

ADDENDUM 1

March 24, 2020

**REQUEST FOR BID
LBITP EQUIPMENT PURCHASE #5D
BACKHOE**

COASTAL WATER AUTHORITY

1801 Main Street, Suite 800

Houston, Texas 77002

713-658-9020

www.coastalwaterauthority.org

Addendum 1

Clarifications:

Due to the ongoing global Pandemic CWA will accept electronic bids for the ongoing bid solicitation of LBITP Equipment Purchase #5D. Emails should be sent to SEALEDDBIDS@CWALPS.ORG and must contain in the subject line the following information: SEALED BID LBITP EQUIPMENT PURCHASE #5D. All required bid documents must be submitted in their entirety or bid shall be deemed unresponsive. Electronic Bids will be opened and read aloud by the Executive Director of the Coastal Water Authority or his designated representative at 10:00 AM Local Time, March 31, 2020.

A teleconference call will be available for those bidders wanting to participate in the bid opening but unable to attend in person. Please contact JSEALY@CWALPS.ORG to receive call-in information.

End of Addendum 1

COASTAL WATER AUTHORITY
INVITATION TO BID

The Coastal Water Authority (herein also referred to as “CWA” or the “Authority”) invites qualified vendors or parties (each “Bidder” or collectively “Bidders”) to bid on:

Luce Bayou Interbasin Transfer Project
Equipment Purchase #5D

Backhoe

Bid Method:

Sealed bids will be received in duplicate by the Coastal Water Authority at 1801 Main Street, Suite 800, Houston, TX 77002, until **10:00 AM local time, March 31, 2020** which will be the Bid Opening time.

Bid Opening:

Bids will be opened in public by the Executive Director of the Coastal Water Authority or his designated representative at the time, date and place stated above (the “Bid Opening”). Bidders, interested parties, and the general public are allowed but not required to attend the Bid Opening. At the Bid Opening, the Bidder’s name and amount of each bid will be read aloud and recorded. No decisions relating to the award of the Contract will be made at the Bid Opening.

The Authority reserves the right to reject, in whole or in part, any or all bids, or to accept any bid, in whole or in part, or any combination of bids it deems most advantageous to the Authority and that will, in the judgment of the Authority, result in the best and most economical completion of the Authority’s work, such bid coming from a responsible Bidder. The Authority also reserves the right to waive any technicalities or formalities in bids or the Bid Documents in the best interest of the Authority.

Official Bid Form:

To be considered for award please submit two (2) copies (one (1) original and one (1) photocopy) of all pages comprising the Official Bid Form which is attached hereto, including the signature page in an envelope marked legibly **“LBITP Equipment Purchase #5D”**. The signature page must be signed by a company official authorized to bind the company. If awarded the Contract, such signature will bind Bidder to the Contract, without any further action by Bidder. Bidder must also provide two (2) copies of any other information submitted, including without limitation, technical literature and brochures.

Notwithstanding anything to the contrary herein, submission or attachment of Bidder’s “quotation forms” or the like, containing alternative terms and/or conditions, may result in the bid being deemed non-responsive.

Submission of bids containing equipment not detailed in the Technical Specifications shall result in the bid being deemed non-responsive.

Contact:

Should you have any questions or comments regarding the Bid Documents or desire to make a site visit, contact:

David Miller, P.E.
Coastal Water Authority
1801 Main St., Suite 800
Houston, Texas 77002
713.658.0855
dmiller@coastalwaterauthority.org

Any revisions to be incorporated into the Bid Documents arising before, during, or subsequent to the pre-bid conference will be confirmed in writing, by addendum, prior to the Bid Opening. No verbal responses or statements will alter any specifications, terms or conditions stated herein.

Bid Documents:

The Bid Documents are comprised of:

1. Invitation to Bid
2. Instructions to Bidders, including Official Bid Form w/checklists
3. General Terms and Conditions & Appendices
4. Texas Water Development Board Supplemental Contract Conditions and Instructions
5. Technical Specifications
6. Any addenda

Copies of the bidding documents may be obtained from www.CoastalWaterAuthority.org: search "LBITP Equipment Purchase #5D".

This contract is contingent upon release of funds from the Texas Water Development Board (TWDB).

Any contract or contracts awarded under this Invitation to Bid (IFB) or Request for Qualifications (RFQ) are expected to be funded in part by financial assistance from the TWDB. Neither the U.S. Environmental Protection Agency (EPA) or the State of Texas, nor any of its departments, agencies, or employees, are or will be a party to the IFB, RFQ, or any resulting contract.

End of Document

COASTAL WATER AUTHORITY

INSTRUCTIONS TO BIDDERS

1.0 GENERAL, BIDDING and AWARD:

- 1.1 Competitive Bidding. It is the intent of the Coastal Water Authority (herein also referred to as “CWA” or the “Authority”), through a competitive bidding process, to solicit a bid that will, in the Authority’s judgment, be most advantageous to the Authority and will result in the best and most economical completion of the Authority’s work, such bid coming from a responsible Bidder. All equipment and/or materials shall be new unless otherwise specified. Each Bidder, by making a bid, represents that the Bidder has read and understood the Bid Documents and has bid in accordance therewith.
- 1.2 Bid Opening. Bids will be opened in public by the Executive Director of the Authority, or his designated representative, at the stated time, date and place specified in the Invitation to Bid. Bidders, interested parties, and the general public are allowed but not required to attend the Bid Opening. At the Bid Opening, the Bidder’s name and amount of each bid will be read aloud and recorded. No decisions relating to the award of the Purchase Order will be made at the Bid Opening.
- 1.3 Award. The Authority may accept a bid offer by issuance of a Notice of Award Letter and/or Purchase Order any time on or before the 90th day following the day of the Bid Opening. Each Bid Package (as defined in Section 1.8) shall for 90 days after Bid Opening constitute an irrevocable offer by the Bidder, but such period may be extended by written agreement of the Authority and the Bidder.
- 1.4 Qualifications. In addition to more specific requirements that may be stated in the Technical Specifications, the successful Bidder shall present satisfactory evidence, if requested by the Authority, that Bidder has regularly engaged in the manufacture, selling, or furnishing of supplies, equipment, work, and/or services as proposed in the Bid Package and has the capital, labor, equipment, suppliers, and materials to fulfill the requirements of the Bid Documents.

The Authority may make such investigations as it deems necessary to determine the capability of the Bidder to perform. The Bidder shall furnish to the Authority all such information, references, and data for this purpose as the Authority may request.

- 1.5 Right to Accept, Reject, and Waive Formalities. The Authority reserves the right to reject in whole or in part any or all bids, or to accept any bid, in whole or in part, or any combination of bids it deems most advantageous to the Authority and that will, in the judgment of the Authority, result in the best and most economical

completion of the Authority's work. The Authority also reserves the right to waive any technicalities or formalities in bids or the Bid Documents in the best interest of the Authority.

