INVITATION FOR BIDS
AND
CONTRACT DOCUMENTS
FOR

PROJECT NUMBER 122178
Birch Creek Unit – Flow Meter Installation
Lake Somerville State Park (Birch Creek)
BURLESON COUNTY, TEXAS

P-O-C:
Serena Holster, Contract Manager, CTCD, CTCM
Email: serena.holster@tpwd.texas.gov
Direct Line: 512-389-8761

ISSUE DATE: January 29, 2019
BIDS DUE: NO LATER THAN
2:00 PM (CST), March 5, 2019
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NOTICE TO BIDDERS

Sealed bids will be received by the Contracting Branch, Infrastructure Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, UNTIL 2:00 P.M (CST), MARCH 5, 2019 for Project Number 122178, Lake Somerville State Park (Birch Creek), Somerville, Burleson County, Texas. The bid opening will be conducted in A-100 Conference Room. The estimated range of construction cost is $22,000 to $25,000.

Project includes – Furnish all labor, tools, equipment, materials and incidentals but not limited to an installation of an ultrasonic flow meter in existing flow control manhole with a remote readout in accordance with the Bidding and Contract Documents.

Performance Period: All work shall be completed in one-hundred and fifty (150) calendar days commencing on the date specified in the Notice to Proceed.

Minimum Experience Requirements: Bidder must meet minimum qualifications requirements as stipulated in Terms and Conditions, paragraph 44 to be eligible for contract award.

Site Examination Visit: BIDDERS MAY ATTEND A NON-MANDATORY, COORDINATED SITE VISIT TO BE HELD AT 10:30 AM ON FEBRUARY 12, 2019 AT THE PROJECT SITE.

Site Location: Lake Somerville State Park (Birch Creek) is located at 14222 Park Rd 57, Somerville, TX 77879. Bidders will meet at the Birch Creek Headquarters prior going to the area. TPWD strongly encouraged to visit the site and be familiar with the site conditions. Failure to give proper consideration in the bid to site conditions will not constitute grounds for additional compensation. Prospective Bidders who cannot attend this prescheduled site examination visit may request to visit at another date and time, however, this cannot be guaranteed. Requests to visit at an alternative date and time must be scheduled by contacting Roger Padon, Construction Manager at 512/627-4417.

Contact Information: For technical information and information regarding administration of the contract, contact Contract Manager, Serena Holster and 512/389-8761.

To view and download full Bidding and Contract Documents, visit the TWPD web site using: http://tpwd.texas.gov/business/bidops/current_bid_opportunities/construction/

1. **BIDS:** Bids must be received in the Infrastructure Division of the Texas Parks and Wildlife Department (TPWD) Austin, Texas NO LATER THAN the date and time specified in the Notice to Bidders. Bids received after this time will not be considered and will be returned unreviewed. **Bidders are advised that TPWD's Headquarters Complex does not open until 8:00 A.M. Bidders should plan their delivery method accordingly.** Each bid shall be submitted on the Contractor's Bid form provided.

**FAXED AND/OR EMAILED BIDS WILL NOT BE ACCEPTED. BIDS MUST BE ENCLOSED IN A SEALED ENVELOPE, BOX, OR CONTAINER CLEARLY MARKED ON THE OUTSIDE AS AN "OFFICIAL BID" AND SHALL INCLUDE THE FOLLOWING INFORMATION: PROJECT NUMBER, PROJECT DESCRIPTION, PROJECT LOCATION, BID OPENING DATE AND TIME.**

Bids shall have all blanks fully and legibly completed including a price for all alternates and/or unit costs when listed under the base bids on which a bid is submitted. Failure to do so shall result in rejection of the bid. Corrections in the bidder's bid shall be legible and initialed. The bid form shall show no alterations or qualifications of any kind. **Bids must be signed by an individual who has the authority to legally bind the firm.** TPWD reserves the right to require a bidder to furnish documentary evidence of Bidder's signature authority.

Corrections, deletions, or additions to bids may be made by facsimile (FAX), provided such FAX are received in correct and comprehensive form prior to the opening time of bids and an original reflecting said corrections, deletion, or additions must be submitted to TPWD within two (2) business days of submitted FAX. No telephonic instructions will be accepted. **FAX corrections, deletions or additions to bids shall be sent to FAX number: 512/389-4790, attention: Serena Holster, Contract Manager.** This is the only number that will be used for receipt of corrections, deletions, or additions. TPWD shall NOT be responsible for failure of electronic equipment or operator error.

TPWD reserves the right to reject any or all bids—and to waive any or all informalities in connection therewith. TPWD does not bind itself to accept the lowest bid or any part thereof, and reserves the right to ask for new bids for the whole or parts. The mere opening and reading aloud of a bid shall not constitute TPWD's acceptance of the suitability of a bidder or a bid. The competency and responsibility of the bidders will be considered in making an award. **TPWD reserves the right to award, partially award, or not award a contract if no responses are deemed acceptable; and may re-solicit as determined necessary and in the best of the State of Texas.**

2. **BASIS OF AWARD:** Determination of the low bidder will be based on the lowest responsible base bid and/or a combination of the base bid and alternate bids. Alternates accepted will be considered in determining the low bidder, but TPWD does not obligate itself to accept an alternate or to accept alternates in any order listed unless otherwise stipulated elsewhere in the Invitation for Bids and Contract Documents.

3. **UNIT PRICE/ESTIMATED QUANTITY BIDS:** If the Bid furnished with this project requires a bid on a unit price/estimated quantity basis, the Bidder shall enter a unit price in the space provided therefor and a total item price based upon the estimated quantities shown on the bid form. Unit prices entered shall be the full price to TPWD including materials, labor, services, taxes, bonds, rentals, overhead, profit, etc., for the work described. Quantities shown reflect measurements taken from the Drawings and are assumed correct for bidding purposes. Final contract price will be based on actual quantities of work installed as determined by TPWD and Contractor upon completion of the work.

Award of contract shall be based upon the summation of the various unit price bids, but in case of error the unit prices shall govern and computations will be checked for accuracy before award is made.
Prices will also be reviewed for balance prior to award, and obvious imbalance in favor of work scheduled for early completion or subject to significant expansion after award may be grounds for rejection of the bid.

4. **BID SECURITY:** Unless otherwise stipulated in the Invitation for Bids and Contract Documents, only projects in which the total contract price exceeds $25,000.00, will require bid security. **Bids exceeding $25,000.00 must be accompanied by a bid bond, certified check or cashier's check drawn to the order of the Texas Parks and Wildlife Department for not less than five percent (5%) of the total amount of the bid (including total of all separate bids for one or more projects bid and multiple base bids and/or alternate bids and/or optional bids and/or allowances).** Therefore, to ensure adequate bid security, bidders should calculate bid security based on the highest possible monetary award. Certified checks and cashier checks must be originals. No other forms of bid security or checks will be accepted. **Bid will be rejected if the appropriate security is not furnished in the form specified above and by the time set for the bid opening.**

Bid security for the three (3) lowest bidders may be retained by TPWD until the successful bidder executes the contract, and if required, furnishes bonds and certificates of insurance. All other bid security will be returned as soon as practical after bid opening.

Bid security for the successful bidder will be returned following execution of the contract and submission of satisfactory bonds and insurance. If the successful bidder fails to return the signed contract (and bonds and certificate of insurance when required) within the time specified, the bid security may be forfeited not as a penalty but as liquidated damages.

5. **INSURANCE REQUIREMENTS:** The successful Contractor must certify the minimum insurance coverages as set forth by the contract, specifically, the Terms and Conditions, paragraph 12. The required insurance information shall be submitted within ten (10) calendar days from receipt of Notice of Selection. Failure to timely meet this requirement may result in disqualification of the bid and forfeiture of the bid security, if any. In such circumstances, TPWD shall be authorized to proceed with award to the next highest ranking, responsive and responsible bidder.

6. **BONDING REQUIREMENTS:** If the total contract price exceeds $25,000.00, a Payment Bond must be furnished by the successful Contractor. If the total contract price exceeds $100,000.00 a Payment Bond and a Performance Bond must be furnished by the successful Contractor. All bonds submitted shall be the original form bearing original signatures and seal. (See also Terms and Conditions)

7. **DISCREPANCIES:** Should any Bidder find discrepancies between Invitation for Bids and Contract Documents, or should Bidder be in doubt as to their exact meaning, Bidder should notify the Owner at once. The Owner may then, at its option, issue addenda clarifying same. The Owner will not be responsible for oral instructions or for misinterpretation of Invitation for Bids and Contract Documents.

8. **ADDENDA:** The Owner reserves the right to issue addenda at any time prior to the bid opening. (See also Terms and Conditions). All addenda shall be acknowledged as received on the Contractor’s Bid Form. **BIDDER’S FAILURE TO ACKNOWLEDGE RECEIPT OF ADDENDA MAY RESULT IN REJECTION OF BID.**

No oral explanation in regard to the meaning of the Bidding Documents will be made and no oral instructions will be given before the award of the contract. The Owner requests that all discrepancies, omissions or questions as to the meaning of Drawings and Specifications shall be communicated in writing to the Contract Manager for interpretation by *February 19, 2019* to the attention of Serena Holster, Contract Manager at the address stated below or via email to serena.holster@tpwd.texas.gov or via fax at 512-389-4790.
9. **PROHIBITED COMMUNICATIONS:** Upon issuance of this solicitation, TPWD, its representative(s), or partners will not answer questions or otherwise discuss the contents of this Solicitation with any potential Bidder or their representatives(s), except for the written inquiries described in the foregoing paragraph. Attempts to ask questions by phone or in person will not be allowed or recognized as valid.

**Failure to observe this restriction may disqualify Bidder.** Bidder shall rely only on written statements issued through or by TPWD’s contracting staff. This restriction does not preclude discussions between affected parties for the purposes of conducting business unrelated to this solicitation.

10. **LABOR LAWS:** Contractors must comply with all labor laws established by State and Federal statutes. (See also Terms and Conditions).

11. **STATE SALES TAX:** The Owner qualifies for exemption from State and Local Sales and Use Taxes pursuant to the provisions of the Texas Tax Code (Title 2, Chapter 151, Subsection 151.309).

The Contractor shall comply with applicable provisions of Chapter 34, Rules 3.291 and 3.357 of the Texas Administrative Code, or other procedures as may be prescribed by the State Comptroller of Public Accounts.

12. **CONTRACTOR QUALIFICATIONS:** A Contractor's Statement of Qualifications must be submitted with the bid. Failure to properly complete and provide a Contractor's Statement of Qualifications shall be cause for the Contractor's bid being rejected by the Owner. The Owner may make such investigations as necessary to determine the ability of the Contractor to perform the work, and reserves the right to reject any bid if the evidence submitted and/or obtained through investigation fails to satisfy the Owner that the Contractor is properly qualified to carry out the obligations of the Agreement.

13. **TEXAS IDENTIFICATION NUMBER:** Prior to any payment by Owner for the work or services required herein, the Contractor must be assigned a TEXAS IDENTIFICATION NUMBER (TIN) by the State Comptroller of Public Accounts. A space has been provided on the Contractor's Bid Form for provision of a TEXAS IDENTIFICATION NUMBER if available. If selected Contractor has not been assigned a TIN, the application form will be provided at Notice of Selection.

14. **SPECIAL REQUIREMENTS:** Bidders should refer to all of the Bidding and Contract Documents for special project requirements, if any, that may affect bidding.

15. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:** Bidder certifies that the responding 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 the Bidder is in compliance with the State of Texas statutes and rules relating to procurement and that Bidder is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

16. **PROTEST PROCEDURES:** Any Actual or prospective Respondent who is aggrieved in connection with this solicitation, evaluation, or award of any contract resulting from this solicitation may formally protest as provided in TPWD’s rules at TAC, Title 31, Part 2, Chapter 51, Subchapter L, Rule 51.350

17. **RESERVED**

18. **RESERVED**

19. **RESERVED**
CONTRACTOR’S
BID
SUBMITTALS
TEXAS PARKS AND WILDLIFE

CONTRACTOR'S BID

Texas Parks and Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744

Having carefully examined the Invitation for Bids and Contract Documents. Project Number 122178, Lake Somerville State Park (Birch Creek), Somerville, Burleson County for the Texas Parks and Wildlife Department, as well as the premises and conditions affecting this work, and all other contract documents, the undersigned proposes to furnish all labor, equipment and materials necessary to complete the work for the sum of:

BID SCHEDULE

<table>
<thead>
<tr>
<th>BASE BID ITEMS</th>
<th>LUMP SUM PRICE</th>
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<tbody>
<tr>
<td>Furnish all labor, equipment, materials, and incidentals but not limited</td>
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<tr>
<td>to installation of an ultrasonic flow meter in existing flow control</td>
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<tr>
<td>manhole with a remote readout in accordance with the Invitation for</td>
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<tr>
<td>Bids and Contract Documents.</td>
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</table>

**TOTAL LUMP SUM BASE BID**  

(Total Lump Sum Base Bid Price written in words)

EACH BID ITEM INCLUDES ANY AND ALL APPURTEANANT WORK AND ITEMS NECESSARY FOR FULLY FUNCTIONAL AND OPERATIONAL SYSTEMS, COMPLETE AND IN PLACE, IN ACCORDANCE WITH THE INVITATION FOR BIDS AND CONTRACT DOCUMENTS.

