealed envelope which are clearly labeled and addressed, and delivered (by Postal Service, team or express courier) to the address listed below:

CONFIDENTIAL: STATEMENT OF QUALIFICATIONS

San Jacinto River Authority
Purchasing Department
RFQ# 18-0004-A WWTF No. 1 Replacement of Aeration Basin Nos. 1 and 2 Project
1577 Dam Site Road
Conroe, TX 77305

The San Jacinto River Authority reserves the right to accept or reject in part or in whole any submission, and to waive technicalities of the submission, in the best interest of obtaining best value.

Each respondent is responsible for taking the necessary steps to ensure their submission is received by the date and time noted herein. The San Jacinto River Authority is not responsible for missing, lost or late mail or any mail or email delays, internal or external, that may result in the submission arriving after the set time.

18. SUBMISSION FORMAT

Respondents shall provide detailed information to allow the San Jacinto River Authority to properly evaluate the submission, as detailed within the solicitation. The San Jacinto River Authority requests the following format be utilized:

1. Submit response before the published due date. Submittals must be in a sealed envelope with the solicitation number and name.
2. Provide three (3) bound hard copy submissions, with original signature by an officer authorized to bind the team, and one (1) electronic PDF copy via USB flash drive (memory data stick) format.
3. Submission shall be no more than fifty (50) pages in length. ***Provide no more than 15 pages for the requirements in Item #11, sub-items #6 through #14; provide no more than 35 pages for the remainder of the RFQ including coversheet, Transmittal Letter, attachments, and plain section dividers.***
4. Utilize tabs to identify exhibits and attachments.
5. The submission shall be in the following order, utilizing plain section dividers:
 - a. Coversheet – including Solicitation number and name, team name, address, contact name, phone, fax, website and email address.
 - b. Transmittal Letter
 - c. Completed Solicitation Checklist
 - d. Attachment A – Business Overview and Questionnaire Form
 - e. Attachment B – Exception Form
 - f. Attachment C – Schedule and Budget Compliance Forms
 - g. Attachment D – References Form
 - h. Attachment E – Conflict of Interest Form
 - i. Attachment F – Signed Acknowledgement Form
 - j. Sub-items #6 through #14 as identified in Item #11 – Instructions to Proposers / Statement of Qualifications (***maximum 15 pages***)

19. EVALUATION PROCEDURES

Selection of a team to provide the aforementioned services shall be in accordance with the San Jacinto River Authority (SJRA) Purchasing Policies and Procedures, the State of Texas Government Code 2254, and Title 40 Code of Federal Regulations, Part 31 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments). SJRA shall open all submissions and evaluate each respondent in accordance to the below criteria:

Step 1: Initial Evaluation

SJRA shall conduct an **initial evaluation** of the submission(s) in accordance with the selection criteria and will provide an initial ranking (**shortlist**) of the teams on the basis of the submittals. SJRA reserves the right to consider information obtained in addition to the data submitted in the response. The selection criteria is listed below:

- a. Relevant experience, expertise, and qualifications of the team (prime consultant firm **and proposed subconsultant firm(s), if any**) (10 points);

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- b. Relevant experience, expertise, and qualifications of the Project Manager and Lead Technical Professional(s) **(30 points)**;
- c. Proposed experience, expertise, and qualifications of support resources **(15 points)**;
- d. Project understanding and approach **(30 points)**;
- e. Commitment to meeting DBE goals or “fair share” compliance **(15 points)**.

Respondent’s submission of required documentation, and the respondent will be awarded points based on the total amount of “good faith” effort achieved and submitted for this project.

TOTAL POSSIBLE POINTS: 100 POINTS

The submissions shall be scored as indicated above, Step 1 items a-e. Based on the outcome of the computations performed, each submission will be assigned a score for completion of the scoring process.

Step 2: Interviews (optional, at discretion of SJRA)

Following Step 1: Initial Evaluation, SJRA may conduct interviews with a minimum of three (3) top ranked teams (shortlist). The interview format shall be determined by SJRA, but may consist of presentations by the teams and opportunity for questions and answers (Q&A).

Step 3: Final Evaluation

Following Step 2: Interviews, SJRA shall conduct a final evaluation of the three (3) top ranked teams (shortlist), considering all selection criteria from Step 1 items a-e, and as further defined in the shortlisted team’s interview (if optional interviews were conducted).

Step 4: Negotiation

Following Step 3: Final Evaluation, SJRA shall proceed to negotiate a contract with the **highest ranked team**. Provided SJRA cannot successfully contract with the highest ranked team, the SJRA shall formally, and in writing, end all negotiations with that team and SJRA may elect to proceed to negotiate with the next team in the order of the selection ranking until a contract is reached or negotiations with all ranked teams end, in accordance with Texas Government Code 2254.

Step 5: Written Recommendation for Award

Following Step 4: Negotiation, a written recommendation for approval of a final negotiated professional services agreement will be presented to the SJRA Board of Directors requesting authorization to proceed with contract execution for the proposed services.

The successful respondent will be required to enter into a *Professional Services Agreement*, similar to Exhibit “A” of this solicitation. This RFQ and the successful respondents’ response, or any part thereof, may be incorporated into and made a part of the final contract. SJRA reserves the right to negotiate final terms and conditions of the contract. SJRA also retains the right to revise the Professional Services Agreement (PSA) based on review of laws passed by the Texas Legislature.

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There will be no disclosure of contents to competing teams and all responses will be kept confidential during the selection process to the degree permitted by law. SJRA is subject to the Texas Public Information Act (Texas Government Code 552). In accordance with the provisions of Texas Government Code 552.110, trade secrets, commercial or financial information that may be privileged or confidential by statute or judicial decision, are exempt from required public disclosure. All submissions shall be opened in a manner that avoids disclosure of the contents to competing respondents and keeps the responses secret during negotiations. A public opening will not be conducted with this process. All information, documentation, and other materials not marked “confidential” shall be subject to public disclosure, after award of the contract.

After the contract has been awarded all submissions will be open for public inspection, and the unsuccessful respondent(s) may request a debriefing regarding their submittal. Contact the SJRA Purchasing staff to document the request for a debriefing. A meeting with the SJRA Purchasing Staff and the using Division will be scheduled within a reasonable time.

20. CONTACT BETWEEN RESPONDENT(S) AND SAN JACINTO RIVER AUTHORITY

Respondents shall direct all inquiries and communications concerning this solicitation to the Point of Contact (POC) only, as listed below:

Elton D. Brock, MBA, CTPM, CTCM, C.P.M., CPSM
Manager, Purchasing Department
1577 Dam Site Road
Conroe, TX 77305
(936) 588-7101
ebrocks@sjra.net

Respondents or their representatives are strictly prohibited from communicating with any SJRA Board member, or SJRA staff, consultants, or advisors regarding this opportunity from during the solicitation process time period, or until an award is made, except as noted above as the POC. Any other contact with SJRA Board, SJRA staff, consultants, or advisors regarding this contract may eliminate that team from contract award consideration. All communications regarding this RFQ must be made in writing and electronically to POC as listed above.

All questions asked, and answers provided individually shall be posted electronically as an addendum to the solicitation. Email notice will not be provided, and respondents are encouraged to check the website frequently, for updates and addendums regarding this opportunity.

21. CONFLICT OF INTEREST

No public official shall have interest in this opportunity except in accordance with Vernon’s Texas Codes Annotated, Local Government Code Title 5, Subtitle C, and Chapter 171.

Attachment E – Conflict of Interest Form contained in this solicitation must be completed and submitted with any response. In accordance with the provisions of Texas Local Government Code 176.006, all respondents to this solicitation are required to file a public disclosure of certain

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information concerning the person(s) doing business or seeking to do business with SJRA, including affiliations and business and financial relationships such person(s)/business may have with SJRA Officers. By doing business or seeking to do business with SJRA, including submitting a response to the solicitation, the respondent acknowledges that he/she has been notified of the requirements of Texas Local Government Code 176 and represents that the said respondent is in compliance with the requirements.

Additional Requirement for Awarded Respondent only: Effective January 1, 2016, Texas Government Code 2252.908 requires government entities to ensure that all contracts, which require SJRA Board approval or have a value of at least \$1 million dollars, have met the following additional conflict of interest requirements:

- The government entity may not enter into a contract unless the business entity, in accordance with this section and rules adopted under this section, submits a disclosure of interested parties to the governmental entity at the time the business entity submits the signed contract to the government entity.
- The disclosure of interested parties must be submitted electronically through the Texas Ethics Commission website at:
https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

Provided your response is deemed as the best value to SJRA and a recommendation for award is approved, the above requirement shall be met prior to contract award by SJRA Board of Directors.

22. GENERAL

This RFQ does not commit SJRA to enter into a contract, nor does it obligate it to pay any costs incurred in the preparation and submission of a statement of qualifications and subsequent discussions, interviews and/or presentations in anticipation of a contract. The cost of preparing the qualification submission and any subsequent materials or presentation shall be solely the responsibility of the prospective respondent. SJRA reserves the right to:

- determine which response is in SJRA's best interest;
- reject any and all Statements of Qualifications received;
- cancel the entire RFQ;
- remedy technical errors in the RFQ process;
- negotiate with any, all, or none of the respondents to the RFQ;
- request proposals from a short list of respondents to the RFQ;
- conduct interviews with a shortlist of respondents to the RFQ, which may include a requirement to provide a presentation of the team's proposed solution by the team's proposed Project Manager;
- waive informalities and irregularities;
- modify the selection process;
- SJRA retains the right to select, approve, or disapprove all subconsultants; and
- SJRA retains the right to revise the Professional Services Agreement (PSA) based on review of laws passed by the Texas Legislature.

23. DISADVANTAGED BUSINESS ENTERPRISES (DBE) DOCUMENTATION AND REQUIREMENTS

Exhibit “B” contains the required forms, and guidance documents that must be returned with the response to this solicitation.

This project is contingent upon release of funds from the Texas Water Development Board (TWDB), and as such DBE requirements are applicable.

This RFQ is issued in accordance with Texas Government Code 2254 (Professional Services Procurement Act), Texas Water Code, Chapter 49 and Title 40 Code of Federal Regulations, Part 31 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. State and Federal requirements are to be applicable to this project, including requirements regarding procurement, cost and pricing data, solicitation of Disadvantaged Business Enterprises (DBE) and Equal Employment Opportunity (EEO).

The TWDB Clean Water and Drinking Water State Revolving Fund programs receive federal funds from the U. S. Environmental Protection Agency (EPA). These funds are used to provide low interest rate loans (bonds) to finance wastewater and drinking water capital projects. As a condition of federal grant awards, EPA regulations require that loan recipients (municipalities, towns, public water authorities, etc.) and sub-recipients (prime contractors and sub-contractors) make a "**good faith effort**" to award a “fair share” of work to DBEs, as acceptable to the TWDB, who are Minority Business Enterprises (MBEs), and Women-Owned Business Enterprises (WBEs) whenever procuring **construction, supplies, services and equipment**.

The DBE Program is an outreach, education, and goal oriented program designed to increase the participation of DBEs in procurements funded by EPA assistance agreements. In addition, EPA regulations require evidence of the demonstration of the "Six Affirmative Good Faith Steps" in trying to achieve the DBE participation goals.

MBEs and WBEs are encouraged to submit qualification statements for consideration.

The EPA and TWDB have established the following MBE/WBE “fair share” goals for this project:

“FAIR SHARE” GOALS

Project Category	MBE	WBE
Construction	19.44%	9.17%
Equipment	16.28%	11.45%
Services	20.41%	13.66%
Supplies	25.34%	8.82%

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The Consultant shall, if awarding to subconsultants, to the extent appropriate for the goals listed above, make a good faith effort to use minority and women-owned businesses when possible as sources of supplies and services by taking the following “Six Affirmative Good-Faith Steps”:

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, state and local government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether teams competing for large contracts could subcontract with DBEs. For Indian Tribal, state and local government recipients, this will include dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these teams to handle individually.
5. Use the services and assistance of the Small Business Administration (SBE) and the Minority Business Development Agency of the Department of Commerce.
6. If the prime Consultant awards subcontracts, require the prime Consultant to take the above steps.

Equal Opportunity in Employment – All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, pregnancy, sexual orientation, national origin, political belief or affiliation, age, disability or genetic information. The Consultant shall carry out applicable requirements of 40CFR Part 33 (<https://www.gpo.gov/fdsys/granule/CFR-2010-title40-vol1/CFR-2010-title40-vol1-sec33-301>) in the award and administration of contracts awarded under TWBD financial assistance agreements. Failure by the Consultant to carry out these requirements is a material breach, which may result in the termination of the awarded financial assistance.

TWBD document TWDB-0210 Guidance for U.S. Environmental Protection Agency Disadvantaged Business Enterprise Program describes the requirements for this program. The contractor must provide SJRA with the information required for DBE Certification and Participation Summary, TWDB document TWDB-373, and provide sufficient documentation (TWDB-216) that a “good faith effort” was made in offering fair opportunity for participation by qualified SMWBE teams. This information must be submitted prior to the contract award.

Respondents and/or their agents may contact the TWBD for assistance at 512-463-4841, Ms. Rosario Flores, DBE & Policy Coordination, Program and Policy Development, for clarification with any issues specifically related to the completion of the required TWBD forms.

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SOLICITATION CHECKLIST

Check when Completed	Task to be Completed by Respondent
	Review Exhibit “A” – Professional Services Agreement
	Review Exhibit “B” – Disadvantaged Business Forms and Guidance – Required for Submission
	Cover sheet
	Solicitation number
	Solicitation name
	Team name
	Solicitation Checklist
	Document how team meets minimum qualifications (see requirements in Item #4)
	Provide Statement of Qualifications and detail to support evaluation criteria
	Attachment A – Business Overview and Questionnaire Form
	Attachment B – Submission Exceptions Form
	Attachment C – Schedule and Budget Compliance Forms
	Attachment D – References
	Attachment E – Conflict of Interest Form – <u>with signature</u>
	Attachment F – Verification Company does not Boycott Israel
	Attachment G – Texas Government Code 2252.152 Certification
	Attachment H – Federal Debarment Certification Form
	Attachment I – Acknowledgment, with Addendum acknowledgment
	<u>Hard Copy Submission:</u> SJRA requires three (3) hard copies.
	<u>Electronic Copy:</u> SJRA requires submission of one (1) electronic PDF copy via USB flash drive (memory data stick)

Submit response, with plain section dividers marking each section, in the following order:

Order for Submission	Document
1	Cover Sheet and Submission Materials
2	Transmittal Letter
3	Completed Solicitation Checklist
4	Attachment A – Business Overview and Questionnaire Form
5	Attachment B – Submission Exceptions Form
6	Attachment C – Schedule and Budget Compliance Forms
7	Attachment D – References
8	Attachment E – Conflict of Interest Form
9	Attachment F – Verification Company does not Boycott Israel
10	Attachment G – Texas Government Code 2252.152 Certification
11	Attachment H – Federal Debarment Certification Form
12	Attachment I – Acknowledgment, with Addendum acknowledgment
13	Sub-items #6-14 of Item #11

ATTACHMENT A-BUSINESS OVERVIEW QUESTIONNAIRE AND FORM

1. Team or Firm legal name:

2. Corporate address:

3. Address and phone number of Texas office supporting this project:

4. Primary contact name, phone number and email address:

5. Website address:

6. Federal tax identification number:

7. Texas Board of Professional Engineers Team or Firm Registration Number:

8. Number of years in business:

9. Organization Class (circle):

Partnership	Corporation	Individual	Association
-------------	-------------	------------	-------------

10. Date of organization (month and year):

11. Location(s) of business:

12. Name(s) and date(s) of predecessor organization(s):

13. Total number of employees located in Texas office(s) supporting this Project:

14. Number and type of professionals and corresponding registrations/certifications located in Texas office(s) supporting this Project:

15. Historically Underutilized Business: Yes or No

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16. Type and limits of insurance coverage – **Note: SJRA standard insurance requirements are stated in Exhibit “A” of this document. Teams who cannot meet these minimum standards will not be considered.**
17. Provide a detailed listing of all products and/or services that your company provides.
18. Has your company filed or been named in any litigation involving your company and the Owner on a contract within the last five (5) years under your current company name or any other company name? If so provide details of the issues and resolution if available. Include lawsuits where Owner was involved. (Notice: Failure to disclose this information during proposal submission, and later discovered, may result in contract termination at the Owner’s option.)
19. Have you ever defaulted on or failed to complete a contract under your current company name or any other company name? If so, where and why? Give name and telephone number(s) of Project Owner(s).
20. Have you ever had a contract terminated by the Owner? If so, where and why? Give name and telephone number(s) of Owner(s).

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21. Has your company implemented an Employee Health and Safety Program compliant with 29 CFR 1910 “General Industry Standards”

https://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=STANDARDS&p_toc_level=1&p_keyvalue=1910

and/or 29 CFR 1926 “General Construction Standards”

https://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=STANDARDS&p_toc_level=1&p_keyvalue=1926 as they apply to your Company’s customary activities?

I certify that our team meets the minimum qualifications as stated in this Main document.

