

Texas Water Development Board
RFP #580-09-1142
American Recovery and Reinvestment Act (ARRA) Program Assistance Coordination

SECTION I - GENERAL

INTRODUCTION. The Texas Water Development Board (TWDB) invites proposals for contractor(s) to provide program and project management for planning and reporting, outreach and technical assistance, and communication and coordination related to the TWDB's administration of the American Recovery and Reinvestment Act (ARRA) Clean Water (CW) and Drinking Water (DW) State Revolving Fund (SRF) programs. The TWDB ARRA SRF programs provide loans and grants to eligible entities for projects to construct water and wastewater infrastructure. ARRA introduced new requirements for reporting and stricter timelines for the initiation of construction on the approved projects. TWDB is currently in the process of reviewing and approving applications for ARRA financial assistance.

The selected contractor will be expected to provide overall program management assistance to ensure timely provision of funds to eligible entities, to provide technical services, as requested by TWDB, for eligible entities, to implement and manage timely reporting required under ARRA and internal reporting to TWDB's executive management. The contractor will be required to develop a Master Plan for ensuring that all ARRA timelines are met and will also be required to develop a guidance manual for assistance to funded entities. Contractor will be expected to assist TWDB staff in ensuring the funded entities expenditures comply with restrictions in ARRA and TWDB's loan and grant documents. Compliance assistance will include review of change orders and requests for payments and reimbursements. Technical assistance may include providing the funded entities with appropriate financial administration systems, ARRA reporting on job creation, communications with construction contractors and any other issues that may delay the initiation or completion of the funded project.

NOTICE: This contract will be funded by federal funds and the selected contractor will be subject to certain requirements in the TWDB's Grant Agreements for the Clean Water SRF and the Drinking Water SRF with the U.S. Environmental Protection Agency (EPA). Additionally, the contractor will be subject to certain parts of 40 CFR Part 31 relating to Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and other federal statutes and regulations which will be detailed in the final contract. Allowable costs for this contract will be determined in accordance with OMB Circular A-87.

1.1 BACKGROUND. On February 17, 2009, U.S. President Barack Obama signed into law the ARRA. Funding through this legislation was awarded to Texas through the Clean Water (CW) and Drinking Water (DW) SRF programs. This funding is as follows:

- \$171,957,024 for Clean Water loans/grants and
- \$154,229,760 for Drinking Water loans/grants

On June 18, 2009 the TWDB Board (Board) approved the CW-ARRA Intended Use Plan and on July 16, 2009 the Board approved the DW-ARRA Intended Use Plan. These plans list projects eligible for funding and illustrated a funding line for those projects that were invited to apply for ARRA funds. Applicants for CW-ARRA funding are political subdivisions.

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Applicants for DW-ARRA funding are public water systems, including political subdivisions, non-profit water supply corporations, and private utilities. ARRA funds will be awarded either by 0% loans or grants (for disadvantaged communities).

The following list of related documents provides additional background information on TWDB's responsibilities under ARRA. The materials listed below provide additional information about the TWDB ARRA SRF program and potential contractors should review them.

These documents can be found on TWDB's website at <http://www.twdb.state.tx.us/stimulus/index.htm>

- Clean Water - ARRA Intended Use Plan
- Drinking Water – ARRA Intended Use Plan
- ARRA of 2009
- Current Board Rules and recent Board Items
- Other EPA and OMB Guidance Documentation

- 1.2 SCOPE.** The TWDB is requesting program and project management assistance. The work includes planning and reporting, outreach and technical assistance, and communication and coordination services (Services) in accordance with the specifications contained in this Request for Proposals (RFP).

TWDB's and the selected contractor(s) primary goal is to retain the full grant allocation to assist Texas entities and position the state to receive any reallocation of ARRA funds from other states for the same purpose. Therefore, the contractor's primary goal is to assist in managing the ARRA program and individual projects to ensure that all funds are expended in a timely manner and that all required reporting, financial management, and construction is performed in accordance with ARRA and all applicable federal and TWDB statutes and regulations.

The TWDB must approve project funding commitments and funding for all projects must be closed prior to February 17, 2010. ARRA funds must be committed to a construction contract or the funded project must actually be under construction prior to February 17, 2010.

TWDB anticipates that the selected contractor(s) will start in the week of September 28, 2009 (start date). TWDB staff intends to bring projects to the Board for commitment and closing prior to the start date of the contractor(s). The contractor will be expected to communicate clearly with TWDB staff, funded entities, entities awaiting funding and other external stakeholders to complete the commitments and closings that are not completed by the start date.

- 1.3 CONTRACT TERM.** The Services requested shall be provided for a period of 2 years, beginning with the contract execution and ending August 31, 2011. The contract for Services

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may be renewed for up to three (3) one-year periods, provided all existing terms and conditions remain in full force and upon mutual agreement of both parties. The renewal, if exercised, is to be executed in the form of a contract amendment to be issued by TWDB no sooner than ninety (90) days prior to the expiration date of the initial contract, nor later than the final day of the contract period. Failure by either party to exercise the renewal will cause the contract to expire on the original or mutually agreed upon date. The total period for the contract, including any renewals, will not exceed a maximum combined period of five (5) years.

1.4 DEFINITIONS. For purposes of this RFP, the following definitions apply:

- (a) Board means the governing body of the Texas Water Development Board
- (b) Contract – The Contract awarded as a result of this RFP and all exhibits thereto. This RFP, any Addendum issued in conjunction with this RFP, the successful Respondent’s Proposal, any Best And Final Offer (BAFO), and subsequent submission by Respondent, shall all be fully incorporated therein as exhibits; and
- (c) Contractor – Respondent whose Proposal results in a contract with TWDB.
- (d) Commitment - the TWDB’s agreement to provide grants and loans to eligible entities upon fulfillment of certain conditions
- (e) Disadvantaged communities means local governmental entities qualified for grants under ARRA and the TWDB statutes and rules.
- (f) Eligible Entities - -means the political subdivisions and other entities legally authorized to receive grants and loans from the TWDB’s SRF programs
- (g) Funded entity – means a political subdivision of the State or any local governmental or other entity that has received funds or a commitment pursuant to ARRA
- (h) Green Reserve Project means projects designed to achieve greater water or energy efficiency
- (i) Project – the water or wastewater infrastructure to be constructed with ARRA funds

Acronyms

ARRA means the American Recovery and Reinvestment Act of 2009

CFR means Code of Federal Regulations

CW means Clean Water

DW means Drinking Water

OMB means the U.S. Office of Management and Budget

SRF means State Revolving Fund

OIG means Office of Inspector General (U.S. Department of Health & Human Services)

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SECTION II - STATEMENT OF WORK

2.1 SERVICE REQUIREMENTS. Services shall include, but are not limited to, the requirements contained in this RFP. Services set forth that contain the words "must" or "shall" are mandatory and must be provided as specified with no alteration, modification, or exception. Services set forth that contain the words "may" or "can" allow Respondents to offer alternatives to the manner in which the Services are provided.