BASE BID will be evaluated and determination of the low bidder will be based on responsiveness and responsibility of the bidder and on the lowest Total Lump Sum Base Bid. HOWEVER, THE OWNER RESERVES THE RIGHT TO AWARD TO THE LOW BIDDER ANY COMBINATION OF BID ITEMS OR TO REJECT ALL BIDS.

BIDDER UNDERSTANDS AND ACKNOWLEDGES THAT BIDDER MUST MEET THE MINIMUM QUALIFICATION AND/OR EXPERIENCE REQUIREMENTS SET FORTH IN PARAGRAPH 44 OF TERMS AND CONDITIONS TO BE ELIGIBLE FOR AWARD OF THIS CONTRACT. BIDDER, BY SIGNING THIS BID, AFFIRMS THAT BIDDER MEETS SUCH MINIMUM REQUIREMENTS. FAILURE TO MEET ANY OF THE MINIMUM QUALIFICATIONS SHALL RESULT IN REJECTION OF THE BID.

The undersigned further agrees that, if awarded the Contract, the work will be completed within **one-hundred and fifty (150) calendar days commencing on the date specified in the Notice to Proceed.**
The undersigned agrees that when written notice of bid acceptance is furnished by the Owner within sixty (60) calendar days after the bid opening date, the undersigned will, within the stipulated time, execute and deliver the contract and all required bonds, certificates of insurance, and PR-1 and PR-2 submittals to the Owner. Failure to timely provide the insurance certificate, bonds, and submittals shall be grounds for disqualification of bid and forfeiture of bid security. In such circumstances, TPWD shall be authorized to proceed with award to the next lowest, responsive and responsible bidder.

If the above bid amount exceeds $25,000.00, the undersigned shall include herewith security in the form of a bid bond, certified check, or cashier’s check for an amount not less than five percent (5%) of the total amount of the bid to be awarded by Owner, unless otherwise stipulated under Terms and Conditions. To ensure adequate bid security, bidders should calculate bid security based on the total amount of all base bids plus all additive alternate bids (if any). The bid security will be returned to or forfeited by the undersigned in accordance with the Bid Security provision in the Instructions to Bidders. The undersigned further agrees that this bid security is the appropriate measure of liquidated damages which the Owner will sustain by the failure of the undersigned to execute and deliver said contract and required documents.

The undersigned agrees that this bid will not be withdrawn for a period of sixty (60) calendar days from the date set for the bid opening, and the undersigned further agrees that the bid security will be forfeited in the event this bid is withdrawn before expiration of said sixty (60) calendar days.

By the signature hereon affixed, the bidder hereby certifies that neither the bidder, nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this State, codified in Section 15.01 et seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.

Pursuant to Texas Government Code, Title 10, Subchapter A, §2155.004 (a), Bidder acknowledges that Bidder has not received compensation for participation in the preparation of the specifications for this project.

Pursuant to Texas Government Code, Title 10, Subchapter A, §2155.004 (b), §2155.006 (c), and Subchapter B, §2261.053 (c), Bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified contract and acknowledges that this contract may be terminated, and payment withheld if this certification is inaccurate.

By signing this bid, Bidder certifies that if a Texas address is shown as the address of the Bidder, Bidder qualifies as a Texas Resident bidder as defined in Texas Administrative Code, Title 1, Part 5, Chapter 111, Subchapter A, §111.2 (10).

By signature hereon, the bidder hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code. Making a false statement as to corporate tax status is a material breach of contract.

Bidder certifies that the bidding 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 bidder is in compliance with the State of Texas Statutes and Rules relating to procurement and that bidder 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.sam.gov.

By signing this bid, a bidder affirms that he 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 bid.
Bidder agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support, which is owed to the State of Texas.

Bidder agrees to comply with Texas Government Code, Title 10, Subtitle D, §2155.4441, relating to use of services contracts for products produced in the State of Texas.

Bidder certifies that if a Texas address is shown as the address of the Bidder on this bid, Bidder qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.

Pursuant to Texas Government Code, Title 10, Subchapter F, §§ 2270.001-2270.002, TPWD may not enter into a contract with a company (as defined by Texas Government Code, Title 8, Subchapter A, § 808.001) that boycotts Israel. By signing this bid, Bidder verifies that in accordance with Texas Government Code, Title 10, Subchapter F, §§ 2270.001-2270.002, Bidder:

1. Does not boycott Israel; and
2. Will not boycott Israel during the term of the contract.

Pursuant to Texas Government Code, Title 10, Subchapter F, §§ 2252.151-2252.154, TPWD may not enter into a contract with a company (as defined by Texas Government Code, Title 8, Subchapter A, § 806.051) that is identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Texas Government Code, §§ 806.001, 807.051 or 2252.153. By signing this bid, Bidder certifies that it is not a company identified on a list as prepared and maintained by the Texas Comptroller of Public Accounts pursuant to Texas Government Code, §§ 806.001, 807.051 or 2252.153.

By signature hereon, the bidder acknowledges that Texas Government Code, Title 10, Subchapter F, §§ 2252.201-2252.205 requires that all iron or steel products produced through a manufacturing process used in this project must be produced in the United States. By signing this bid, Bidder certifies that its bid price represents full compensation for compliance with the requirements of Texas Government Code, Title 10, Subchapter F, §§ 2252.201-2252.205.

By signing this bid, Bidder acknowledges and understands that the acceptance of funds by the Bidder or any other entity or person directly under this Contract, or indirectly through a subcontract under this Contract, shall constitute acceptance of the authority of the State Auditor’s Office, Comptroller or other agency of the State of Texas, TPWD or any successor agency, to conduct an audit or investigation in connection with those funds. The Bidder further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including providing access to any information the state auditor considers relevant to the investigation or audit. The Bidder shall ensure that this paragraph concerning the State’s authority to audit funds received indirectly by subcontractors through the Bidder and the requirement to cooperate is included in any subcontract it awards.

Bidder represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

If applicable, pursuant to Texas Family Code, Title 5, Subtitle D, §231.006(d), regarding child support, the Bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, Bidder must provide, in the spaces(s) below, the name and Social Security number of an individual owner, a sole proprietor and all partners, shareholders, or owners with an ownership interest of at least 25% of the business entity prior to award of contract.
Bidder certifies that they are in compliance with *Texas Government Code*, Title 6, §669.003, relating to contracting with executive head of a State agency. If §669.003 applies, Bidder will complete the following information in order for the bid to be evaluated:

Name of former executive: __________________________

Name of State agency: ____________________________

Date of separation from State agency: _______________

Position with Bidder: _____________________________

Date of employment with Bidder: ___________________
RECEIPT IS HEREBY ACKNOWLEDGED OF THE FOLLOWING ADDENDA TO THIS IFB (INITIAL IF APPLICABLE)

No. 01 ____  No. 02 ____  No. 03 ____  No. 04 ____  No. 05 ____  No. 06 ____  No. 07 ____

WARNING: BIDDER'S FAILURE TO ACKNOWLEDGE RECEIPT OF ADDENDA MAY RESULT IN REJECTION OF BID.

BIDDER'S AFFIRMATION: SIGNING THIS BID WITH A FALSE STATEMENT IS A MATERIAL BREACH OF CONTRACT AND SHALL VOID THE SUBMITTED BID OR ANY RESULTING CONTRACTS, AND THE BIDDER SHALL BE REMOVED FROM ALL BID LISTS.

________________________________________  ________________________________
Name of Contracting Firm                  Authorized Signature                Date

________________________________________
Address

________________________________________
City       State       Zip

________________________________________
(Area Code) Phone Number

________________________________________
(Area Code) FAX Number

________________________________________
Email address

________________________________________
(Texas Identification Number)

________________________________________
(Area Code) Cell Number
**TEXAS PARKS AND WILDLIFE**

**CONTRACTOR'S QUALIFICATION STATEMENT**

COMPLETE ALL SECTIONS OF THIS FORM AND SUBMIT WITH BID

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<th>PROJECT NO.</th>
<th>122178</th>
<th>LOCATION:</th>
<th>Lake Somerville State Park (Birch Creek)</th>
<th>BID DATE:</th>
<th>March 5, 2019</th>
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</table>

<table>
<thead>
<tr>
<th>FIRM</th>
<th>ADDRESS</th>
<th>PHONE</th>
<th>FAX</th>
<th>E-MAIL</th>
<th>Individual</th>
<th>Partnership</th>
<th>Corporation</th>
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</thead>
</table>

If incorporated, under the laws of the State of __________________________ with principal place of business in __________________________

**PRINCIPALS IN FIRM AND YEARS EXPERIENCE IN CONSTRUCTION:**

<table>
<thead>
<tr>
<th>NAME</th>
<th>TITLE</th>
<th>PHONE</th>
<th>NO. OF YEARS</th>
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</thead>
<tbody>
<tr>
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**FIRM HISTORY:** List firm history below including any other business names used.

<table>
<thead>
<tr>
<th>From</th>
<th>to</th>
<th>Firm Name</th>
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<tbody>
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<tr>
<th>From</th>
<th>to</th>
<th>Firm Name</th>
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<tr>
<th>From</th>
<th>to</th>
<th>Firm Name</th>
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Has firm, under its current or former name(s) ever failed to complete a project, defaulted on a contract, or been engaged in litigation over a contract? ______ Yes ______ No. If so, state particulars of most recent occurrence on separate sheet(s) and attach to this form.

**CONSTRUCTION CAPABILITIES:**

**FIRM'S AVERAGE ANNUAL CONSTRUCTION VOLUME $ __________________________**

<table>
<thead>
<tr>
<th>Building %</th>
<th>Mech.-HVAC %</th>
<th>Hwy/Roads %</th>
<th>Other %</th>
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<tbody>
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<thead>
<tr>
<th>Electrical %</th>
<th>Utility Lines %</th>
<th>Earthwork %</th>
<th>Other %</th>
</tr>
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<tbody>
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<thead>
<tr>
<th>Plumbing %</th>
<th>Utility Plants %</th>
<th>Site Work %</th>
<th>Other %</th>
</tr>
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<tbody>
<tr>
<td></td>
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BONDING INFORMATION: Indicate agency/surety through which bonding will be obtained.

<table>
<thead>
<tr>
<th>AGENCY</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>City/State/Zip</td>
<td>E-Mail</td>
</tr>
<tr>
<td>Phone</td>
<td>Fax</td>
</tr>
<tr>
<td>Agent's Name</td>
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BONDING COMPANY

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EXPERIENCE RECORD

List minimum of three (3) projects (attach additional sheets if necessary) that are at least 50% completed (50% completed projects will be counted towards successful projects) or have been completed within the last five (5) years and that demonstrate similar experience.

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Project Description and why it is comparable to this contract.

Project A/E Name | A/E Phone |
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HUB AND TPWD CONTRACTING EXPERIENCE:

Please indicate if the firm is a Texas Certified Historically Underutilized Business (HUB):  _____ YES  _____ NO
If yes, please indicate gender and ethnicity:  Gender:  _____ Male  _____ Female
Ethnicity:  ________________________________ (Asian Pacific Islander, Black American, Hispanic American, Native American)
Service Disabled Veteran:  _____ YES  _____ NO

Has firm ever done business with TPWD?  _____ YES  _____ NO
If yes, list the most recent project number(s):  ____________________________________________

I hereby certify that all information provided above and attached is true and correct. Furthermore, I hereby authorize you to contact the references listed above and authorize release of information from such references to Texas Parks and Wildlife Department. I hereby certify that my firm is not debarred or suspended from performing work for the U.S.A. or the State of Texas.

Name of Firm

Signature of Owner or Officer

Title of Person Signing

Date
CONDITIONS OF THE CONTRACT
Texas Parks and Wildlife

Terms and Conditions
(Construction)

1. Definitions: As used throughout this contract, the following terms have the meaning set forth below:

(a) Owner- The Texas Parks and Wildlife Department (TPWD) acting on behalf of the State of Texas.

(b) Owner's Designated Representative (ODR)- the individual assigned by the Owner to act on its behalf and to undertake certain activities as specifically outlined in the Contract. The ODR is the only party authorized to direct changes to the scope, cost, or time of the contract. For the purposes of this contract, the ODR shall be Owner's, Project Manager, Thea Luong.

(c) Contractor- The individual, corporation, limited liability company, partnership, firm, or other entity contracted to furnish the materials and to perform all Work under the contract with the Owner.

(d) Contract- means the entire agreement between the Owner and the Contractor, including all of the Contract Documents.

(e) Contract Documents- means those documents identified as a component of the agreement (contract) between the Owner and the Contractor. These may include, but are not limited to, Drawings, Specifications, Terms and Conditions, and all pre-bid and/or pre-proposal addenda.

2. Site: The site of the Work is Lake Somerville State Park (Birch Creek) located at 14222 Park Rd 57, Somerville, Burleson County, Texas 77879.

3. Description of Work: Furnish all labor, materials, tools, equipment and incidentals necessary for performance of all Work associated with Project Number 122178 installation of an ultrasonic flow meter at the Birch Creek Unit at Lake Somerville State Park (Birch Creek) as shown on the drawings and as specified in the Invitation for Bids and Contract Documents.