Signature

Company

Date

ATTACHMENT C - SCHEDULE & BUDGET COMPLIANCE FORMS

SCHEDULE COMPLIANCE FORM

Please detail three (3) of the most recent projects your team has completed:

PROJECT #1

Name of Project:

Description of Services provided: _____

Project Location: _____

Sub-Contractors or Consultants utilized:

Contract Award Date:

Original Contract Required Completion Date:

Actual Contract Completion Date:

If Original and Actual Contract Completion Dates differ, reason for difference: _____

PROJECT #2

Name of Project:

Description of Services provided: _____

Project Location: _____

Sub-Contractors or Consultants utilized:

Contract Award Date:

Original Contract Required Completion Date:

Actual Contract Completion Date:

If Original and Actual Contract Completion Dates differ, reason for difference: _____

PROJECT #3

Name of Project:

Description of Services provided: _____

Project Location: _____

Sub-Contractors or Consultants utilized:

Contract Award Date:

Original Contract Required Completion Date:

Actual Contract Completion Date:

If Original and Actual Contract Completion Dates differ, reason for difference: _____

BUDGET COMPLIANCE FORM

Please detail three (3) of the most recent projects your team has completed:

PROJECT #1

Name of Project:

Description of Services provided: _____

Project Location:

Sub-Contractors or Consultants utilized:

Contract Award Date:

Original Contract Amount:

Final Contract Amount:

If Original and Final Contract Amounts differ, reason for difference: _____

PROJECT #2

Name of Project:

Description of Services provided: _____

Project Location:

Sub-Contractors or Consultants utilized:

Contract Award Date:

Original Contract Amount:

Final Contract Amount:

If Original and Final Contract Amounts differ, reason for difference: _____

PROJECT #3

Name of Project:

Description of Services provided: _____

Project Location:

Sub-Contractors or Consultants utilized:

Contract Award Date:

Original Contract Amount:

Final Contract Amount:

If Original and Final Contract Amounts differ, reason for difference: _____

ATTACHMENT D - REFERENCES

Please list three (3) customer references, **other than the San Jacinto River Authority**, who can verify the quality of service your company provides. SJRA prefers customers of similar size and scope of work to this solicitation.

REFERENCE ONE

GOVERNMENT/COMPANY NAME: _____

LOCATION: _____

CONTACT PERSON AND TITLE: _____

CONTACT PERSON EMAIL: _____

TELEPHONE NUMBER: _____

SCOPE OF WORK: _____

CONTRACT PERIOD: _____

REFERENCE TWO

GOVERNMENT/COMPANY NAME: _____

LOCATION: _____

CONTACT PERSON AND TITLE: _____

CONTACT PERSON EMAIL: _____

TELEPHONE NUMBER: _____

SCOPE OF WORK: _____

CONTRACT PERIOD: _____

REFERENCE THREE

GOVERNMENT/COMPANY NAME: _____

LOCATION: _____

CONTACT PERSON AND TITLE: _____

CONTACT PERSON EMAIL: _____

TELEPHONE NUMBER: _____

SCOPE OF WORK: _____

CONTRACT PERIOD: _____

ATTACHMENT E - CONFLICT OF INTEREST FORM

CONFLICT OF INTEREST QUESTIONNAIRE -

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

1 _____
Name of vendor who has a business relationship with local governmental entity.

2 _____
Check this box if you are filing an update to a previously filed questionnaire.
(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information in this section is being disclosed.

Name of Officer

This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

- A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?
 Yes No
- B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?
 Yes No
- C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?
 Yes No
- D. Describe each employment or business and family relationship with the local government officer named in this section.

4 _____
I have no Conflict of Interest to disclose.

5 _____
Signature of vendor doing business with the governmental entity Date

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ATTACHMENT F - VERIFICATION COMPANY DOES NOT BOYCOTT ISRAEL

BEFORE ME, the undersigned authority, on this day personally appeared _____ [name], _____ [title] of _____ [Contractor], and, upon oath, after first being duly sworn, deposed and stated:

“My name is _____ and I am the _____ [title] of _____ [Contractor], hereinafter referred to in this verification as ‘Contractor’. The facts set forth herein are within my personal knowledge and are true and correct, and I am competent and authorized to make this verification on behalf of Contractor.

Contractor does not Boycott Israel; and

Contractor will not Boycott Israel during the term of this Agreement; and

‘Boycott Israel’ as used herein means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.”

Contractor: _____

By: _____
[Signature of Affiant]

Printed Name: _____

Title: _____

SUBSCRIBED AND SWORN TO before me on this ____ day of _____, 201_, by _____, _____ [title] of _____ [Contractor], known to me or proved through photo identification.

Notary Public in and for the State of Texas
My commission expires: _____

ATTACHMENT G – TEXAS GOVERNMENT CODE 2252.152 CERTIFICATION

**CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH
IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATIONS
PROHIBITED - CERTIFICATION**

I, _____, the undersigned representative of _____ (Company or business name) being an adult over the age of eighteen (18) years of age, pursuant to Texas Government Code, Chapter 2252, Section 2252.152 and Section 2252.153, certify that the company named above is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153. I further certify that should the above-named company enter into a contract that is on said listing of companies on the website of the Comptroller of the State of Texas which do business with Iran, Sudan or any Foreign Terrorist Organization, I will immediately notify the San Jacinto River Authority's Purchasing Division.

Name of Company Representative (Print)

Signature of Company Representative

Date

ATTACHMENT H – FEDERAL DEBARMENT CERTIFICATION

Federal Debarment Certification Letter

Date: _____

Consultant/Vendor: _____

Re: Contract # 18-0004-A

Debarment:

Federal Executive Order (E.O.) 12549 “Debarment“ requires that all contractors receiving individual awards, using federal funds, and all sub recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government. By signing this document, you certify that your organization and its principals are not debarred. Failure to comply or attempts to edit this language may disqualify your bid. Information on debarment is available at the following websites: www.sam.gov and <https://acquisition.gov/far/index.html> see section 52.209-6.

With respect to the award of Contract No. 18-0004-A by the San Jacinto River Authority, as "Owner", to [INSERT NAME OF CONTRACTOR], as "Contractor", the undersigned duly authorized representative of Contractor hereby certifies that, to the best of his or her knowledge, neither Contractor, nor any of Contractor's principals (defined at 2 C.F.R. § 180.995) or affiliates (defined at 2 C.F.R. § 180.905), are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935) from such covered transaction (see .2 C.F. R. pt. 180 and 2 C.F. R. pt. 3000).

PHONE _____ -- FAX _____
EMAIL _____

Signature _____ Date _____

If you have questions, please contact me as listed below:

Elton D. Brock, MBA, CTPM, CTCM, C.P.M., CTCM
Manager, Purchasing
Ph# 936-588-7101
ebrook@sjra.net

***This form must be maintained with the procurement file or purchase order record.
This form shall be submitted as an Agenda action item at the next ensuing meeting of the
SJRA Board.***

ATTACHMENT I - ACKNOWLEDGMENT

The undersigned agrees this submission becomes the property of the San Jacinto River Authority after the official opening.

The undersigned affirms he/she has familiarized himself with the requirements, scope of work, and matters that will be required for the work before submitting a response.

The undersigned agrees, if this submission is accepted, to furnish any and all items/services upon which prices are offered, at the price(s) and upon the terms and conditions contained in the specification. The period for acceptance of this submission will be 180 calendar days unless a different period is noted.

The undersigned affirms that they are duly authorized to execute this contract, that this submission has not been prepared in collusion with any other respondent, nor any employee of SJRA, and that the contents of this submission have not been communicated to any other respondent or to any employee of SJRA prior to the acceptance of this submission.

Respondent hereby assigns to SJRA any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Com. Code, Section 15.01, et seq.

The undersigned affirms that they have read and do understand the specifications, all exhibits and attachments contained in this solicitation package.

The undersigned agrees that the solicitation package posted on the website are the official requirements and shall not alter the electronic copy of the requirements, terms, or conditions – were applicable, without clearly identifying changes.

The undersigned understands they will be responsible for monitoring the SJRA Purchasing Website at: <http://www.sjra.net/purchasing/bidopportunities/> to ensure they have downloaded and signed all addendum(s) required for submission with their response. I certify that I have made no willful misrepresentations in this submission, nor have I withheld information in my statements and answers to questions. I am aware that the information given by me in this submission will be investigated, with my full permission, and that any misrepresentations or omissions may cause my submission to be rejected.

Acknowledge receipt of following addenda to the solicitation:

Addendum No 1 Dated _____ Received _____

Addendum No 2 Dated _____ Received _____

Addendum No 3 Dated _____ Received _____

**NAME AND ADDRESS OF COMPANY:
REPRESENTATIVE:**

Tel. No. _____
Email. _____

AUTHORIZED

Signature _____
Date _____
Name _____
Title _____
Fax No. _____

EXHIBIT “A”

(Professional Services Agreement)

**PROFESSIONAL SERVICES AGREEMENT
CONTRACT NO. _____**

This Professional Services Agreement (the “Agreement”) is made and entered into effective as of the _____ day of _____, 201_, by and between the San Jacinto River Authority, a conservation and reclamation district of the State of Texas, (“SJRA”) with general and administration offices located at 1577 Dam Site Road, Conroe, Texas 77304,

and

_____, a [corporation, limited partnership, limited liability company] organized under the laws of the State of _____, (“CONSULTANT”) with principal offices located at _____.

SJRA and CONSULTANT are sometimes referred to herein collectively as the “Parties” or individually as a “Party.”

The Parties hereby agree as follows:

ARTICLE 1 – SCOPE OF SERVICES

1.1 CONSULTANT agrees to perform professional services (the “Services”) related to _____ as are requested from time to time by SJRA, which Services shall be set forth more particularly in Work Orders, the form of which is attached hereto as Attachment B, issued from time to time by SJRA and accepted by CONSULTANT. Each Work Order shall constitute a separate and independent agreement between CONSULTANT and SJRA.

1.2 Work Orders shall contain the schedule, price, and payment terms applicable to the Services within the scope of such orders. Time is of the essence to this Agreement and all Work Orders. Work Orders shall become effective when an acknowledged copy thereof is signed by a duly authorized officer of CONSULTANT, returned to SJRA and countersigned by SJRA. The specific terms of a Work Order may not be modified unless such modifications are agreed to in writing by SJRA and CONSULTANT.

1.3 All Work Orders incorporate and shall be governed by and subject to the terms, conditions, and other provisions of this Agreement; provided, however, that a Work Order may specifically state a term, condition, or other provision of this Agreement that is being modified thereby. Unless so stated, the terms, conditions, or other provisions contained in any Work Order or any proposal attached to or incorporated into a Work Order that conflict with any terms, conditions, or other provisions of this Agreement shall have no effect and shall be deemed stricken and severed from such Work Orders, and the balance of the terms, conditions, and other provisions contained in such Work Orders shall remain in full force and effect. Modifications of the terms, conditions, or other provisions of this Agreement with respect to a particular Work Order shall not modify the terms, conditions or other provisions of this Agreement with respect to any other Work Order.

1.4 Nothing herein shall obligate SJRA to issue, or CONSULTANT to accept, any Work Orders. Further, the Parties agree that nothing in this Agreement shall prohibit the Parties, or either of them, from entering into agreements other than this Agreement for professional services or other work.

ARTICLE 2 – TERM OF AGREEMENT

2.1 This Agreement shall be effective for a term of one (1) year from the date first set forth above and shall be automatically renewed without action by either Party for subsequent terms of one year unless terminated earlier in writing in accordance with Article 12.

2.2 Notwithstanding the foregoing Paragraph 2.1, this Agreement shall apply to and remain in effect for Work Orders issued and accepted during the term of this Agreement until such time as Consultant's obligations in connection with the Services under such Work Orders have been completed and fulfilled; provided however, that, pursuant to Article 12, either Party shall have the right to terminate any Work Order for cause and SJRA shall have the right to terminate any Work Order for convenience.

2.3 Without limiting the generality of the foregoing Paragraph 2.2, Consultant's obligations under Articles 5, 6, 8, 9, 10, 11, 18, 19 and 20 shall survive the expiration or termination of this Agreement or any Work Order.

ARTICLE 3 – COMPENSATION AND PAYMENT

3.1 SJRA agrees to pay CONSULTANT, and CONSULTANT agrees to accept, as full and complete compensation for Services properly performed by CONSULTANT in accordance with this Agreement and applicable Work Order, the rates and charges agreed upon for a specific Work Order. Paragraphs A.1 or A.2 of Attachment A, which is attached hereto and incorporated herein by reference, shall be used to negotiate the compensation payable for each Work Order issued hereunder.

3.2 On or before the tenth day of each calendar month, CONSULTANT shall submit an invoice to SJRA, together with backup documentation required by SJRA and releases and waivers in forms acceptable to SJRA, covering all Services performed under any Work Order by CONSULTANT and its subconsultants, subcontractors and suppliers during the preceding calendar month. CONSULTANT shall separately itemize on each invoice: (i) each Work Order for which payment is sought, (ii) the amount budgeted for each such Work Order, (iii) the amount of payment requested pursuant to each such Work Order, (iv) the amount previously paid pursuant to each such Work Order, (v) descriptions of Services performed during the prior month pursuant to each such Work Order, and (vi) the total payment requested by such invoice. SJRA shall pay the amount it agrees to be due within thirty (30) days after receipt of such complete invoice and backup documentation.

3.3 SJRA shall have the right but not the obligation to withhold all or any part of payment requested in any invoice to protect SJRA from loss or expected loss because of:

(a) Services that are not in compliance with this Agreement or the applicable Work Order or any failure of CONSULTANT to perform Services in accordance with the provisions of this Agreement or the applicable Work Order;

(b) third party suits, stop notices, claims or liens arising out of Services performed for which CONSULTANT is responsible pursuant to this Agreement and asserted or filed against SJRA or any of its property or portion thereof or improvements thereon provided that CONSULTANT fails to provide SJRA with sufficient evidence that CONSULTANT's insurance is adequate or shall cover the claim(s);

(c) uninsured damage to any INDEMNITEE (hereinafter defined) which results from CONSULTANT's failure to obtain or maintain the insurance required by this Agreement or from

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any action or inaction by CONSULTANT or any of its subcontractors, subconsultants, or suppliers which excuses any insurer from liability for any loss or claim which would, but for such action or inaction, be covered by insurance; or

(d) any failure of CONSULTANT to pay any subcontractor, subconsultant, or supplier of CONSULTANT the correct, undisputed, and contractually obligated amount for acceptable services received and for acceptable supplies received. CONSULTANT will not include in its billings to SJRA any amount in a subcontractor or supplier invoice which it has not paid or does not intend to pay within the terms and conditions of the applicable subcontract agreement or supplier purchase order.

Any failure by SJRA to exercise its right to withhold all or any part of payment requested in any invoice as provided in this Paragraph 3.3 shall not be and shall not be construed as (i) a waiver of SJRA's right to do so in the future, or (ii) evidence that any of the circumstances identified in Subparagraphs 3.3(a) through (d) above have not occurred.

3.4 CONSULTANT agrees to pay in full (less any applicable retainage) as soon as reasonably practicable, but in no event later than thirty (30) days following payment from SJRA, all subcontractors, subconsultants, and any other persons or entities supplying labor, supplies, materials, or equipment in connection with Services that are owed payment by CONSULTANT out of such payment made to CONSULTANT by SJRA. Further, provided that SJRA has paid CONSULTANT in accordance with the terms of this Agreement and any particular Work Order, CONSULTANT shall defend and indemnify SJRA from and against any claims for payment asserted or filed by any such person or entity against SJRA, its project or property or CONSULTANT.

ARTICLE 4 – STANDARD OF CARE; COORDINATION OF SERVICES; SAFETY; COST ESTIMATES; LEGAL COMPLIANCE; THIRD PARTY REVIEW

4.1 CONSULTANT shall perform, supervise and direct the Services, and otherwise discharge its obligations under this Agreement and any Work Order: (a) with the professional skill and care ordinarily provided by competent engineers practicing under the same or similar circumstances and professional license; and (b) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer (collectively, the CONSULTANT's "Standard of Care").

4.2 Consistent with its Standard of Care, CONSULTANT shall (a) perform its Services in accordance with all applicable laws, codes, ordinances and regulations; (b) perform its Services in an efficient manner; and (c) keep SJRA apprised of the status of Services, coordinate its activities with SJRA, and accommodate other activities of SJRA at sites that Services impact. CONSULTANT shall designate an authorized representative to be available for consultation, assistance, and coordination of activities.

4.3 CONSULTANT shall be responsible for its own activities at sites including the safety of its employees, and that of its subconsultants, subcontractors and suppliers but shall not assume control of or responsibility for the site. Construction contractors of SJRA shall have sole responsibility for providing materials, means, and methods of construction, for controlling their individual work areas and safety of said areas for all persons, and for taking all appropriate steps to ensure the quality of their work and the safety of their employees and of the public in connection with their performance of work or services provided under contracts with SJRA. However, CONSULTANT shall notify SJRA if it observes violations of safety regulations or ordinances or quality of work deficiencies by SJRA's construction contractors. CONSULTANT shall comply with the site safety program and rules established by the construction contractors.

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4.4 To the extent that CONSULTANT provides to SJRA any estimate of costs associated with construction, any such estimate shall be developed in accordance with CONSULTANT's Standard of Care, but it is recognized by the Parties that neither CONSULTANT nor SJRA has control over the cost of the labor, materials, or equipment, over a construction contractor's methods of determining bid prices, or over competitive bidding, market, or negotiating conditions. Accordingly, CONSULTANT cannot and does not warrant or represent that bids or negotiated prices will not vary from SJRA's budget for the project or from any estimate of the cost of work or evaluation prepared or agreed to by CONSULTANT.

4.5 With respect to providing Services hereunder, CONSULTANT agrees to meet at the time applicable (i) Equal Employment Opportunity ordinances, rules and regulations, and (ii) Affirmative Action ordinances, rules and regulations. In addition, pursuant to Section 2270.002 of the Texas Government Code, contemporaneous with CONSULTANT's execution of this Agreement, CONSULTANT shall execute the Verification Company Does Not Boycott Israel, attached hereto in Exhibit 1 and incorporated herein. In addition, pursuant to Texas Government Code Section 2252.908, CONSULTANT shall submit a disclosure of interested Parties (Form 1295) to SJRA at the time CONSULTANT submits this signed Agreement to SJRA. CONSULTANT may use the following link to access filing instructions for the disclosure of interested Parties form: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm. CONSULTANT shall also submit a signed Conflict of Interest Questionnaire, at the time CONSULTANT submits this signed Agreement to SJRA, attached hereto in Exhibit 1. If CONSULTANT affirms that there are no Conflicts of Interest, CONSULTANT shall indicate so by writing name of CONSULTANT's firm and "No Conflicts" on the Conflict of Interest Questionnaire form and signing the form. CONSULTANT may use the following link to access the Conflict of Interest Questionnaire form: https://www.ethics.state.tx.us/filinginfo/conflict_forms.htm. Pursuant to Chapter 2252, Texas Government Code, Company represents and certifies that, at the time of execution of this Agreement neither Company, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201 or 2252.153 of the Texas Government Code. CONSULTANT shall submit a signed Texas Government Code 2252 Certification Form, at the time CONSULTANT submits this signed Agreement to SJRA, attached hereto in Exhibit 1.