- 1.6 Quoted Prices Firm. Any prices quoted shall remain firm through delivery and shall not be subject to any increase (or supplemented on Bidder's invoice(s) for payment).
- 1.7 Quantity Adjustments; Line Item Award. The Authority reserves the right to adjust the quantities listed on the Official Bid Form upward or downward, subject to the availability of funds, and/or make award by line item. Bidder accepts the risk that the Authority may adjust any such quantity or make award by line item and the Authority shall not be liable for any obligations that Bidder undertakes toward any third party based on Bidder's expectation that the Authority will purchase any particular quantity.
- 1.8 Technical Literature. If the Bidder is bidding the exact item or service specified, technical literature is not required but may be provided with the Official Bid Form and any other materials submitted (collectively, the "Bid Package"). However, the Authority may request product literature, specification sheets, or particular submittals to assist in evaluating the bid.

If the Bidder does not bid the exact item or service but instead bids an "equivalent," then along with the Official Bid Form, the Authority requires the submission of technical literature or specifications sheets. The burden of proof shall rest with the Bidder to prove that the proposed items(s) are equivalent to the performance, materials, processes, or items specified. Determination as to whether the item(s) bid is/are equivalent to those specified shall rest solely with the Authority. The Authority reserves the right to request additional literature or clarifications, as needed, after the Bid Package is submitted. Such literature or clarifications shall be submitted in duplicate. Failure of Bidder to submit the requested literature or clarifications within three (3) business days of the Authority's request may be grounds for rejection of Bidder's bid.

Upon delivery of the item or service, the successful Bidder will submit owner's manuals, operation and maintenance manuals, parts manuals, etc. identified in the Technical Specifications.

2.0 TAXES:

- 2.1 The Authority is exempt from payment of Texas sales, excise, and use taxes under the Texas Tax Code Section 151.309 and is a duly constituted political subdivision of the State of Texas. Unless the Official Bid Form or Instructions to Bidders specifically indicate otherwise, the Total Bid Amount must be exclusive of taxes and will be so construed.

3.0 BID DOCUMENTS:

3.1 The Bid Documents consist of: "Invitation to Bid," "Instructions to Bidders," "Official Bid Form," "Technical Specifications," "CWA Standard Terms and Conditions", TWDB Supplemental Contract Conditions and Instructions, and any addenda.

4.0 CONFLICT IN TERMS:

4.1 In the event of any conflict in any Bid Document, the provisions incorporated in the Technical Specifications and drawings (if any) shall control over the provisions of the Instructions to Bidders and the CWA Standard Terms and Conditions; provided, however, to the maximum extent possible all provisions of the Bid Documents shall be construed as supplementing, and not as conflicting with each other.

End of Document

Section 00410 – Bid Form
COASTAL WATER AUTHORITY
 FORMAL ONE-TIME BID
Luce Bayou Interbasin Transfer Project
Equipment Purchase #5D

TO: Coastal Water Authority
 Attention of: Executive Director
 1801 Main St. Ste. 800
 Houston, TX 77002-8119

CONTRACT PERIOD: _____ Calendar Days A.R.O. (After Receipt of Order) Maximum 90 Calendar Days

The following bid items comprise the bid for all equipment per the Bid Documents, including CWA’s Technical Specifications:

Item No.	Item Description	Make/Model	Unit	Qty	Unit Price	Total
1	Furnish and deliver (1) new 2019-2020 Backhoe per CWA’s Technical Specifications	Select Make and Model: <u>Caterpillar 430F2-IT</u> <u>John Deer 410L</u> <u>New Holland B110C</u> <u>Case 590SN</u>	Each	1		
TOTAL BID AMOUNT						

The undersigned (“Bidder”) hereby offers to furnish and deliver the goods and/or services as specified for the Total Bid Amount and upon the terms herein stated and in accordance with the Invitation to Bid, Instructions to Bidders, Technical Specifications, Texas Water Development Board Supplemental Contract Conditions and Instructions, and General Terms & Conditions, all of which are incorporated by reference and made a part of this offer. Equipment specified by model, brand name, trade name, or manufacturer, only products of those named manufacturers are acceptable. The contractor shall not be allowed to supply equal or alternative equipment.

Bidder understands that CWA may accept the bid offer by issuance of a Notice of Award and/or Purchase Order signed by CWA to the successful Bidder at any time on or before the ninetieth (90th) day after the day of the Bid Opening. Bidder's offer shall be irrevocable by Bidder for ninety (90) days after the Bid Opening, but this period may be extended by written agreement of CWA and Bidder. Bidder further understands that if CWA accepts the bid, upon issuance of Notice of Award by CWA, the Contract will be binding upon Bidder without any further action on the part of Bidder.

Bidder certifies that the only person or parties interested in this proposal as principals are those named herein. Bidder has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken action to restrain the competitiveness of the bidding for the award of the Contract.

[Signature page to follow]

NOTE: BID MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE BIDDER, WHICH MUST BE THE ACTUAL LEGAL ENTITY THAT WILL PERFORM THE CONTRACT IF AWARDED. BID SECURITY DESCRIBED ABOVE MUST BE ATTACHED TO THE BID.

Respectfully Submitted:

Bidder: _____

(Print or type name of Bidder-Full Company Name)

Employer Identification Number: _____

By: _____

(Signature of Authorized Officer or Agent)

Name: _____

Telephone: () _____

Title: _____

Fax: () _____

Date: _____

E-Mail: _____

Address (Street or P.O. Box)

(City – State – Zip Code)

City & State of principal place of business if different from above.