The selected contractor will be an independent contractor who shall perform tasks as requested by the TWDB.

This RFP requests proposals for program and project management assistance. The following tasks are currently anticipated: with planning and reporting, outreach and technical assistance, and communication and coordination for CW and DW projects funded through ARRA. Approximately 50 to 60 projects will be funded with ARRA funds and will require contract and project support services over the next several years until all projects are fully constructed. The services include, but are not limited to the following:

- A. Develop a Master Plan and Schedule to ensure that the TWDB funded projects are either under construction or committed to a construction contract prior to February 17, 2010. The Master Plan shall contain, at a minimum, the following components:
 1. Process and protocols for "Program Recovery Plans" for necessary corrective actions to keep projects and related program activities on schedule and within budget.
 2. A process for identifying variances from the funded entities' project schedule or project budget and a process for developing and implementing corrective actions that will ensure timely initiation of construction activities. The process shall include a timeline for TWDB evaluation and approval of the corrective actions;
 3. A process for reviewing, evaluating and reporting the funded entities' compliance with TWDB and ARRA reporting requirements;
 4. A process and protocols for reviewing and reporting, evaluating and approving the funded entities' monthly financial reporting, submission of requests for reimbursements and other project financial information to compare outlay rates to estimates and identification of potential areas of concern relating to full commitment of ARRA funds prior to February 17, 2010;
 5. Identification of key data elements necessary to maintain appropriate metrics for the ARRA program that keep the Board and staff informed on activities requiring action;
 6. A process for reporting project variances, including cancellations and substitutions between projects and procedures to ensure accurate, current data relating to all ARRA funded projects;
 7. Protocols to ensure that billable tasks and other activities performed under the funding contracts, ordinances or agreements are in compliance with ARRA and with TWDB approved Project budgets, Project schedules and Project activities;

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8. Protocols to ensure adequate and effective communications between the TWDB and the funded entities to support weekly program status reports.

The selected contractor may be required to amend the Master Plan from time to time when additional tasks or duties are needed to ensure success of TWDB ARRA programs. *The TWDB expects to provide its governing Board with the Master Plan at its regularly scheduled meeting in November 2009 to demonstrate how the primary goal will be obtained.*

- B. **PRIORITY PROJECT TASK:** Establish and maintain a communications link (WEB based) for access by all TWDB offices and entities in the ARRA program and maintain the ARRA Web site. This requires rapid development and deployment of an interactive Web based reporting system to be used by funded entities to provide required ARRA and TWDB reporting relating to jobs created, project status and other relevant metrics. The system shall require links to federal reporting sites and interface with TWDB project tracking systems.
- C. Coordinate all activities closely with the TWDB Executive Administrator and the ARRA Program Director
- D. Provide written policy, process or procedural recommendations to the TWDB Executive Administrator and ARRA Program Director.
- E. Prepare and present monthly status reports about ARRA funded projects to the Board.
- F. Establish a schedule of “focused meetings” between the TWDB and ARRA funded entities; conduct and facilitate the meetings to identify and provide any necessary technical assistance to funded entities.
- G. Create a Master List of all ARRA requirements relating to the State Revolving Funds, including TWDB’s and funded entities’ reporting requirements to ensure full compliance with ARRA.
- H. Monitor the adequacy of current TWDB ARRA reporting systems for federal financial and audit needs; recommend necessary improvements.
- I. Review funded entities’ construction contract budgets to identify contingencies that may result in less than full expenditure of ARRA funds; provide recommendations on actions necessary to commit any amounts that are not reasonably expected to be under contract prior to February 17, 2010.
- J. Review all ARRA application materials and supplemental materials to ensure that useable, accurate, and complete information is in TWDB files and that all information needed to ensure the expeditious processing of projects is readily available to TWDB staff;
- K. For each funded Projects, develop a process and implement a program to collect, organize and update data, including accurate and distinct financial information, physical descriptions of funded projects, and complete identification of all Green Project reserve project components and other ARRA program requirements; include protocols and procedures for quality control of the design and construction process for each funded project;.
- L. Schedule, attend and provide minutes for any necessary on-site reviews and meetings for funded entities include coordination with TWDB project staff including engineering, inspection and field support, legal, financial, and environmental personnel, as necessary.
- M. Develop a guidance manual for the ARRA program.

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2.2 JOINT PARTY SUBMISSIONS. TWDB will accept Proposals that identify more than one party for the performance of the work. Any such submission shall identify the primary contractor who shall be the Party to a contract resulting from this RFP.

2.3 SUBCONTRACTORS. The selected contractor may utilize Subcontractors to provide Services under the contract. Respondents should provide a list of proposed subcontractors in a response to this Proposal. Any subcontract is subject to TWDB's prior approval and all subcontractors shall meet the legal requirements of the contractor's contract and shall demonstrate a level of experience adequate to perform the tasks according to the specifications of the subcontract. No subcontractor shall relieve the contractor's responsibility for ensuring the requested services are provided. .

2.4 PERFORMANCE TRACKING. TWDB will monitor the performance of the Contract issued under this RFP. All Services under the Contract shall be performed on the parameters requested. Performance tracking may include, but is not limited to work product inspections, monitoring of progress against project milestones, monthly reporting by contractor including cost to date versus total cost, and comparisons of cost to date and time of contract. During the course of a Contract, the TWDB may develop corrective action plans requiring the contractor to meet the performance standards in the contract.

SECTION III - GENERAL INFORMATION

3.1 SCHEDULE OF EVENTS. The solicitation process for this RFP will proceed according to the following schedule:

EVENT DATE (Central Standard Time)

Date	Activity
August 12, 2009	Request for Proposals issued
August 24, 2009	Pre-Proposal Conference
September 2, 2009 – 12:00 p.m.	Deadline for Submission of RFP
September 3 – September 10, 2009	Evaluation Period and Interviews
Week of September 14, 2009	Contract negotiation and expected award
October 1, 2009	Contract starts; begin development of Master Plan
November 2, 2009	Draft master plan due
November 19, 2009	Master Plan presented at TWDB Board meeting

PRE-PROPOSAL CONFERENCE. There will be an agency briefing on August 24, 2009 at the Stephen F Austin Building in Room 220 at 2:00 p.m. to provide further details about the scope of work or the requirements of this RFP and to address questions.