4. Performance Time: The Contractor shall complete all Work, including clean-up required by the contract within one-hundred and fifty (150) calendar days after the date specified in the Notice to Proceed.

5. Inquiries: All inquiries in regard to the Invitation for Bids and Contract Documents, to include any discrepancies thereto and administration of the contract, should be directed to Serena Holster, Contract Manager, 512/389-8761.

6. Examination of Site: Bidders should visit the site and be thoroughly familiar with job conditions such as the location, accessibility, and general character of the site and/or building prior to submitting a bid. Visits shall be scheduled with Roger Padon, Construction Manager, at 512/627-4417. Bidders are strongly encouraged to visit the site and be familiar with the site conditions. Failure to give proper consideration in the bid to site conditions will not constitute grounds for additional compensation.

7. Venue: Venue is hereby fixed in Travis County, Texas.
8. **LABOR, MATERIALS, AND WORKMANSHIP:**

(a) Unless otherwise specified herein, the Contractor shall furnish and pay for all labor, materials, equipment, tools, construction equipment, and machinery, water, heat, utilities (unless otherwise specified in the Invitation for Bids and Contract Documents), transportation, and other facilities and services necessary for the proper execution and completion of this contract. All materials incorporated in the Work shall be new and of the quality specified, and all Work shall be performed in a skillful and workmanlike manner. Where manufacturer's names are mentioned in these contract documents, it has been done in order to establish a standard of quality and construction, not to preclude the use of equal or superior materials or products of other manufacturers. However, substitutions must have Owner's prior approval.

(b) Unless otherwise indicated in the Contract Documents, equipment and material shall be installed in accordance with recommendations of the manufacturer to include such tests as manufacturer recommends. Both materials and workmanship shall be subject to the inspection of the Owner or its representative, who will require the Contractor to correct defective workmanship or material without cost to the Owner.

9. **INTENT OF THE CONTRACT DOCUMENTS:**

(a) The intent of the Invitation for Bids and Contract Documents is to include all of the Work for the contract price and within the contract time. All Invitation for Bids and Contract Documents are to be considered as cooperative. All Work not specified and/or not shown on the drawings, but which is necessary for the completion and/or functioning and operation of the project, shall be understood and implied as part of the contract to be performed by the Contractor for the contract price. Such Work shall be executed by the Contractor in the same manner and with the same character of material as other portions of the contract without extra compensation.

(b) It is the intention of the Invitation for Bids and Contract Documents to call for finished Work, tested, and ready for operation. Any apparatus, material or Work described in the Invitation for Bids and Contract Documents and any incidental accessories necessary to make the Work complete in all respects and ready for operation (even though not particularly specified) shall be furnished, delivered, and installed by the Contractor without additional expense to the Owner. Minor details not usually shown or specified but necessary for proper installation and operation are included in the Work just as if therein specified or shown.

(c) The Drawings depict the location and quantity of elements of the Work. The specifications indicate quality. All documents are intended to be complementary to produce the Work. Requirements of the specifications not included in the drawings or schedules or shown on the drawings and/or schedules and not included in the specifications shall be of like effect as if shown or mentioned in both. Explanatory notes on the drawings shall take precedence over conflicting drawn-out indications. Figured dimensions on drawings shall take precedence over scale measurements. Where figures are lacking, scale measurements may be followed, but in all cases the measurements are to be checked from the Work in place and those measured dimensions taken at the site shall take precedence over scale dimensions in drawings.

(d) In the event of conflict between Drawings and Specifications, the Specifications shall prevail. In the event of conflict among provisions of Specifications, using the CSI format, what is called for in the division of the predominant discipline will govern inconsistent provisions found elsewhere.
(e) In the event of conflict among the drawings, the large-scale drawings prevail over the small-scale drawings. Figures given on drawings shall govern over scaled measurements from drawings.

(f) Prior to commencing the Work, in order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to pricing or commencing the Work, the Contractor shall examine and compare the Contract Documents, information furnished by the Owner, relevant field measurements made by the Contractor and any visible or reasonably anticipated conditions at the site affecting the Work. This duty extends throughout the construction phase prior to commencing each particular Work activity and/or system installation.

(g) The Owner does not warrant or make any representations as to the accuracy or completeness of the information furnished to the Contractor by the Owner. The Contractor shall promptly report in writing to the Owner the discovery of any apparent error, omission or inconsistency in the Contract Documents prior to execution of the Work. It is recognized, however, that the Contractor is not acting in the capacity of a licensed design professional, and that the Contractor’s examination is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations. If, however, the Contractor fails to perform the examination and reporting obligations of these provisions, the Contractor shall be responsible for any avoidable costs or direct damages.

(h) All Work shall be performed and furnished by the Contractor in accordance with accepted construction industry practices.

(i) A duplication of Work is not intended by the Contract Documents and any duplication shall not become a basis for extra cost to the Owner.

10. **PERMITS AND LAWS:** Contractor shall comply with all laws, ordinances, statutes, rules and regulations applicable to the project, including but not limited to those pertaining to the collection, transportation and disposal of trash and refuse and shall obtain such permits, licenses or other authorizations as may be required.

If applicable governmental laws, rules, regulations or ordinances conflict with the Contract Documents, then such laws, rules, regulations, or ordinances shall govern instead of the Contract Documents, except in such cases where the Contract Documents exceed them in quality of materials or labor, then the Contract Documents shall be followed.

11. **LABOR, LAWS AND WAGES:**

In the execution of this contract, the Contractor must comply with all applicable State and Federal laws, regulations and rules including but not limited to those concerned with labor, equal employment opportunity, safety and minimum wages. The Contractor shall obtain and pay for all permits required in connection with the execution of Contractor’s Work. The Owner shall be furnished with certified copies of these permits if the Owner so requests. If such laws, regulations or rules conflict with the Invitation for Bids and Contract Documents, then the laws, regulations or rules, shall govern instead of the Invitation for Bids and Contract Documents, except in such cases where the Invitation for Bids and Contract Documents exceed them in quality of materials or labor, then the Invitation for Bids and Contract Documents shall be followed.

(a) **Duty to Pay Prevailing Wage Rates.** The Contractor shall not pay less than the wage scale of the various classes of labor as shown on the prevailing wage schedule provided by Owner in the bid or proposal specifications. The specified wage rates are minimum rates only. Owner is not bound to pay any claims for additional compensation made by any
Contractor because the Contractor pays wages in excess of the applicable minimum rate contained in the Contract. The prevailing wage schedule is not a representation that qualified labor adequate to perform the Work is available locally at the prevailing wage rates.

(b) Notification to Workers. Contractor shall post the prevailing wage schedule in a place conspicuous to all workers on the Project Site. When requested by Owner, Contractor shall furnish evidence of compliance with the Texas Prevailing Wage Law and the addresses of all workers.

i. Pursuant to Tex. Gov’t Code § 2258.024, Contractor shall keep, on site, true and accurate records showing the name and occupation of each worker employed by the Contractor or subcontractors and the actual per diem wages paid to each worker. The record shall be open to inspection by the ODR and their agents at all reasonable hours for the duration of the contract.

ii. With each application for progress payment, Contractor shall make available upon request certified payroll records, including from subcontractors of any tier level, on Form WH-347 as promulgated by the U.S. Department of Labor, as may be revised from time to time and in unlocked and unprotected Excel format, along with copies of any and all Contract Documents between Contractor and any Subcontractors. Pursuant to Tex. Penal Code §§ 37.02 and 37.10, Employees of Contractor and subcontractors, including all tier levels, shall be subject to prosecution for submitting certified payroll records that contain materially false information.

iii. The prevailing wage schedule is determined by Owner in compliance with Tex. Gov’t Code, Ch. 2258. Should Contractor at any time become aware that a particular skill or trade not reflected on Owner’s prevailing wage schedule will be or is being employed in the Work, whether by Contractor or by Subcontractor, Contractor shall promptly inform ODR of the proposed wage to be paid for the skill along with a justification for same and ODR shall promptly concur with or reject the proposed wage and classification.

iv. Contractor is responsible for determining the most appropriate wage for a particular skill in relation to similar skills or trades identified on the prevailing wage schedule. In no case, shall any worker be paid less than the wage indicated for laborers.

v. Pursuant to Tex. Labor Code § 214.008, Misclassification of Workers; Penalty. The Owner requires Contractor and all subcontractors properly classify individuals as Employees or Independent Contractors.

(c) Penalty for Violation. Contractor, and any Subcontractor, will pay to the State a penalty of sixty dollars ($60) for each worker employed for each day, or portion thereof, that the worker is paid less than the wage rates stipulated in the prevailing wage schedule.

(d) Complaints of Violations.

i. Owner’s Determination of Good Cause. Upon receipt of information concerning a violation, Owner will conduct an investigation in accordance with Tex. Gov’t Code, Ch. 2258 and make an initial determination as to whether good cause exists that a violation occurred. Upon making a good cause finding, Owner will retain the full amounts claimed by the claimant or claimants as the difference between
wages paid and wages due under the prevailing wage schedule and any supplements thereto, together with the applicable penalties in accordance with Tex. Gov't Code § 2258.023, such amounts being subtracted from successive progress payments pending a final decision on the violation.

ii. **No Extension of Time.** If Owner's determination proves valid that good cause existed to believe a violation had occurred, Contractor is not entitled to an extension of time for any delay arising directly or indirectly from the arbitration procedures.

iii. **Cooperation with Owner's Investigation.** Contractor shall cooperate with Owner during any investigations hereunder. Such cooperation shall include, but not necessarily be limited to, timely providing the information and/or documentation requested by Owner, which may include certified payroll records on Form WH-347 as promulgated by the U.S. Department of Labor, as may be revised from time to time and in unlocked and unprotected Excel format; and copies of any and all Contract Documents between Contractor and any Subcontractors.

iv. **Notification to Owner.** In the event Contractor or Subcontractor elect to appeal an initial determination made pursuant to Paragraph 2.2.3.1, the Contractor and/or Subcontractor, as applicable, shall deliver notice thereof to Owner.

12. **INSURANCE REQUIREMENTS:**

(a) Contractor shall carry insurance in the types and amounts indicated in this Article for the duration of the Contract. The insurance shall be evidenced by delivery to Owner of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Upon request, Owner, and/or its agents, shall be entitled to receive without expense, copies of the policies and all endorsements. Contractor shall update all expired policies prior to submission for monthly payment. Failure to update policies shall be reason for withholding of payment until renewal is provided to Owner.

(b) Contractor shall provide and maintain all insurance coverage with the minimum amounts described below until the end of the warranty period unless otherwise stated in these Terms and Conditions. Failure to maintain insurance coverage, as required, is grounds for suspension of Work for cause.

(c) Contractor shall deliver to Owner true and complete copies of certificates and corresponding policy endorsements prior to the issuance of any Notice to Proceed.

(d) Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

(e) The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

(f) The insurance coverage and limits established herein shall not be interpreted as any representation or warranty that the insurance coverage and limits necessarily will be adequate to protect Contractor.
(g) Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A or better by A.M. Best Company or similar rating company or otherwise acceptable to Owner.

(h) **Insurance Coverage Required.**

i. **Workers’ Compensation.** Insurance with limits as required by the Texas Workers’ Compensation Act, with the policy endorsed to provide a waiver of subrogation in favor of Owner, employer’s liability insurance of not less than:

- $1,000,000 each accident;
- $1,000,000 disease each employee; and
- $1,000,000 disease policy limit.

ii. **Commercial General Liability Insurance.** Including premises, operations, independent contractor’s liability, products and completed operations and contractual liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring Contractor’s liability for bodily injury (including death) and property damage with a minimum limit of:

- $1,000,000 per occurrence;
- $2,000,000 general aggregate;
- $5,000 Medical Expense each person;
- $1,000,000 Personal Injury and Advertising Liability;
- $2,000,000 products and completed operations aggregate;
- $50,000 Damage to Premises Rented to You; and

Coverage shall be on an “occurrence” basis.

The policy shall include coverage extended to apply to completed operations and explosion, collapse, and underground hazards. The policy shall include endorsement CG2503 Amendment of Aggregate Limits of Insurance (per Project) or its equivalent.

If the Work involves any activities within fifty (50) feet of any railroad, railroad protective insurance as may be required by the affected railroad, written for not less than the limits required by such railroad.

iii. **Asbestos Abatement Liability Insurance.** Including coverage for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos containing materials. *This requirement applies if the Work or the Project includes asbestos containing materials.*

The combined single limit for bodily injury and property damage will be a minimum of $1,000,000 per occurrence.
Specific requirement for claims-made form: Required period of coverage will be determined by the following formula: continuous coverage for life of the Contract, plus one (1) year (to provide coverage for the warranty period), and an extended discovery period for a minimum of five (5) years which shall begin at the end of the warranty period.

Employer's liability limits for asbestos abatement will be:

$500,000 each accident;

$500,000 disease each employee; and

$500,000 disease policy limit.

If this Contract is for asbestos abatement only, the Special Form builder's risk or Special Form installation floater (e) is not required.

iv. Comprehensive Automobile Liability Insurance, covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage of $1,000,000 per accident. No aggregate shall be permitted for this type of coverage.