Coastal Water Authority Backhoe Specifications

		Compliance
Make / Model / John Deer 410L / CAT 430F2-IT / Case 590SN / New Holland B110C		yes___ no___
New 2019 - 2020 model		yes___ no___
Engine		Compliance
1	Minimum four cylinder, turbocharged, isolation mounted diesel engine and shall be designed and built by the manufacturer	yes___ no___
2	Engine displacement shall be no less than (250 cu. in.)	yes___ no___
3	Engine rated net peak power (ISO9249) shall be no less than 109 hp	yes___ no___
4	Engine shall have no less than 350 lb-ft net torque at 1400 rpm	yes___ no___
5	Daily Engine check points shall be accessible from ground level	yes___ no___
6	Engine shall have a serpentine belt with automatic belt tensioner reducing required maintenance	yes___ no___
7	Engine fan shall have a fan guard	yes___ no___
8	Under-hood engine air cleaner shall be dry type, dual element with evacuator valve, restriction sensor and in-cab restriction warning light	yes___ no___
9	The backhoe shall have a one-piece tilt hood for easy engine access without having to remove engine side shields	yes___ no___
10	Backhoe shall have an under hood after treatment with curved-end exhaust stack	yes___ no___
Cooling		Compliance
1	The backhoe shall be equipped with an oil-to-water engine oil cooler	yes___ no___
2	Fluid levels should be easily checked by sight gauges, dipsticks or overflow tank	yes___ no___
Powertrain		Compliance
1	Transmission shall be hydraulically actuated power shift with torque converter; four forward, three reverse speeds	yes___ no___
2	Mechanical-front wheel-drive (MFWD) limited-slip differential for improved traction	yes___ no___
3	Front axle is sealed to protect against contamination	yes___ no___
4	Driveshaft will be painted for protection.	yes___ no___
6	Hydraulic wet-disc clutch engaged MFWD with electric on/off control can be engaged on the fly during operation.	yes___ no___
7	Hydraulic wet-disc clutch-engaged rear axle differential lock with electric on/of control can be engaged on the fly during operation	yes___ no___
8	The single electric Transmission Control Lever will have gear selection fully integrated in the lever as well as forward, neutral and reverse (FNR power shuttle).	yes___ no___
9	Transmission oil cooler shall be provided as standard equipment	yes___ no___
10	The backhoe shall have hydrostatic power steering with emergency manual mode	yes___ no___
11	The rear axle bearings shall be self-lubricating and shall not need to be greased	yes___ no___

Coastal Water Authority Backhoe Specifications

		Compliance
12	Brakes shall be inboard, wet-multiple disk, self-adjusting and self equalizing and hydraulically actuated for a long and trouble-free life, sealed from water, mud and dust contamination	yes____ no____
13	Parking brake shall be independent of service brakes, spring applied, hydraulically released, wet multi-disk, and sealed from water, mud and dust contamination.	yes____ no____
Hydraulic		Compliance
1	Hydraulic cooler will have an independent reservoir	yes____ no____
2	Hydraulic fittings shall have "O"-ring face seal connectors to secure a tight, leak-free seal	yes____ no____
3	Hydraulic filter will be vertically mounted, spin on design for ease of installation and leak-free replacement.	yes____ no____
4	Automatic bucket return-to-dig control	yes____ no____
5	Hydraulic pump shall be 40 gpm axial piston pump, pressure compensating, load sensing	yes____ no____
6	Controls Backhoe pilot control with pattern select, Loader single lever control	yes____ no____
Electrical		Compliance
1	12 volt system with 120 amp alternator minimum	yes____ no____
2	Two batteries shall be included with 1900 CCA	yes____ no____
3	The machine shall have blade type, multi-fused circuits	yes____ no____
4	Unit shall be equipped with 10 halogen lights, 4 front driving/working, 4 Rear working, and 2 side docking lights. The front lights shall be adjustable.	yes____ no____
5	Unit shall be equipped with two front and two rear turn signal/flashing and two rear stop and tail lights and two rear reflectors	yes____ no____
6	Cab shall have strobe/beacon light and AM/FM Radio Installed	yes____ no____
Operator Station		Compliance
1	Access to the cab shall be from the right and left side with protected, wide, rigid, self-cleaning, and ergonomically located hand-holds	yes____ no____
2	A minimum 3" retractable seat belt shall be provided	yes____ no____
3	Illuminated electronic gauges with audible warning for engine coolant temperature, oil temperature and fuel level.	yes____ no____
4	Monitor system shall have audible and visual warnings: engine air restriction, low alternator voltage, engine oil temperature and pressure, hydraulic filter restriction, parking brake on/off, seat	yes____ no____
5	Monitor will have a multi-language (English, French and Spanish) digital monitor for diagnostics (including diagnostic messages and fault code readings), calibrations and machine information.	yes____ no____
6	Unit shall have digital display for: engine rpm, engine hours and system voltage	yes____ no____
7	foot throttle shall be suspended	yes____ no____
8	Stabilizer controls shall be easy to reach from both the backhoe and loader seat position	yes____ no____
9	Machine cab and air conditioner available from the factory.	yes____ no____

Coastal Water Authority Backhoe Specifications

General Specification		Compliance	
1	Engine hood, toolbox, hydraulic reservoir, and fuel filler shall be lockable.	yes___	no___
2	Easy to read periodic maintenance and grease chart shall be easily accessible on the machine.	yes___	no___
3	Fuel tank capacity shall be no less than 30 gallons shall be accessible from the ground. DEF tank to be no less than 3 gallons and accessible from ground and lockable.	yes___	no___
4	Operating weight shall be no less than 14,000 without optional equipment.	yes___	no___

Overall Vehicle		Compliance	
1	The mainframe shall be a one-piece unitized construction for maximum strength	yes___	no___
2	Unit shall have four built-in vehicle tie downs, two in front and two in rear for safe transport between jobs	yes___	no___
3	Side plate thickness on the loader boom, backhoe boom and mainframe shall be 4.5 mil or greater	yes___	no___

Backhoe		Compliance	
1	The lift capacity at ground level with dipper stick retracted shall be no less than 3200 lbs.	yes___	no___
2	The lift capacity at full height with dipper stick extended shall be no less than 2260 lbs.	yes___	no___
3	Extendible dipper stick	yes___	no___
4	Digging depth with extendable dipper stick extended shall be no less than 18 ft. 10 in	yes___	no___
5	Swing lock pin shall be stored in the operator's station	yes___	no___
6	Stabilizer valve will be two directional	yes___	no___
7	Stabilizer shall have reversible pads	yes___	no___
8	Backhoe boom design shall be a curved design.	yes___	no___
9	Digging force with standard backhoe, bucket cylinder shall be at least 12,900	yes___	no___
10	Backhoe shall be equipped with a rubber bumper/linkage style boom locks to keep the backhoe from vibrating on the swing frame	yes___	no___
11	Swing casting shall have dual yokes: on top and on the bottom	yes___	no___
12	Backhoe shall come with a manufacturers "OEM" Quick Coupler	yes___	no___
13	Backhoe shall come with a manufacturers "OEM" Q/C 18" Bucket	yes___	no___
14	Backhoe shall come with a manufacturers "OEM" Q/C 24" Bucket	yes___	no___
15	Backhoe shall come with a manufacturers "OEM" Q/C 60" Bucket	yes___	no___

Coastal Water Authority Backhoe Specifications

Loader		Compliance	
1	Lift Capacity with standard duty bucket at full height shall be at least 7,200 lbs.	yes___	no___
2	Dump Clearance with bucket at 45 deg. shall be no less than 8 ft. 6 in	yes___	no___
3	Bucket breakout force shall be no less than 10,000 lb.	yes___	no___
4	The loader shall have hydraulic self-leveling and bucket-level indicator.	yes___	no___
5	The loader shall have divergent loader arms for excellent visibility to the bucket	yes___	no___
6	Loader control will be single-lever with electric clutch cutoff switch	yes___	no___
7	Loader shall have a non-removable, hinged loader boom service lock.	yes___	no___
8	Loader shall come with a manufacturers "OEM" Quick Coupler	yes___	no___
9	Loader shall come with a manufacturers "OEM" Pallet Forks	yes___	no___