4.6 CONSULTANT acknowledges and agrees that projects of SJRA may be subject to review and approval by other third parties. Accordingly, as and when requested by SJRA, CONSULTANT shall submit such information and cooperate with the other third parties to the extent necessary to undergo any such review or obtain any such approval.

4.7 CONSULTANT does not represent Work Product to be suitable for reuse on any other project or for any other purpose(s). If SJRA reuses any Work Product without CONSULTANT's specific written verification or adaptation, such reuse will be at the risk of SJRA, without liability to CONSULTANT.

ARTICLE 5 – COST RECORDS

5.1 CONSULTANT shall maintain records and books in accordance with generally accepted accounting principles and practices. For Services provided by CONSULTANT under cost reimbursable, time and material or unit price Work Orders, during the period of this Agreement and for five (5) years thereafter, CONSULTANT shall maintain records of direct costs for which SJRA is charged. SJRA shall at all reasonable times have access to such records for the purpose of inspecting, auditing, verifying, or copying the same, or making extracts therefrom. SJRA's audit rights for fixed unit rate or time and materials Work Orders shall extend to review of records for the purpose of substantiating man-hours worked, units employed, and third party charges only. Except to the extent audit rights are granted to SJRA

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by applicable law, SJRA shall have no audit rights with respect to the portion of Work Orders or Services compensated on a lump sum basis.

ARTICLE 6 – OWNERSHIP OF WORK PRODUCT AND TECHNOLOGY

6.1 All studies, plans, reports, drawings, specifications, cost estimates, software, computations, and other information and documents prepared by CONSULTANT, its subconsultants, subcontractors, and/or suppliers, in connection with Services or any project of SJRA are and shall remain SJRA’s property upon creation (collectively, “Work Product”); provided, however, that Work Product shall not include pre-existing proprietary information of CONSULTANT, its subconsultants, subcontractors, and/or suppliers (“CONSULTANT Proprietary Information”). To this end, CONSULTANT agrees to and does hereby assign, grant, transfer, and convey to SJRA, its successors and assigns, CONSULTANT’s entire right, title, interest and ownership in and to such Work Product, including, without limitation, the right to secure copyright registration. CONSULTANT confirms that SJRA and its successors and assigns shall own CONSULTANT’s right, title and interest in and to, including without limitation the right to use, reproduce, distribute (whether by sale, rental, lease or lending, or by other transfer of ownership), to perform publicly, and to display, all such Work Product, whether or not such Work Product constitutes a “work made for hire” as defined in 17 U.S.C. Section 201(b). In addition, CONSULTANT hereby grants SJRA a fully paid-up, royalty free, perpetual, assignable, non-exclusive license to use, copy, modify, create derivative works from and distribute to third parties CONSULTANT Proprietary Information in connection with SJRA’s exercise of its rights in the Work Product, operation, maintenance, repair, renovation, expansion, replacement, and modification of projects of SJRA or otherwise in connection with property or projects in which SJRA has an interest (whether by SJRA or a third party). CONSULTANT shall obtain other assignments, confirmations, and licenses substantially similar to the provisions of this paragraph from all of its subconsultants, subcontractors, and suppliers. Work Product is to be used by CONSULTANT only with respect to the project in connection with which such Work Product was created and is not to be used on any other project. CONSULTANT and its subconsultants, subcontractors, and suppliers are granted a limited, nonexclusive, non-transferable, revocable license during the term of their respective agreements under which each is obligated to perform Services to use and reproduce applicable portions of the Work Product appropriate to and for use in the execution of Services. Submission or distribution to comply with official regulatory requirements for other purposes in connection with Services is not to be construed as publication in derogation of SJRA’s copyright or other reserved rights. CONSULTANT agrees that all Work Product will be maintained according to the provisions of the Public Information Act, Chapter 552, Texas Government Code, and the Local Government Records Act, Chapters 201 through 205, Texas Local Government Code, each as amended. CONSULTANT shall deliver all copies of the Work Product to SJRA upon the earliest to occur of SJRA’s request, completion of Services in connection with which Work Product was created, or termination of this Agreement. CONSULTANT is entitled to retain copies of Work Product for its permanent project records.

6.2 CONSULTANT agrees that all information provided by SJRA in connection with Services shall be considered and kept confidential (“Confidential Information”), and shall not be reproduced, transmitted, used, or disclosed by CONSULTANT without the prior written consent of SJRA, except as may be necessary for CONSULTANT to fulfill its obligations hereunder; provided, however, that such obligation to keep confidential such Confidential Information shall not apply to any information, or portion thereof, that:

- (a) was at the time of receipt by CONSULTANT otherwise known by CONSULTANT by proper means;

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- (b) has been published or is otherwise within the public domain, or is generally known to the public at the time of its disclosure to CONSULTANT;
- (c) subsequently is developed independently by CONSULTANT, by a person having nothing to do with the performance of this Agreement and who did not learn about any such information as a result of CONSULTANT's being a Party to this Agreement;
- (d) becomes known or available to CONSULTANT from a source other than SJRA and without breach of this Agreement by CONSULTANT or any other impropriety of CONSULTANT;
- (e) enters the public domain without breach of the Agreement by or other impropriety of CONSULTANT;
- (f) becomes available to CONSULTANT by inspection or analysis of products available in the market;
- (g) is disclosed with the prior written approval of SJRA;
- (h) was exchanged between SJRA and CONSULTANT and ten (10) years have subsequently elapsed since such exchange; or
- (i) is disclosed to comply with the Texas Open Records Act or in response to a court order to comply with the requirement of a government agency.

6.3 CONSULTANT shall not be liable for the inadvertent or accidental disclosure of Confidential Information, if such disclosure occurs despite the exercise of at least the same degree of care as CONSULTANT normally takes to preserve and safeguard its own proprietary or confidential information.

6.4 CONSULTANT will advise SJRA of any patents or proprietary rights and any royalties, licenses, or other charges which CONSULTANT knows or should know in the exercise of its Standard of Care impacts any design provided by CONSULTANT in connection with any Services, and obtain SJRA's prior written approval before proceeding with such Services. CONSULTANT shall not perform patent searches or evaluation of claims, but will assist SJRA in this regard if requested, pursuant to a written change order in accordance with Paragraph 12.1, below. There will be no charge for CONSULTANT's existing patents.

ARTICLE 7 – INDEPENDENT CONTRACTOR RELATIONSHIP

7.1 In the performance of Services hereunder, CONSULTANT shall be an independent contractor with the authority to control and direct the performance of the details of Services and its own means and methods. CONSULTANT shall not be considered a partner, affiliate, agent, or employee of SJRA and shall in no way have any authority to bind SJRA to any obligation.

ARTICLE 8 – WARRANTY PERIOD; GUARANTEES

8.1 If within a period of one (1) year following completion of Services under a Work Order, it is discovered that such Services were not performed in accordance with CONSULTANT's Standard of Care, SJRA, in its sole discretion, may: (1) direct CONSULTANT to re-perform and CONSULTANT shall re-perform such Services at its own expense, and as expediently or in the manner required for SJRA's needs; or (2) retain such other consultant or consultants as necessary to perform such corrective services, and CONSULTANT agrees to pay SJRA's costs associated with having such other consultant or consultants

perform such corrective services, and any other damages incurred by SJRA as a result of such default. The obligations of CONSULTANT under this Paragraph 8.1 are in addition to other rights and remedies of SJRA available to it pursuant to this Agreement or applicable law.

8.2 CONSULTANT agrees to assign SJRA the warranty or guarantee of any subconsultant, subcontractor, supplier or manufacturer of items of services, supplies, machinery, equipment, materials, or products provided by CONSULTANT hereunder and cooperate and assist SJRA in SJRA's enforcement thereof. CONSULTANT's responsibility with respect thereto is limited to such assignment, cooperation, and assistance. The representations and warranties of CONSULTANT under this Agreement and Work Orders are made in lieu of any other warranties or guarantees and CONSULTANT makes no other warranties whether expressed or implied, including any warranty of merchantability or fitness for a particular purpose, and CONSULTANT shall have no liability to SJRA based upon any theory of liability that any such other warranty was made or breached.

8.3 CONSULTANT warrants and represents that: (i) CONSULTANT does not have any contracts with and does not provide supplies or services to any organization designated as a foreign terrorist organization by the United States secretary of state as authorized by 8 U.S.C. Section 1189 (a "Foreign Terrorist Organization"); or (ii) the United States government has affirmatively declared CONSULTANT to be excluded from its federal sanctions regime relating to Sudan, its federal sanctions regime relating to Iran, or any federal sanctions regime relating to a Foreign Terrorist Organization.

ARTICLE 9 – INDEMNIFICATION

9.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS SJRA AND ITS BOARD, DIRECTORS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES, (EACH AN "INDEMNITEE" AND COLLECTIVELY, THE "INDEMNITEES"), FROM AND AGAINST CLAIMS, LOSSES, DAMAGES, DEMANDS, SUITS, CAUSES OF ACTION, SETTLEMENTS, LIABILITIES, COSTS, FINES, JUDGMENTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE AND NECESSARY COURT COSTS, EXPERTS' FEES AND ATTORNEYS' FEES) (COLLECTIVELY, "LOSSES"), ARISING IN FAVOR OF OR BROUGHT BY ANY THIRD PARTY, TO THE EXTENT CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER, COMMITTED BY CONSULTANT, ITS AGENT, ITS CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY WORK ORDER, EVEN IF SUCH LOSSES ARE CAUSED IN PART BY THE NEGLIGENCE OR FAULT, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD OR RULE OR BREACH OF CONTRACT OF AN INDEMNITEE OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF AN INDEMNITEE; PROVIDED, HOWEVER, THAT CONSULTANT'S OBLIGATION TO INDEMNIFY AND HOLD HARMLESS SHALL NOT EXTEND TO THE PORTION (IF ANY) OF SUCH LOSSES THAT ARE CAUSED BY THE NEGLIGENCE OR FAULT, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD OR RULE OR BREACH OF CONTRACT OF AN INDEMNITEE OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF AN INDEMNITEE OTHER THAN CONSULTANT OR ITS AGENT OR EMPLOYEE OR SUBCONTRACTORS OF ANY TIER.

9.2 TO THE FULLEST EXTENT PERMITTED BY LAW, AND TO THE EXTENT A DEFENSE IS NOT PROVIDED FOR THE INDEMNITEES UNDER AN INSURANCE POLICY AS

REQUIRED UNDER SECTION 11.1(f) HEREOF OR THE INDEMNITEES' ATTORNEYS' FEES ARE NOT OTHERWISE RECOVERED UNDER THE INDEMNITY PROVISION SET FORTH IN SECTION 9.1 HEREOF, CONSULTANT SHALL, UPON FINAL ADJUDICATION OF THE LOSSES AS DEFINED IN SECTION 9.1 HEREOF AND WITHIN THIRTY (30) DAYS FOLLOWING THE DATE OF A WRITTEN DEMAND, REIMBURSE THE INDEMNITEES FOR ALL REASONABLE ATTORNEYS' FEES INCURRED TO DEFEND AGAINST THE LOSSES IN PROPORTION TO CONSULTANT'S LIABILITY TO ANY THIRD PARTY FOR SUCH LOSSES.

ARTICLE 10 – LIMITATION OF LIABILITY

10.1 Neither Party hereto shall be liable to the other Party or its affiliates for any loss of profit, loss of revenue, loss of use or any other indirect, consequential or special damages (excluding fines and penalties levied by a regulatory agency), even if caused by the sole or concurrent negligence of a Party, whether active or passive, and even if advised of the possibility thereof.

10.2 Nothing herein shall be construed as creating any personal liability on the part of any board member, officer, employee, or agent of SJRA.

ARTICLE 11 – INSURANCE

11.1 **General Requirements.** CONSULTANT shall, at all times during the performance of Services pursuant to Work Orders issued under this Agreement and for not less than two years after the completion of any Services, provide and require all subconsultants and subcontractors to provide insurance coverage with companies lawfully authorized to do business in Texas and acceptable to SJRA and with forms of policies acceptable to SJRA, which coverage will protect CONSULTANT from claims set forth below which may arise out of or result from CONSULTANT's Services and operations under this Agreement and any Work Order for which CONSULTANT may be legally liable, whether such Services or operations are by CONSULTANT or a subconsultant or subcontractor of CONSULTANT or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and meeting not less than the minimum requirements set forth in this Article 11. Such insurance is to be provided at the sole cost of CONSULTANT and all subconsultants and subcontractors. The terms "subconsultant" and "subcontractor" for the purposes of this Article 11 shall include subconsultants and subcontractors of any tier.

(a) **Kinds of Claims**

- (1) claims under workers' and workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to CONSULTANT's Services to be performed;
- (2) claims for damages because of bodily injury, occupational sickness or disease, or death of CONSULTANT's employees;
- (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than CONSULTANT's employees;
- (4) claims for damages insured by usual personal injury liability coverage which are sustained (i) by a person as a result of an offense directly or indirectly related to employment of such person by CONSULTANT, or (ii) by another person;

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- (5) claims for damages other than to CONSULTANT’s work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- (6) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- (7) claims involving contractual liability insurance applicable to CONSULTANT’s indemnification obligations under this Agreement; and
- (8) claims for errors and omissions in the provision of professional consulting services of the kind rendered by CONSULTANT pursuant to this Agreement.

(b) **Policies and Minimum Limits of Liability**

<u>Kinds of Insurance:</u>	<u>Limits of Liability*:</u>
A. Workers’ Compensation Texas Operations Employer’s Liability	Statutory Bodily Injury by Accident \$1,000,000 Each Accident Bodily Injury by Disease \$1,000,000 Each Employee Bodily Injury by Disease \$1,000,000 Policy Limit
B. Commercial General Liability Including but not limited to: 1. premises/operations 2. independent contractor 3. products and completed operations 4. personal injury liability with employment exclusion deleted 5. contractual	\$2,000,000 General Aggregate \$2,000,000 Products/Completed Operations Aggregate \$1,000,000 Each Occurrence \$2,000,000 Personal and Advertising Injury \$300,000 Fire Damage Liability
C. Professional Liability	\$1,000,000 per claim \$2,000,000 Aggregate
D. Business Automobile Liability Including all Owned, Hired, and Non-owned Automobiles	\$1,000,000 Combined Single Limit Per Occurrence
E. Umbrella Liability	\$1,000,000 Per Occurrence \$1,000,000 Aggregate Bodily Injury and Property Damage

* Aggregate limits are per 12-month policy period unless otherwise indicated; defense costs shall be excluded from limits of liability of each policy other than Professional Liability Insurance; Commercial General Liability Insurance coverage limits shall be on a per-project basis.

(c) All required insurance shall be maintained with responsible insurance carriers acceptable to SJRA and lawfully authorized to issue insurance of the types and amounts set forth in this Article 11. Carriers should have a Best’s Financial Strength Rating of at least “A-” and a Best’s Financial Size Category of Class VIII or better, according to the most current edition of *Best’s Key Rating Guide, Property-Casualty United States* or be of sufficient size and financial strength as adjudged by SJRA to meet the financial obligations evidenced in the certificate of insurance.

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- (d) All certificates shall be in a form reasonably acceptable to SJRA and each certificate must state to the extent permitted by Texas Insurance Code Chapter 1811 that the policy may not expire or be cancelled, materially modified, or non-renewed unless the carrier and/or CONSULTANT gives SJRA thirty (30) days advance written notice. When any required insurance, due to the attainment of a normal expiration date or renewal date, shall expire, CONSULTANT shall, prior to such expiration, supply SJRA with certificates of insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as is required by this Agreement. Any renewal or replacement policies shall be in form and substance satisfactory to SJRA and written by carriers acceptable to SJRA and meeting the requirements of this Article 11. CONSULTANT shall or shall cause the applicable carrier or carriers to give written notice to SJRA within thirty (30) days of the date on which total claims by any Party against insurance provided pursuant to this Article 11 reduce the aggregate amount of coverage below the amounts required by this Article 11. In addition, CONSULTANT shall or shall cause the applicable carrier or carriers to provide SJRA with amendatory riders or endorsements to the Commercial General Liability Insurance policy that specify that the coverage limits apply on a per-project basis.
- (e) With respect to all policies required in this Article 11, as soon as practicable prior to execution of this Agreement, CONSULTANT shall deposit with SJRA true and correct original certificates thereof, bearing notations or accompanied by other evidence satisfactory to SJRA that the requirements of this Article 11 are being met. If requested to do so by SJRA, CONSULTANT shall also furnish the originals or certified copies of the insurance policies for inspection including but not limited to copies of endorsements.
- (f) All policies of insurance and certificates, with the exception of Professional Liability and Workers' Compensation Insurance, shall name the INDEMNITEES as additional insureds. Without limiting the foregoing, CONSULTANT's Commercial General Liability Insurance policy shall name the INDEMNITEES as additional insureds pursuant to ISO Additional Insured Endorsements CG 20-10-10-01 and CG 20-33-10-01 or their combined equivalents. Further, the CONSULTANT shall provide the INDEMNITEES any defense provided by its Commercial General Liability Insurance policy to the fullest extent allowed by law.
- (g) CONSULTANT hereby waives all rights of recovery and damages against the INDEMNITEES to the extent such damages are covered or should have been covered by the insurance obtained or required to be obtained by CONSULTANT under this Agreement. All of CONSULTANT's policies of insurance, with the exception of Professional Liability Insurance, shall include a waiver of subrogation in favor of the INDEMNITEES.
- (h) The Parties intend that the CONSULTANT'S insurance shall be primary and non-contributing with respect to any other insurance maintained by SJRA and all policies of insurance obtained by CONSULTANT shall be endorsed to be primary and non-contributing with respect to any other insurance maintained by SJRA.
- (i) If any policy required to be purchased pursuant to this Article 11 is subject to a deductible, self-insured retention or similar self-insurance mechanism which limits or otherwise reduces coverage, the deductible, self-insured retention, or similar self-insurance mechanism shall be the sole responsibility of CONSULTANT in the event of any loss and CONSULTANT hereby waives any claim therefor against any INDEMNITEE.