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3.2 REVISIONS TO SCHEDULE. TWDB reserves the right to change the dates in the schedule of events above upon written notification to prospective Respondents as an addendum posted on the Electronic State Business Daily.

3.3 REJECTION OF PROPOSALS. TWDB reserves the right to reject all proposals submitted in response to this RFP. TWDB also may reject any proposal which does not strictly comply with the minimum requirements for proposals.

3.4 PROPOSAL REQUIREMENTS

(a) Submissions: Respondents shall submit one (1) original Proposal along with one (1) electronic version of the Proposal and five (5) double-sided copies according to item (d) below. RFP pages should be numbered and contain an organized, paginated table of contents corresponding to the section and pages of the RFP.

(b) Proposal Costs: Respondents are responsible for all costs in the preparation and delivery of this Proposal to TWDB.

(c) Copyrights: TWDB will not consider any Proposal that bears a copyright. Proposals will be subject to the Texas Public Information Act, Texas Government Code, Chapter 552, and may be disclosed to the public upon request. Subject to the Act, Respondents may protect trade and confidential information from public release. Trade secrets or other confidential information submitted as part of a Proposal shall be clearly marked at each page it appears. Such marking(s) shall be in boldface type in at least **14 point font**.

(d) Contents: Submit all information listed below for the cover sheet and five exhibits in the order given, separated by labeled and tabbed sheets, in response to this RFP. The application will only be considered if all items are submitted. TWDB reserves the right, in its sole judgment and discretion, to waive minor technicalities and errors that serve in the best interest of the State.

Cover sheet: Include Respondent information in **(1)** through **(5)** on cover sheet of the proposal.

(1) Name, title, address, telephone number, facsimile number, and email address of Respondent's primary contact.

(2) Formal name and all assumed names used by the business entity; structure of business entity (i.e., sole proprietorship, partnership, corporation), and Federal Tax Identification Number.

(3) State in which business entity was formed or incorporated.

(4) Whether, and to what extent, Respondent has established a physical presence in the State of Texas including relevant timeframes.

(5) Physical address and mailing address; principal place of business.

Exhibit A– Proposed Services: Specific responses that address each of the following items and the Respondent's method of accomplishing the following items will be considered by the TWDB.

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- (1) Key Personnel:** Respondent shall submit resumes detailing the experience and expertise of Key Personnel assigned to the work required under this RFP. The key personnel shall be integrated into Respondent's proposed organizational structure. A process mapping of the flow of activities and responsibilities shall be included in the response submission. A manpower matrix must be included in submissions. The matrix must clearly itemize and delineate all personnel assigned to the work required under this RFP including the estimated hours that will be used by the designated personnel each year. No substitution of Key Personnel will be permitted without the prior written approval of the TWDB.
- (2)** The total number of pages of the submission will be limited to 10 pages-double sided, single spaced, font size 12 minimum.
- (3)** Appendices will be limited to resumes of individuals who will be directly involved and assigned to this undertaking. One additional page in the appendices will be allowed to further document the qualifications of the firm(s).
- (4)** Joint party submissions are acceptable. Precise delineation of the roles and responsibilities of each firm and individuals must be identified. Only those individuals who are listed in the response will be allowed to be assigned to this engagement. .

Exhibit B– References, Experience, and Qualifications:

- (1)** Briefly describe services and the scope of activities for five previous entities for which your organization has provided services in the past five (5) years that demonstrate your capability to carry out similar services described within this RFP Highlight any experience in providing similar services to public entities. Include the names, addresses, email contacts, and phone numbers of these five entities and specify the names of entity representatives who may be contacted for references and performance history.
- (2)** The respondent must provide audited financial statements for the last three years and any other information relevant to demonstrating the respondent is financially capable, and possesses sufficient resources to sustain involvement in this project.
- (3)** Supply professional **credentials** and pricing requirements of the employee(s) performing the actual services for all personnel who will be participating in providing the services solicited in the RFP. Key contractor personnel that are submitted that will perform project management tasks should demonstrate the ability to perform at the level of a person with or be a person with one of the following credentials:
 - a. (CAPM) Certified Associate in Project Management
 - b. (PMP) Project Management Professional
 - c. (PgMP) Program Management Professional
 - d. (LEED) Leadership in Environmental and Energy Design

The TWDB may use other references to determine a Respondent's performance history. A single negative reference, in the TWDB's sole discretion, may be cause for disqualification of the Respondent's entire proposal.

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(4) The Contractor will need to demonstrate the following capabilities:

Successful Program or Project Management experience related to construction management, financial management, Web interactive systems implementation and management, development of processes and procedures for project management, and familiarity with state and local governmental entities

- Extensive knowledge of and experience with federal funding programs such as the Clean Water and Drinking Water programs.
- Ability to assess compliance with financial commitments.
- Ability to assess performance of construction projects for water and wastewater improvement projects in Texas.
- Ability to assess the progress of the “green reserve” components of water and wastewater improvement projects.
- Ability to work in a team environment and proven work experience with government agencies similar to the TWDB and government agency stakeholders.
- Ability to perform all aspects of project management including scheduling, budgeting, quality control, and documentation and reporting.
- Experience in administering programs with Davis Bacon Act, Buy American and Disadvantaged Business Enterprise federal requirements.
- Familiarity and relevant experience with State Revolving Fund programs

Exhibit C – Disadvantaged Business Enterprise Program (DBE)

The Texas Water Development Board’s 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 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 DBE’s who are small business enterprises (SBE’s), minority business enterprises (MBE’s), and women-owned business enterprises (WBE’s) whenever procuring construction, supplies, services, and equipment. The DBE Program is an outreach, education, and goal oriented program designed to increase the participation of DBE’s in procurements funded by EPA assistance agreements. In addition, EPA regulations require evidence of the demonstration of the “Six Affirmative Steps” in trying to achieve the DBE participation goals.

Six Affirmative Steps

1. Include qualified DBEs on solicitation lists;
2. Solicit potential DBEs whenever they are potential sources;
3. Reduce contract size or quantities when economically feasible, to permit maximum participation of DBEs;
4. Establish delivery schedules to encourage participation by DBEs;

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5. Use the services and assistance of the EPA, Small Business Administration, U.S. Department of Transportation, or by state, local, Tribal, or private entities whose certification criteria match EPA's;
6. Require Prime Contractors to follow steps 1 – 5 when awarding subcontracts or sub-agreements.

EPA's DBE program rule applies to contract procurement actions funded in part by EPA assistance agreements awarded after May 27, 2008.