Such insurance is to include coverage for loading and unloading hazards.

v. Special Form Builder's Risk Insurance, if applicable (or Special Form installation floater for instances in which the project involves solely the installation of material and/or equipment). Coverage shall be Special Form, including, but not limited to, fire, extended coverage, vandalism and malicious mischief, theft and, if applicable, flood, earth movement and named storms. Builder's risk and installation floater limits shall be equal to 100 percent of the Contract Sum plus, if any, existing property and Owner-furnished equipment specified by Owner. The policy shall be written jointly in the names of Owner and Contractor. Subcontractors shall be named as additional insureds. The policy shall have endorsements as follows:

1. This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.

2. This insurance shall not contain an occupancy clause suspending or reducing coverage should Owner partially occupy the Site and before the parties have determined Substantial Completion.

3. Loss, if any, shall be adjusted with and made payable to Owner as trustee for the insureds as their interests may appear. Owner shall be named as loss payee.

4. For renovation projects or projects that involve portions of Work contained within an existing structure, refer to Paragraph 62 of these Terms and Conditions for possible additional builder's risk insurance requirements.

5. For Owner furnished equipment or materials that will be in care, custody or control of Contractor, Contractor will be responsible for damage and loss.
6. For those properties located within a Tier 1 or 2 windstorm area, named storm coverage must be provided with limits specified by Owner.

7. For those properties located in flood prone areas, flood insurance coverage must be provided with limits specified by Owner.

8. Builder’s risk insurance policy shall remain in effect until Substantial Completion.

(i) Policies must include the following clauses, as applicable:

i. This insurance shall not be canceled, materially changed, or non-renewed except after thirty (30) days written notice has been given to Owner.

ii. It is agreed that Contractor’s insurance shall be deemed primary with respect to any insurance or self-insurance carried by Owner for liability arising out of operations under the Contract with Owner.

iii. Owner, its officials, directors, employees, representatives, and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured performed under Contract with Owner. The additional insured status must cover completed operations as well. This is not applicable to workers’ compensation policies.

iv. A waiver of subrogation in favor of Owner shall be provided in all policies.

(j) Without limiting any of the other obligations or liabilities of Contractor, Contractor shall require each Subcontractor performing Work under the Contract, at Subcontractor’s own expense, to maintain during the term of the Contract, the same stipulated minimum insurance including the required provisions and additional policy conditions as shown above. As an alternative, Contractor may include its Subcontractors as additional insureds on its own coverage as prescribed under these requirements. Contractor’s certificate of insurance shall note in such event that Subcontractors are included as additional insureds and that Contractor agrees to provide workers’ compensation for Subcontractors and their employees. Contractor shall obtain and monitor the certificates of insurance from each Subcontractor in order to assure compliance with the insurance requirements. Contractor must retain the certificates of insurance for the duration of the Contract plus five (5) years and shall have the responsibility of enforcing these insurance requirements among its Subcontractors. Owner shall be entitled, upon request and without expense, to receive copies of these certificates.

(k) Workers’ compensation insurance coverage must be provided for all workers at all tier levels and meet the statutory requirements of Tex. Lab. Code § 401.011(44) and specific to construction projects for public entities as required by Tex. Lab. Code § 406.096.

13. **INDEPENDENT CONTRACTOR:** The Contractor shall not render the Contractor to an employee, officer or agent of the Owner for any purpose. The Contractor is and shall remain an independent contractor in relationship to the Owner. The Owner shall not be responsible for withholding taxes from payments made under the Contract. The Contractor shall have no claim against the Owner 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.
14. **PERFORMANCE AND PAYMENT BONDS:** If the total contract price exceeds $25,000, the Contractor shall execute a Payment Bond to the Owner in the amount of the total contract price. If the total contract price exceeds $100,000, the Contractor shall execute a Payment Bond and a Performance Bond to the Owner in the amount of the total contract price. The performance bond is payable to the State in the full amount of the Contract and is solely for the protection of the State and is conditioned on the faithful performance of the Work in accordance with the Contract Documents. The payment bond is payable to the State in the full amount of the Contract and is solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the Contractor or a supplier of required materials or labor. Each bond shall be executed by a corporate surety or corporate sureties duly authorized to do business in the State of Texas and on forms provided by the Owner and approved by the Attorney General of Texas. Corporate sureties authorized to issue bonds shall be qualified and comply with relevant provisions of the Texas Insurance Code. All Performance and Payment Bonds shall be executed by sureties which are licensed to do business in the State of Texas and which are included in the list of companies in the current U.S. Department of the Treasury Circular 570, "Companies holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies", Sections 9304 through 9308 of Title 31 of the U.S. Code Annotated. The Contractor shall submit the executed performance and payment bonds to the Owner within the time stipulated within these documents. The process of requiring and accepting bonds and making claims there under shall be conducted in compliance with Chapter 2253, Texas Government Code. If for any reason a statutory payment or performance bond is not honored by the surety, the Contractor shall fully indemnify and hold the Owner harmless of and from any costs, losses, obligations or liabilities it incurs as a result. Owner shall furnish a copy of the payment bond and the related Contract to any qualified person seeking copies who complies with §2253.026, Texas Government Code. Claims on payment bonds must be sent directly to the Contractor and his surety in accordance with § 2253.041, Texas Government Code. All Payment Bond claimants are cautioned that no lien exists on the funds unpaid to the Contractor on such Contract, and that reliance on notices sent to the Owner may result in loss of their rights against the Contractor and/or his surety. The Owner is not responsible in any manner to a claimant for collection of unpaid bills and accepts no such responsibility because of any representation by any agent or employee. When the value of the Contract between the Owner and the Contractor is less than $25,000.00, claimants and their rights are governed by Texas Property Code, §§ 53.231 – 53.239. These provisions set out the requirements for filing a valid lien on funds unpaid to the Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claims. If the Contractor fails to submit such bond within the time stipulated herein, Owner may disqualify the bid. In such circumstances, TPWD shall be authorized to proceed with award to the next lowest, responsive and responsible bidder.

15. **ADDENDA:** Any addenda issued in writing by the Owner during the period of bidding shall be included in the bid and Bidder's receipt of addenda shall be acknowledged in the bid form. Such addenda shall become a part of the contract and shall modify the Contract Documents accordingly. Oral changes in the Work made during the period of bidding will not be binding. **BIDDER'S FAILURE TO ACKNOWLEDGE RECEIPT OF ADDENDA MAY RESULT IN REJECTION OF BID.**

16. **REFERENCES AND STANDARDS:**

(a) Contractor's personnel shall utilize the following adopted Standard Building Codes in all design and construction Work.

i. **INTERNATIONAL CODE COUNCIL ADOPTIONS**

1. BUILDING CODE INTERNATIONAL BUILDING CODE 2015
2. STRUCTURAL CODE INTERNATIONAL BUILDING CODE 2015
3. PLUMBING CODE INTERNATIONAL PLUMBING CODE 2015
4. MECHANICAL CODE INTERNATIONAL MECHANICAL CODE 2015

Terms and Conditions (091718)
5. GAS CODE — INTERNATIONAL FUEL GAS CODE 2015
6. RESIDENTIAL CODE — INTERNATIONAL RESIDENTIAL CODE 2015
7. EXISTING BUILDINGS — INTERNATIONAL EXISTING BUILDINGS CODE 2015


ii. NATIONAL FIRE PROTECTION ASSOCIATION
1. ELECTRICAL CODE — NATIONAL ELECTRICAL CODE NFPA-70 2017
2. FIRE CODE — NFPA – 1 2015
3. LIFE SAFETY CODE — NFPA – 101 2015

iii. STATE ENERGY CONSERVATION OFFICE (SECO)/TEXAS COMPTROLLER’S OFFICE
1. ENERGY CODES FOR STATE BUILDINGS — Energy Conservation Design Standards: Texas Administrative Code, Title 34, Part 1, Ch. 19, Subchapter C (link)

   See SECO website for State Funded Buildings, New Construction and Major Renovation Requirements and SECO Compliance Certification Forms (link)

2. WATER CONSERVATION STANDARDS FOR STATE BUILDINGS — Energy Conservation Design Standards: Texas Administrative Code, Title 34, Part 1, Ch. 19, Subchapter C (link)
   i. COMPLIANCE WITH THE WATER CONSERVATION DESIGN STANDARDS FOR STATE BUILDINGS AND INSTITUTIONS OF HIGHER EDUCATION FACILITIES, STATE ENERGY CONSERVATION OFFICE (SECO), 2016.

   See SECO website for Texas Water Conservation Design Standards, Requirements and SECO Compliance Certification / Reporting Form (link)

iv. ACCESSIBILITY CODES
1. US DEPT. OF JUSTICE, 2010 ADA STANDARDS FOR ACCESSIBLE DESIGN.
2. ARCHITECTURAL BARRIERS ACT ACCESSIBILITY GUIDELINES; OUTDOOR DEVELOPED AREAS, NOVEMBER 25, 2013.
3. 2012 TEXAS ACCESSIBILITY STANDARDS, ELIMINATION OF ARCHITECTURAL BARRIERS, TEXAS GOVERNMENT CODE, CHAPTER 469.
v. PLAYGROUND SAFETY CODE
1. ASTM F1487-17, STANDARD CONSUMER SAFETY PERFORMANCE SPECIFICATIONS FOR PLAYGROUND EQUIPMENT FOR PUBLIC USE.
2. ASTM F2223-15, STANDARD GUIDE FOR ASTM STANDARDS ON PLAYGROUND SURFACING.

(b) In addition to the building codes adopted by Texas Parks and Wildlife Department, the latest edition of the following industry testing and quality standards as well as any additional standards set forth in the specifications and/or elsewhere in the Solicitation and Contract Documents are incorporated herein and made a part hereof, as applicable:

ACI American Concrete Institute
AISC American Institute of Steel Construction
CRSI Concrete Reinforcing Steel Institute
American Society of Heating, Refrigeration and Air Conditioning Engineers
ASHRAE
ASTM American Society for Testing and Materials
AWWA American Water Works Association
UL Underwriters’ Laboratories
SMACNA Sheet Metal and Air Conditioning Contractors National Association
TCA Tile Council of America
TXDOT Texas Department of Transportation
TCEQ Texas Commission on Environmental Quality

All contractors, including sub-contractors, shall ensure all personnel follow the adopted Standardized Building Codes in all design and construction Work.

17. MEASUREMENT AND BASIS OF PAYMENT: The various items in the bid schedule will be paid at the unit or lump sum price bid. These prices shall be full compensation for furnishing all material, labor, equipment, tools, power, transportation, superintendence, overhead, and profit necessary to complete the construction of the various items of the project listed in the bid schedule. It is not the intent of the bid schedule to itemize each and every labor, material or incidental requirement. Any requirement, explicit or implied as determined by the Owner for project completion, including testing, and not specifically mentioned in the bid schedule shall be included in items with which they would be considered subsidiary. The measurement units that may be used are abbreviated on the bid schedule as follows:

<table>
<thead>
<tr>
<th>LS</th>
<th>Lump Sum</th>
<th>EA</th>
<th>Each</th>
<th>LF</th>
<th>Linear Foot</th>
<th>SY</th>
<th>Square Yard</th>
</tr>
</thead>
<tbody>
<tr>
<td>CY</td>
<td>Cubic Yard</td>
<td>VF</td>
<td>Vertical Foot</td>
<td>GAL</td>
<td>US Gallon</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

18. LICENSING OF TRADES: Contractor shall comply with all applicable provisions of State law related to license requirements for skilled tradesmen, contractors, suppliers and or laborers, as necessary to accomplish the Work. In the event Contractor, or one of its Subcontractors, loses its license during the term of performance of the Contract, Contractor shall promptly hire or contract with a licensed provider of the service at no additional cost to Owner.

19. CHANGES AND CHANGED CONDITIONS:

(a) The Owner may, in writing, order changes in the Contract Documents within the general scope of the contract.
(b) The Contractor shall promptly notify the Owner in writing of subsurface or latent physical conditions differing materially from those indicated in this contract or unknown unusual physical conditions at the site, before proceeding further with the Work.

(c) If changes pursuant to this section increase or decrease the cost of, or time required for, performing the Work, then upon assertion of a claim in writing by the Contractor prior to the making of final payment under the contract, a written equitable adjustment by change order may be made. However, no adjustment shall be made unless the written notice required therein was given timely, or unless the Owner waives the requirement therefore. If the adjustment cannot be agreed upon, the dispute shall be decided pursuant to the paragraph entitled “Disputes”.

(d) It is recognized by the parties hereto and agreed by them that the Specifications and Drawings may not be complete or free from errors, omissions and imperfections or that they may require changes or additions in order for the Work to be completed to the satisfaction of Owner and that, accordingly, it is the express intention of the parties, notwithstanding any other provisions in this Contract, that any errors, omissions or imperfections in such Specifications and Drawings, or any changes in or additions to same or to the Work ordered by Owner and any resulting delays in the Work or increases in Contractor’s costs and expenses arising out of such errors, shall not constitute or give rise to any claim, demand or cause of action of any nature whatsoever in favor of Contractor, whether for breach of Contract, or otherwise; provided, however, that Owner shall be liable to Contractor for the sum stated to be due Contractor in any Change Order approved and signed by both parties, it being agreed hereby that such sum, together with any extension of time contained in said Change Order, shall constitute full compensation to Contractor for all costs, expenses and damages to Contractor, as permitted under Tex. Gov’t Code, Chapter 2260.