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(j) CONSULTANT shall require and cause its subconsultants and subcontractors to purchase and maintain the insurance policies set forth in Paragraph 11.1(b) above with limits of liability commensurate with the amount of each sub-consulting or subcontract agreement, but in no case less than \$500,000 per occurrence. CONSULTANT shall provide copies of insurance certificates for all such insurance to SJRA prior to any subconsultant's or subcontractor's performance of any Services.

(k) If CONSULTANT fails to procure or to maintain in force the insurance required by this Article 11, SJRA may secure such insurance and the costs thereof shall be borne by CONSULTANT. CONSULTANT shall reimburse SJRA the cost of such insurance plus a ten percent (10%) administrative charge within ten (10) days after billing by SJRA. Any sum remaining unpaid fifteen (15) days after billing by SJRA shall bear interest at the rate of twelve percent (12%) per annum until paid by CONSULTANT. Except to the extent prohibited by Subchapter C of Chapter 151 of the Texas Insurance Code, CONSULTANT shall defend, indemnify, and hold harmless the INDEMNITEES from and against any and all losses, claims, damages, and expenses (including, without limitations, court costs, costs of defense, and attorneys' fees), that any INDEMNITEE may incur as a result of CONSULTANT's failure to obtain or cause to be obtained the specific endorsements or insurance required pursuant to this Agreement. Failure of any INDEMNITEE to identify any deficiency in the insurance forms provided shall not be construed as a waiver of CONSULTANT's obligation to maintain such insurance and to cause such insurance to be maintained.

(l) CONSULTANT's compliance with the provisions of this Article 11 shall not be deemed to constitute a limitation of CONSULTANT's liability with respect to claims covered by insurance provided or required pursuant to this Article 11 or in any way limit, modify, or otherwise affect CONSULTANT's obligation under this Agreement or otherwise. CONSULTANT's obligations under this Agreement to defend, indemnify and/or hold harmless INDEMNITEES shall not be limited in any way by any insurance required of CONSULTANT by this Agreement or otherwise provided or maintained by CONSULTANT. Any insurance obligations of CONSULTANT under this Agreement are independent from CONSULTANT's obligations under this Agreement to defend, indemnify and/or hold harmless INDEMNITEES. The insolvency, bankruptcy, or failure of any insurance company carrying insurance for CONSULTANT or any subcontractor, or the failure of any insurance company to pay claims accruing shall not be held to waive any of the provisions of this Agreement.

(m) If requested by SJRA, CONSULTANT shall furnish or shall cause to be furnished any such other insurance or limits as SJRA may reasonably deem necessary for any Work Order or Orders and the cost thereof shall be charged to SJRA by appropriate modification of any such Order(s).

ARTICLE 12 – CHANGES; TERMINATION FOR CONVENIENCE; TERMINATION FOR CAUSE

12.1 SJRA may, at any time and from time to time, make written changes to Work Orders in the form of modifications, additions, or omissions. In the event that any such change, through no fault of CONSULTANT, shall impact CONSULTANT's compensation or schedule, then (a) such changes shall be authorized by written change order issued by SJRA and accepted by CONSULTANT, and (b) an equitable adjustment shall be made to the Work Order in writing duly executed by both Parties, to reflect the change in compensation and schedule.

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12.2 SJRA may for convenience terminate this Agreement, any Work Order issued under this Agreement, or CONSULTANT's right to perform Services under this Agreement or any Work Order by at any time giving seven (7) days written notice of such termination. In such event, SJRA shall have the right but not the obligation to assume all obligations and commitments that CONSULTANT may have in good faith undertaken or incurred in connection with the Services terminated, and SJRA shall pay CONSULTANT, as its sole and exclusive remedy, for Services properly performed to date of termination and for reasonable costs of closing out such Services provided SJRA has pre-approved such costs. CONSULTANT shall not be entitled to lost profit on unperformed Services or any consequential damages of any kind. Upon termination, CONSULTANT shall invoice SJRA for all services performed by CONSULTANT prior to the time of termination which have not previously been compensated. Payment of undisputed amounts in the final invoice shall be due and payable within thirty (30) days after receipt by SJRA and SJRA's receipt of all Work Product.

12.3 This Agreement or any Work Order may be terminated by either Party in the event that the other Party fails to perform in accordance with its requirements and such Party does not cure such failure within ten (10) days after receipt of written notice describing such failure. In the event that SJRA terminates this Agreement or any Work Order for cause, CONSULTANT shall not be entitled to any compensation until final completion of the then ongoing Services and any such entitlement shall be subject to SJRA's right to offset and/or recoup all damages and costs associated with finally completing such Services. If for any reason, CONSULTANT is declared in default and/or terminated by SJRA under any Work Order with SJRA, SJRA shall have the right to offset and apply any amounts which might be owed to SJRA by CONSULTANT against any earned but unpaid amounts owed to CONSULTANT by SJRA under any Work Order. In the event any Work Order is terminated by SJRA, CONSULTANT shall promptly deliver to SJRA all Work Product with respect to such terminated Work Order.

ARTICLE 13 – FORCE MAJEURE

13.1 Any delay in performance or non-performance of any obligation other than an obligation to make a payment as required under this Agreement or any Work Order, of CONSULTANT contained herein shall be excused to the extent such delay in performance or non-performance is caused by Force Majeure. "Force Majeure" shall mean fire, flood, act of God, earthquakes, extreme weather conditions, epidemic, war, riot, civil disturbance or unrest, imposition of martial law, restrictions imposed by civil authority, loss of control of civil authority, illegal activity, extreme unreliability or failure of the utility infrastructure, failure of the US banking system, loss of access to communication systems, sabotage, terrorism, or judicial restraint, but only to the extent that such event (i) is beyond the control of and cannot be reasonably anticipated by or the effects alleviated by CONSULTANT and (ii) prevents the performance of Services.

13.2 If CONSULTANT is affected by Force Majeure, CONSULTANT shall promptly provide notice to SJRA, explaining in detail the full particulars and the expected duration thereof. Notice will be considered prompt if delivered within five days after CONSULTANT first becomes aware that the event of Force Majeure will affect the performance of Services and the end of the restrictions, if any, on CONSULTANT's ability to communicate with SJRA. CONSULTANT shall use its commercially reasonable efforts to mitigate the interruption or delay if it is reasonably capable of being mitigated.

ARTICLE 14 – SUCCESSORS, ASSIGNMENT AND SUBCONTRACTING

14.1 SJRA and CONSULTANT bind themselves and their successors, executors, administrators and permitted assigns to the other Party of this Agreement and to the successors, executors, administrators and permitted assigns of such other party, in respect to all covenants of this Agreement.

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14.2 No right or interest in this Agreement or any Work Order shall be assigned by CONSULTANT or SJRA without the prior written consent of the other Party.

14.3 Prior to commencement of any part of the Services to be provided under any Work Order with respect to which CONSULTANT has elected to subcontract, CONSULTANT will notify SJRA in writing of the identity of the particular subcontractor, subconsultant or supplier CONSULTANT intends to employ for the performance of such part of the Services and the scope of Services it will perform. SJRA shall have the right within twenty-one (21) calendar days of such written notice to disallow CONSULTANT's employment of any particular subcontractor, subconsultant or supplier, provided that any reasonable additional costs incurred by CONSULTANT as a result of such disallowance shall be borne by SJRA.

ARTICLE 15 – SEVERABILITY; NON-WAIVER

15.1 If any provision or portion thereof of this Agreement or any Work Order is deemed unenforceable or void, then such provision or portion thereof shall be deemed severed from the Agreement or such Work Order and the balance of the Agreement or Work Order shall remain in full force and effect.

15.2 Failure by SJRA in any instance to insist upon observance or performance by CONSULTANT of any term, condition or obligation of this Agreement shall not be deemed a waiver by SJRA of any such observance or performance. No waiver by SJRA of any term, condition, obligation or breach of this Agreement will be binding upon SJRA unless in writing, and then will be for the particular instance specified in such writing only. Payment of any sum by SJRA to CONSULTANT with knowledge of any breach will not be deemed a waiver of such breach or any other breach.

ARTICLE 16 – LICENSE REQUIREMENTS

16.1 The CONSULTANT and any subconsultant shall have and maintain any licenses, registrations and certifications required by the State of Texas or recognized professional organizations governing the Services performed under this Agreement and any Work Order.

ARTICLE 17 – ENTIRE AGREEMENT

17.1 This Agreement and all Work Orders issued under it contain the full and complete understanding of the Parties pertaining to their subject matter and supersede any and all prior and contemporaneous representations, negotiations, agreements or understandings between the Parties, whether written or oral. The Agreement and Work Orders may be modified only in writing, signed by both Parties.

ARTICLE 18 – GOVERNING LAW; VENUE

18.1 This Agreement and Work Orders, and its and their construction and any disputes arising out of, connected with, or relating to this Agreement or Work Orders shall be governed by the laws of the State of Texas, without regard to its conflicts of law principles. Venue of all dispute resolution proceedings arising out of, connected with or relating to this Agreement, shall be in Montgomery County, Texas.

ARTICLE 19 – DISPUTE RESOLUTION

19.1 In the event of any dispute arising out of or relating to this Agreement, any Work Order or any Services which SJRA and CONSULTANT have been unable to resolve within thirty (30) days after such dispute arises, a senior representative of CONSULTANT shall meet with the General Manager of SJRA at a mutually agreed upon time and place not later than forty-five (45) days after such dispute arises to attempt

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to resolve such dispute. In the event such representatives are unable to resolve any such dispute within fifteen (15) days after such meeting, either Party may, by written notice to the other, submit such dispute to non-binding mediation before a mutually agreeable mediator. If the Parties are unable to agree upon a mediator within twenty (20) days after such written notice of submission to mediation, the American Arbitration Association shall be empowered to appoint a qualified mediator pursuant to the American Arbitration Association Construction Industry Mediation Rules. If the dispute is technical in nature, the mediator appointed by the American Arbitration Association shall be qualified by at least ten (10) years' experience in construction, engineering, and/or public works operations. The mediation shall be conducted within thirty (30) days of the selection or appointment of the mediator, as applicable. The mediation shall be held at a mutually agreeable location in Montgomery County, Texas. If the Parties are unable to agree on a location, the mediation shall be held at the offices of the American Arbitration Association closest to Conroe, Texas.

19.2 Any dispute arising out of or relating to this Agreement or any Work Order or any Services not resolved pursuant to Article 19.1, shall be resolved, by litigation in a court of competent jurisdiction.

19.3 Notwithstanding the foregoing, in the event SJRA and any other consultant and/or any contractor are involved in a dispute in connection with a project for which CONSULTANT has provided Services, and SJRA, in its sole discretion, determines that CONSULTANT's participation in any dispute resolution meeting or mediation proceeding between SJRA and any such consultant and/or contractor is necessary to the resolution of such dispute, CONSULTANT agrees to attend and participate at its own cost in any such dispute resolution meeting or mediation proceeding.

19.4 If CONSULTANT brings any claim against SJRA and CONSULTANT does not prevail with respect to such claim, CONSULTANT shall be liable for all attorneys' fees and costs incurred by SJRA as a result of such claim.

ARTICLE 20 – ELECTRONIC SIGNATURES; COUNTERPARTS

20.1 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Duplicate copies of duly executed and delivered counterparts of this Agreement shall be deemed to have the same full force and effect as originals and may be relied upon as such. Notwithstanding the foregoing, the Parties agree that this Agreement and any Work Order may be executed using electronic signatures at the option and in the discretion of SJRA, and, in such event, the provisions of the Uniform Electronic Transaction Act, Chapter 332, Texas Business and Commerce Code, as amended, and any applicable policies and procedures of SJRA regarding electronic signatures shall apply.

ARTICLE 21 – CONFIDENTIALITY

21.1 Neither CONSULTANT nor any of its subconsultants shall publish or release any publicity or public relations materials of any kind concerning or relating to this Agreement, the Services or the activities of SJRA, unless such materials have first been reviewed and approved in writing by SJRA. This provision shall not apply to mandatory reports which CONSULTANT or its subconsultants are required by law to file with governmental authorities.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the day and year herein above first written.

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CONSULTANT:

Name

By: _____

Name
Title

Date: _____

ATTEST:

SJRA:

San Jacinto River Authority

By: _____

Jace A. Houston
General Manager

Date: _____

ATTEST:

SAMPLE

ATTACHMENT A

Compensation terms for cost reimbursable and lump sum Services:

A.1. COMPENSATION BASED ON COST WITH MULTIPLIER

For professional and non-professional staff, SJRA will compensate CONSULTANT on the basis of a multiplier added to the Raw Salary Cost as shown in the table below for the Scope of Work specified in the Work Order. Professional is defined as a manager, supervisor, engineer, scientist or other recognized profession. Typically, professional employees are salaried exempt employees. Typically, non-professional employees are hourly non-exempt employees. The Raw Salary Cost for salaried employees is defined as the annual base salary excluding bonuses, burdens, and benefits divided by 2080. For hourly personnel, the Raw Salary Cost is defined as the hourly wage paid to the employee exclusive of burdens and benefits. Any shift premiums or premiums paid for hours worked in excess of 40 per week will be added to the base hourly wage and will be considered a part of the Raw Salary Cost.

(a) RAW SALARY MULTIPLIERS

X.XX for professional and non-professional staff working at CONSULTANT or its subcontractor, subconsultant, or vendor offices

2.86 for professional and non-professional staff working in the field during construction or at SJRA offices for a minimum period of six (6) consecutive months

2.75 for construction inspectors working in the field

(b) EXPENSES

“Billable Expenses” include all costs and expenses directly attributable to performance of the services, which are in good accounting practice direct costs of the Services and not covered by the allowance for payroll burden and general office overhead and profit. Costs of outside services will be charged at actual invoice cost plus ten percent (10%). “Billable Expenses” include: subconsultants; travel expenses to and from locations outside Harris and Montgomery Counties; and copies of all deliverables submitted to SJRA. All local vehicle use outside Harris and Montgomery Counties will be reimbursed at the current IRS allowable rate with no markup. All other expenses are considered to be covered by the allowance for payroll burden and general office overhead and profit and are non-billable expenses.

A.2. LUMP SUM COMPENSATION

SJRA will compensate CONSULTANT on the basis of a mutually agreed upon lump sum price for the scope of work specified in the Work Order. SJRA may ask CONSULTANT for a cost estimate for the scope of work prior to issuing the Work Order. The cost estimate will include a summary breakdown showing the labor hours and cost, subconsultant costs, and other direct costs included in the estimate. Labor rates to be used in preparing the estimate will be the actual salary or wage of the employee times the appropriate multiplier specified in A.1 (a) above. CONSULTANT will submit and SJRA will pay monthly invoices based on the mutually agreed upon percentage of the project completed.

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ATTACHMENT B

This Work Order is issued subject to, is governed by and incorporates by reference that certain Professional Services Agreement, Contract No. _____, between the SJRA and CONSULTANT effective _____, 201_.

Work Order Date: _____

CONSULTANT: _____

Type of Compensation: _____

Compensation: _____

Location of Services: (County) _____

Description of Services: _____

Deliverables: See Attached.

Schedule Requirements:

Commence Services: _____

Completion of Services: _____

Submittal Dates for Each Deliverable: See Attached.

Agreed to by:

SJRA

By: _____

Name: Jace A. Houston

Title: General Manager

and

[CONSULTANT]

By: _____

Name: _____

EXHIBIT “B”

(Disadvantaged Business Forms and Guidance – Required
for Submission)

Texas Water
Development Board



**Guidance on
Disadvantaged Business Enterprises for
State Revolving Fund Projects**

Updates to this guidance include:

- *Fiscal Year 2018 Negotiated Minority Business Enterprise and Women's Business Enterprise (MBE/WBE) Goals (p. 2).*
- *Updated TWDB-0215 (Attachment 1)*
- *Updated TWDB-0217 (Attachment 3)*

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

TWDB-0210 GUIDANCE

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Attachments (examples of required forms):

1. TWDB-0215
2. TWDB-0216
3. TWDB-0217
4. TWDB-0373

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

INTRODUCTION TO FEDERAL REQUIREMENTS

The Texas Water Development Board (TWDB) intends to ensure that applicants, consultants and contractors are provided with information and guidance to successfully meet the U.S. Environmental Protection Agency's (EPA) Disadvantaged Business Enterprise (DBE) program requirements.

The TWDB's Clean and Drinking Water State Revolving Fund programs receive federal funding from the EPA to provide financial assistance for water and wastewater projects. Recipients of financial assistance (e.g., municipalities, towns, public water systems) and their sub-recipients (e.g., prime consultants, prime contractors, purchase order vendors) are **required** to make a "Good Faith Effort" to award a fair share of work to contractors who are certified as Minority Business Enterprises (MBE) and Women-owned Business Enterprises (WBE) whenever procuring construction, supplies, services, and equipment ([40 CFR, Section 33.301](#)). This requirement is currently limited to Clean Water State Revolving Fund Equivalency projects and all Drinking Water State Revolving Fund projects. Recipients of financial assistance are required to show evidence that they have performed the six steps showing a "Good Faith Effort" (referred to as the Six Good Faith Efforts) for all procurements ([40 CFR, Section 33.301](#)).