For more information on the TWDB's DBE requirements, go to the following resources:

- http://www.twdb.state.tx.us/publications/forms_manuals/PGM_forms_main.asp
- www.twdb.state.tx.us/publications/forms_manuals/SMWBE.xls

Exhibit D – Historically Underutilized Businesses (HUB) Subcontracting Plan:

- (1) Include all subcontractors on the Historically Underutilized Business Subcontracting Plan (Plan) and state whether each subcontractor is certified as a Historically Underutilized Business by the State of Texas.
- (2) If certified as a Historically Underutilized Business, provide the most recent date of certification. Complete and sign the remainder of the Plan forms as directed. Failure to complete and return the Plan with the submitted Proposal will result in rejection and disqualification of the RFP.

Exhibit E – Proposal: Sign and return the Execution of Proposal with the submitted Proposal.

3.5 INQUIRIES.

- (1) All inquiries shall be submitted in writing to Mr. David Carter by e-mail to david.carter@twdb.state.tx.us or by facsimile 512-475-3009.
- (2) Except as otherwise provided in this section, upon issuance of this RFP, other employees and representatives of TWDB will not answer questions or otherwise discuss the contents of the RFP with any potential Respondent or its representatives. Failure to observe this restriction may result in disqualification of any subsequent RFP. This restriction does not preclude discussions unrelated to this RFP.

3.6 PROPOSAL SUBMISSION.

- (1) All Proposals must be received and time stamped at TWDB by the date specified in the Schedule of Events above, Section 3.1. The TWDB will reject late submittals.
- (2) Proposals should be placed in a separate envelope or package and correctly identified with the RFP number and submittal deadline. It is the Respondent's responsibility to appropriately mark and deliver the response to TWDB by the specified date.
- (3) Telephone, facsimile or emailed responses will not be accepted.

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(4) Receipt of all addenda, if applicable, to this RFP should be acknowledged by returning a signed copy of each addendum with the submitted response.

3.7 DELIVERY OF PROPOSALS.

RFP may be submitted to TWDB by one of the following methods:

U.S. Postal Service

Overnight/Express Mail

Hand Delivery

Texas Water Development Board

Contracting and Purchasing

P.O. Box 13231

Austin, TX 78711-3231

1700 North Congress Avenue, Room 581

Austin, TX 78701

Hours – 8:00 a.m. to 5:00 p.m.

3.8 RESPONSE OPENING.

Responses will be opened at 1700 North Congress, Room 513F, Austin, Texas.

(1) All submitted Responses become the property of TWDB after the submittal deadline/opening date.

(2) Responses submitted shall constitute an offer for a period of ninety (90) days or until selection and contract execution is made by TWDB, whichever occurs earlier.

3.9 PROPOSAL EVALUATION AND AWARD.

(1) TWDB shall award a contract to a respondent whose response is considered to provide the best value to the State of Texas, as defined by Texas Government Code, Title 10, Section 2155.074.

(2) A committee will be established by TWDB to evaluate the responses.

(3) The evaluation committee will determine best value by applying the following criteria:

- Experience and ability in managing projects of similar size and complexity, including specific expertise in reporting and monitoring programs.
- Explanation of methodology to perform tasks and duties; how the program will be managed and the resources that will be dedicated to it.
- Description of the firm's experience with project reporting mechanisms and recovery planning processes; explanation of how the firm will incorporate these functions into the ARRA program to ensure integrity of the program.
- Description of the firms experience evaluating procurement processes and documentation; methodology to procurement evaluation.
- Experience, qualifications and location of key personnel named in the proposal; experience working with governmental entities.
- List of five similar projects the firm has administered; budget history from agreed cost to final actual cost; list of key people on proposed team and projects referenced.

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(4) The evaluation committee will determine if Best and Final Offers are necessary. Award of a contract may be made without Best and Final Offers. TWDB may, at its discretion, elect to have Respondents provide oral presentations and respond to inquiries from the evaluation committee related to their Proposals. A request for a Best and Final Offer is at the sole discretion of TWDB and will be extended in writing.

(5) In evaluating Proposals to determine the best value for the State, TWDB may consider information related to past contract performance of a Respondent including, but not limited to, the Texas Comptroller of Public Accounts, Texas Procurement and Support Services Division Vendor Performance Tracking System (available at: http://www.window.state.tx.us/procurement/prog/vendor_performance/).

SECTION IV - GENERAL TERMS AND CONDITIONS

- 4.1 Any Contract awarded as a result of this RFP will generally contain the terms and conditions similar to those in the SAMPLE CONTRACT in Attachment 2, and the ARRA requirements in Attachment 2-A. Subcontractors also will be required to comply with most of these provisions.
- 4.2 The Contract shall be governed, construed, and interpreted under the laws of the State of Texas. The factors listed in Texas Government Code, Title 10, Subtitle D, Section 2155.074, 2155.144, 2156.007, 2157.003 shall also be considered in making an award when specified. Any legal actions must be filed in Travis County, Texas.
- 4.3 **PATENTS, TRADEMARKS, OR COPYRIGHTS:** Respondent agrees to defend and indemnify the TWDB and State from claims involving infringement or violation of patents, trademarks, copyrights, trade secrets, or other proprietary rights, arising out of the TWDB's or the State's use of any good or service provided by the Respondent as a result of this RFP.
- 4.4 **RESPONDENT ASSIGNMENTS:** Respondent hereby assigns to the TWDB any and all claims for overcharges associated with this contract arising under the antitrust laws of the United States 15 U.S.C.A. §1, *et seq.*, and the antitrust laws of the State of Texas, Tex. Bus. & Comm. Code §15.01, *et seq.*
- 4.5 **RESPONDENT AFFIRMATIONS:** Signing Execution of Proposal (Exhibit E) with a false statement is a material breach of contract and shall void the submitted RFP and any resulting contracts, and the Respondent shall be removed from all proposal lists. By signature hereon affixed, the Respondent hereby certifies that:
- 4.6 The Respondent has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted proposal.
- 4.7 Pursuant to 15 U.S.C. §1, *et seq.* and Tex. Bus. & Comm. Code §15.01, *et seq.* neither the Respondent nor the firm, corporation, partnership, or institution represented by the

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Respondent, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.

4.8 Pursuant to §2155.004, Gov't Code, neither the Respondent nor any person or entity which will participate financially in any contract resulting from this RFP has received compensation for participation in the preparation of the specifications for this RFP.