(e) **Unit Prices:** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a Proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to Owner or Contractor, the applicable unit prices shall be equitably adjusted as agreed to by the parties and incorporated into a Change Order.

(f) Any unexpected circumstance which necessitates an immediate change in order to avoid a delay in progress of the Work may be expedited by verbal communication authorization between Contractor and Owner, with written confirmation following within twenty-four (24) hours. A limited scope not to exceed estimate of costs and time will be requested prior to authorizing Work to proceed. Should the estimate be impractical for any reason, ODR may authorize the use of detailed cost records of such Work to establish and confirm the actual costs and time for documentation in a formal change order.

(g) **Pricing Change Order Work:** The amounts that Contractor and/or its Subcontractor adds to a Change Order for profit and overhead will also be considered by Owner before approval is given. The amounts established hereinafter are the maximums that are acceptable to Owner.

i. For Work performed by its forces, Contractor will be allowed their actual costs for materials, the total amount of wages (including benefits) paid for labor, plus the total cost of State and Federal payroll taxes and of worker’s compensation and comprehensive general liability insurance, plus additional bond and builders risk insurance cost if the change results in an increase in the premium paid by Contractor. To the total of the above costs, Contractor will be allowed to add a percentage as noted below to cover overhead and profit combined. Allowable percentages for overhead and profit on any specific
change shall not exceed fifteen (15) percent for the first $10,000 of value for self-performed Work or portion thereof, ten (10) percent for the second $10,000 of value for self-performed Work or portion thereof and seven and a half (7.5) percent for any value of the self-performed Work that exceeds $20,000.

ii. For subcontracted Work each affected Subcontractor shall figure its costs, overhead and profit as described above for Contractor's Work, all Subcontractor costs shall be combined, and to that total Subcontractor cost Contractor will be allowed to add a maximum mark-up of ten (10) percent for the first $10,000 of subcontracted Work value or portion thereof, seven and half (7.5) percent for the second $10,000 of subcontracted Work value or portion thereof, and five (5) percent for any value of the subcontracted Work exceeding $20,000.

iii. All proposed costs for change order Work must be supported by itemized accounting of material, equipment and associated itemized installation costs in sufficient detail, following the outline and organization of the established Schedule of Values, to permit analysis by A/E and ODR using current estimating guides and/or practices. Photocopies of Subcontractor and vendor proposals shall be furnished unless specifically waived by ODR. Contractor shall provide written response to a change request within twenty-one (21) days of receipt.

20. DISPUTES:

(a) The dispute resolution process provided for in Tex. Gov’t Code, Chapter 2260, and the procedures provided in Title 31, Part 2, Chapter 51, Subchapter J of the Texas Administrative Code shall be used by the Owner and the Contractor to attempt to resolve any claim for breach of contract made by the Contractor, that is not resolved under procedures described throughout the Terms and Conditions of the Contract.

(b) Nothing herein shall hinder, prevent, or be construed as a waiver of Owner’s right to seek redress on any disputed matter in a court of competent jurisdiction.

(c) Nothing herein shall waive or be construed as a waiver of the State’s sovereign immunity.

21. PAYMENTS TO CONTRACTOR:

(a) If the contract time (or valid extension thereof) exceeds thirty (30) calendar days then upon presentation of a properly executed voucher, progress payments equal to 90% of the value of Work performed may be made monthly on estimates approved by the Owner. Such voucher shall be accompanied by Contractor's Progress Payment Affidavit form furnished by Owner. Upon payment therefore, title to the property shall vest in the Owner. This provision shall not be construed as relieving the Contractor from sole responsibility for all material and Work upon which payments have been made or the restoration of any damaged Work, or as waiving the right of the Owner to require the fulfillment of all of the terms of the contract. Final payment will be made after all Work is completed and accepted.

(b) Final Payment constitutes a waiver of all claims by the Owner, relating to the condition of the Work except those arising from:

i. Faulty or defective Work appearing after Substantial Completion (latent defects); and/or

ii. Failure of the Work to comply with the requirements of the Contract Documents; and/or

iii. Terms of any warranties required by the Contract, or implied by law; and/or
iv. Claims arising from personal injury or property damage to third parties.

(c) The final payment shall not become due until the Contractor submits to the Owner the following:

i. A fully executed Contractor’s Final Payment Affidavit form furnished by Owner. Also, if required by Owner, the Contractor shall submit other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims arising out of the contract, to the extent and in such form as may be designated by the Owner. If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify it against any such claim;

ii. Two (2) sets of approved project submittals and all equipment and materials warranties/guarantees as provided by suppliers and/or manufacturers;

iii. One (1) set of “as-built” drawings and specifications showing all changes to the original construction documents. Drawings also shall show routing of underground outside utilities and conduits with actual dimensions from buildings or other known landmarks.

iv. If contract exceeds $25,000, Consent of Surety to Final Payment form provided by Owner.

(d) The Owner may reduce any Construction Voucher prior to payment to the extent necessary to protect the Owner from loss on account of actions of the Contractor, including, but not limited to:

i. Defective Work not remedied;

ii. Damage to Work of a separate contractor;

iii. Failure to maintain scheduled progress;

iv. Failure to comply with the requirements of Texas Government Code Chapter 2258 (Prevailing Wage Law); or

v. For Contracts with a value of less than $25,000 for which no payment bond is posted, receipt of written notice by the Owner of unpaid bills, filed in conformance with § 53.232, Texas Property Code. Any funds so withheld shall be released to the Contractor if he furnishes a bond or release of lien as provided in § 53.236, Texas Property Code;

vi. Failure to maintain a current record set of "As-Built" documents on site; and/or

vii. Failure to maintain or to allow Owner’s inspection of payroll records.

(e) Submission of an Application for Final Payment by the Contractor constitutes a waiver of all claims and liens by the Contractor except those specifically identified in writing and submitted to the ODR prior to the application for Final Payment.

(f) Regardless of approval and issuance of Final Payment, the Contract is not deemed fully performed by the Contractor and closed out until the expiration of all warranty periods.
22. **TERMINATION FOR DEFAULT:**

(a) The Owner may, without prejudice to any right or remedy terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, under the following circumstances:

i. Persistent or repeated failure or refusal, except during complete or partial suspensions of Work authorized under the Contract Documents, to supply enough properly skilled workmen or proper materials;

ii. Persistent disregard of laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, including Owner;

iii. Persistent failure to prosecute the Work in accordance with the Contract Documents, and to insure its completion within the time, or any extension thereof, specified in this contract;

iv. Failure to remedy defective Work condemned by the Owner;

v. Failure to pay subcontractors, laborers, materialmen and suppliers pursuant to Texas Government Code Chapter 2251;

vi. Persistent endangerment, by the Contractor or its Subcontractors or other vendors, of the safety of labor or of the Work itself;

vii. Failure to maintain statutory bonds, if applicable and required herein, or failure to maintain insurance as required herein; or

viii. Any other material breach of the Contract.

ix. Contractor's insolvency, bankruptcy, or demonstrated financial inability to perform the Work.

(b) The Owner reserves the right to terminate at any time for any of the above-listed reasons or causes. Owner's failure to exercise the right to terminate in any instance or for any proper reason shall not be construed as waiver of the right to do so in any other instance or for any other proper reason.

(c) The Owner shall give the Contractor and its Surety (if applicable) fifteen (15) days' prior written notice of its intent to terminate for any of the above reasons. If the Contractor or the Surety demonstrates, to the satisfaction of the Owner, that the condition or conditions upon which the notice of termination is based have been removed, corrected, or will not recur, then the Owner shall rescind the notice and the Contract shall continue unmodified, and the Contractor shall not be entitled an extension of time. Should the Contractor or the surety fail to so demonstrate within thirty days following receipt of such notice, or fail to satisfy the Owner that the condition or conditions upon which the notice of termination is based have been removed, corrected, or will not recur, the Owner may arrange for completion of the Work and deduct the cost thereof from the unpaid Contract sum remaining, including the cost of additional Architect/Engineer services made necessary by such default or neglect, in which event no further payment shall then be made to the Contractor, by the Owner until all costs of completing the Work shall have been paid. If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for the Architect/Engineer's additional services made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor or his surety shall pay the difference to the Owner. This obligation for payment shall survive the termination of the Contract. The Owner reserves the right, where the Contract is terminated for cause, to take assignment of any and all contracts between the Contractor and its Subcontractors, vendors and suppliers, and the ODR shall promptly notify the Contractor of the contracts the Owner elects to assume. Upon receipt of such notice, the Contractor shall promptly take all steps necessary to affect such assignment.
23. **TERMINATION FOR CONVENIENCE OF OWNER:** Prior to, or during the performance of the Work, the Owner reserves the right to terminate the Contract for unforeseen causes not limited to court orders, loss of funding, acts of the federal government to discontinue the Work, etc., that may occur and render the Owner’s continued performance of the Contract impossible or illegal. Upon such an occurrence, the following procedures will be adhered to:

(a) The Owner will immediately notify the Contractor in writing, specifying the reason for and the effective termination date of the Contract. Such notice shall also contain any instructions necessary for the protection, storage or decommissioning of incomplete Work or systems, and for safety;

(b) After receipt of the notice of termination, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the contract and shall:

   i. Stop all Work;
   ii. Place no further subcontracts or orders for materials or services;
   iii. Terminate all subcontracts for convenience;
   iv. Cancel all material and equipment orders as applicable;
   v. Take action that is necessary to protect and preserve all property related to this Contract which is in the possession of the Contractor.

(c) Within 30 days of the notice of termination, the Contractor shall submit the final termination settlement proposal to the Owner based upon costs up to the date of termination, any provable loss (excluding anticipated profits and the cost for preparation of the final termination settlement proposal). If the Contractor fails to submit the proposal within the time allowed, the Owner may determine the amount due to the Contractor because of the termination and shall pay the determined amount to the Contractor.

(d) If the Contractor and the Owner fail to agree on the settlement amount, the matter will be handled as a dispute through administrative procedures as established in paragraph entitled “Disputes” of these Terms and Conditions (Construction).

24. **WARRANTY OF CONSTRUCTION:**

(a) Contractor warrants to the Owner that all Work shall be executed in accordance with the Contract Documents, complete in all parts and in accordance with approved practices and customs, and of the best finish and workmanship. Unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new. The Owner may, at its option, agree in writing to waive any failure of the Work to conform to the Contract Documents, and to accept a reduction in the Contract Price for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written agreement, however, the Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute and is not waived by any inspection or observation by the Owner, Architect/Engineer or others, by making any progress payment or final payment, except as provided in §19, by the use or occupancy of the Work or any portion thereof by the Owner, at any time, or by any repair or correction of such defect made by the Owner.

(b) Except as otherwise specified, the Contractor shall repair all defects in materials, equipment or workmanship appearing within one year from the date of Substantial Completion of the Work as a whole. Upon receipt of written notice from the Owner of the discovery of any defects, the Contractor shall promptly and at its own cost remedy the defects and replace any property damaged therefrom. In case of emergency where delay would cause serious risk of loss or damage to the Owner, or if the Contractor, after notice, fails to proceed promptly and remedy within fifteen (15) days or within another period of
time which has been agreed to in writing, in compliance with the terms of the warranty and
guarantee, the Owner may have the defects corrected and the Contractor and his surety
shall be liable for all expenses incurred.

(c) Where a particular piece of equipment or component of the Work for which a separate
warranty is required under the Contract Documents is placed in continuous service before
Substantial Completion, the date of service commencement shall be certified by the
Architect/Engineer and the Warranty Period for that equipment or component shall run
from the date so certified. In addition to the Contractor’s warranty and duty to repair, as
set forth in herein, the Contractor expressly assumes all warranty obligations required
under the Contract Documents for specific building components, systems and equipment.
The Contractor may satisfy any such obligation by obtaining and assigning to the Owner a
complying warranty from a manufacturer, supplier, or subcontractor. Where an assigned
warranty is tendered and accepted by the Owner which does not fully comply with the
requirements of the Contract Documents, the Contractor shall remain liable to the Owner
on all elements of the required warranty that are not provided by the assigned warranty.

25. INDEMNIFICATION AND HOLD HARMLESS:

Indemnification of Owner. The Contractor covenants and agrees to FULLY INDEMNIFY and
HOLD HARMLESS, the Owner and the elected officials, employees, officers, directors,
volunteers, and representatives of the Owner, individually or collectively, from and against any and
all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions,
demands, causes of action, liability and suits of any kind and nature, including but not limited to,
personal or bodily injury, death and property damage, made upon the Owner directly or indirectly
arising out of, resulting from or related to Contractor’s activities under this Contract, including any
acts or omissions of Contractor, any agent, officer, director, representative, employee, consultant
or the Subcontractor of Contractor, and their respective officers, agents, employees, directors and
representatives while in the exercise of performance of the rights or duties under this Contract. The
indemnity provided for in this paragraph does not apply to any liability resulting from the
negligence of the Owner, officers or employees, separate Contractors or assigned contractors, in
instances where such negligence causes personal injury, death or property damage. IN THE
EVENT CONTRACTOR AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT
OF COMPETENT JURISDICTION, LIABILITY WILL BE APPORTIONED
COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS,
WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE
STATE UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE
PARTIES UNDER TEXAS LAW.