The DBE program is an outreach, education, and goal oriented program designed to increase the participation of MBEs and WBEs in procurements funded by EPA assistance agreements through the State Revolving Funds. The DBE program goals, also referred to as Fair Share Objectives, are negotiated every three years between the TWDB and the EPA. The TWDB's current negotiated fair share goals are:

<u>Category</u>	<u>MBE</u>	<u>WBE</u>
Construction	19.44%	9.17%
Equipment	16.28%	11.45%
Supplies	25.34%	8.82%
Services	20.41%	13.66%

Effective 08/14/2018 – 09/01/2021

The MBE/WBE goals are neither standards nor quotas; they are goals. Recipients of financial assistance are not required to meet the fair share objectives. They must, however, acknowledge that they are aware of and are actively pursuing the fair share objectives with their procurements.

Recipients of financial assistance **must** maintain all records documenting compliance with all applicable federal and state requirements. They are also subject to additional contract administration requirements ([40 CFR, Section 33.302](#)).

This guide will cover the Six Good Faith Efforts, procurement instructions, and the TWDB's DBE review process. All of the required DBE forms as well as a few situational examples are included for reference. Clear definitions of all of the terms used throughout the guidance document may be found within the Glossary (Appendix A). The terms "recipient of financial assistance", "applicant", or "entity" may be used interchangeably.

COMPLIANCE WITH THE REQUIREMENTS

Compliance is achieved by: 1) applying the Six Good Faith Efforts to all procurements utilizing applicable State Revolving Fund program funds, 2) submitting TWDB's DBE forms in a timely manner, 3) ensuring all necessary documentation and language is included in bid advertisements and solicitations, and 4) maintaining detailed documents showing compliance with the DBE requirements. In the event that a recipient of financial assistance fails to comply with any of the DBE program requirements, EPA may take remedial action under [40 CFR, Section 33.105](#). A failure to comply with the DBE process outlined in this guidance document accurately and in a timely manner may also result in the withholding of payments or project delays.

SIX GOOD FAITH EFFORTS

The Six Good Faith Efforts undertaken by a recipient of financial assistance and its prime consultant(s)/contractor(s) ensures that DBE businesses are made aware of procurement opportunities.

According to [40 CFR § 33.301](#), a recipient of financial assistance is required to complete the following Six Good Faith Efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement:

- (1) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (2) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (3) Consider in the contracting process whether businesses competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (4) Encourage contracting with a consortium of DBEs when a contract is too large for one of these businesses to handle individually.
- (5) Use the services and assistance of the Small Business Administration (SBA) and the Minority Business Development Agency of the Department of Commerce.
- (6) If the Prime Contractor awards subcontracts, require the prime contractor to take the complete steps (1) through (5) listed above.

Note: Step-by-step guides are available in future sections of this guidance to explain these six steps (pp. 7-15).

WHEN TO SUBMIT

Recipients of financial assistance through the SRF Programs will be required to submit DBE documentation at different phases during the project's lifecycle (Application, Prior to Closing, Release of Planning/Design funds, and Construction Contract Phases). *Note: Submitting DBE forms to the TWDB alone will not meet EPA's fair share policy. Review the section, Required Documentation, for the additional steps that **must** be completed.*

Application (must be submitted with a financial application)

- **TWDB-0215 (from Applicant/Entity)** certifies that the entity understands they **must** follow the Six Good Faith Efforts and attempt to meet the Fair Share Objectives for MBE/WBE participation.

Prior to Closing (must be submitted, reviewed and approved by TWDB staff prior to closing)

- **TWDB-0216 (from Applicant/Entity)** identifies the methods of solicitation used for procurements, all businesses directly solicited for procurement (at this stage, typically the Financial Advisor, Bond Counsel, and Engineer), their contact information, and their MBE/WBE status.
- **TWDB-0373 (from Applicant/Entity)** identifies the businesses awarded a contract, their contact information, their MBE/WBE status, an actual or anticipated executed contract date, and contract amount. *Note: Any businesses operating as brokers may not be listed on the TWDB-0373 as an MBE or WBE.¹*
- **TWDB-0217 (from Prime Consultants)** certifies that the Prime Consultant (at this stage, typically the Financial Advisor, Bond Counsel, and Engineer) understand they **must** follow the Six Good Faith Efforts and attempt to meet the Fair Share Objectives for MBE/WBE participation.

Release of Planning/Design Phase funds

- **TWDB-0216 (from Applicant/Entity)** identifies the methods of solicitation used for procurements, all businesses directly solicited for procurement, their contact information, and their MBE/WBE status. This form is required at this stage only, if the entity pursues procuring additional businesses (e.g., Environmental, Other Legal Services, Surveying) for construction (if applicable), equipment, services, or supplies after closing.
- **TWDB-0373 (from Applicant/Entity)** identifies the businesses awarded a contract, their contact information, their MBE/WBE status, an actual or anticipated executed contract date, and contract amount. This form is required, at this step only, if the entity pursues procuring additional businesses (e.g., Environmental, Other Legal Services, Surveying) for construction (if applicable), equipment, services, or supplies after closing. *Note: Any businesses operating as brokers may not be listed on the TWDB-0373 as an MBE or WBE.¹*
- **TWDB-0216 (from Prime Consultants/Contractors)** indicates all businesses solicited for procurement, their contact information, and their MBE/WBE status.

¹ A broker is a business that does not perform, manage, or supervise the work of its sub/contract in a manner consistent with the normal business practices for sub/contractors in its line of business.

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- **TWDB-0373 (from Prime Consultants/Contractors)** identifies all businesses awarded a subcontract, their contact information, their MBE/WBE status, an actual or anticipated executed contract date, and contract amount. *Note: Any businesses operating as brokers may not be listed on the TWDB-0373 as an MBE or WBE.*²

Construction Contracts

- **TWDB-0216 (from Applicant/Entity)** identifies the methods of solicitation used for procurements, all businesses directly solicited for procurement (at this stage, typically a construction contractor), their contact information, and their MBE/WBE status.
- **TWDB-0373 (from Applicant/Entity)** identifies the businesses awarded a contract, their contact information, their MBE/WBE status, an actual or anticipated executed contract date, and contract amount.
- **TWDB-0216 (from Prime Consultants/Contractors)** indicates all businesses solicited for procurement, their contact information, and their MBE/WBE status.
- **TWDB-0217 (from Prime Contractor)** certifies that the Prime Contractor understands they **must** follow the Six Good Faith Efforts and attempt to meet the Fair Share Objectives for MBE/WBE participation.
- **TWDB-0373 (from Prime Contractor)** identifies all businesses awarded a contract, their contact information, their MBE/WBE status, an actual or anticipated executed contract date, and contract amount. *Note: Any businesses operating as brokers may not be listed on the TWDB-0373 as an MBE or WBE.*²

REQUIRED DOCUMENTATION

In addition to the forms that **must** be submitted to the TWDB for review and approval prior to a project progressing through its lifecycle, recipients of financial assistance are required to maintain the following sets of documents or files related to the DBE program for the duration of the project:

- All copies of advertisements, solicitation postings, and communications to publish public solicitation including publishers' affidavits, U.S. certified mail receipts, and emails.
- Bidder's List(s) of Prime Contracts if procurement was through an open-competitive bidding process.
- All forms submitted to the TWDB and the EPA for the DBE program.
- All documentation submitted by the Prime Consultant(s) and Contractor(s) depicting their compliance with EPA's fair share policy (review the section, Procurement Steps, for more details).

SPECIAL CIRCUMSTANCES

In some circumstances, a recipient of financial assistance may not be able to make a good faith effort in procuring DBEs. If this circumstance is encountered, communication with the TWDB's DBE Coordinator should take place well in advance of making the decision to execute a procurement/contract not following the TWDB's DBE program. The DBE Coordinator will determine whether the circumstance may qualify for a **sole-source** method of procurement. The sole-source method requires that the recipient of financial assistance produce a letter explaining why they were unable to follow the DBE program, submit the documentation to the TWDB for official review, and retain a copy of the letter within the project file.

² A broker is a business that does not perform, manage, or supervise the work of its sub/contract in a manner consistent with the normal business practices for sub/contractors in its line of business.

Example:

After pilot testing a specific treatment process for a treatment plant, the Texas Commission on Environmental Quality (TCEQ) has required a specific piece of equipment that only a single manufacturer produces, or a sole-source. In this instance, two key items are needed for DBE program compliance: a letter from the recipient of financial assistance detailing the circumstances related to the sole-source, and the exemption letter from the TCEQ identifying the specific equipment. These items should be sent to the TWDB and saved within the recipient of financial assistance's project file. Communication should be given to the TWDB's DBE Coordinator upon receipt and review of the TCEQ's exemption letter.

There may be instances when a recipient of financial assistance would like to contract for services or contract with a supplier(s) for an extended period of time. These **multi-year contracts** are allowed and acceptable under the EPA's DBE program, so long as certain steps are followed. When the TWDB's DBE Coordinator reviews any submitted DBE documentation, they will ensure the solicitation language contains the expected scope of work and the applicable timeframes of the contract. The solicitation should also reference the TWDB's negotiated fair share objectives through use of the TWDB's solicitation statement within the advertisement. Including the solicitation statement ensures the multi-year contract is procured under the TWDB's current negotiated fair share objectives. If any of this information is missing, the TWDB's DBE Coordinator may not be able to approve the submitted DBE documentation and may require additional steps in order to meet compliance.

The recipient of financial assistance **must** follow the EPA's DBE process in procuring the multi-year contract(s). A multi-year contract will not be accepted if the contract solicitation and award date occurred more than three years from the date of submission to the TWDB's DBE Coordinator. Multi-year contracts exceeding this timeframe may be evaluated by the TWDB on a case-by-case basis. Advanced notice of this type of procurement should be given to the TWDB's DBE Coordinator before making the decision to execute a procurement/contract.

Example:

The Town of Medgar (Town), is preparing to execute a contract with a consultant engineering firm for engineering services covering all line replacement work within its public water supply system. The Town has drafted a solicitation for water line replacement work for all projects that are or may possibly be funded through the TWDB's Drinking Water State Revolving Fund (DWSRF) and has received an approval for use by the TWDB's DBE Coordinator. The multi-year contract is structured to be in effect for no longer than three years. Following the standard DBE process, the Town posts the solicitation, awards the contract, and then submits the applicable forms to the TWDB for review. Three years later, the Town chooses to take on additional water line replacement work funded through new DWSRF financing. To show compliance, they submit the DBE forms showing their original procurement of the engineering firm to the TWDB's DBE Coordinator. Following this process allows the Town to utilize one consultant engineering firm for all water line replacement projects within the system that are planned and/or implemented within the three years after executing the contract.

In instances where a recipient of financial assistance wants their own staff to perform services, their approval process would follow a **force account** process. Under a force account, the recipient of financial assistance submits a written request to the TWDB's DBE Coordinator describing the scope of work covered by their staff and indicating their participation through the force account process. This letter should remain within their project files. The TWDB's DBE Coordinator will acknowledge its receipt, review for applicability, and respond with a determination before any work proceeds.

PROCUREMENT STEPS

Included in these instructions are steps to successfully perform your DBE solicitation. Please read them carefully. These steps should be taken when procuring construction, equipment, services, and/or supplies. The terms “recipients of financial assistance”, “applicant”, or “entity” may be used interchangeably. The term “Prime(s)” refers to both “Consultants” and “Contractors”.

STEP 1. DETERMINE YOUR PROCUREMENT NEEDS

For all of the categories listed below, you are required to solicit by any of the listed methods identified in Step 2 DBE businesses qualified and capable of completing the work requested. You should also determine whether it is economically feasible to divide the proposed project into smaller tasks or quantities to permit maximum participation by DBE businesses.

Procurement Categories

Construction contracts generally relate to the bidding process for a prime contractor.

Equipment contracts relate to the purchase of equipment from vendors.

Services contracts relate to the hiring of consultants or any other service related work.

Supply contracts relate to the purchase of supplies directly from vendors.

Examples

1. If your project consists of one general construction contract, you will need to solicit DBE prime contractors within the regional vicinity of the project that are capable of completing the work.
2. If your own workforce will be performing all of the work, but you will need to purchase supplies or equipment, then you will need to solicit DBE vendors within the regional project area capable of providing supplies or equipment to your proposed project.

STEP 2. DETERMINE YOUR METHODS OF SOLICITATION

You may choose from a list of seven methods of solicitation. At least TWO methods **must** be chosen. These may be performed in conjunction with any required local or state procurement laws:

- Newspaper Advertisements
- Direct Contact by Phone, Fax, USPS Mail, Email (any combination of these still counts as ONE method)
- Meetings or Conferences
- Minority Media Postings
- Internet Website Postings
- Trade Association Publications (i.e., publishing a solicitation within a Trade Association’s publications)
- Other Government Publications (i.e., publishing a solicitation within other governmental publications)

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If you choose to solicit via direct contact, additional steps are required to ensure fairness (see Step 2B. Directly Solicit Businesses). To reiterate, depending on your entity or businesses' makeup, you **must** ensure that you meet all applicable local and state procurement laws.

STEP 2A. ADVERTISE YOUR PROJECT

Draft the content of your solicitation. Example advertisement and request for qualifications language is available in appendix B.

To be compliant with the DBE program, all solicitations, both publicly advertised and via direct contact, should address 1) fair share goals; 2) good faith efforts; 3) the involvement of federal EPA funding; and 4) encouragement of MBEs, WBEs, and other DBEs to bid on prime and subcontracts.

To ensure compliance, the TWDB recommends including the following solicitation statement in all solicitations:

This contract is subject to the Environmental Protection Agency's (EPA) Disadvantaged Business Enterprise (DBE) Program, which includes EPA-approved fair share goals toward procurement of Minority and Women-owned Business Enterprise (M/WBE) businesses. EPA rules require that applicants and prime contractors make a good faith effort to award a fair share of contracts, subcontracts, and procurements to M/WBEs through demonstration of the six affirmative steps. For more details of the DBE Program and the current, applicable fair share goals, please visit www.twdb.texas.gov/dbe.

The TWDB encourages you to publish your solicitation at least 30 days prior to the bid closing date to allow sufficient time for potential prime or subconsultants/contractors to submit bids and proposals. The solicitation statement may be used within a newspaper advertisement, a posting to minority media or internet website, or posting within any other trade association or government publications. A copy of the actual solicitation found within/on the publication or web page **must** be kept with the project files and submitted along with the form TWDB-0216.

When advertising your project through a newspaper, it is important to retrieve a publisher's affidavit showing the dates of the posting(s) and the content of the advertisement. This support information **must** be saved with the project files and submitted along with the form TWDB-0216. For entities and projects required by state procurement law to perform an open competitive bidding process (i.e., political subdivisions of the state or districts soliciting for contract(s) more than a specific dollar amount as directed by state procurement law), a posting at least once a week, for two consecutive weeks, in a newspaper published in the municipality (or county) in which the district is located is required (TEX. LOC. GOV'T CODE § 252.041 and TEX. WATER CODE § 49.273).

Note: Sufficient documentation for meetings or conferences held as a method of solicitation include announcements of the meeting or meeting minutes AND a sign-in sheet. Posting items to a government-run plan room is considered the "Other Government Publications" method listed within the previous step. Posting items to a privately-run plan room is considered the "Trade Association Publications" method listed within the previous step. Conducting and submitting a search of businesses does not count as any one of the methods listed within the previous step. Search results are only accepted when accompanied with a detailed, signed explanation to document your inability to locate DBE businesses meeting the qualifications solicited and/or their inability to bid on your project.

STEP 2B. DIRECTLY SOLICIT BUSINESSES

You may directly solicit businesses utilizing phone, fax, USPS mail, or email communications. All documentation of such activity **must** be saved with the project files. When communicating via phone, an electronic or hand-written call log may be used as support. Remember to document the name of the firm solicited, the person contacted, a telephone number, their MBE/WBE status, and the category of work requested.

You **must** make contact with at least three qualified businesses for the specific procurement and **at least one** of those businesses **must** be a certified MBE/WBE business. An example of submitted direct solicitation documentation is available in Appendix D. To determine a business' certification, review Step 3. Determining a Business' DBE Status.

STEP 3. DETERMINING A BUSINESS' DBE STATUS

A DBE is a business owned by a socially and economically disadvantaged individual and certified as such by the EPA or another organization whose certification standards meet or exceed that of the EPA's (See Appendix A for a full definition of DBE). To assist you in identifying, soliciting, and utilizing qualified DBE businesses, the TWDB encourages you to refer to the following list of acceptable DBE certification agencies made available at the local, statewide, and national levels.

- [Texas Procurement and Support Services \(TPASS\)](#) The **Centralized Master Bidders List (CMBL) – Historically Underutilized Business (HUB) Directory Search** is a statewide database managed by the TPASS. This database contains contact information on all vendors registered to do business with the State, including TPASS-certified HUB vendors. The CMBL & HUB search is an online system available to the public free of charge.
- [Small Business Administration](#)
- [Texas Department of Transportation](#)
- [City of Austin](#) Located on the right-hand side of the webpage are links to the MBE/WBE/DBE Certified Vendor Search and SBE Certified Vendors directories.
- [City of Houston](#)

A list of other Minority & Women-owned Business Organizations that you may contact directly to obtain a list of qualified vendors for your procurement opportunities may be found at www.twdb.texas.gov/dbe.

Please note that MBE, WBE, or Historically Underutilized Business (HUB) certifications provided by the Texas Small Businesses Association or the Texas Certification Directory **will not** be accepted by the TWDB or the U.S. Environmental Protection Agency (EPA) as they do not meet EPA certification requirements.

STEP 4. UNDERSTANDING ROLES AND RESPONSIBILITIES

For Applicants:

As the recipient of financial assistance, you are responsible for ensuring that your project meets EPA's fair share policy for all procurements funded utilizing State Revolving Fund program funds. This includes the subcontracts of your Prime Consultant(s) and Contractor(s). You should review the Prime Consultant's and Contractor's DBE documentation and determine them to be in compliance before you submit the TWDB forms and support for official review.