4.9 Pursuant to §231.006(d), Texas Family Code, regarding child support, the Respondent certifies that the individual or business entity named in this proposal is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Respondent subject to §231.006, Gov't Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the proposal. This information must be provided prior to award. Enter the Name & Social Security Numbers for each person below:

Name:	Social Security Number:
Name:	Social Security Number:
Name:	Social Security Number:

4.10 Under §2155.004, Gov't Code, the Respondent certifies that the individual or business entity named in this proposal or any contract resulting from this RFP is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate. §2155.004 prohibits a person or entity from receiving a state contract if they received compensation for participating in preparing the solicitation or specifications for the contract.

4.11 As required by §2252.903, Gov't Code, Respondent agrees that any payments due under a contract resulting from this RFP shall be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support, until the debt is paid in full. Respondent shall comply with rules adopted by TWDB under §§403.055, 403.0551, 2252.903, Gov't Code and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

4.12 Pursuant to §669.003, Gov't Code, TWDB may not enter into a contract with a person who employs a current or former executive head of the TWDB until four years has passed since that person was the executive head of the TWDB. By submitting a response, the Respondent certifies that it does not employ any person who was the executive head of the TWDB in the past four years. If Respondent does employ a person who was the executive head of the TWDB, provide the following information:

Name of Former Executive: _____

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Name of State Agency: _____

Date of Separation from State Agency: _____

Position with Respondent: _____

Date of Employment with Respondent: _____

- 4.13 In accordance with §2155.4441, Gov't Code, Respondent agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
- 4.14 Respondent certifies their entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.
- 4.15 Sections 2155.006 and 2261.053, Gov't Code, prohibit state agencies from awarding contracts to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004, Gov't Code, occurring after September 24, 2005. Under §2155.006, Gov't Code, Respondent certifies that the individual or business entity named in its proposal is not ineligible to receive a contract and acknowledges that any contract resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.
- 4.16 Respondent represents and warrants that payment to the Respondent and the Respondent's receipt of appropriated or other funds under any contract resulting from this RFP are not prohibited by §556.005 or §556.008, Gov't Code, relating to the prohibition of using state funds for lobbying activities.
- 4.17 Respondent represents and warrants that the provision of services or other performance under a contract will not constitute an actual or potential conflict of interest and will not reasonably create even the appearance of impropriety.

Respondent shall disclose to the TWDB the names and positions of any current employees who were employed by the State of Texas within the past four years. Respondent shall also disclose the names and positions of any current employees who are related to current State of Texas employees.

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Respondent represents and warrants that they have not given and do not intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant or employee or representative of the State of Texas in connection with this solicitation.

- 4.18 NOTE TO RESPONDENT:** If Respondent takes any exceptions to any provisions of the RFP, these exceptions must be specifically and clearly identified by section in Respondent's proposal in response to the RFP and Respondent's proposed alternative must also be provided in the proposal. Respondents cannot take a 'blanket exception' to the entire RFP. If any Respondent takes a 'blanket exception' to the entire RFP or does not provide proposed alternative language to any noted exceptions, then Respondent's proposal may be disqualified from further consideration.
- 4.19 PROTEST PROCEDURES:** Any actual or prospective Respondent who is aggrieved in connection with this RFP, evaluation, or award of any contract resulting from this RFP may formally protest as provided in TAC 34 Part 1, Chapter 20, Subchapter G, 20.384.
- 4.20 DISPUTE RESOLUTION:** The dispute resolution process provided for in Chapter 2260, Gov't Code must be used by the TWDB and the Respondent to attempt to resolve any dispute arising under any contract resulting from this RFP.
- 4.21 NON-APPROPRIATION OF FUNDS:** Any contract resulting from this RFP is subject to termination or cancellation, without penalty to TWDB, either in whole or in part, subject to the availability of state and/or federal funds. TWDB is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If TWDB becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render TWDB's or Respondent's delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, TWDB will not be liable to Respondent for any damages, which are caused or associated with such termination, or cancellation and TWDB will not be required to give prior notice.
- 4.22 TEXAS PUBLIC INFORMATION ACT:** Notwithstanding any provisions of this RFP to the contrary, Respondent understands that TWDB will comply with the Texas Public Information Act (Chapter 552, Gov't Code) as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to the Texas Public Information Act. Within three (3) days of receipt, Respondent will refer to TWDB any third party requests, received directly by Respondent, for information to which Respondent has access as a result of or in the course of performance under any contract resulting from this RFP. Any part of the solicitation response that is of a confidential or proprietary nature must be clearly and prominently marked as such by the Respondent.

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- 4.23 **CONFLICT OF INTEREST:** Under §2155.003, Gov't Code, a TWDB employee may not have an interest in, or in any manner be connected with a contract or proposal for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Section 1.2 of the State of Texas Procurement Manual, which outlines the ethical standards required of public purchasers, employees, and Respondents who interact with public purchasers in the conduct of state business, and with any opinions of or rules adopted by the Texas Ethics Commission. Entities who are interested in seeking business opportunities with the State must be mindful of these restrictions when interacting with public purchasers of TWDB or purchasers of other state agencies.
- 4.24 **FORCE MAJEURE:** Neither Respondent nor TWDB shall be liable to the other for any delay in, or failure of performance, of any requirement included in any contract resulting from this RFP caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.
- 4.25 **INDEPENDENT CONTRACTOR:** Respondent is and shall remain an independent contractor in relationship to the TWDB. The TWDB shall not be responsible for withholding taxes from payments made under any contract resulting from this RFP. Respondent shall have no claim against the TWDB for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.
- 4.26 **INDEMNIFICATION:** RESPONDENT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES, AND TWDB, ITS OFFICERS, AND EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF RESPONDENT OR ANY, EMPLOYEE, SUBCONTRACTOR, OR AGENT OF RESPONDENT IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT . RESPONDENT MAY BE REQUIRED TO COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY

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GENERAL. . THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE RESPONDENT TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TWDB FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE STATE, THE TWDB OR ITS EMPLOYEES.