Literature		Compliance	
1	Service Manual	yes___	no___
2	Parts Manual	yes___	no___
3	Repair Manual	yes___	no___
4	Hard Back or Paper Back	yes___	no___

Warranty		Compliance	
1	Include 5 year 5000 hour warranty complete machine warranty	yes___	no___

Serviceability		Compliance	
1	Manufactures shall have an authorized location for warranty , parts and service located in Harris county or one of its seven adjacent counties	yes___	no___

COASTAL WATER AUTHORITY

CWA STANDARD TERMS AND CONDITIONS

These CWA Standard Terms and Conditions (these “Terms and Conditions”) are referenced in purchase orders issued by the Coastal Water Authority (“CWA”) for the purchase of various goods and services. These Terms and Conditions are hereby incorporated by reference into each purchase order that references them, as if set out fully therein. The “Purchase Order” as used in these Terms and Conditions means the purchase order issued by CWA which incorporates by reference these Terms and Conditions, together with any specifications, attachments, exhibits and other documents incorporated by reference in the Purchase Order and these Terms and Conditions.

1. Definitions.

The Bidder who is awarded the Purchase Order shall be hereinafter referred to as “Seller.” “Goods” means the goods and/or services described in and to be furnished under the Purchase Order.

2. Contract Formation and Conflicting Terms.

The Purchase Order, upon issuance by CWA, constitutes a binding contract between CWA and Seller on the terms and conditions of the Purchase Order and these Terms and Conditions. The Purchase Order is hereby expressly limited to its terms and these Terms and Conditions. Any additional, inconsistent or conflicting terms proposed by Seller are rejected unless expressly assented to in writing by CWA. If the Purchase Order is made in response to an offer or counteroffer by the Seller, CWA does not accept the Seller’s offer or counteroffer unless the Seller assents to any and all terms in the Purchase Order that are in addition to or different from the Seller’s offer or counteroffer. No agreement or understanding to modify or rescind the Purchase Order or these Terms and Conditions shall be binding upon CWA unless in writing and signed by CWA.

3. Invoices, Liens, Offset and Withholding.

Invoices shall be mailed to:

Coastal Water Authority
ATTN: Accounts Payable
1801 Main St. Suite 800
Houston, TX 77002

To the maximum extent allowed by law, Seller agrees to release, defend, indemnify, and hold harmless CWA from and against any and all laborers’, materialmen’s, mechanic’s or other liens arising from, alleged to arise from, or in any way associated with Seller’s performance or nonperformance under the Purchase Order. Seller waives all rights of lien against the Goods and against CWA’s premises, facilities, equipment and other property. Any sums due Seller under the Purchase Order may be applied by CWA as a set off against any sums owed by Seller to CWA, or against any claims of third parties against CWA arising from Seller’s performance, whether under

this or any other purchase order or other document. Further, CWA shall have the right to withhold from any payment due Seller an amount to protect CWA from any actual or expected loss arising from: (i) any failure by Seller to provide Goods in accordance with the requirements of the Purchase Order; (ii) any failure by Seller to timely deliver Goods; or (iii) any failure by Seller to honor any aspect of these Terms and Conditions, including without limitation any indemnity obligation of these Terms and Conditions.

4. Termination for Convenience of CWA.

CWA has the right to terminate for CWA's convenience at any time all or any part of the Purchase Order or Seller's right to provide Goods in connection with the Purchase Order. In the event of such termination for convenience, Seller shall immediately stop all work hereunder, and shall immediately terminate all related supplier and subcontractor contracts. In the event of such a termination, CWA shall be responsible to compensate Seller only for that portion of the Purchase Order price as the work satisfactorily performed to the date of the termination bears to the entire work contracted for, less any amounts theretofore paid to Seller. Upon CWA's instructions, Seller will identify for the benefit of CWA and preserve and protect the Goods, work in progress, supplier data, and completed work, both in Seller's own and in its suppliers' facilities. If the Goods have been paid for in whole or in part, then CWA has the immediate right to enter Seller's or any of its supplier's premises to take possession of and remove the Goods and all drawings, records, materials and equipment to be incorporated into the Goods. Seller shall not be paid for any work performed or obligations Seller incurs after receipt of the notice of termination, nor shall Seller be paid for any costs or other obligations incurred by any of Seller's suppliers or subcontractors which Seller could reasonably have avoided.

5. Termination for Cause.

CWA may terminate for cause all or any part of the Purchase Order or Seller's right to provide Goods in connection with the Purchase Order in the event of any default by Seller. Without limiting the generality of the foregoing, Seller's (a) failure to comply with any of the terms or conditions of the Purchase Order; (b) late delivery of Goods; (c) delivery of Goods which are defective or which do not conform to the requirements of the Purchase Order; (d) bankruptcy, reorganization, receivership, insolvency, or making an assignment for the benefit of creditors; and (e) failure to provide CWA, upon request, with adequate assurances of future performance, shall each be a default entitling CWA to terminate the Purchase Order for cause. Upon such a termination, Seller will be liable to and will immediately reimburse CWA for all costs, losses and damages of any nature resulting from Seller's default.

6. Warranty and Warranty Remedies.

Seller warrants to CWA that the Goods furnished under the Purchase Order, whether manufactured, fabricated, or otherwise produced or provided by Seller or others, will:

- (a) meet or exceed the descriptions, data, drawings, plans, specifications, performance criteria, and samples if any, and other requirements referred to in the Purchase Order;
- (b) conform with all applicable laws, ordinances, codes and regulations, including without limitation, not infringing any intellectual property right of another; and
- (c) be free from defects in materials, performance, operation, and workmanship.

All work on the Goods or otherwise in the performance of the Purchase Order will be performed in a good and skilled manner and will be of first-class quality and workmanship in every respect.

If required by CWA, Seller will supply satisfactory evidence of the origin, composition, manufacture, kind and quality of the Goods or components or materials thereof. Seller will apply for and submit all documents necessary to effect the above warranties.