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You may request DBE documentation from your Prime Consultant(s) and Contractor(s) at the time of bid or after you have awarded a contract. Keep in mind your project schedule and the timeframes in which you need to obtain TWDB's approvals to continue progressing with your project. Receiving and reviewing forms earlier ensures that you receive approval well in advance of critical deadlines.

If your Prime Consultant's and Contractor's documented DBE process comes back with any errors, it is your responsibility to work with them to achieve compliance. Be mindful that contracts procured without following requirements may result in the need for re-procurement or be funded utilizing an alternate source of funds other than State Revolving Fund program funds. The TWDB's DBE Coordinator is available to assist you in correcting any deficiencies of your Prime Consultant's and Contractor's procurements. For more detailed instructions, review the section, Applicant's Review of Prime Consultant's/Contractor's Procurements.

If the contract amount for any of your Prime Consultant(s)/Contractor(s) changes from the time of your initial DBE submission, you **must** submit an updated TWDB-0373 listing the final, actual contract dollar amounts.

Note: In the event you change your Prime Consultant/Contractor or any subcontractors, for any reason, you or your Prime Consultant/Contractor must follow the DBE process when re-procuring. This will require you to re-submit a new TWDB-0373 reflecting actual contract dollar amounts and any supporting certification documentation.

For the Prime:

As the Prime, you are responsible for ensuring that your project meets EPA's fair share policy for all procurements funded utilizing State Revolving Fund program funds. You should review the subcontractors' DBE documentation and determine them to be in compliance before you submit the TWDB forms and support to the Entity awarding you a contract.

You may request DBE documentation from your subcontractor(s) at the time of bid or after you have been awarded a contract. Keep in mind your project schedule and the timeframes in which you need to obtain TWDB's approvals to continue progressing with your project. Receiving and reviewing forms earlier ensures that you receive approval well in advance of critical deadlines.

Be mindful that should any DBE forms or support documentation come back with any errors, it is your responsibility to correct any deficiencies to achieve compliance. A contract procured without following all of the necessary requirements may result in the need for re-procurement or be funded utilizing an alternate source of funds other than State Revolving Fund program funds. The TWDB's DBE Coordinator is available to assist you in correcting any deficiencies.

If the contract amount for any of your subcontractors change from the time of your initial DBE submission, you **must** submit an updated TWDB-0373 listing the final, actual contract dollar amounts.

Note: In the event you change any of your subcontractors, for any reason, you must follow the DBE process when re-procuring. This will require you to re-submit a new TWDB-0373 reflecting actual contract dollar amounts and any supporting certification documentation.

STEP 5. CREATING A BIDDERS LIST (APPLICANTS-ONLY)

As a recipient of financial assistance, you **must** create and maintain a Bidders List **if** your solicitation is subject to competitive bidding requirements. The list must include all firms that bid or quote on contracts and/or subcontracts. You **must** keep the bidders list until the project is complete, the project period has expired, and you are no longer receiving EPA funding under the financing agreement.

The following information **must** be retained on the Bidders List:

- The firm's name with point of contact
- The firm's mailing address, telephone number and email address
- The procurement on which the firm bid or quoted, and when
- The firm's status as an MBE/WBE.

The TWDB's form, [Affirmative Steps Solicitation Report \(TWDB-0216\)](#), may be used as the official Bidders List.

You may be exempt from the Bidders List requirement if you have received no more than \$250,000 for any single EPA financial assistance agreement OR no more than a combined total of \$250,000 for multiple EPA financial assistance agreements within any one federal fiscal year.

STEP 6. COMPLETING THE NECESSARY DBE FORMS

If you are completing these steps **prior to closing** on a TWDB financial assistance award:

Applicant: The forms you must complete and sign are the [TWDB-0216](#) and [TWDB-0373](#). These forms document the methods of solicitation used, who was directly solicited and/or made a bid, and who was ultimately awarded a contract. You may have chosen one or more Prime Consultants (typically an Engineer, Financial Advisor, and/or Bond Counsel).

Prime(s): You must complete and sign the [TWDB-0217](#) acknowledging you understand the DBE program requirements.

All three of these forms are needed well in advance of your (applicant's) anticipated closing date, as they must be reviewed and approved by TWDB staff before the closing is initiated. Confirm all forms are accurately completed, the required support documentation has been attached, and dated signatures from the appropriate authorized representatives are included.

If you are completing these steps for the **release funds for the planning, acquisition, and/or design phases**:

Prime(s): In addition to having the above referenced forms completed, you will need to complete and submit additional forms if you have selected subcontractors. Forms [TWDB-0216](#) and [TWDB-0373](#) should be completed and submitted to the Entity awarding you a contract. These forms document the methods of solicitation used, who was directly solicited and/or made a bid, and who was ultimately awarded a contract. All of these forms are needed in advance of the desired date for release of funds, as they **must** be reviewed and approved by TWDB staff before the release is initiated. Confirm that all forms are accurately completed, the required support documentation has been attached, and dated signatures from the appropriate authorized representatives are included.

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If you are completing these steps for a **construction contract(s)**:

Applicant: Forms [TWDB-0216](#) and [TWDB-0373](#) are required showing your selection process for a Prime Contractor(s).

Prime(s): Form [TWDB-0217](#) **must** be completed acknowledging that you understand the DBE program requirements. If subcontractors are utilized, complete forms [TWDB-0216](#) and [TWDB-0373](#) showing your selection process.

These forms are needed in advance of the desired date for release of funds, as they **must** be reviewed and approved by TWDB staff before the release is initiated. Confirm that all forms are accurately completed, the required support documentation has been attached, and dated signatures from the appropriate authorized representatives are included.

Note: In the event you change any of your subcontractors, for any reason, you must follow the DBE process when re-procuring. This will require you to re-submit a new TWDB-0373 reflecting actual contract dollar amounts and any supporting certification documentation.

In the event you run out of space on any of the TWDB forms, you can use your own additional spreadsheet or word document and attach.

STEP 7. SUMMARIZING THE PROCESS

The following is a summary of the necessary steps to complete in order to receive a notice of compliance with the DBE program requirements.

- **Applicant:** Publish, post, contact, and/or distribute advertisements soliciting for a Prime Consultant(s)/Contractor(s) for the proposed project. It is recommended that this occur at least 30-days prior to the close of accepting bids. The solicitation advertisement should contain the TWDB's recommended solicitation statement.
- **Applicant:** If applicable, create and retain a copy of a Bidders List (refer to Step 5).
- **Primes:** Complete and submit the Prime Consultant/Contractor Certification form (TWDB-0217) to the Entity awarding you a contract. If instructed to do so by the Entity, also submit the completed form to the TWDB Review Engineer. If sent electronically, copy DBE@twdb.texas.gov.
- **Primes:** If subcontracting, publish, post, contact, and/or distribute advertisements soliciting subcontractor(s) for the proposed project. It is recommended that this occur at least 30-days prior to the close of accepting bids. The solicitation advertisement should contain the TWDB's recommended solicitation statement.
- **All:** Save all copies, correspondence, etc. documenting the solicitation(s).
- **All:** Based upon the stage of the project, complete all necessary forms associated with the solicitation and award of the contract(s) for Prime Consultant(s)/Contractor(s) or subcontractor(s) (refer to Step 6 for the required forms).
- **All:** Compile all necessary forms from your selected Prime Consultant(s)/Contractor(s) or subcontractor, based upon the stage of the project. Ensure accuracy and completeness of the forms. Coordinate with the submitter should there be any errors.
- **All:** Submit all required documentation to the TWDB Project Reviewer / Engineer assigned to the project. If submitting electronically, copy DBE@twdb.texas.gov with the submission.

STEP 8. CHANGES TO SELECTED CONSULTANTS OR CONTRACTORS

In the event there is a change of Consultant(s)/Contractor(s) or any subcontractor(s), you **must** follow the DBE process when re-procuring.

APPLICANT'S REVIEW OF PRIME CONSULTANT'S/CONTRACTOR'S PROCUREMENTS

Before submitting any DBE documentation to the TWDB for an official review, look over the DBE documentation from your Prime Consultants/Contractors to confirm the documents are in order and the procurements are in compliance.

As a recipient of financial assistance, it is important to remember you are responsible for the Prime Consultant's/Contractor's soliciting of DBE businesses (DBE includes both MBEs and WBEs) for any procurements needed to complete your proposed project. This includes all construction, services, supplies and/or equipment.

If you encounter any errors, most can be corrected for compliance after the bid opening date as long as no awards have been made.

If you are unsure of any information presented to you during the review of the Prime Consultant(s)/Contractor(s) efforts, please contact the TWDB's DBE Coordinator for further instruction or recommendation at (512) 463-0991 or at DBE@twdb.texas.gov.

Included in these instructions are steps to successfully perform your review of your Prime Consultant(s)/Contractor(s) DBE documentation for this project. Please read them carefully. The term Prime(s) refers to both Consultants and Contractors. The terms recipient of financial assistance, applicant, or entity may be used interchangeably.

STEP 1. REVIEW ANY DRAFT SOLICITATIONS

Prior to the Prime Consultant(s)/Contractor(s) making any solicitations for subcontractor opportunities, you should review the draft solicitation to ensure that the TWDB's recommended solicitation statement, or the statement with the required solicitation components (see p. 8) is included. For reference, the following should appear in all solicitations:

This contract is subject to the Environmental Protection Agency's (EPA) Disadvantaged Business Enterprise (DBE) Program, which includes EPA-approved fair share goals toward procurement of Minority and Women-owned Business Enterprise (M/WBE) businesses. EPA rules require that applicants and prime contractors make a good faith effort to award a fair share of contracts, subcontracts, and procurements to M/WBEs through demonstration of the six affirmative steps. For more details of the DBE Program and the current, applicable fair share goals, please visit www.twdb.texas.gov/dbe.

If this or another form of acceptable language is not included, procurements made through the solicitation may not be compliant with the EPA's DBE Program.

STEP 2. ENSURE THAT ALL DOCUMENTATION HAS BEEN PROVIDED BY THE PRIME(S)

The Prime Consultant(s)/Contractor(s) should provide you, the Applicant:

- [TWDB-06217](#) This form acknowledges that the Prime Consultant/Contractor understands that they **must** follow the DBE program when soliciting for subcontractors.
- [TWDB-0216](#) If subcontractors are utilized, this form should be submitted. The form indicates all businesses solicited for procurement, their contact information, and their MBE/WBE status. The Prime Consultant/Contractor **must** include support documentation demonstrating they have met the Six Good Faith Efforts and followed the correct steps for their selected method(s) of solicitation.
- [TWDB-0373](#) If subcontractors are utilized, this form should be submitted. The form identifies the businesses awarded a procurement contract, their contact information, their MBE/WBE status, an actual or anticipated executed contract date, and contract amount. If any MBE/WBE businesses are contracted, the Prime Consultant/Contractor should include the DBE certification along with the form as support documentation. You **must** review the certification to ensure that the certification comes from an agency acceptable to the EPA. A list of acceptable DBE certification agencies may be found at www.twdb.texas.gov/dbe. *Note: Any businesses operating as brokers may not be listed on the TWDB-0373 as an MBE or WBE.*³

STEP 3. REVIEW THE SUPPORTING SOLICITATION DOCUMENTATION

The DBE solicitation should specifically describe the construction work, supplies, equipment, or services that are being solicited, and include the following required DBE language:

This contract is subject to the Environmental Protection Agency's (EPA) Disadvantaged Business Enterprise (DBE) Program, which includes EPA-approved fair share goals toward procurement of Minority and Women-owned Business Enterprise (M/WBE) businesses. EPA rules require that applicants and prime contractors make a good faith effort to award a fair share of contracts, subcontracts, and procurements to M/WBEs through demonstration of the six affirmative steps. For more details of the DBE Program and the current, applicable fair share goals, please visit www.twdb.texas.gov/dbe.

Similar to the solicitation you performed for your Prime Consultant(s)/Contractor(s), the TWDB recommends solicitations for subcontractors be published at least 30 days prior to the bid closing date to allow sufficient time for potential subcontractors to submit bids and proposals. You should ensure that a copy of the actual solicitation found within/on the publication or web page is kept with their and your project files. This information will be needed for submission to the TWDB for official review of DBE compliance.

If the Prime Consultant(s)/Contractor(s) is advertising through a newspaper, it is important to ensure that they have retained a publisher's affidavit showing the dates of the posting(s) and the content of the advertisement. You should also ensure that this support information is saved with their and your project files, as the information will be needed for submission to the TWDB for official review. Be mindful of your applicable local and state procurement laws as they relate to your Prime Consultant's/Contractor's solicitation of subcontractors.

³A broker is a business that does not perform, manage, or supervise the work of its sub/contract in a manner consistent with the normal business practices for sub/contractors in its line of business.

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STEP 3A. REVIEW PHONE LOGS, FAX TRANSMITTAL LOGS, EMAIL DELIVERY RECIEPTS, MEETING SIGN-IN SHEET, MINORITY MEDIA POSTING, INTERNET & WEB POSTINGS, TRADE ASSOCIATION PUBLICATIONS AND OTHER GOVERNMENT PUBLICATIONS

If the Prime Consultant(s)/Contractor(s) chose one of the solicitation methods mentioned above, they are **required** to provide support documentation showing that the TWDB's required solicitation statement was included or mentioned. Review all support documentation to ensure that this requirement was met.

STEP 4. CLOSE COORDINATION

It is important for you and your Prime Consultant(s)/Contractor(s) to coordinate closely during all phases of your project to ensure that all DBE requirements have been met. Failure to do so may result in project delays or the inability to make use of State Revolving Fund program funds.

STEP 5. NOW THAT YOU HAVE COMPLETED YOUR REVIEW

Once you have completed your review of the Prime Consultant's/Contractor's solicitation efforts and have determined that they are in compliance, you should keep all documentation on file in the event it is requested for review by the TWDB or the U.S. Environmental Protection Agency. All of the Prime Consultant's/Contractor's DBE solicitation documentation should be included in the DBE compliance package submitted to TWDB.

CONTRACT ADMINISTRATION REQUIREMENTS

Each procurement contract signed by a recipient of financial assistance must include the following term and conditions:

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

Additionally, the following U.S. EPA DBE regulations apply:

- A recipient **must** require its Prime Contractor to pay its subcontractor for satisfactory performance no more than 30 days from the Prime Contractor's receipt of payment from the recipient.
- A recipient **must** be notified in writing by its Prime Contractor prior to any termination of a DBE subcontractor for convenience by the Prime Contractor.
- If a DBE subcontractor fails to complete work under the subcontract for any reason, the recipient must require the Prime Contractor to employ the Six Good Faith Efforts described in 40 CFR § 33.301 if soliciting a replacement subcontractor.
- A recipient **must** require its Prime Contractor to employ the Six Good Faith Efforts even if the Prime Contractor has achieved its fair share objectives.

DBE PROGRAM LINKS

TWDB DBE Program Webpage: www.twdb.texas.gov/dbe

DBE Rules (40 CFR Parts 33, 35, and 40): www.epa.gov/sites/production/files/2013-09/documents/final_dbe_rule.pdf

MBE/WBE Certification Fact Sheet: www.epa.gov/sites/production/files/2013-09/documents/mbe_wbe_certification.pdf

- **Applicant** – a public or private utility seeking funding from the Clean Water State Revolving Fund (i.e., Equivalency funding only) or the Drinking Water State Revolving Fund.
- **Broker** – a business that does not perform, manage, or supervise the work of its contract or subcontract in a manner consistent with the normal business practices for contractors or subcontractors in its line of business.
- **Construction** – the erection, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other improvements to real property, and activities in response to a release or a threat of release of a hazardous substance into the environment, or activities to prevent the introduction of a hazardous substance into a water supply.
- **Disadvantaged Business Enterprises (DBE)** – an entity owned or controlled by a socially and economically disadvantaged individual as described by Public Law 102-389 (42 U.S.C. §4370d) or an entity owned and controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. §7601 note); a Small Business Enterprise (SBE); a Small Business in a Rural Area (SBRA); or a Labor Surplus Area Firm (LSAF), a Historically Underutilized Business (HUB) Zone Small Business Concern, or a concern under a successor program. This term includes Minority Business Enterprises (MBE) and Women-owned Business Enterprises (WBE).
- **Entity** – See “Applicant”.
- **Equipment** – items procured under a financial assistance agreement as defined by applicable regulations for the particular type of financial assistance received.
- **Equivalency funding** – a term used to categorize projects within the Clean Water State Revolving Fund program identified by the TWDB whose cumulative funding is in an amount equal to the capitalization grant awarded by EPA to the TWDB.
- **Fair Share Goals / Objectives** – are goals based upon the capacity and availability of qualified, certified MBEs and WBEs within the state for the procurement categories of construction, equipment, services, and supplies, compared to the number of all qualified entities within the state for the same procurement categories. The goals are negotiated every three years between the TWDB and EPA. A fair share objective is not a quota; a recipient cannot be penalized for not meeting its fair share objectives; and, once negotiated, fair share objectives remain in place for three years.
- **Fair Share Policy** – a policy maintained by the EPA relating to the “Good Faith Effort” to award a fair share of the work to contractors who are certified as Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) whenever procuring construction, supplies, services and equipment. The TWDB’s current negotiated fair share goals are available on page 2. Recipients are not required to meet the fair share goals; however, the EPA may take remedial action under 40 CFR §33.105 for failure to comply with DBE program requirements.
- **Financial Assistance Agreement** – a binding legal agreement between the recipients of financial assistance and the TWDB outlining the terms and conditions for the funding provided and the recipient’s obligations.