- 4.27 **RIGHT TO AUDIT:** In addition to and without limitation on the other audit provisions of this RFP, pursuant to §2262.003, Texas Government Code, the state auditor may conduct an audit or investigation of the Respondent or any other entity or person receiving funds from the state directly under this contract or indirectly through a subcontract under this contract. The acceptance of funds by the Respondent or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Respondent or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This RFP or any contract resulting from this RFP may be amended unilaterally by TWDB to comply with any rules and procedures of the state auditor in the implementation and enforcement of §2262.003, Texas Government Code. Respondent will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Respondent and the requirement to cooperate is included in any subcontract it awards.
- 4.28 **DISADVANTAGED BUSINESS ENTERPRISE.** This contract is subject to the Environmental Protection Agency's (EPA) "fair share policy", which includes EPA-approved "fair share goals" for Disadvantaged Business Enterprise (DBE) firms in the Construction, Supplies, Equipment, and Services procurement categories. EPA's policy requires that applicants and prime contractors make a good faith effort to award a fair share of contracts, subcontracts, and procurements to Disadvantaged Business Enterprises. Although EPA's policy does not mandate that the fair share goals be achieved, it does require applicants and prime contractors to demonstrate us of the six affirmative steps. The current fair share goals for the State of Texas are as follows:

Category	Minority Business Enterprise	Woman-owned Business Enterprise
Construction	34.84 %	6.72 %
Equipment	7.22 %	4.14 %
Services	16.05 %	21.31 %
Supplies	9.67 %	5.20 %

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Attachment 2 - Sample Contract

TWDB CONTRACT NO. XXXXXXXXXX
TEXAS WATER DEVELOPMENT BOARD
AND

Contract for _____ Services

This Contract is entered into by and between the TEXAS WATER DEVELOPMENT BOARD (TWDB), an agency of the State of Texas located at 1700 N. Congress Avenue, Austin, Texas, and (Contractor Name), located at _____.

WHEREAS, on _____, the TWDB issued a Request for Proposals (RFP) # for _____ services; and

WHEREAS, on _____, the Contractor submitted a Proposal in response to TWDB's RFP; and

WHEREAS, on _____, the TWDB awarded this Contract to Contractor based on his Proposal and Best and Final Offer; and

NOW THEREFORE, TWDB and Contractor hereby agree, in good faith, to execute this Contract according the terms and conditions agreed upon herein

I. AUTHORITY, TERM, and CONTINGENCY

1.01. Authority

The TWDB enters into this Contract pursuant to Texas Water Code §6.190, which authorizes the Executive Administrator of the TWDB to negotiate with and enter into a contract with any entity to carry out the powers, duties, and responsibilities of the TWDB.

1.02. Term and Termination

This Contract shall be in effect on the date signed by the TWDB's Executive Administrator who shall sign after the Contractor. This contract shall continue in effect until August 31, 2011 and may, at the discretion of the TWDB be renewed upon mutually agreed terms or conditions for an up to three additional twelve month periods. The TWDB or the Contractor may terminate this Contract upon 30 days written notice. This Contract shall automatically terminate on August 31, 2011 unless renewed in accordance with this section. The TWDB may terminate this contract for default in whole or in part for cause if the Contractor fails to perform in full compliance with the contract requirements through no fault of the TWDB. The TWDB may also terminate this contract for convenience at any time.

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Attachment 2 - Sample Contract

1.03. Contingent Upon Availability of Funds

The Contractor understands that payments by and obligations of the TWDB, under this Contract, are contingent upon the receipt of appropriated funds. Contractor also understands that this Contract does not constitute a debt on behalf of the State of Texas.

1.04. No Waiver; Contractor's Rights

The Contractor understands and agrees that the TWDB's execution of this Contract does not constitute a waiver of the sovereign immunity of the State of Texas; neither does it constitute a waiver of the State of Texas' Eleventh Amendment immunity. Further, Contractor understands and agrees that his rights and obligations relating to any dispute arising from this Contract shall be governed solely by the provisions of Government Code, chapter 2260 relating to certain contract claims against the State. TWDB agrees that the dispute resolutions provision of Chapter 2260 shall be utilized to resolve any disputes arising out of Contractor's performance of work under this Contract.

II. GENERAL TERMS AND CONDITIONS

2.01. Severability

If any provision of this Contract is construed to be illegal or invalid, such interpretation shall not affect the legality or validity of any of its other provisions. The illegal or invalid provision shall be deemed stricken and deleted to the same extent and effect as if it was never incorporated into this Contract, but all other provisions shall remain in full force and effect.

2.02. Amendments and Change Orders

This Contract may not be amended, changed or modified in any manner, except upon written agreement of the Contractor and the TWDB. Oral modifications are of no force or effect and shall be considered null and void. No person employed by the TWDB is authorized to amend, change or modify this Contract except in accordance with this section. Key Contractor personnel identified in the RFP and assigned to this project will not change throughout the duration of the contract term without the written approval of the TWDB.

2.03. No Liability for Taxes

TWDB is not liable for and may be exempt from the payment of any Federal, State, or Local taxes related to or incurred in connection with the Contractor's work performed pursuant to this Contract. Contractor is solely responsible for the payment and discharge of any and all such taxes, including any penalties and interest.

2.04. Independent Contractor

Contractor will perform work under this Contract as an independent contractor and not as an agent or representative of TWDB. Contractor is solely and exclusively liable for all taxes and employment-related charges incurred in connection with the performance of this Contract. TWDB will not be liable for any employment-related charges or benefits of Contractor, such as workers compensation benefits, unemployment insurance and benefits, overtime, or fringe benefits. Contractor and subcontractor's employees are not and shall not represent themselves as employees or agents for the TWDB or the State of Texas.

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Attachment 2 - Sample Contract

2.05. Right to Audit; Records Retention

Contractor understands that the acceptance of funds under this Contract constitutes an acceptance of the authority of the Texas State Auditor's Office to conduct audits and investigations in connection with state funds received pursuant to this contract. The Contractor shall comply with and cooperate in any such investigation or audit. The Contractor also agrees to include a provision in any subcontract related to this contract that requires the subcontractor to submit to audits and investigation by the State Auditor's Office in connection with any and all state funds received pursuant to the subcontract. The Contractor agrees to keep and maintain any supporting documents, in all media, related to Contractor's work under this Contract for a period of four years after the final payment under this Contract.

2.06. No Lobbying

Contractor understands and agrees that no lobbying of any legislative body or elected or appointed official, as defined by applicable state and federal laws, shall be performed with funds provided by this Contract and further that TWDB expressly prohibits Contractor from lobbying related to the Work provided under this Contract.

2.07. No Assignment

Contractor shall not assign or subcontract the whole or any part of this Contract without the prior written consent of the TWDB.

2.08. No Conflicts

Contractor represents and warrants that Contractor has not actual or potential conflicts of interest in providing services to the TWDB or the State of Texas under this Contract and that Contractor's does not have any ground to believe that the provision of services hereunder will create the appearance of a conflict of interest.

2.09. Deceptive Trade Practices; Unfair Business Practices; Antitrust

Contractor represents and warrants that neither it nor any of its employees have been the subject of allegations of violations of the Deceptive Trade Practices Act, Tex. Bus. & Com. Code, chapter 17 nor have they been found to be liable for any unfair business practices. Further Contractor agrees that neither Contractor nor its employees have they violated the antitrust laws of the State under Tex. Bus. & Com. Code, chapter 15.