Inspection, test, acceptance or use of the Goods furnished hereunder, regardless of the location of any such inspection, test, acceptance or use, shall not affect the Seller's obligations under the above warranties, and such warranties shall survive any such inspection, test, acceptance and use. Seller's warranties shall run to CWA and its successors and assigns. Seller shall correct or replace the Goods without cost to CWA if it is discovered that during the last to expire of (i) one (1) year after the Goods are placed in service by CWA, (ii) twenty-four (24) months after date of acceptance of the Goods by CWA or (iii) any longer period of time required by the Technical Specifications or provided pursuant to Seller's standard or extended warranties for the Goods, any Goods that do or did not conform to the above warranties. If Seller fails to correct defects in or replace nonconforming Goods promptly, CWA, after notice to Seller, may make such corrections or replace such Goods and charge Seller for all costs incurred by CWA in doing so, without voiding the above warranties and without CWA waiving any other rights or remedies it may have under the Purchase Order or applicable law. Seller also recognizes that CWA's operation, maintenance or other requirements may necessitate immediate repairs or reworking of defective Goods, without prior notice to the Seller. In such event, upon written notice to Seller, Seller shall reimburse CWA for all costs incurred by CWA in doing so, without voiding the above warranties and without CWA waiving any other rights or remedies it may have under the Purchase Order or applicable law.

For the avoidance of doubt, the period(s) during which Seller is obligated to correct or repair Goods does not limit the time by which CWA may institute any legal or equitable proceeding against Seller for any failure to fulfill Seller's obligations under the Purchase Order and all remedies afforded CWA pursuant to this Section 6 shall be cumulative of all other remedies available to CWA under the Purchase Order and applicable law.

7. NO DAMAGES FOR DELAY.

Notwithstanding anything in the Purchase Order to the contrary, Seller shall receive no financial compensation for any delay, interference or hindrance by CWA or its consultants to the performance of the Purchase Order. In no event shall CWA be liable to the Seller, or any subcontractor of any tier, or supplier, or any other person, or any surety for, or any employee or agent of any of them, for any damages arising out of or associated with any such delay, interference or hindrance, regardless of the source of the delay, interference or hindrance, including events of Force Majeure, AND EVEN IF SUCH DELAY, INTERFERENCE OR HINDRANCE RESULTS FROM, ARISES OUT OF OR IS DUE, IN WHOLE OR IN PART, TO THE NEGLIGENCE, BREACH OF CONTRACT, VIOLATION OF STATUTE OR OTHER FAULT OF ANY INDEMNITEE (as defined in Section 9 below). Seller's sole remedy in any such case shall be an extension of time. For the purposes of this paragraph, the term "Force Majeure" means fire, flood, act of God, earthquakes, epidemic, war, riot, civil disturbance, sabotage, terrorism or judicial restraint, but only to the extent such event (i) is beyond the control of and cannot be reasonably anticipated by or the effects alleviated by the Seller and (ii) prevents the performance of the Purchase Order. Events not specifically listed herein shall not constitute events of Force Majeure. By way of example only, weather which is not abnormal, even if such weather could not be reasonably anticipated and even if such weather prevents the delivery of the Goods, shall not be an event of Force Majeure.

If Seller's delay due to an event of Force Majeure exceeds thirty (30) days from the original delivery date, CWA may cancel the Purchase Order without any liability other than for payment of work performed for and delivered to CWA prior to such event of Force Majeure. If Seller's production is only partially restricted or delayed, it shall use its best efforts to accommodate CWA's requirements, including giving the Purchase Order preference and priority over those of other customers which were placed after the Purchase Order.

8. Intellectual Property Indemnification.

Seller agrees upon receipt of notification to promptly assume full responsibility for defense of any claim, demand, suit, or proceeding which may be brought against any Indemnitee (as defined in Section 9 below) for alleged or actual infringement of any patent, copyright, trade secret, or other intellectual property right, as well as for any alleged or actual unfair competition resulting from similarity in design, trademark or appearance of Goods furnished hereunder, and Seller further agrees to defend and indemnify the Indemnitees against any and all Losses (as defined in Section 9 below) resulting from any such claim, demand, suit or proceeding, including any settlement resulting therefrom. If any Goods or intellectual property furnished or used in connection with the Purchase Order is adjudicated as infringing or its use enjoined, Seller shall, at its own expense, secure for CWA the right to continue using it or replace it with a non-infringing equivalent.

9. INDEMNIFICATION AND RELEASE BY SELLER.

To the maximum extent allowed by law, Seller shall defend, indemnify and hold harmless CWA, its board, directors, officers, elected and appointed officials, employees and agents, and the City of Houston and its officers, elected and appointed officials, employees and agents (collectively, the "Indemnitees"), from and against any and all claims, demands, suits, causes of action, losses, damages, settlements, liabilities, costs, expenses, fines, and judgments (including, without limitation, reasonable and necessary court costs, experts' fees and attorney's fees) (collectively, "Losses"), whether arising in equity, at common law, or by statute, including without limitation the Texas Deceptive Trade Practices Act (as amended) or similar statute of other jurisdictions, or under the law of contracts, torts (including, without limitation, negligence and strict liability without regard to fault) or property, of every kind or character (including, without limitation, claims for property damage, personal injury (including without limitation emotional distress), and economic loss), arising in favor of or brought by any of the Seller's employees, agents, subcontractors, suppliers or representatives, or by any governmental agency or any other third party, based upon, in connection with, relating to or arising out of Seller's failure to supply Goods that comply with the requirements of the Purchase Order, or the Seller's actions or inactions under the Purchase Order, including without limitation any failure to pay taxes or failure to comply with any applicable law, and EVEN IF ANY SUCH LOSSES ARE DUE IN PART TO ANY INDEMNITEE'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE OR OTHER FAULT, BREACH OF CONTRACT OR WARRANTY, VIOLATION OF STATUTE, OR STRICT LIABILITY WITHOUT REGARD TO FAULT, WHETHER INDEMNITEE IS IMMUNE FROM SUIT OR LIABILITY OR NOT.

The foregoing indemnification obligation shall apply regardless of the amount of insurance coverage held by Seller, including without limitation any such coverage under any worker's compensation act, disability act, or other act or law which would limit the amount or type of

damages, compensation, or benefits payable by or for Seller, and shall not be limited by any insurance carried or provided by Seller in relation to the Purchase Order or otherwise.

Seller shall and does hereby waive all causes of action it has for, and releases and forever discharges the Indemnitees from, Losses for injuries (including death) to any person or damage to or destruction of any property sustained or alleged to have been sustained in connection with or arising out of or incidental to the Purchase Order.

Other provisions in the Purchase Order containing indemnities shall be deemed to be cumulative of and to operate independently of the indemnities provided above such that all indemnities provided in the Purchase Order shall be construed to grant indemnity to the Indemnitees to the fullest and broadest extent possible.