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- **Force Account** – the part of the expense account of a public body (as a municipality) resulting from the employment of a labor force usually distinguished from the part resulting from contracting similar services with commercial agencies
- **Historically Underutilized Business (HUB)** – a small business organization that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
- **Minority Business Enterprises (MBE)** – a Disadvantaged Business Enterprise (DBE) owned and/or controlled by a socially and economically disadvantaged individual other than a Small Business Enterprise (SBE), Labor Surplus Area Firm (LSAF), Small Business in Rural Areas (SBRA), or Women-owned Business Enterprise (WBE).
- **Prime Consultant** – consultants awarded a contract by the recipient of financial assistance, typically during the initial phases of a project; primarily the project’s consulting Engineer, Financial Advisor, and Bond/Legal Counsel.
- **Prime Contractor** – contractors awarded a contract by the recipient of financial assistance, typically during the construction phase of a project.
- **Procurement** – the act of obtaining construction work, equipment, services, or supplies.
- **Recipient** – See “Applicant”.
- **Services** – a contractor’s labor, time or efforts provided in a manner consistent with normal business practices which do not involve the delivery of a specific end item, other than documents (e.g., reports, design drawings, specifications).
- **Six Affirmative Steps** – also referred to as the Six Good Faith Efforts, are the steps every recipient of financial assistance through the State Revolving Fund must follow, along with their Prime Consultant(s)/Contractor(s), in order to adequately offer the opportunity to make bids for work paid using these funds.
- **Six Good Faith Efforts** – See “Six Affirmative Steps”.
- **Small Business Enterprises (SBE)** – an organization, including its affiliates, independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR Part 121.
- **Subcontractor** – a business awarded a contract by a Prime Consultant/Contractor for specific work, services, supplies, or equipment.
- **Supplies** – items procured under a financial assistance agreement as defined by applicable regulations for the particular type of financial assistance received.
- **Women-owned Business Enterprises (WBE)** – a business which is at least 51% owned or controlled by women for purposes of EPA’s 8% statute or a business concern which is at least 51% owned and controlled by women for purposes of EPA’s 10% statute. Determination of ownership by a married woman in a community property jurisdiction will not be affected by her husband’s 50% interest in her share. Similarly, a business which is more than 50% owned by a married man will not become a qualified WBE by virtue of his wife’s 50% interest in his share.

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APPENDIX B. EXAMPLE ADVERTISEMENTS (REQUEST FOR QUALIFICATIONS)

ADVERTISEMENT / INVITATION FOR BIDS REQUEST FOR SEALED PROPOSALS

The City of ____ will receive bids for the Lift Station and Sanitary Sewer Rehabilitation Project at ____ City Hall until 3:00 p.m., on the ____ day of _____, 2011, at the City ____ City Hall located on 123 Example St., _____, Texas 78516, at which time all bids will be received and publicly opened and read. Bids received after the closing time will be returned unopened. NO PRE-BID CONFERENCE WILL BE CONDUCTED.

This contract is subject to the Environmental Protection Agency's (EPA) Disadvantaged Business Enterprise (DBE) Program, which includes EPA-approved fair share goals toward procurement of Minority and Women-owned Business Enterprise (M/WBE) businesses. EPA rules require that applicants and prime contractors make a good faith effort to award a fair share of contracts, subcontracts, and procurements to M/WBEs through demonstration of the six affirmative steps. For more details on the DBE Program and the current, applicable fair share goals, please visit www.twdb.texas.gov/dbe.

This contract is to be funded through a loan obtained from the Texas Water Development Board as part of the Clean Water State Revolving Fund. There are a number of special provisions for this funding that bidders, by submitting a bid, acknowledge understanding, including the following: A contract is contingent upon release of funds from the TWDB. Any contract or contracts awarded under this Notice to Bidders are expected to be funded in part by financial assistance from the TWDB. Neither the State of Texas nor any of its departments, agencies, or employees are or will be a party to this Invitation for Bids or any resulting contract.

Equal Opportunity in Employment - All qualified applicants will receive consideration for employment without regard to race, color, national origin, sex, religion, age, or handicap. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under TWDB financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach, which may result in the termination of the awarded financial assistance.

The project will consist of the following:

The City of ____ intends to replace/install/upgrade electrical controls and minor rehab for eight (8) lift stations remove and replace approx. 616 linear feet of 8" sanitary sewer line, remove and replace approx. 1,758 linear feet of 12" clay sanitary sewer line with a 15" PVC sanitary sewer line, remove and replace ten (10) 48" brick manholes with 48" fiberglass manholes.

Contract Documents, including Drawings and Technical Specifications are on file at the City of ____ City Hall or at the office of _____, at _____, _____. Please direct questions to _____.

Copies of the Contract Documents and Construction Plans can be examined at _____. Bidders, suppliers or sub-contractors may obtain copies of the Contract Documents for bidding purposes at ____ for a non-refundable payment of \$100.00 per set, checks made payable to _____. A Certified check or bank draft, payable to the order of City of _____ or negotiable U.S. Government Bonds (at par value) or a satisfactory Bid Bond executed by the Bidder of an acceptable surety in an amount equal to five percent (5%) of the total bid shall be submitted with each bid.

The City of _____ reserves the right to reject any or all bids or to waive any informality in the bidding. Bids may be held by the City of _____ for a period not to exceed sixty (60) days from the date of the bid opening for the purpose of reviewing the bids and investigating the bidders' qualifications prior to the contract award.

Small and minority firms are encouraged to submit bids for this project.

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ENGINEER, BOND COUNSEL, and FINANCIAL ADVISOR - REQUEST FOR QUALIFICATIONS

The City of _____ requests the submission of qualifications statements, which will lead to the possible award of a contract to provide _____ services for a project involving the City's Water Treatment Facilities.

Scope of Work

The services to be obtained for the **Engineer** require: _____

The services to be obtained for the **Bond Counsel** require: _____

The services to be obtained for the **Financial Advisor** require: _____

Guidelines for Content of Qualification Statements

DO NOT INCLUDE COST INFORMATION with the qualification statement. Responses that include cost or pricing information will be rejected and will not be considered by the City.

Detailed instructions on preparation of the qualification statement must be obtained from the City. For more information on preparing and submitting the qualification statement, contact _____, City Administrator, at _____. This information should be requested as soon as possible in order to allow time to prepare the document and comply with the procedures.

Submittal Deadline

Three copies of the qualifications statement must be filed with the City by: _____.

Minimum Qualifications and Selection Criteria

The City will evaluate the proposals to determine which firm has the best qualifications.

Contract Terms and Negotiation Schedule

The consultant for *Bond Counsel, Financial Advisor, Engineering and Rate Consultant* services is expected to negotiate an agreement for services that is acceptable to the City. If an acceptable contract cannot be negotiated, the City may formally end negotiations and begin negotiating with the next highest qualified person or firm.

This contract is contingent upon release of funds from the Texas Water Development Board (TWDB). Any contract or contracts awarded under this Invitation for Bid (IFB) or Request for Qualifications (RFQ) are expected to be funded in part by a loan from the TWDB. Neither the State of Texas nor any of its departments, agencies, or employees are or will be a party to this IFB, RFQ, or any resulting contract. RFQ's are issued in accordance with Section 2254 of the Texas Government Code (Professional Services Act).

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This contract is subject to the Environmental Protection Agency's (EPA) Disadvantaged Business Enterprise (DBE) Program, which includes EPA-approved fair share goals toward procurement of Minority and Women-owned Business Enterprise (M/WBE) firms. EPA rules require that applicants and prime contractors make a good faith effort to award a fair share of contracts, subcontracts, and procurements to M/WBEs through demonstration of the six affirmative steps. For more details of the DBE Program and the current, applicable fair share goals, please visit www.twdb.texas.gov/dbe.

The City of _____ is an affirmative action/equal opportunity employer. All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, handicap or national origin. Small, minority, and women-owned business enterprises are encouraged to submit proposals.

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APPENDIX C. HOW TO SEARCH THE CMBL AND HUB DIRECTORY

Visit the [Texas Procurement and Support Services \(TPASS\)](http://www.cpa.state.tx.us/procurement/cmb/cmbhub.html) website at <https://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>.

The screenshot shows a web browser window with the URL <http://www.cpa.state.tx.us/procurement/cmb/cmbhub.html>. The page title is "Window on State Government". The main heading is "Centralized Master Bidders List (CMBL) & Historically Underutilized Business (HUB) Search".

Search:
 CMBL only, HUBs on CMBL, HUBs not on CMBL
 HUB Mentor Protege, All Vendors

Vendor ID:
Vendor Number:
Vendor Name: begins with Name
Include Inactive Vendors: **Small Businesses Only:** Yes, No

Selection 1: Class Code: Item: District:
Selection 2: Class Code: Item: District:
Selection 3: Class Code: Item: District:
[Class Code](#) | [Item Code](#) | [District](#)

Texas County:
City: begins with
Zip: begins with
Sort by: Vendor Name
Output as: Detail List
Results: return all matches

Output may contain coded information in Hub Status and Reason Off CMBL

Related Links:
[CMBL Registration](#)
[HUB Directory](#)
[HUB Mentor Protege Agreement Listing](#)
[System for Award Management \(EPLS\)](#)
[Debarred Vendors List](#)

NIGP Class-Item Codes contain 5-digits. To obtain the five-digit code, combine the three-digit class code with its corresponding two-digit item number.

Step 1: Go to the TPASS website.

Step 2: Select the type of business search: CMBL only, HUBs on CMBL, HUBs not on CMBL, HUB mentor protégé, or all vendors.

Step 3: Enter the respective commodity class, item and district codes (please see next page for related water and wastewater commodities) and click on Search.

Step 4: On the following page, select the information you would like to obtain from the database: contact information, address, business description, gender, ethnicity, and website.

Step 5: Search Results will appear with the requested information.

Step 6: Click on the Vendor ID or business name to pull up detailed vendor information to confirm HUB status (A = Active, N = Not HUB), contact information, and registered commodities.

Step 7: Gather physical or email contact information from the search results list.

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Example National Institute of Government Purchasing (NIGP) Commodity Codes

Class	Item(s)	Description
890 (Water Supply, Groundwater, Sewage Treatment, and Related Equipment)	01 - 95	Equipment (various)
907 (Architectural and Engineering Services – Non-Professional)	42	Geotechnical – Soils
907 (Architectural and Engineering Services – Non-Professional)	75	Site Assessment and Site Field Observation
907 (Architectural and Engineering Services – Non-Professional)	83	Testing Services
912 (Construction Services, General)	16	Boring, Drilling, Testing, Soundings
912 (Construction Services, General)	23	Construction, General (Backfill Services, Digging, Ditching, Road Grading, Rock Stabilization)
912 (Construction Services, General)	40	Demolition Services
912 (Construction Services, General)	44	Excavation Services
912 (Construction Services, General)	75	Quality Control Testing Services
913 (Construction Services, Heavy – Including Maintenance and Repairs)	39	Construction, Pipe Culvert
913 (Construction Services, Heavy – Including Maintenance and Repairs)	40	Construction, Pipeline
913 (Construction Services, Heavy – Including Maintenance and Repairs)	45	Construction, Sewer and Storm Drain
913 (Construction Services, Heavy – Including Maintenance and Repairs)	47	Construction, Sidewalk and Driveway
913 (Construction Services, Heavy – Including Maintenance and Repairs)	56	Construction, Utility/Underground Projects
913 (Construction Services, Heavy – Including Maintenance and Repairs)	59	Construction and Upgrades, Wastewater Treatment Plant
913 (Construction Services, Heavy – Including Maintenance and Repairs)	60	Construction, Water System/Plants, Main and Service Line
913 (Construction Services, Heavy – Including Maintenance and Repairs)	63	Lime Slurry Removal Services
913 (Construction Services, Heavy – Including Maintenance and Repairs)	77	Maintenance and Repair, Pipe Culvert
913 (Construction Services, Heavy – Including Maintenance and Repairs)	78	Maintenance and Repair, Pipeline (Includes Removal and Relocation)
913 (Construction Services, Heavy – Including Maintenance and Repairs)	81	Maintenance and Repair, Sewer and Storm Drain (Including Removal)
913 (Construction Services, Heavy – Including Maintenance and Repairs)	82	Maintenance and Repair, Sidewalk and Driveway (Including Removal)
913 (Construction Services, Heavy – Including Maintenance and Repairs)	89	Maintenance and Repair, Utility/Underground Projects
913 (Construction Services, Heavy – Including Maintenance and Repairs)	91	Maintenance and Repair, Wastewater Treatment Plant
913 (Construction Services, Heavy – Including Maintenance and Repairs)	92	Maintenance and Repair, Water System, Main and Service Line
914 (Construction Services, Trade (New Construction))	27 -88	Construction Trades (various)
918 (Consulting Services)	16	Archeological Consulting
918 (Consulting Services)	41	Energy Conservation Consulting

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Class	Item(s)	Description
918 (Consulting Services)	42	Engineering Consulting
918 (Consulting Services)	43	Environmental Consulting
918 (Consulting Services)	46	Feasibility Studies (Consulting)
918 (Consulting Services)	55	Geological Consulting and Study
918 (Consulting Services)	72	Lakes, Rivers, and Other Waterway Management Consulting Services
918 (Consulting Services)	74	Legal Consulting
918 (Consulting Services)	97	Utilities: Gas, Water, Electric Consulting
925 (Engineering Services, Professional)	17	Civil Engineering
925 (Engineering Services, Professional)	24	Desalination (Process and Facilities) Engineering
925 (Engineering Services, Professional)	28	Drainage Engineering
925 (Engineering Services, Professional)	33	Engineer Services, Professional
925 (Engineering Services, Professional)	34	Energy Management Engineering
925 (Engineering Services, Professional)	35	Environmental Engineering
925 (Engineering Services, Professional)	36	Engineering Services (Not Otherwise Classified)
925 (Engineering Services, Professional)	37	Facilities Design Services, Engineering
925 (Engineering Services, Professional)	44	General Construction: Management, Scheduling, Cost Estimation – Engineering
925 (Engineering Services, Professional)	45	Geological Engineering
925 (Engineering Services, Professional)	46	Geotechnical Engineering
925 (Engineering Services, Professional)	58	Irrigation; Drainage: Flood Control/Engineering
925 (Engineering Services, Professional)	61	Land Development and Planning/Engineering
925 (Engineering Services, Professional)	70	Municipal Engineering
925 (Engineering Services, Professional)	77	Pollution Control Engineering
925 (Engineering Services, Professional)	78	Power Generation, Transmission, Distribution - Engineering
925 (Engineering Services, Professional)	83	Sanitary Engineering
925 (Engineering Services, Professional)	87	Sewage Collection, Treatment, and Disposal Engineering
925 (Engineering Services, Professional)	96	Waste Water Treatment Engineering
925 (Engineering Services, Professional)	97	Water Supply, Treatment, and Distribution/Engineering
926 (Environmental and Ecological Services)	14	Air Pollution Control Services (Including Data Collection Research and Development, etc.)
926 (Environmental and Ecological Services)	23	Auditing Services, Environment
926 (Environmental and Ecological Services)	29	Contaminated Groundwater Services (Including Discharge Pipe Installation)
926 (Environmental and Ecological Services)	40	Ecological Services
926 (Environmental and Ecological Services)	41	Ecosystem Development, Management and Protection Services
926 (Environmental and Ecological Services)	42	Environmental Services (Not Otherwise Classified)
926 (Environmental and Ecological Services)	52	Impact Studies, Environmental
926 (Environmental and Ecological Services)	62	Noise Testing Services
926 (Environmental and Ecological Services)	70	Permitting Services, Environmental
926 (Environmental and Ecological Services)	72	Planning and Advisory Services, Environmental
926 (Environmental and Ecological Services)	83	Site Assessment, Environmental
926 (Environmental and Ecological Services)	85	Soil, Soil Vapor, and Groundwater Sampling and Analysis (Including Disposal)
926 (Environmental and Ecological Services)	88	Storm Water Discharge Testing Services
926 (Environmental and Ecological Services)	90	Subsurface Testing, Environmental

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Class	Item(s)	Description
926 (Environmental and Ecological Services)	91	Tank Testing and Disposal Services, Storage (Including Underground Types)
926 (Environmental and Ecological Services)	94	Water Pollution Services
926 (Environmental and Ecological Services)	95	Water/Wastewater Conservation Services
926 (Environmental and Ecological Services)	96	Wetland Delineations (Including Assessments)
946 (Financial Services)	25	Banking Services
946 (Financial Services)	30	Cash/Securities and Bonding Services
946 (Financial Services)	38	Custom Brokerage Services (Including Stocks and Bonds)
946 (Financial Services)	48	Financial Advisor
946 (Financial Services)	49	Financial Services (Not Otherwise Classified)
946 (Financial Services)	56	Investment Management Services
946 (Financial Services)	60	Loan Administration
946 (Financial Services)	66	Monetary Systems (Including Analysis, Liquidity, Policy, etc.)
946 (Financial Services)	75	Securities and Commodities Market Services (Including Direct or Indirect Purchases, Sales and Transactions of Equities, Fixed Income, Options, and Derivatives on an Agency and Principal Basis)
946 (Financial Services)	85	Trusts, Estates and Agency Accounts
958 (Management Services)	05	Asset Management Services
958 (Management Services)	12	Bio-Solids Management Services
958 (Management Services)	26	Construction Management Services
958 (Management Services)	39	Financial Management Services
958 (Management Services)	77	Project Management Services
958 (Management Services)	85	Soil and Land Management Services (Including Testing, Protection, Preparation, Planning, etc.)
961 (Miscellaneous Services, No 1. (Not Otherwise Classified))	01	Archeological Services
961 (Miscellaneous Services, No 1. (Not Otherwise Classified))	32	Environmental Impact Studies
961 (Miscellaneous Services, No 1. (Not Otherwise Classified))	49	Legal Services, Attorney
961 (Miscellaneous Services, No 1. (Not Otherwise Classified))	85	Utility Services, Water
961 (Miscellaneous Services, No 1. (Not Otherwise Classified))	91	Water and Petroleum Pipeline Services
962 (Miscellaneous Services, No 2. (Not Otherwise Classified))	14	Blue Printing Services: Blue Prints, Blue Line, Large Engineering
962 (Miscellaneous Services, No 2. (Not Otherwise Classified))	39	Hauling Services
962 (Miscellaneous Services, No 2. (Not Otherwise Classified))	50	Leak Detection Services: Gas, Water, Chemical
962 (Miscellaneous Services, No 2. (Not Otherwise Classified))	52	Mapping Services (Including Cartography and Surveying Services (Not Aerial – See 902-33 and 905-10 for Aerial Mapping and Surveying Services)
962 (Miscellaneous Services, No 2. (Not Otherwise Classified))	92	Video Scanning of Sewers, Water Wells, etc.
962 (Miscellaneous Services, No 2. (Not Otherwise Classified))	94	Water Services, Bottled and Bulk Delivery (Tanker Services)

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Class	Item(s)	Description
962 (Miscellaneous Services, No 2. (Not Otherwise Classified))	96	Well Services (Including Oil, Gas, and Water): Drilling, Plugging, Consulting, Maintenance and Repair
968 (Public Works and Related Services)	18	Back Flow Preventer Testing Services
968 (Public Works and Related Services)	47	Inspection Services, Construction Type
968 (Public Works and Related Services)	63	Relocation and/or Removal Services for Utility Works
968 (Public Works and Related Services)	66	Right of Way Services (Including Title, Appraisal, Negotiation, Closing, Relocation, Condemnation, etc.)
968 (Public Works and Related Services)	73	Storm Drain Cleaning, Repair, and Sludge Removal Services
968 (Public Works and Related Services)	78	Tank Installation, Removal, Disposal, and Related Services (Including Septic and Underground Type)
968 (Public Works and Related Services)	91	Water Supply Analysis, Infrastructure Analysis, Water Quality Analysis, and Long-Term Planning
968 (Public Works and Related Services)	92	Water Supply Plant Operating and Monitoring System Services (Including Water Resources Development and Water Quality Management Services)
968 (Public Works and Related Services)	96	Water and Wastewater Treatment Services

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APPENDIX D. EXAMPLES OF DIRECT SOLICITATIONS

Example Call/Fax Log

For facsimiles, a copy of one of the faxed information should be provided with the completed TWDB-0216 form submission.