2.10. Default

If Contractor is found to be in default under any provision of this Contract, TWDB may cancel the Contract without notice and either re-solicit or award the contract to the next best responsive and responsible Respondent. In the event of abandonment or default, Contractor will be responsible for paying damages to TWDB including but not limited to re-procurement costs, and any consequential damages to the State of Texas or TWDB resulting from Contractor's non-performance. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work is significantly changed.

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Attachment 2 - Sample Contract

2.11 Rights to Data, Documents and Computer Software (State Ownership)

Any software, research, reports studies, data, photographs, negatives or other documents, drawings or materials prepared by contractor in the performance of its obligations under this contract shall be the exclusive property of the State of Texas and all such materials shall be delivered to the State by the contractor upon completion, termination, or cancellation of this contract. Contractor may, at its own expense, keep copies of all its writings for its personal files. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of contractor's obligations under this contract without the prior written consent of the State; provided, however, that contractor shall be allowed to use non-confidential materials for writing samples in pursuit of the work. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

2.12. Notices

Any written notices required under this Contract will be by either hand delivery to Contractor's office address specified in Section 3.04 of this Contract or by U.S. Mail, certified, return receipt requested. Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this Section by written notification to the other party.

2.13 Order of Precedence

In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: *contract, exhibits, RFP, response to RFP.*

2.14 Substitutions

Substitutions are not permitted without the written approval of TWDB.

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Attachment 2 - Sample Contract

III. CONTRACT ADMINISTRATION

3.01. Maximum Amount Payable

(a) Contractor agrees to provide the Services, as described in the Statement of Work for an amount not to exceed \$XXX.XX during the term of this Contract. Any charges in excess of the maximum amount shall not result in any liability by the TWDB unless an amendment to this Contract has been executed prior to the performance of Services which result in amounts due in excess of the maximum amount payable under this Contract.

(b) Contractor further agrees that no other charges for tasks, functions, or activities that are incidental or ancillary to the delivery of the Services will be charged to the TWDB, nor will the failure of the TWDB to pay for such incidental or ancillary services entitle Contractor to withhold Services due under this Contract.

3.02. Invoices: Receipt and Payment

(a) Contractor will be paid upon invoices submitted to the TWDB for work performed. Payments under this Contract will be made in accordance with the Texas Prompt Payment Act, Government Code, Chapter 2251. If the TWDB disputes payment of an invoice, then TWDB shall notify Contractor of the existence of a bona fide dispute. TWDB may take any legally authorized for purposes of enforcing a remedy or obtaining set-off against payments due, TWDB may limit payments in accordance with Section 3.03 of this Contract. TWDB shall pay the Contractor within thirty days from receipt of an invoice unless TWEDB notifies Contractor of a bona fide dispute regarding the invoice. Invoices shall be addressed to the attention of the TWDB Point of Contact.

(b) Upon TWDB's request, Contractor will provide detailed invoices and backup documents to the degree necessary to resolve any review, examination, inquiry, or audit by TWDB or any other authorized entity.

3.03. Payment Disputes

If TWDB disputes payment of all or any portion of an invoice from Contractor, TWDB will notify the Contractor of such dispute and both Parties shall attempt, in good faith, to resolve the dispute. TWDB shall not pay any disputed amount before the dispute is resolved. Notwithstanding any such dispute, Contractor shall, unless otherwise notified by TWDB, continue to perform the Services and produce deliverables in compliance with the terms of this Contract pending resolution of such dispute so long as all undisputed amounts continue to be paid to Contractor.

3.04. Points of Contact

The Parties will direct inquiries, invoices, payments, and notices to:

For TWDB

Name

Title

Texas Water Development Board

PO Box 13231

Austin, Texas 78711-3231

For Contractor

Contractor

Contractor Title

Address

city, State, Zip Code

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Attachment 2 - Sample Contract

IV. STATEMENT OF WORK

4.01 Description of Work

The Contractor shall provide the services set forth in the TWDB RFP and the Contractor's Proposal, both of which are incorporated herein and attached as Exhibits ____ and _____ to this Contract. The TWDB may with consent of the Contractor add tasks to this Contract.

4.02. Services: Standard of Care, Liability

Notwithstanding any language in the Contractor's Proposal and the Statement of Work, Contractor agrees that it will provide _____ services to the TWDB in accordance with the standards of care and conduct applicable to persons engaged in the business of executive recruitment services. Furthermore, Contractor agrees that it will maintain the highest ethical standards applicable to persons engaged in the business of executive recruitment services. Contractor agrees that in no event shall TWDB be liable for any errors or omissions, negligence, intentional torts or other misconduct of the Contractor or its employees, agents or subcontractors

4.03. Confidential Information; Public Information Act

(a) Contractor understands and agrees that during the performance of the Work under this Contract, the Contractor may receive information from the TWDB that is confidential and not subject to disclosure under state or federal law. Contractor agrees not to release such confidential information to third parties, to use it only for the purpose of performing the work under this Contract. TWDB will appropriately mark confidential information provided to the Contractor and Contractor shall return such confidential information when it is no longer required to perform the work or at the termination of this Contract, whichever is sooner.

(b) Contractor may mark information provided to TWDB as proprietary or confidential. Such marking shall be obviously visible and clearly show what information the Contractor claims is proprietary and confidential. Contractor understands that TWDB records are generally presumed to be public information and are subject to the Public Information Act, Government Code, chapter 552. TWDB will advise Contractor, who may exercise his rights as the provider of the information, about any requests, under the Public Information Act, for documents related to this Contract.