(a) The provisions of this Indemnification are solely for the benefit of the parties hereto and
not intended to create or grant any rights, contractual or otherwise, to any other person or
entity.

(b) Promptly advise the Owner in writing of any claim or demand against the Owner or the
Contractor known to the Contractor related to or arising out of the Contractor’s activities
under this Contract.

26. FORCE MAJEURE:

The Owner may grant relief from performance of contract if the Contractor is prevented from
performance by an act of war, order of legal authority, act of God, or other unavoidable cause not
attributable to the fault or negligence of Contractor. The burden of proof for the need of such relief
shall rest upon the Contractor. To obtain release based on force majeure, the Contractor shall file
a written request with the Owner.
27. **DELAWS AND EXTENSION OF TIME:**

(a) The Contractor may be granted an extension of time because of changes ordered in the Work or because of unforeseeable delays not within the control of or arising from the fault of either the Contractor or Owner caused by the following:

i. Unusual delay in the delivery of materials, components or equipment to be incorporated into the Work. Strikes and labor disputes (but not the availability of adequately skilled labor, unless such impact is caused solely by the conduct of the Owner);

ii. Physical damage to the Work caused by circumstances beyond the control of the Contractor;

iii. War, civil unrest or insurrection;

iv. Other unforeseeable causes beyond the control of either the Contractor or the Owner, including inclement weather, but not for delays that merely extend the duration of non-critical activities, or which consume only float without delaying the project completion date.

(b) Claims or extensions of time must be made in writing within thirty (30) calendar days after the onset of the event or circumstance giving rise to the delay, except in the case of inclement weather, claims for which shall be submitted in writing within 30 calendar days after cessation of the cause of the delay. All time extension claims shall be supported by sufficient written evidence to justify the claim. In the case of a continuing cause of delay, only one claim is necessary. Claims for extensions of time shall be stated in numbers of whole calendar days. In case of claims for extension of time because of inclement weather, such extension of time shall be granted only because such inclement weather prevented the execution of major or critical path items of Work.

28. **NO DAMAGES FOR DELAY: THE CONTRACTOR HAS NO CLAIM FOR MONETARY DAMAGES FOR DELAY OR HINDRANCES TO THE WORK FROM ANY CAUSE, INCLUDING WITHOUT LIMITATION ANY ACT OR OMISSION OF THE OWNER.**

29. **COMPLIANCE WITH LAWS AND SAFETY PRECAUTIONS AND PROGRAMS:**

(a) Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work and it shall be the duty and responsibility of the Contractor and all of its subcontractors to be familiar and comply with all requirements of Public Law 91-596, 29 U.S.C. Secs. 651, et seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto, and to enforce and comply with all of the provisions of this Act.

(b) It shall be the duty and responsibility of the Contractor and all of its subcontractors to comply with any and all state and federal statutes, rules, and regulations, including but not limited to those relating to hazardous materials.

(c) In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatening damage, injury or loss provide Owner with prompt notice if Contractor believes that any significant changes in the Work or variations from Contract Documents have been caused by Contractor’s emergency response. Any additional compensation or extension of time claimed by the Contractor resulting from emergency Work shall be considered in accordance with paragraph entitled “Changes and Changed Conditions”.

Terms and Conditions (09/17/18)
30. **CONTRACT COMPLETION AND LIQUIDATED DAMAGES:**

(a) Contract Period: This contract must be completed within the specified number of days commencing on the date stated in the Notice to Proceed. Unless specifically stated as "working day", the term "day" or "calendar day" shall mean every day of the year. Contractor shall submit a schedule for normal working days.

(b) The Owner has determined that the completion of the Work in this contract is critical to the proper operation of the facility, and the Contractor's failure to complete the Work within such time will cause damage to the Owner. Since exact damages are difficult to determine or forecast, the sum of $339.22 per calendar day is hereby established by the parties as a reasonable estimate of just compensation to the Owner for the failure of the Contractor to complete the Work by the time set forth in the contract or authorized extension thereto. Said sum will be deducted from the money due or to become due to the Contractor, not as a penalty, but as liquidated damages and added expense including administrative and inspection costs for each and every calendar day the Work or any portion thereof shall remain incomplete after the expiration of the time limit set in the contract or authorized extension.

(c) Charges for liquidated damages will begin accumulating on the first calendar day following the final contract completion date and continue until the date of final acceptance as established by the Owner. Final acceptance will not be issued until all punch list items have been completed, as verified by Owner.

31. **CONSTRUCTION SUBMITTALS:**

(a) **GENERAL:**

i. A TPWD standard *Submittal Cover Sheet* must accompany each numbered submittal set. **One Submittal per Submittal Cover Sheet.**

ii. The number of copies of submittals required for each item shall be not less than one (1) electronic copy, unless specified otherwise, for Owner's use, plus the number of additional copies that the Contractor desires for his own use.

iii. The Contractor must double-check and sign all submittals before forwarding them to the Owner for review and action.

iv. The Architect/Engineer and the Owner will review the submittal data. If there are no exceptions taken to the submittal, the original and three copies will be retained by the Owner. All remaining copies will be returned to the Contractor. The Contractor must keep one copy at the jobsite at all times.

v. If further action is required by the Contractor, Owner will retain three copies of the submittal data for the Owner's use and return all remaining copies to the Contractor.

vi. Any and all costs, direct or indirect, incurred by Owner in reviewing submittals in excess of two (2) times will be charged to the Contractor and deducted from the total price for the Work.

vii. Owner's approval of shop drawings and/or any aspects of the Work shall not act to transfer Contractor's responsibility for, nor relieve Contractor from the performance of any of Contractor's duties set forth in the contract documents.

(b) **PRE-CONSTRUCTION SUBMITTALS:** The following PR Submittals shall be submitted by the Contractor for the Owner's review and approval. Contractor's failure to obtain approval of PR submittals will not constitute grounds for additional time. Owner will provide more specific clarification regarding the requirements for each PR Submittal.
Submittal PR-1 – To be submitted by the Contractor for the Owner’s review and approval within twenty-one (21) calendar days from receipt of Notice of Selection. Owner’s Approval of PR 1 submittals is a prerequisite to the scheduling of the pre-construction meeting and start of construction activities. Contractor’s failure to obtain approval of PR submittals will not constitute grounds for additional time.

1. Contractor’s Superintendent: List of name and qualifications of the person designated as project superintendent.

2. Subcontractors/Materials Suppliers: List of all subcontractors and major material/equipment suppliers that Contractor and Contractor’s major subcontractors propose to use. This list shall include correct names, mailing addresses and phone numbers.

3. Contractor’s Authorized Representatives: List of names and titles of Contractor’s representatives authorized to sign contractual documents and construction vouchers.

4. Licensed Craftspersons: List of names, qualifications and licenses of all licensed crafts required by the contract documents.

Submittal PR-2 – To be submitted by the Contractor for the Owner’s review and approval within twenty-one (21) calendar days from receipt of Notice of Selection. Owner’s Approval of PR 2 submittals is required prior to requesting payment. Contractor’s failure to obtain approval of PR submittals will not constitute grounds for additional time.

1. Schedule of Values, itemizing material and labor for each classification of Work.

   (a) Owner will provide forms entitled “Schedule of Values” for the Contractor’s use in preparing the breakdown. After contract award, the Owner will also provide further clarification including an example.

   (b) Itemization of material and labor costs is required so the Owner may make progress payments on materials delivered. For each bid item or classification of Work to be listed in the “Type of Work” column on the Schedule of Values, the Contractor shall multiply the unit bid price by the estimated quantity for each bid item to arrive at the “Contract Cost” for each such bid item. Contractor shall separately itemize material and labor costs for each such bid item in the “Type of Work” column.

2. Work Progress Schedule (in duplicate) of Contractor’s Proposed Construction Schedule for Work tasks in relation to the entire project. Owner will provide a schedule bar chart form to aid the Contractor in preparing a schedule. The Contractor shall follow this format and must indicate all Work tasks as well as differentiate critical path Work tasks from non-critical path tasks showing the beginning and ending dates for each critical and non-critical path Work task.

3. Submittal Register: Submittal Register shall be organized by specification section, listing all items to be furnished for review and approval by the A/E and the Owner, including anticipated sequence and submittal dates.
(c) MATERIAL SUBMITTALS: To be submitted to Owner prior to the installation of any materials. It is the Contractor's responsibility to incorporate lead time required for review, resubmittal, ordering, manufacturing, fabrication and delivery. Contractor is responsible if a delay in lead time planning affects the critical path.

i. Contractor shall submit manufacturer's information on all materials and equipment, regardless of whether substitutions are being requested.

ii. Substitution requests must be submitted early enough to allow time for evaluation by the Owner and for resubmittal, if required. Material substitutions will not be allowed following this 10-day period.

iii. No materials shall be ordered or installed until submittals for such materials have been received and acted upon by the Owner.

32. PRECONSTRUCTION CONFERENCE: After issuance of the Notice to Proceed letter, approval of Pre-Construction (PR) submittals and prior to start of Work, a conference between the Owner and the Contractor will be held to discuss provisions of the Contract Documents and to coordinate the Work effort. The Contractor's jobsite Superintendent is required to attend. At that time the Contractor shall be furnished additional sets of Contract Documents.

33. ANTIQUITIES: Contractor shall take precaution to avoid disturbing primitive records and antiquities of archaeological, paleontological or historical significance. No objects of this nature shall be disturbed without written permission of Owner and the Texas Historical Commission. When such objects are uncovered unexpectedly, the Contractor shall stop all Work in close proximity and notify the ODR and the Texas Historical Commission of their presence and shall not disturb them until written permission and permit to do so is granted. All primitive rights and antiquities, as defined in Chapter 191, Texas Natural Resource Code, discovered on the Owner's property shall remain property of State of Texas, the Texas Historical Commission. It is determined by Owner, in consultation with the Texas Historical Commission that exploration or excavation of primitive records or antiquities on Project Site is necessary to avoid loss, Contractor shall cooperate in salvage Work attendant to preservation.

34. OWNER'S INSPECTION – QUALITY ASSURANCE:

(a) The Owner will employ a Project Inspector who will periodically inspect and observe the construction progress, procedures, and materials of the Contractor for the purpose of providing quality assurance for the Owner. Such observations by Owner shall not be construed as construction supervision nor indication of approval of the manner or location in which the Work is being performed as being a safe practice or place. The Contractor shall offer full cooperation to facilitate these observations and shall be responsive to questions from the Owner's Inspector regarding methods, equipment, materials, and intentions in pursuing the Work or any particulars thereof.

(b) Contractor shall notify Inspector when Work is ready for inspection or testing. It shall be Contractor's responsibility to give such notifications sufficiently in advance of other Work to prevent delays. A minimum of five (5) working days advance notice is required, and Contractor shall include in his Work schedule such notice periods for inspections and/or testing. Failure to do so shall cause any certifications of testing to be void and require the Contractor to re-test at the Owner's request. All expenses for re-testing shall be borne by the Contractor.

(c) Tests cannot be conducted, and Work cannot be covered up until the Inspector observes and authorizes continuation of Work. The Contractor shall bear all costs for re-tests and for removal and replacement of construction resulting from unauthorized continuation.

(d) Should ODR fail to make the necessary inspection within the agreed period, Contractor may proceed with cover-up Work after making every reasonable effort to contact the ODR and after documenting the Work but is not relieved of responsibility for Work to comply with requirements of the Contract Documents.
(e) If applicable, all permanent utilities shall be connected before final tests are conducted for equipment and systems. Final operational tests shall be conducted prior to project acceptance by the Owner. The Contractor shall provide the materials, energy, equipment and personnel to conduct the tests required in the contract.

(f) If the Owner rejects materials that have been incorporated into the project, any testing performed to prove compliance will be at the expense of the Contractor.

(g) No Work shall be performed on weekends or State-designated holidays unless approved by the inspector.

35. **NON-APPROPRIATION OF FUNDS:** Any contract resulting from this solicitation is subject to termination or cancellation, without penalty to TPWD, either in whole or in part, subject to the availability of state funds. TPWD is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If TPWD becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render TPWD’s or contractor’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, TPWD will not be liable to contractor for any damages, which are caused or associated with such termination, or cancellation and TPWD will not be required to give prior notice.

36. **CONSTRUCTION MATERIALS:**

(a) **Materials:**

i. All materials shall be new and of the quality specified. Materials shall be free from defects.

ii. Unless otherwise indicated in the specifications, material shall be installed in accordance with the manufacturer’s recommendations and shall include such tests as manufacturer recommends.