10. Changes in Goods.

Seller will make no change, substitution, or revision in or to the Goods. CWA has the right to make changes in the character or quantity of the Goods, or in the manner or time of performance of the Purchase Order. Notice of such change will be in writing and signed by a duly authorized representative of CWA. If Seller is unable to comply with the change, then Seller will notify CWA in writing, within five (5) days of receipt of such notice, otherwise such change will be deemed accepted. An equitable adjustment in the price and time of performance will be made by CWA and Seller in writing if any change by CWA results in a demonstrated decrease or increase in Seller's cost or time of performance; however, no claim by Seller for an adjustment in the price or in the time of performance resulting from any change required by CWA will be considered unless presented to CWA in writing within ten (10) days after Seller receives the notice of change from CWA. CWA shall not be responsible for costs incurred by Seller related to or arising from unauthorized changes.

11. Inspection and Acceptance.

Seller will have the obligation and CWA will have the right to inspect the Goods in process of manufacture, in storage, in transit, and upon delivery. Seller will provide CWA reasonable access to Seller's premises and any premises of Seller's suppliers or subcontractors, so that CWA may perform any such inspection of the Goods. CWA will be supplied by Seller, upon request or as needed, with data, drawings, specifications, test results, quality documentation, schedules and other documents and information in accordance with the documentation requirements included in the Purchase Order. CWA's inspection, waiving of inspection, review, approval, or acceptance of the Goods or provision or acceptance of any information, drawings or data under the Purchase Order will not relieve or discharge Seller, either expressly or by implication, of Seller's responsibilities and obligations under the Purchase Order.

Payment for the Goods delivered hereunder shall not constitute acceptance thereof. The Goods will conform strictly to the description, data, drawings, plans, specifications, performance criteria, and samples if any, and other requirements of the Purchase Order. CWA shall have the right to reject any or all Goods that are, in CWA's reasonable judgment, defective or nonconforming. Goods rejected and Goods supplied in excess of quantities specified by CWA may be returned to Seller at Seller's expense and in addition to CWA's other rights. CWA may charge Seller all expenses of unpacking, examining, repacking and reshipping defective, non-conforming or excess Goods. Nothing contained in the Purchase Order shall in any way relieve Seller from the obligation of providing all testing, inspection and quality control necessary to ensure that Seller meets the requirements of the Purchase Order.

12. Shipment; Passage of Title.

Seller is responsible for properly and carefully packing and shipping the Goods, at its expense, FOB ("Free on Board") to the destination set forth in the Purchase Order (the "Destination"), unless otherwise specified in the Purchase Order. Seller will comply with any documentary requirements as provided for in the Purchase Order. Unless otherwise specified in the Purchase Order, title to the Goods (and in the event that the Goods are made to order, then title to all material, inventory and work in progress, design data, other documentation, and all contractual rights thereto) will vest in CWA immediately upon the earlier of (i) delivery of the Goods to CWA at the Destination or (ii) payment for the Goods by CWA. Seller warrants that upon passage of title, CWA shall have good title, free and clear from any and all liens, restrictions, reservations, security interests and other encumbrances. Notwithstanding vesting of title and any other provision in the Purchase Order to the contrary, Seller will bear the risk of loss and damage to the Goods and will insure or self-insure for the benefit of Seller and CWA the Goods in its care, custody and control, including material supplied to Seller for incorporation into, or work in conjunction with, the Goods, until the same are delivered to the Destination and accepted by CWA. If, in order to comply with CWA's required delivery date, it becomes necessary for Seller to ship by a more expensive method than specified in the Purchase Order, any increased shipment costs resulting therefrom shall be at Seller's sole expense.

13. Delivery.

TIME IS OF THE ESSENCE TO THE PURCHASE ORDER. SELLER'S FAILURE TO MEET THE DELIVERY DATE(S) WITHOUT CWA'S PRIOR WRITTEN CONSENT TO A LATER DELIVERY DATE OR DATES CONSTITUTES A MATERIAL BREACH OF CONTRACT AND A MATERIAL DEFAULT UNDER THE PURCHASE ORDER. If delivery or rendering of Goods is not completed by the time promised, CWA reserves the right, without liability and in addition to its other rights and remedies, to terminate the Purchase Order for cause pursuant to Section 5 above.

14. Limitation on CWA's Liability.

To the maximum extent allowed by law, in no event shall CWA be liable for anticipated profits or for any incidental, indirect, exemplary or consequential damages of Seller. CWA's liability for any damages arising out of, connected with or resulting from the Purchase Order or from the performance or breach hereof shall in no case exceed the portion of the Purchase Order price unpaid by CWA for the Goods or units thereof which give rise to any such liability, AND EVEN IF ANY OF SUCH DAMAGES ARISE OUT OF OR RESULT FROM CWA'S SOLE OR CONCURRENT NEGLIGENCE OR OTHER FAULT, BREACH OF CONTRACT OR WARRANTY, VIOLATION OF STATUTE, OR STRICT LIABILITY WITHOUT REGARD TO FAULT.

15. Waiver.

CWA's failure to insist on performance of any of the terms or conditions of the Purchase Order shall not preclude CWA from thereafter insisting upon, or relieve Seller from its responsibilities to strictly comply with, each and every requirement of the Purchase Order.

Further, no waiver by CWA of any requirement of the Purchase Order shall be effective unless such waiver is expressly set forth in a writing signed by CWA.

16. Tax Exempt Status of CWA.

Pursuant to Section 151.309 of the Texas Tax Code, CWA is exempt from Texas sales, excise, and use tax. CWA will not be responsible for paying any such taxes associated with the Purchase Order and Seller will have no right to invoice CWA or to be paid by CWA for any such taxes.

17. Assignments and Subcontracting.

Seller shall not in whole or in part assign, delegate, subcontract or otherwise transfer the Purchase Order or any of Seller's rights or obligations under the Purchase Order, including without limitation any right to payment, without the prior written consent of CWA.

18. Governing Law

The Purchase Order and any disputes arising out of or related to it shall be governed and construed in accordance with the laws of the State of Texas, without regard to its conflict of law principles.

19. Submission to Jurisdiction, Waiver of Right to Remove and Venue

Seller hereby agrees that the Purchase Order is performable in whole or in part in Harris County, Texas, and hereby submits to the jurisdiction of the state courts within such county, and agrees that such jurisdiction shall be exclusive with respect to any legal or equitable proceeding filed by Seller. Further, Seller hereby expressly, clearly and unequivocally agrees that CWA has the right to choose the forum in which any legal or equitable proceeding arising out of, relating to or connected with the Purchase Order shall be heard; and, having so agreed, Seller hereby irrevocably waives its right to remove any such proceeding to any federal court should CWA choose to bring any proceeding in any state court of Harris County, Texas. Furthermore, to the fullest extent permitted by law, Seller hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any proceeding arising out of, relating to or connected with the Purchase Order in any state court residing in Harris County, Texas. Finally, Seller hereby irrevocably waives any claim which it may now or hereafter have that any such proceeding brought in any state court in Harris County, Texas, has been brought in an inconvenient forum.