DBE Call Log
City of Yaleville Water Treatment Plant Project
DWSRF

Date: 10/15/16
 Contact: Carl Sagan, Manager
 Company: Goldberg Instruments LLC
 Phone No.: 313.555.7199
 Certification: Not a MBE/WBE
 Comments: Requested a quote on lab equipment for water quality testing. Emailed the ad used in The Yaleville Hallor classifieds.

Date: 10/15/16
 Contact: Neil deGrasse Tyson, owner
 Company: N.E.G. Instruments, LLC
 Phone No.: 313.555.1000
 Certification: MBE, Certified by City of Austin
 Comments: Requested a quote on lab equipment for water quality testing. Emailed the ad from The Yaleville Hallor classifieds.

Date: 10/16/16
 Contact: Michio Kaku, President
 Company: Bottom Page Instrument Company
 Phone No.: 313.557.4322
 Certification: MBE, Certified by Texas D.O.T.
 Comments: Requested a quote on lab equipment for water quality testing.

Date: _____
 Contact: _____
 Company: _____
 Phone No.: _____
 Certification: _____
 Comments: _____

Date: _____
 Contact: _____
 Company: _____
 Phone No.: _____
 Certification: _____
 Comments: _____

Date: _____
 Contact: _____
 Company: _____
 Phone No.: _____
 Certification: _____
 Comments: _____

Date: _____
 Contact: _____
 Company: _____
 Phone No.: _____
 Certification: _____
 Comments: _____

Date: _____
 Contact: _____
 Company: _____
 Phone No.: _____
 Certification: _____
 Comments: _____

Date: _____
 Contact: _____
 Company: _____
 Phone No.: _____
 Certification: _____
 Comments: _____

Date: _____
 Contact: _____
 Company: _____
 Phone No.: _____
 Certification: _____
 Comments: _____

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Example Email

From: Felix Stanton
Sent: Monday, November 28, 2016 4:32 PM
To: Rose Mendoza (rmendoza@shiplap.com)
Subject: Yaleville WTP RFT

Importance: High

Attachments: Yaleville WTP Project RFT

Ms. Mendoza,

The City of Yaleville is seeking a response to this Request for Tender (RFT) for lab equipment for water quality testing.

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Example US Mail

Along with the Certified mail receipts (shown below), a copy of one of the mailed letters should be provided with the completed TWDB-0216 form submission.

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

COLLEYVILLE TX 76034
OFFICIAL USE

Postage	\$ 0.45	0086
Certified Fee	\$2.95	15 Postmark Here
Return Receipt Fee (Endorsement Required)	\$0.00	
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 3.40	12/12/2012

Sent to
Street, Apt. No. or PO Box No.
City, State, ZIP
Thompson Terrace
Colleyville, Texas 76034

7011 3500 0000 7522 1266
PS Form 3800

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

AUSTIN TX 78757
OFFICIAL USE

Postage	\$ 0.45	0086
Certified Fee	\$2.95	15 Postmark Here
Return Receipt Fee (Endorsement Required)	\$0.00	
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 3.40	12/12/2012

Sent to
Street, Apt. No. or PO Box No.
City, State, ZIP
Northcross Drive, Suite 211
Austin, Texas 78757

7011 3500 0000 7522 1295
PS Form 3800

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

AUSTIN TX 78739
OFFICIAL USE

Postage	\$ 0.45	0086
Certified Fee	\$2.95	15 Postmark Here
Return Receipt Fee (Endorsement Required)	\$0.00	
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 3.40	12/12/2012

Sent to
Street, Apt. No. or PO Box No.
City, State, ZIP
Lost Oasis Hollow
Austin, Texas 78739

7011 3500 0000 7522 1301
PS Form 3800

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

DALLAS TX 75219
OFFICIAL USE

Postage	\$ 0.45	0086
Certified Fee	\$2.95	15 Postmark Here
Return Receipt Fee (Endorsement Required)	\$0.00	
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 3.40	12/12/2012

Sent to
Street, Apt. No. or PO Box No.
City, State, ZIP
Turtle Creek Boulevard,
Suite 1151
Dallas, Texas 75219

7011 3500 0000 7522 1316
PS Form 3800

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

SUGAR LAND TX 77479
OFFICIAL USE

Postage	\$ 0.45	0086
Certified Fee	\$2.95	15 Postmark Here
Return Receipt Fee (Endorsement Required)	\$0.00	
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 3.40	12/12/2012

Sent to
Street, Apt. No. or PO Box No.
City, State, ZIP
Southwest Freeway, Suite 227
Sugar Land, Texas 77479

7011 3500 0000 7522 1325
PS Form 3800

San Jacinto River Authority
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ATTACHMENT 1 – AFFIRMATIVE STEPS CERTIFICATION AND GOALS (TWDB-0215)

To download this document, view [TWDB-0215 from the TWDB website](#).

FOR OFFICE USE ONLY: Commitment #	TWDB-0215 Revised 08/14/2018		
TWDB-0215 APPLICANT/ENTITY TEXAS WATER DEVELOPMENT BOARD AFFIRMATIVE STEPS CERTIFICATION and GOALS			
I. PROJECT INFORMATION			
TWDB Project Number	Applicant/Entity Name	Total of TWDB Funding Request	Program Type (insert "X" for all that apply)
			<input type="checkbox"/> Drinking Water SRF (DWSRF)
			<input type="checkbox"/> Clean Water SRF (CWSRF)
II. GOOD FAITH EFFORT (Applicable to all PRIME contracts awarded by the applicant/entity)			
I understand that it is my responsibility to comply with all state and federal regulations and guidance in the utilization of Minority and Women-Owned Businesses in procurement. I certify that I will make a good faith effort to afford opportunities for Minority Business Enterprise (MBE), and Women-Owned Business Enterprise (WBE) by:			
1.	Including qualified MBEs and WBEs on procurement solicitation lists		
2.	Soliciting potential MBE's and WBE's		
3.	Reducing contract size/quantities when economically feasible to permit maximum participation by MBE's and WBE's		
4.	Establishing delivery schedules to encourage participation by MBE's and WBE's		
5.	Using the services and assistance of the Small Business Administration, Minority Business Development Agency, U.S. Department of Commerce, and Texas Marketplace		
6.	Requiring all Prime Consultants/Contractors to follow steps 1-5 listed above in employing MBE and WBE Subcontractors		
	Signature - Applicant/Entity Representative	Title (print legibly)	Date
III. PROJECT PARTICIPATION ESTIMATES			
The Cost Categories mentioned below are goals. These goals are neither standards nor quotas. Recipients of financial assistance are not required to meet the fair share objectives. They must, however, acknowledge that they are aware of and are actively pursuing the fair share objectives with their procurements.			
	Potential MBE Participation	Potential WBE Participation	
Cost Category	Goal	Goal	
Construction	19.44%	9.17%	
Supplies	25.34%	8.82%	
Equipment	16.28%	11.45%	
Services	20.41%	13.66%	
<i>The fair share goals listed above are required by 40 CFR Part 33 Subpart D and are directly negotiated with EPA Region 6. Entities receiving federal financial assistance are subject to the TWDB's goals and may not be substituted with other agency or program goals.</i>			
IV. TWDB APPROVAL SIGNATURE			
Signature indicates the form meets DBE Requirements.			
DBE Coordinator		Approval Date	

San Jacinto River Authority
RFQ #18-0004-A

ATTACHMENT 2 – AFFIRMATIVE STEPS CERTIFICATION AND GOALS (TWDB-0216)

To download this document, view [TWDB-0216 from the TWDB website](#).

Page 1 of 2

FOR OFFICE USE ONLY
 Commitment # _____

TWDB-0216
 Revised 11/13/2017

TWDB-0216
TEXAS WATER DEVELOPMENT BOARD
AFFIRMATIVE STEPS SOLICITATION REPORT

I. PROJECT INFORMATION

TWDB Project Number	Applicant/Entity Name	Total TWDB Funding Request	Program Type (insert "X" for all that apply)
			<input type="checkbox"/> Drinking Water SRF (DWSRF) <input type="checkbox"/> Clean Water SRF (CWSRF)

Project Name: _____

Solicitation By: Applicant/Entity OR Prime Contracted Business: _____

Project Phase: Prior to Closing Release of funding for PADs Construction Contract # _____

II. SOLICITATION METHOD(S) UTILIZED
 At least two methods of solicitation are required. Select the method(s) utilized for the solicitation. Copies of the actual postings, direct contact email/phone log, etc. must be attached to this form as support documentation for each method used. Failure to adequately follow these steps will result in the requirement to complete additional steps in order to become compliant.

<input type="checkbox"/> Newspaper Advertisements	<input type="checkbox"/> Meetings or Conferences	<input type="checkbox"/> Trade Association Publications
<input type="checkbox"/> Minority Media	<input type="checkbox"/> Internet & Web Postings	<input type="checkbox"/> Other Government Publications
<input type="checkbox"/> Direct Contact by Phone, Fax, USPS Mail, or Email*		

*If using direct contact, entities must solicit to a **minimum of 3** businesses/firms (at least one being a DBE) for each category of contract sought (i.e., construction, supplies, equipment, or services) to demonstrate a Good Faith Effort.

III. PROJECT BIDDERS LIST:
 List on the following table, or provide on a separate list, each business entity directly solicited for procurement or that submitted a bid for consideration.

Instructions for Columns 1 - 4	1 - Full business name (line one) & point of contact (line two) 2 - Business address 3 - Telephone number 4 - Email address for the business
Instructions for Column 5	Enter one of the following procurement or contract categories: CONSTRUCTION – SUPPLIES – EQUIPMENT – SERVICES <i>For detailed definitions, review guidance document, TWDB-0210.</i>
Instructions for Column 6	Enter the type of business: MBE - Minority Business Enterprise, WBE - Women-owned Business Enterprise, or OTHER - Company or firm is Non-MBE or WBE

Notice: Entities receiving State Revolving Fund financial assistance must create and maintain a Bidders List if the entity is subject to, or chooses to follow, competitive bidding. The Bidders List must include all firms that bid or quoted on contracts under EPA assisted projects, including both MBE/WBEs and non-MBE/WBEs. Entities must keep all Bidders Lists until project completion or the recipient is no longer receiving EPA funding under the loan, whichever is later. Entities with loans totaling less than \$250,000 during a state fiscal year are exempt from the Bidders List requirement, but must still meet DBE program requirements. The Bidders List requirement also applies to all Prime Contracted Businesses/Firms that make subcontracting.

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ATTACHMENT 3 – AFFIRMATIVE STEPS CERTIFICATION AND GOALS (TWDB-0217)

To download this document, view [TWDB-0217 from the TWDB website](#).

FOR OFFICE USE ONLY: Commitment #	TWDB-0217	TWDB-0217 Revised 08/14/2018				
TEXAS WATER DEVELOPMENT BOARD (TWDB) PRIME CONSULTANT/CONTRACTOR CERTIFICATION						
I. PROJECT INFORMATION						
TWDB Project Number	Applicant/Entity Name	Total of TWDB Funding				
		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20px; text-align: center;"><input type="checkbox"/></td> <td>Drinking Water SRF (DWSRF)</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Clean Water SRF (CWSRF)</td> </tr> </table>	<input type="checkbox"/>	Drinking Water SRF (DWSRF)	<input type="checkbox"/>	Clean Water SRF (CWSRF)
<input type="checkbox"/>	Drinking Water SRF (DWSRF)					
<input type="checkbox"/>	Clean Water SRF (CWSRF)					
Prime Consultant/Contractor: _____						
Contract Number: _____ Contract Amount: _____						
II. GOOD FAITH EFFORT (Applicable to all subcontracts awarded by the prime contractor/consultant)						
I understand that it is my responsibility to comply with all state and federal regulations and guidance in the utilization of Minority and Women-owned Businesses in procurement. I certify that I will make a "good faith effort" to afford opportunities for Minority Business Enterprise (MBE), and Women-owned Business Enterprise (WBE) by:						
1.	Including qualified MBEs and WBEs on procurement solicitation lists					
2.	Soliciting potential MBEs and WBEs					
3.	Reducing contract size/quantities when economically feasible to permit maximum participation by MBEs and WBEs					
4.	Establishing delivery schedules to encourage participation by MBEs and WBEs					
5.	Using the services and assistance of the Small Business Administration, Minority Business Development Agency, U.S. Department of Commerce, and Texas Marketplace					
6.	Submitting documentation to the Applicant/Entity to verify good faith effort, steps 1-5.					
<input type="checkbox"/>	EXCEPTION: As the Prime Consultant/Contractor, I certify that I have reviewed the contract requirements and found no available subcontracting opportunities. I also certify that I will fulfill 100 percent of the contract requirements with my own employees and resources. (Check if applicable)					
Signature – Prime Consultant/Contractor		Title (print legibly)				
		Certification Date				
III. PROJECT PARTICIPATION ESTIMATES						
The Cost Categories mentioned below are goals. These goals are neither standards nor quotas. Recipients of financial assistance are not required to meet the fair share objectives. They must, however, acknowledge that they are aware of and are actively pursuing the fair share objectives with their procurements.						
	Potential MBE Participation	Potential WBE Participation				
Cost Category	Goal	Goal				
Construction	19.44%	9.17%				
Supplies	25.34%	8.82%				
Equipment	16.28%	11.45%				
Services	20.41%	13.66%				
<i>The fair share goals listed above are required by 40 CFR Part 33 Subpart D and are directly negotiated with EPA Region 6. Entities receiving federal financial assistance are subject to the TWDB's goals and may not be substituted with other agency or program goals.</i>						
IV. TWDB APPROVAL SIGNATURE						
Signature indicates the form meets DBE Requirements.						
DBE Coordinator		Approval Date				

San Jacinto River Authority
RFQ #18-0004-A

ATTACHMENT 4 – PARTICIPATION SUMMARY (TWDB-0373)

To download this document, view [TWDB-0373 from the TWDB website](#).

Page 1 of 2	FOR OFFICE USE ONLY Commitment # _____	TWDB-0373 Revised 11/13/2017			
TWDB-0373 TEXAS WATER DEVELOPMENT BOARD PARTICIPATION SUMMARY					
I. PROJECT INFORMATION					
TWDB Project Number	Applicant/Entity Name	Total TWDB Funding Request	Program Type (insert "X" for all that apply)		
			<input type="checkbox"/> Drinking Water SRF (DWSRF)		
			<input type="checkbox"/> Clean Water SRF (CWSRF)		
Project Name: _____					
Solicitation By: <input type="checkbox"/> Applicant/Entity OR <input type="checkbox"/> Prime Contracted Business: _____					
Project Phase: <input type="checkbox"/> Prior to Closing <input type="checkbox"/> Release of funding for PADs <input type="checkbox"/> Construction Contract # _____					
Instructions					
Column 1	Enter the full name, street address, city/state/zip for each firm awarded a contract for the project.				
Column 2	Enter one of the following procurement or contract categories: CONSTRUCTION – SUPPLIES – EQUIPMENT – SERVICES				
Column 3	Enter the type of business: MBE (Minority Business Enterprise), WBE (Women-owned Business Enterprise), or OTHER (NOTE: OTHER = Company or firm is Non-MBE or WBE)				
Column 4	Enter the exact amount of the awarded contract.				
Column 5	Enter the exact date the contract was executed or the proposed date of contract execution.				
If valid MBE/WBE firms are awarded contracts, a copy of their certification is required to be attached with this form for each MBE/WBE business listed. Notice: Brokers may not be listed below as an MBE or WBE. A broker is a firm that does not perform, manage, or supervise the work of its sub/contract in a manner consistent with the normal business practices for sub/contractors in its line of business. For more specifics, review guidance document, TWDB-0210.					
II. LIST OF ACTUAL CONTRACTS/PROCUREMENTS					
	Column 1	Column 2	Column 3	Column 4	Column 5
	Name & Address of Contracted Firm/Vendor	Procurement Category	MBE/WBE Status	Contract Amount (\$)	Contract Execution Date
1.					
2.					
3.					
4.					
5.					
6.					
<i>(Table continues on the next page)</i>					