(b) **Storage and Protection of Materials:**

i. The Contractor is responsible for all damages to Work performed and material delivered until completion and final acceptance of Work. All materials shall be suitably stored to be protected from damage. Watertight storage facilities of suitable size with floors raised above the ground shall be provided for all materials subject to damage from exposure to the weather. Other materials shall be stored on blocks off the ground. Materials shall be stored to permit easy access for inspection and identification. Any material that has deteriorated, become damaged or otherwise unfit for use, shall not be used in the Work (as judged by Owner). Upon completion of all Work, or when directed, the Contractor shall remove storage facilities from the site.

ii. If applicable, during construction, open ends of all drains, piping and conduit, and all openings in equipment, shall be closed before leaving the Work at any time so as to prevent the entrance of all foreign matter.

37. **EXECUTION OF THE WORK/CONSTRUCTION SITE AND JOB CONDITIONS:**

(a) **Superintendence:** Contractor shall employ a competent person or persons who will be present at all times at the Project Site during the progress of the Work to supervise or oversee the Work. The competent persons are subject to the approval of ODR through the submittal process stated in Item 30. Contractor shall not change approved staff during the course of the project without the written approval of ODR unless the staff member leaves the employment of Contractor.
Jobsite: The Contractor will be provided with designated space in the immediate vicinity of the job site for use during construction. Unauthorized damage to any existing utilities, building facilities, structures, or plant life shall be repaired by the Contractor at no expense to the Owner. The Contractor shall take precautions necessary to protect persons and property against injury or damage and shall be responsible for any such injury or damage. The Contractor shall not allow any unsafe or unsanitary conditions to develop as a result of Contractor’s operations for the duration of construction.

Utilities: Water and electrical power are available and will be furnished by the Owner at no charge to the Contractor. However, any temporary connections, appurtenances or extensions shall be provided by the Contractor at no cost to the Owner and removed from the premises at the conclusion of the contract.

Telephone: There is no telephone service at the site available to the Contractor. Contractor shall maintain a cellular or mobile telephone at the site and notify the ODR of the number.

Toilet Facilities: The Contractor shall provide and maintain in neat, sanitary condition temporary toilets and other necessary accommodations for employees' use to comply with the regulations of the State Department of Health or other jurisdiction. The Owner will designate a location on the site for the Contractor to place temporary toilets.

Trash and Debris: The Contractor shall not allow trash or debris to accumulate on the site. At the end of primary segments (installation and removal) of the project, Contractor shall clean the entire area of any litter resulting from Contractor’s efforts and shall leave the area “broom clean”. The Contractor shall maintain the premises as clean and presentable as good construction practices will allow at all times.

Project Identification: There shall be no project signs of any size or type allowed on the project site or surrounding Texas Parks and Wildlife Department property at any time unless Federal Funds are used.

Fire Protection: The Contractor shall take stringent precautions against fire. Open fires are not allowed unless approved in writing by Owner.

Other Activities: The Contractor shall perform the Work without interfering with other contractors’ Work or Owner’s activities to the extent possible and with as little delay.

Field Office: The Owner will provide the Contractor with a small area for office space or the Owner will provide the Contractor with a site on which the Contractor may place a small, temporary office structure.

SITE OPERATIONS: During construction of this project the site will remain open to public visitation. It is the responsibility of the Contractor to maintain convenient access and egress to facilities in a manner to be approved by the Owner. The Contractor shall also be responsible for public safety at the construction site. All temporary fencing, barricades, warning lights, signs, and flagmen shall be provided and maintained in good condition throughout the course of the project. The Contractor shall maintain security of construction sites.

PROTECTION OF SITE: The Contractor shall protect all trees and shrubs adjacent to the construction site, and if Contractor finds that the Work will require removal of trees the Contractor shall obtain approval of Owner prior to removal. The Contractor shall be held liable for removal of trees without prior approval of Owner.
40. **UNDERGROUND OBSTACLES**: The approximate location of existing underground improvements and utilities is shown on the drawings according to the best information available to the Owner; in addition, the Contractor will make every effort to establish the exact location of such underground improvement or utility by contacting owners of same and by prospecting in advance of all trenching and subsurface excavations.

41. **CUTTING AND PATCHING**: Where indicated in the construction documents, this project requires cutting into existing construction for the performance of the Work and requires subsequent fitting and patching to restore the existing Work to original condition.

   (a) **Utilities**:
      i. Do not cut and patch utilities until all necessary approvals and coordination requirements are accomplished.
      ii. Before cutting services, which are to remain permanently or temporarily in service, provide by-pass system as necessary to maintain service.
      iii. After by-pass and cutting, cap, valve or plug and tightly seal remaining portion of service piping or conduit to prevent entrance of moisture and foreign matter.

   (b) **Structural Work**:
      i. Do not cut and patch structural Work in a manner that would result in a reduction of load-carrying capacity or of load-deflection ratio.

   (c) **Inspection**:
      i. Before cutting, examine items to be cut and patched and the conditions under which the Work is to be performed. If unsafe or otherwise unsatisfactory conditions are encountered, take corrective action before proceeding with the Work.
      ii. Meet at the Work site with all trades involved in cutting and patching. Review areas of potential interference and conflict between the various trades. Coordinate layout of the Work and resolve potential conflicts before proceeding with the Work.

42. **AS-BUILT DOCUMENTS**: The Contractor shall set aside one set of construction drawings and specifications to be used for keeping a record of all changes made during construction. The Contractor shall be responsible for keeping these drawings and specifications current and neatly noting with colored pencil or ink the actual conditions of the Work and show and reference all changes made during construction. These drawings will be checked once each month by the Owner and partial payments will not be made to the Contractor until the Owner verifies that the records are being properly kept. Such inspections shall not constitute review or approval of the as-built documents for accuracy or completeness. These construction drawings shall be turned over to the Owner at the completion of the project. Final payment will not be made until these documents have been received and approved by the Owner.

43. **CLEAN-UP**: The Contractor shall remove all waste products, dust, dirt, debris, packaging, trash, fingerprints, grease containers, and other deleterious materials and marks from the site upon completion of the Work. Refer to individual specification sections for special cleaning required by that section. Contractor is expected to leave the project in spotless, "like new" condition.

44. **MINIMUM QUALIFICATIONS**: CONTRACTOR MUST SHOW EVIDENCE OF THREE (3) SUCCESSFUL CONSTRUCTION PROJECTS SIMILAR TO THIS PROJECT (AS JUDGED BY OWNER) TO BE ELIGIBLE FOR AWARD OF THIS CONTRACT. THIS EXPERIENCE MUST HAVE OCCURRED WITHIN THE PAST FIVE (5) YEARS, MEASURED BACKWARDS FROM THE ISSUE DATE OF THIS SOLICITATION.

45. **OCCUPATIONAL SAFETY AND HEALTH STANDARDS**: Prior to trenching below a depth of four (4) feet (if applicable), a Contractor must submit separate pay items for: (i) trench safety to be determined by the linear feet of trench excavated, and (ii) special shoring requirements, if any, to be determined by the square feet of shoring used, pursuant to Texas Government Code, Title 10,
Chapter 2166, Section 2166.303. Such pay item(s), following calculation as required above, shall be quoted on the basis of a total lump sum price.

46. **RIGHT TO AUDIT/RECORDS RETENTION:** Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor’s Office, TPWD or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including providing all records requested. Contractor shall ensure that this paragraph concerning the State’s authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and the State’s property for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the Work of this Contract. Contractor and the subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Contractor must retain all Work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by TPWD and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor. Contractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State’s Work as requested. Contractor’s failure to comply with this Section shall constitute a material breach of this Contract and shall authorize TPWD and the State of Texas to immediately assess appropriate damages for such failure.

47. **RESERVED**

48. **RESERVED**

49. **LAYOUT OF WORK AND SURVEYS:** The Contractor, at Contractor’s expense, shall be responsible for establishing base lines, and bench marks if applicable, for the limits of the project. The Contractor shall also be responsible for all measurements that may be required for the execution of the Work to the location and limit marks prescribed in the specifications or on the drawings, subject to such modifications as the Owner may require, to meet changed conditions or as a result of necessary modifications to the Work.

50. **IMMIGRATION REFORM:** The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) enacted on September 30, 1996.

51. **CIVIL RIGHTS:** The Contractor agrees that no person shall, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. The Contract shall comply with Executive Order 11246, “Equal Employment Opportunity,” as amended by Executive Order 11375, “Amending Executive Order 11246 relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 C.F.R. Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor.”
52. **FEDERAL, STATE AND LOCAL REQUIREMENTS:** Contractor shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2’s to common law employees. Contractor is responsible for both federal and State unemployment insurance coverage and standard Worker’s Compensation insurance coverage. Contractor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Contractor or its employees for any Unemployment or Worker’s Compensation coverage or federal or State withholding requirements. **Contractor shall indemnify the State of Texas and shall pay all costs, penalties or losses resulting from Contractor’s omission or breach of this Section.**

53. **SEVERABILITY CLAUSE:** If any provision of this Contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein, but all other provisions will remain in full force and effect.

54. **NO WAIVER:** Nothing in this Contract shall be construed as a waiver of the state’s sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies or immunities available to the State of Texas. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies or immunities available to the State of Texas under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies or immunities or be considered as a basis for estoppel. The Owner does not waive any privileges, rights, defenses or immunities available to the Owner by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

55. **DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES:** Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com Code, Chapter 17 or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has those officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and those such officers have not been found to be liable for such practices in such proceedings.

56. **FELONY CRIMINAL CONVICTIONS:** Contractor represents and warrants that Contractor has not and Contractor’s employees have not been convicted of a felony criminal offense or that if such a conviction has occurred, Contractor has fully advised the Owner as to the facts and circumstances surrounding the conviction.

57. **ASSIGNMENTS:** The Contractor shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the Owner.

58. **PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS:** Contract agrees to defend and indemnify the Owner and State from claims involving infringement or violation of patents, trademarks, copyrights, trade secrets, or other proprietary rights, arising out of the Owner’s or the State’s use of any good or service provided by the Contractor as a result of this solicitation.

59. **PROPRIETARY OR CONFIDENTIAL INFORMATION; TEXAS PUBLIC INFORMATION ACT:**

(a) Any proprietary, trade secret or otherwise confidential information Bidder includes in its Bid must be clearly labeled as proprietary or confidential information, and Bidder must identify the specific exception to disclosure in the Public Information Act (PIA). Merely making a blanket claim the entire Bid is protected from disclosure because it contains some
proprietary information is not acceptable and shall make the entire Bid subject to release under the PIA. In order for the Owner to initial the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the Bid that are considered by the Bidder to be proprietary or confidential must be clearly labeled as described herein. Any information which is not clearly identified as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA.

(b) Information the Bidder provides to the Owner in response to this solicitation will be considered public and subject to disclosure under the Texas Public Information Act.

(c) Contractor is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no charge to the state. Contractor will make sure information not excepted from disclosure available in an electronic format that is accessible to the public unless Contractor receives written approval from Owner to provide information in a different format, and such approval becomes a part of this Contract.

60. U.S. DEPARTMENT OF HOMELAND SECURITY’S E-VERIFY SYSTEM

By entering into this Contract, the Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security’s E-Verify system to determine the eligibility of:

(a) All persons employed to perform duties within Texas, during the term of the Contract; and

(b) All persons (including subcontractors) assigned by the Respondent to perform Work pursuant to the Contract, within the United States of America.

The Contractor shall provide, upon request of Texas Parks and Wildlife Department, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor’s subcontractors, as proof that this provision is being followed.

If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the state must undertake to replace the terminated Contract.

61. RESERVED

62. INTERNET-BASED PROJECT MANAGEMENT SYSTEMS

At its option, TPWD may administer its design and construction management through an Internet-based management system. In such cases, the Contractor shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, Request for Information, vouchers or payment request and processing, amendments, Change Orders and other administrative activities.

(a) Accessibility and Administration.

i. When used, TPWD will make the software accessible via the Internet to all Project team members.
ii. TPWD shall administer the software.

   (b) Training. When used, TPWD shall provide training to the Project team members.

63. RESERVED

64. RESERVED
PREVAILING WAGE RATE DETERMINATION INFORMATION

Chapter 2258, Texas Government Code, Title 10 requires that state agencies, (including universities), cities, counties, independent school districts, and all other political subdivisions that engage in public works construction projects produce and include prevailing wage rate determinations in the project bidding and contract documents.

Chapter 2258 requires that the contractor who is awarded a contract by a public body and a contractor's subcontractor shall pay not less than the rates determined by such state agencies to workers employed for the execution of such work. Pursuant to Chapter 2258, Texas Parks and Wildlife has ascertained the following wages to be paid for the various classifications of workers, in the locality of this project. In determining these wages, TPWD has utilized the Prevailing Wage Rates as determined by the U.S. DOL in accordance with the Davis-Bacon Act.

See attached wage rate document.

General Decision Number: TX190007 01/04/2019 TX7

Superseded General Decision Number: TX20180016

State: Texas

Construction Types: Heavy and Highway

Counties: Atascosa, Bandera, Bastrop, Bell, Bexar, Brazos, Burleson, Caldwell, Comal, Coryell, Guadalupe, Hays, Kendall, Lampasas, McLennan, Medina, Robertson, Travis, Williamson and Wilson Counties in Texas.