20. Severability.

The invalidity, illegality, or unenforceability of any provision of the Purchase Order, or the occurrence of any event rendering any portion or provision of the Purchase Order void shall in no way affect the validity or enforceability of any other portion or provision of the Purchase Order. Any invalid, illegal, unenforceable or void provision shall be deemed severed from the Purchase Order and the balance of the Purchase Order shall be construed and enforced as if the Purchase Order did not contain the particular portion or provision held to be invalid, illegal, unenforceable or void. CWA and Seller further agree to reform the Purchase Order to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Section 20 shall not prevent the entire Purchase Order from being void should a provision which is the essence of the Purchase Order be determined to be invalid, illegal, unenforceable or void.

21. Notices.

Notices under the Purchase Order shall be considered received on the date of actual receipt unless sent by certified mail, then upon the earlier of (a) actual receipt or (b) five (5) business days after deposit of such notice in the U.S. mail. Notices under the Purchase Order directed to CWA should be addressed to:

Coastal Water Authority
ATTN: Purchasing Agent
11801 Main St. Suite 800
Houston, Texas 77002
Phone: 713-658-9020
Email: jsealy@cwalps.org

Notices directed to Seller shall be addressed to the street address, phone number, or facsimile number listed on the Purchase Order.

22. Headings

Headings are for convenience of reference only and shall not affect the interpretation of any provision.

23. Entire Agreement.

The Purchase Order constitutes the entire agreement between CWA and Seller and supersedes all prior and contemporaneous conditions, agreements, communications or representations, whether oral or written, relating to the subject matter hereof.

[End of Terms and Conditions]



Texas Water Development Board

Supplemental Contract Conditions and Instructions
(TWDB-0552)

For Construction Services for

Projects Funded through State Programs

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Forms and Guidance:

The Texas Water Development Board (TWDB) forms and guidance documents noted in this instruction document may be accessed through the TWDB's Financial Assistance web site at:

<http://www.twdb.texas.gov/financial/instructions/index.asp>

Search by either the document number or name.

I. INSTRUCTIONS TO APPLICANT

1. Applicability

These Supplemental Conditions contain provisions that are worded to comply with certain statutes and regulations which specifically relate to projects receiving state funds only. These supplemental conditions apply to projects funded by the following financial assistance programs:

- (a) the Texas Water Development Fund (DFund),
- (b) State Participation (SP),
- (c) Rural Water Assistance Fund (RWAFF),
- (d) Economically Distressed Areas Program (EDAP), and
- (e) State Water Implementation Fund for Texas (SWIFT).

Provisions that are applicable to the project's funding source or dollar value of the contract are so noted within these provisions.

2. Use of Conditions

The language and conditions listed under *Section II: Instructions to Bidders* are to be included in the instructions to bidders for construction services. The provisions listed under *Section III: Construction Contract Supplemental Conditions* shall be included in their entirety with the other general and special conditions that are typically included in the construction contract documents by the design engineer.

3. Modifications to Provisions

These provisions shall be included as a stand-alone section in the contract documents. The Applicant and the consulting engineer (Engineer) should carefully study these provisions before incorporating them into the construction contract documents. In particular, Water Districts and other types of districts should be aware of statutes relating to their creation and operation which may affect the application of these conditions. The TWDB Project Engineer/Reviewer should be consulted if the Applicant thinks there is a need to modify parts of these provisions.

Supplemental Condition #13 (Archeological Discoveries and Cultural Resources) and #14 (Endangered Species) may be superseded or modified by project specific conditions established during the environmental review process.

These documents may confer certain duties and responsibilities on the Engineer that are beyond, or short of, what the Applicant intends to delegate. The Applicant should ensure that the contractual agreement with the Engineer provides for the appropriate services. Otherwise the Applicant should revise the wording in these special conditions to agree with actually delegated functions.

4. Good Business Practices

There are other contract provisions that the Applicant (Owner) and Engineer should include as a matter of good business practices. It is recommended that provisions addressing the following matters be included in the construction contract.

- (a) Specifying the time frame for accomplishing the construction of the project, and the consequences of not completing on time, including liquidation damages.
- (b) Specifying the type, dollar value, and documentation of insurance the contractor is to carry. At a minimum the contractor should carry worker's compensation, liability and builder's risk insurance.
- (c) Identifying the responsibility of the contractor – Responsibility and Warranty of Work.
- (d) Price reduction for defective pricing of negotiated costs.
- (e) Differing site conditions - notice and claims regarding site conditions differing from indicated conditions.
- (f) Covenants against contingent fees - prohibit contingent fees for securing business.
- (g) Gratuities - prohibitions against offering and accepting gratuities.
- (h) Audit and access to records.
- (i) Suspension of work - conditions under which the Owner may suspend work.
- (j) Termination - conditions under which the Owner may terminate the contract.
- (k) Remedies - procedures for resolving disputes.

5. Other Requirements

There may be other local government requirements and applicable Federal and State statutes and regulations that are not accommodated by these conditions. It is the Applicant's responsibility to ensure that the project and all contract provisions are consistent with the relevant statutes and regulations.

6. Advertisements for Bids

State procurement statutes require advertising a contract for bids for at least two (2) consecutive weeks. By not following this requirement, the project may need to be re-advertised. The official advertisement for bids that is published in newspapers shall include certain information such as, but not limited to, the following:

- (a) A clear description of what is being procured.
- (b) How to obtain plans and specifications (P&S) and necessary forms and information.
- (c) The date and time by which bids are to be submitted (deadline).
- (d) The address where bids are to be provided.
- (e) This contract is contingent upon release of funds from the Texas Water Development Board (TWDB).
- (f) This contract is subject to the U.S. Iron and Steel and Manufactured Goods requirements of Texas Water Code §17.183 (does not apply to State Participation or SWIFT projects).
- (g) Acknowledgement of any special requirements such as mandatory pre-bid conference.
- (h) Right to reject any and all bids.
- (i) General bond requirements.

7. Bid Proposal

The Bid Proposal form should account for the following:

- (a) If lump sum bid, include a list of the materials used and associated costs.
- (b) Distinguish eligible and ineligible items.
- (c) Accommodate trench safety requirements with separate per unit pay item for trench excavation safety protection, Health and Safety Code Chapter 756, Subchapter C.
- (d) Include space for the Contractor to acknowledge receipt of each Addendum issued during the bidding process.

8. Bidding Process

The Plans and Specifications (P&S) should include an explanation of how the bids will be processed. The explanation should include the following components:

- (a) Whether a pre-bid conference will be held, whether it is optional or mandatory, where and when it will be held.
- (b) Specify the criteria and process for determining responsiveness and responsibility of the bidder.
- (c) Specify the method of determining the successful bidder and award (e.g., award to the lowest responsive, responsible bidder, accounting for any multiple parts to bids) and accounting for non-resident bidder reciprocity requirements.
- (d) Allow for withdrawal of a bid due to a material mistake.
- (e) Identify the time frame that the bids may be held by the Applicant before awarding a contract (e.g., typically for 60 or 90 days).
- (f) Acknowledge right of the Applicant to reject any and all bids.