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Attachment 2 - Sample Contract

TEXAS WATER DEVELOPMENT BOARD

By: _____
J. Kevin Ward
Executive Administrator

By: _____
Name: _____

Title: _____

Date: _____

Date: _____

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Attachment 2-A

ARRA Requirements

The Contract resulting from this RFP shall require the Contractor to comply with ARRA and other applicable federal laws and regulations. Those federal laws and regulations include the following:

A. Requirements from 40 CFR Part 31

1. Subcontracts shall be procured in accordance with applicable State of Texas procurement and contracting statutes.
2. Allowable costs must be in conformance with OMB Circular A-87
3. Budget changes shall be approved by TWDB, including any transfer of costs among direct cost categories which are expected to exceed ten percent (10%) of the total budget.
4. TWDB must grant prior approval for Changes in Key Personnel, revision of the scope of objectives of the Contract, and extension of the period of availability of funds.
5. The procurement of equipment, supplies and general support services do not required prior approval of TWDB.
6. **COPYRIGHTS.** The U.S.E.P.A. reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and authorize others to use, for federal government purposes:
 - (a) the copyright in ay work developed under this Contract; and
 - (b) any rights of copyright to which the Contractor purchases ownership with funds awarded under this Contract.
7. Any Contractor or Subcontract which is debarred or suspended or otherwise excluded from or ineligible for participating in Federal assistance programs under Executive Order 12549 shall not receive any funds under this Contract.
8. Termination of this Contract may be for cause or for convenience
9. Contractor and Subcontractors shall comply with the following:
 - (a) Davis-Bacon Act, 40 U.S.C. §§276a to 276a-7 as supplemented by U.S. Department of Labor regulations at 29 CFR Part 5.
 - (b) Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 327-340 as supplemented by U.S. Department of Labor regulations at 29 CFR Part 5.
 - (c) Copeland “Anti-Kickback” Act, 18 U.S.C. § 874 as supplemented by U.S. Department of Labor regulations at 29 CFR Part 3
 - (d) Executive Order 11246 of September 24, 1965 entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented by U.S. Department of Labor regulations at 41 CFR chapter 60.
10. Contractor and Subcontractors shall provide access to the books, documents, papers, and records which are directly pertinent to work and expenditures under this Contract; entities authorized to examine, copy, excerpt, transcribe and otherwise review and analyze such items include the TWDB, the State of Texas Auditor’s Office, the U.S. Comptroller General, the Office of the Inspector General of the U.S. E.P.A., and any other entity authorized under Texas or federal law.
11. Contractors and Subcontractors shall comply with all applicable standards, orders, or requirements issues under section 306 of the Clean Air Act, 42 U.S.C. § 1857(h), section 508 of the Clean Water Act, 33 U.S.C. §1368, Executive Order 11738, and U.S.E.P.A. regulations at 40 CFR Part

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Attachment 2-A

15. Contractor and Subcontractors may be limited to certain salary rates if individual consultants are used in the performance of the work under this Contract. This limitation shall apply to the consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. The current rates are: maximum daily rate of \$587.20 per day and maximum hourly rate of \$73.40 per hour. These maximum rates do not include normal travel reimbursement.

16. Contractors and subcontractors shall retain all records, books, documents, and papers related to the work required under this Contract for a period of at least four (4) years from the last payment made under this Contract.

B. Requirements of ARRA

1. Protection of Whistleblowers. An employee of a Contractor or Subcontractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Recovery Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the Contractor or Subcontractor who has the authority to investigate, discover, or terminate a person for misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of:

- (a) gross mismanagement of this Contract;
- (b) a gross waste of any funds paid under this Contract;
- (c) a substantial and specific danger to public health or safety related to the implementation or use of any funds paid under this Contract;
- (d) an abuse of authority related to the implementation or use of any funds paid under this Contract;
- (e) a violation of law, rule, or regulation related to this Contract.

The Contractor and Subcontractors shall post a notice of these rights and remedies as provided by ARRA § 1553.

C. Requirements of State Law

- 1. Travel Reimbursement is limited to amounts authorized in the General Appropriations Act and the regulations of the Texas Comptroller of Public Accounts.
- 2. See Sample Contract, *Attachment 2* to this RFP.

**Texas Water Development Board
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American Recovery and Reinvestment Act (ARRA) Program Assistance Coordination**

Required Proposal Contents

Cover sheet

Please see SECTION III, GENERAL INFORMATION, 3.3 Proposal Requirements, (d) Contents.

Exhibit A

Proposed Services

**Texas Water Development Board
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American Recovery and Reinvestment Act (ARRA) Program Assistance Coordination**

Exhibit B

References, Experience, and Qualifications

(1) Briefly describe services and the scope of activities for five previous entities for which your organization has provided services in the past five (5) years that demonstrate your capability to carry out similar services described. Highlight any experience in providing similar services to public entities. Include the names, addresses, email contacts, and phone numbers of five entities and specify the names of entity representatives who may be contacted for references and performance history.

(2) Provide an audited financial statement that ensures financial capability and sufficient resources to sustain involvement in this project.

(3) RESPONDENT PERSONNEL QUALIFICATIONS, PRICING AND REFERENCES

Respondent Name: _____

The respondent shall complete one profile not to exceed two pages for each individual to be assigned to this solicitation. TWDB reserves the right to reject the proposed Respondent Personnel if references or past working performance are questionable or unfavorable.

RESPONDENT PERSONNEL INFORMATION	RESPONSE			
FULL NAME:				
NUMBER OF YEARS EMPLOYED BY RESPONDENT:				
TITLE				
PRICING/HOURLY RATE (indicate range if applicable)				
RESPONDENT PERSONNEL QUALIFICATIONS	# YRS EXP.	FROM	TO	HOW/WHERE OBTAINED
NUMBER OF YEARS EXPERIENCE IN DISASTER RELIEF SERVICES				
SPECIFIC EDUCATION, QUALIFICATIONS, TRAINING, CERTIFICATIONS:				

References: # _____

Name of Organization:	
BUSINESS ADDRESS:	

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BUSINESS CITY:			
BUSINESS STATE:		ZIP	
CONTACT PERSON NAME:			
CONTACT PERSON TITLE:			
PHONE NUMBER:		FAX	
E-MAIL ADDRESS			
Project Title:			
PROJECT DESCRIPTION AND DOLLAR AMOUNT:			
ROLES AND RESPONSIBILITIES OF THE PROPOSED STAFF DURING THIS PROJECT			
PROJECT START DATE:		PROJECT END DATE	
CLIENT COMMENTS:			

This page may be reproduced as needed to document each reference.

THIS PAGE OR A REASONABLE FACSIMILE SHALL BE RETURNED WITH THE RESPONSE. FAILURE TO RETURN THIS PAGE OR A REASONABLE FACSIMILE WILL RESULT IN THE RESPONSE BEING CONSIDERED NON-RESPONSIVE. ANY NEGATIVE RESPONSE(S) MAY RESULT IN DISQUALIFICATION OF THE RESPONSE.

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Exhibit C

Disadvantaged Business Enterprise Program (DBE) Plan

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Exhibit D

Historically Underutilized Businesses (HUB) Subcontracting Plan

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Exhibit E

Execution of Proposal

Texas Water Development Board

Company Name: _____

Address: _____

By signing this proposal, proposer certifies that if a Texas address is shown as the address of the proposer, proposer qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part 1, Chapter 20.

I, _____ am the above-referenced company's representative and I am authorized to submit a proposal for this RFP.

Authorized Signature

Date