HEAVY (excluding tunnels and dams, not to be used for work on Sewage or Water Treatment Plants or Lift / Pump Stations in Bell, Coryell, McLennan and Williamson Counties) and HIGHWAY Construction Projects

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.60 for calendar year 2019 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.60 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2019. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate,
if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number Publication Date
0 01/04/2019

* SUTX2011-006 08/03/2011

Rates Fringes

CEMENT MASON/CONCRETE FINISHER (Paving and Structures) ..................... $ 12.56

ELECTRICIAN .......................... $ 26.35

FORM BUILDER/FORM SETTER
Paving & Curb ......................... $ 12.94
Structures ......................... $ 12.87

LABORER
Asphalt Raker ......................... $ 12.12
Flagger .............................. $ 9.45
Laborer, Common .................... $ 10.50
Laborer, Utility ...................... $ 12.27
Pipelayer ........................... $ 12.79
Work Zone Barricade
Servicer ............................ $ 11.85

PAINTER (Structures) ............... $ 18.34

POWER EQUIPMENT OPERATOR:
Agricultural Tractor ................ $ 12.69
Asphalt Distributor ................ $ 15.55
Asphalt Paving Machine ............ $ 14.36
Boom Truck ........................ $ 18.36
Broom or Sweeper ................... $ 11.04
Concrete Pavement
Finishing Machine ................... $ 15.48
Crane, Hydraulic 80 tons
or less ........................... $ 18.36
Crane, Lattice Boom 80
tons or less..........................$ 15.87
Crank, Lattice Boom over
80 tons................................$ 19.38
Crawler Tractor.....................$ 15.67
Directional Drilling
Locator..............................$ 11.67
Directional Drilling
Operator.............................$ 17.24
Excavator 50,000 lbs or
Less..................................$ 12.88
Excavator over 50,000 lbs....$ 17.71
Foundation Drill, Truck
Mounted..............................$ 16.93
Front End Loader, 3 CY or
Less..................................$ 13.04
Front End Loader, Over 3 CY....$ 13.21
Loader/Backhoe.....................$ 14.12
Mechanic............................$ 17.10
Milling Machine....................$ 14.18
Motor Grader, Fine Grade.......$ 18.51
Motor Grader, Rough.............$ 14.63
Pavement Marking Machine.....$ 19.17
Reclaimer/Pulverizer..............$ 12.88
Roller, Asphalt....................$ 12.78
Roller, Other......................$ 10.50
Scraper.............................$ 12.27
Spreader Box......................$ 14.04
Trenching Machine, Heavy.....$ 18.48

Servicer..............................$ 14.51

Steel Worker
   Reinforcing.....................$ 14.00
   Structural......................$ 19.29

TRAFFIC SIGNAL INSTALLER
   Traffic Signal/Light Pole
   Worker..........................$ 16.00

TRUCK DRIVER
   Lowboy-Float....................$ 15.66
   Off Road Hauler................$ 11.88
   Single Axle.....................$ 11.79
   Single or Tandem Axle Dump
   Truck...........................$ 11.68
   Tandem Axle Tractor w/Semi
   Trailer.........................$ 12.81

WELDER.............................$ 15.97
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WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1,
2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party’s position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION
TEXAS PARKS AND WILDLIFE

PAYMENT BOND

STATE OF TEXAS

COUNTY OF _____________

Project Number 122178
Contract Number ______

KNOW ALL MEN BY THESE PRESENTS:

That we, ____________________________, as PRINCIPAL,

and ____________________________, as SURETY(IES),

are hereby held and firmly bound unto the State of Texas in the penal sum of:

$ ____________ Dollars ($ ____________ )

for the payment, whereof, the said PRINCIPAL and SURETY(IES) bind themselves, their heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents.

The conditions of this obligation are such that whereas the PRINCIPAL entered into a certain contract dated ________________________, 20__, hereto attached, and made a part hereof, with the State of Texas, acting by and through the Texas Parks and Wildlife Department, to commence and complete certain public works described as:

Birch Creek Unit – Flow Meter Installation, Lake Somerville State Park (Birch Creek), Somerville, Burleson, Texas

NOW THEREFORE, the conditions of this obligation are such that, if the PRINCIPAL shall promptly make payment to all claimants as defined in TITLE 10, TEXAS GOVERNMENT CODE, CHAPTER 2253, as amended, supplying labor and materials in the prosecution of the work provided for in said contract and any and all duly authorized changes to said contract that may hereafter be made, notice of such changes to the SURETY(IES) being hereby waived, then, this obligation shall be null and void, otherwise it shall remain in full force and effect.

This bond is made and entered into solely for the protection of all claimants supplying labor and materials in the prosecution of the work provided for in said contract, and all such claimants shall have a direct right to action under the bond as provided in TITLE 10, TEXAS GOVERNMENT CODE, CHAPTER 2253, as amended.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their several seals this ___ day of ________________, 20__, the name and corporation seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

PRINCIPAL

BY______________________________

SURETY

BY______________________________
AGREEMENT BETWEEN OWNER AND CONTRACTOR

STATE OF TEXAS

COUNTY OF ___________  PROJET NO. 122178

CONTRACT NO. ___________

THIS AGREEMENT, made this _____ day of ____________, 20___ by and between the STATE OF TEXAS, acting through the TEXAS PARKS AND WILDLIFE DEPARTMENT, hereinafter called the OWNER, and INSERT CONTRACTOR COMPANY NAME, hereinafter called the CONTRACTOR.

WITNESSETH: That for and in consideration of the payments and agreements hereinafter described, to be made and performed by the OWNER, the CONTRACTOR hereby agrees with the OWNER to commence and complete certain public works described as: Project Number 122178 Birch Creek Unit – Flow meter installation, Lake Somerville State Park (Birch Creek), Burleson County, Texas, for the use and benefit of the OWNER as described in the Bidding and Contract Documents prepared by TEXAS PARKS AND WILDLIFE DEPARTMENT. The Contract Documents include all parts of this Invitation for Bids including, but not limited to, Specifications, Scope of Work, and Terms and Conditions for Project Number 122178. The Contract Documents are hereby incorporated by reference into this Contract Number __________.

In the event that there is a conflict, this contract and its attachments take priority over all other documents. Following the contract in order of priority are the Terms and Conditions; Special Conditions; Invitation for Bids and Contract Documents, and Contractor’s Bid.

The consideration to be paid by the OWNER to the CONTRACTOR for furnishing all the materials, supplies, machinery, equipment, tools, labor, superintendence, insurance, and other accessories and services necessary to complete the said Project in accordance with the Contract Documents is the not to exceed amount of INSERT AMOUNT Dollars and No Cents ($xx,xxx.xx).

The CONTRACTOR hereby agrees to complete all work within one hundred and fifty days (150) calendar days, commencing on the date specified in OWNER’S written “Notice to Proceed.” Time is of the essence with this contract.

The CONTRACTOR further agrees to comply with applicable statutes governing construction contracts including the provisions of V.T.C.A., Texas Government Code, Title 10, Subtitle F, Chapter 2253 requiring Payment Bonds; and to comply with all of the Terms and Conditions of this contract.

Payments by OWNER shall be warrants issued by the Comptroller of Public Accounts out of monies appropriated to the Texas Parks and Wildlife Department for such purpose and shall be made upon OWNER’S acceptance of all portions of work as prescribed in the Specifications.

The dispute resolution process provided for in Tex. Gov’t Code, Chapter 2260, and the procedures provided in Title 31, Part 2, Chapter 51, Subchapter J of the Texas Administrative Code shall be used by the Owner and the Contractor to attempt to resolve any claim for breach of contract in an amount less than $250,000.00 made by the Contractor, that is not resolved under procedures described throughout the Terms and Conditions of the Contract. Contract disputes for a claim of $250,000.00 or more shall be governed by Civil Practice and Remedies Code, Chapter 114.

The venue of any suit brought for any breach of this Contract is hereby fixed in any court of competent jurisdiction in Travis County, Texas. All payments under this Contract shall be due and payable in Travis County, Texas.
The Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States 15 U.S.C.A. SEC. 1 et. seq. (1973).

This Agreement is subject to cancellation, without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature or otherwise made available to the Texas Parks and Wildlife Department for the specified services under this Agreement.

The said parties for themselves, their heirs, successors, executors, administrators, and assigns, do hereby agree to full performance of the covenants herein contained.

Contractor:

By: ___________________________ Date: ___________________________

Title: ___________________________

Owner: Texas Parks and Wildlife Department

By: ___________________________ Date: ___________________________

Title: Serena Holster
       Contract Manager, CTCD, CTCM
STATE OF TEXAS

COUNTY OF ____________

PROJECT NUMBER 122178

CONTRACT NUMBER

BEFORE ME THE UNDERSIGNED AUTHORITY, on this day personally appeared

_____________________________ who being

duly sworn, on oath, says that he/she is a duly authorized representative of

_____________________________, CONTRACTOR, and all

terms of the Contract for the completion of certain public works described as

have been satisfactorily completed to the extent indicated on the attached voucher and that ALL sums of money due for payrolls, bills for material and equipment, and other indebtedness connected with the Work for which OWNER or its property might in any way be responsible, to the best of his/her knowledge and belief have been paid or will be paid or otherwise satisfied within ten days after receipt of the requested payment from the OWNER, or within the period of time required by Title 10, Texas Government Code, Section 2251.022.

Affiant agrees to indemnify and hold Owner harmless from any liens, debts or obligations which arise as a result of labor or materials provided by or through Affiant to the project. Affiant further agrees to indemnify and hold harmless all real property on which the improvements were constructed and all interests in such property, including leasehold interests, from any liens, debts, or obligations arising from any labor or materials provided by or through Affiant to the project.

Payments to subcontractors for labor and/or materials which are pending or disputed as of the date hereof are:

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<tr>
<th>Individual or Company Name</th>
<th>Mailing Address</th>
<th>Amount Owed</th>
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Instructions: Affidavit must be signed by an individual owner, a partner in a partnership, or by a person authorized by bylaws or Board of Directors to sign for a corporation. If Contractor is a joint venture or partnership of individuals, either may sign, but if a joint venture in which a corporation is a party, separate affidavits must be executed by each corporation and by each individual owner or partnership.

_____________________________
Signature

_____________________________
Title

Sworn to and subscribed before me this ___ day of ________ 20__.

(SEAL)

_____________________________
Notary Public in and for
_____________________________
County, Texas
TEXAS PARKS AND WILDLIFE

CONTRACTOR'S FINAL PAYMENT AFFIDAVIT

STATE OF TEXAS
COUNTY OF ________________

PROJECT NUMBER 122178
CONTRACT NUMBER ________

BEFORE ME THE UNDERSIGNED AUTHORITY, on this day personally appeared

who being duly sworn, on oath, says that he/she is a duly authorized representative of

______________________________

CONTRACTOR,

and that all terms of the Contract for the completion of certain public works described as

have been satisfactorily completed and that ALL sums of money for payrolls, bills for material and equipment, and other indebtedness connected with the Work for which Owner or its property might in any way be responsible, to the best of his/her knowledge and belief, have been paid or will be paid or otherwise satisfied within ten days after receipt of final payment from the Owner, or within the period of time required by Title 10, Texas Government Code, Section 2251.022. Payments not made in full at the date of this affidavit are listed below.

Affiant hereby waives all claims against the Owner. (List any exceptions):

Affiant agrees to indemnify and hold Owner harmless from any liens, debts or obligations which arise as a result of labor or materials provided by or through Affiant to the project. Affiant further agrees to indemnify and hold harmless all real property on which the improvements were constructed and all interests in such property, including leasehold interests, from any liens, debts, or obligations arising from any labor or materials provided by or through Affiant to the project.

Final payments to subcontractors for labor and/or materials which are pending or disputed as of the date hereof are:

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<th>Individual or Company Name</th>
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INSTRUCTIONS: Affidavit must be signed by an individual owner, or partner in a partnership, or by a person authorized by bylaws or Board of Directors to sign for a corporation. If Contractor is a joint venture or partnership of individuals, either may sign, but if a joint venture in which a corporation is a party, separate affidavits must be executed by each corporation and by each individual owner or partnership. In the event subcontractors, laborers, or materialmen have not been paid in full, Contractor shall list hereon the amount owed and the name and address of each subcontractor, laborer, or materialman to whom such payment is owed. Add additional pages if required.

__________________________
Signature

__________________________
Title

Sworn to and subscribed before me this ______ day of __________ 20__

(SEAL)

__________________________
Notary Public in and for
County, Texas
CONSENT OF SURETY COMPANY TO FINAL PAYMENT

PROJECT NO. 122178

TITLE OF PROJECT Lake Somerville State Park (Birch Creek) – Birch Creek Unit - Flow Meter Installation

PROJECT LOCATION Burleson County Texas

CONTRACT NO.

CONTRACT DATE

OWNER:
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

CONTRACTOR:

(Name)

(Address)

(City, State, Zip Code)

SURETY COMPANY:

(Name)

(Address)

(City, State, Zip Code)

on bond of ____________________________, Contractor, hereby approves of the final payment by Owner to Contractor on the above Contract, and agrees that final payment to the Contractor shall not relieve Surety Company of any of its obligations to Owner as set forth in said Surety Company's bond.

IN WITNESS WHEREOF, Surety Company has hereunto set its hand this _____ day of _____________, 20__.

SURETY COMPANY:

By: ____________________________

(Signature)

(Printed Name)

(Title)
DRAWINGS