9. Release of Funds

- (a) Submittal of Bid Documents to TWDB Project Engineer/Reviewer to allow contingent award of contract:
 - (1) Advertisement and affidavit of advertisement.
 - (2) Bid tabulation.
 - (3) All addenda submitted and approved for the contract.
 - (4) Bid proposal of apparent low bidder (or chosen bidder, with explanation) with bid bond.
 - (5) Site certificate (ED-101).
 - (6) Consulting engineer's recommendation to award letter.
 - (7) A description of any bidding irregularities.
 - (8) Construction inspection proposal.
 - (9) Vendor Compliance with Reciprocity of Non-Resident Bidders Form (TWDB-0459).
 - (10) Bidder's Certifications Form (WRD-255).

- (b) Following contingent award of the contract, TWDB Project Engineer/Reviewer should receive either a digital or bound copy of the executed contract documents (including specifications). This document should include:
- (1) Executed agreement.
 - (2) Contractor's act of assurance (ED-103).
 - (3) Contractor's act of assurance resolution (ED-104).
 - (4) Payment and Performance bond (must be executed on or after the date of execution of the contract).
 - (5) Contractor's Certificate of Insurance.
 - (6) Sufficiency of funds letter (if the project is not 100% funded with TWDB funds).

After reviewing and approving the executed bid documents, the TWDB will issue an authorization for the Applicant to issue a notice to proceed. At this time, TWDB staff can begin releasing construction funds, in accordance with program specific requirements.

For any questions or proposed modifications to these conditions, please contact your TWDB Project Engineer/Reviewer.

II. INSTRUCTIONS TO BIDDERS

The language and conditions listed in this section shall be included in the “Instructions to Bidders” section of the construction contract document.

1. Contingent Award of Contract

This contract is contingent upon release of funds from the Texas Water Development Board. Any contract or contracts awarded under this Invitation for Bids is/are expected to be funded in part by a loan or grant from the Texas Water Development Board. Neither the state of Texas, nor any of its departments, agencies, or employees are or will be a party to this Invitation for Bids or any resulting contract.

2. U.S. Iron and Steel and Manufactured Goods (Does not apply to State Participation or SWIFT Projects)

Any contract(s) awarded under this Invitation for Bids is/are subject to the U.S. Iron and Steel and Manufactured Goods requirements (Texas Water Code §17.183). Refer to Guidance TWDB-1105 – “Requirements for U.S. Iron and Steel and Manufactured Goods”.

3. Bid Guarantee

Each bidder shall furnish a bid guarantee equivalent to five percent of the bid price (Water Code §17.183). If a bid bond is provided, the Contractor shall utilize a surety company which is authorized to do business in Texas in accordance with Surety Bonds and Related Instruments, Chapter 3503 of the Insurance Code.

4. Award of Contract to Nonresident Bidder

A governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located. A non-resident bidder is a Contractor whose corporate offices or principal place of business is outside of the state of Texas (Source: Texas Government Code, Chapter 2252, Subchapter A, Nonresident Bidders, §2252.002).

The bidder will complete form TWDB-0459, Vendor Compliance with Reciprocity on Non-Resident Bidders, **which must be submitted with the bid.**

III. SUPPLEMENTAL CONTRACT CONDITIONS

1. Supersession

The Owner and the Contractor agree that the TWDB Supplemental Conditions apply to the work eligible for Texas Water Development Board assistance to be performed under this contract and these clauses supersede any conflicting provisions of this contract.

2. Privity of Contract

Funding for this project is expected to be provided in part by a loan or grant from the Texas Water Development Board. Neither the state of Texas, nor any of its departments, agencies or employees is, or will be, a party to this contract or any lower tier contract. This contract is subject to applicable provisions in 31 TAC Chapter 363 in effect on the date of the assistance award for this project.

3. Definitions

- (a) The term "Owner" means the local entity contracting for the construction services.
- (b) The term "TWDB" means the Executive Administrator of the Texas Water Development Board, or other person who may be at the time acting in the capacity or authorized to perform the functions of such Executive Administrator, or the authorized representative thereof.
- (c) The term "Engineer" means the Owner's authorized consulting engineer for the project.

4. Laws to be Observed

In the execution of the contract, the Contractor must comply with all applicable local, state and federal laws, including but not limited to laws concerned with labor, safety, minimum wages, and the environment. The Contractor shall be familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances and regulations which in any manner affect the conduct of the work, and shall indemnify and save harmless the Owner, Texas Water Development Board, and their representatives against any claim arising from violation of any such law, ordinance or regulation by the Contractor, their Subcontractor or their employees.

5. Review by Owner and TWDB

- (a) The Owner, authorized representatives and agents of the Owner, and the TWDB shall, at all times have access to and be permitted to observe and review all work, materials, equipment, payrolls, personnel records, employment conditions, material invoices, and other relevant data and records pertaining to this contract, provided, however that all instructions and approval with respect to the work will be given to the Contractor only by the Owner through authorized representatives or agents.
- (b) Any such inspection or review by the TWDB shall not subject the state of Texas, or its representatives, to any action for damages.

6. Performance and Payment Bonds

Each Contractor awarded a construction contract must furnish performance and payment bonds:

- (a) the performance bond shall include without limitation guarantees that work done under the contract will be completed and performed according to approved plans and specifications and in accordance with sound construction principles and practices;
- (b) the performance and payment bonds shall be in a penal sum of not less than 100 percent of the contract price and remain in effect for one year beyond the date of approval by the Engineer of the political subdivision; and
- (c) the Contractor shall utilize a surety company that is authorized to do business in Texas in accordance with Surety Bonds and Related Instruments, Chapter 3503 of the Insurance Code.

7. Payments Schedule and Cost Breakdown

- (a) The Contractor shall submit for approval immediately after execution of the Agreement, a carefully prepared Progress Schedule, showing the proposed dates of starting and completing each of the various sections of the work, the anticipated monthly payments to become due to the Contractor, and the accumulated percent of progress each month.
- (b) The following paragraph applies only to contracts awarded on a lump sum contract price:

COST BREAKDOWN - The Contractor shall submit to the Owner a detailed breakdown of the estimated cost of all work to be accomplished under the contract, so arranged and itemized as to meet the approval of the Owner or funding agencies. This breakdown shall be submitted promptly after execution of the agreement and before any payment is made to the Contractor for the work performed under the contract. After approval by the Owner the unit prices established in the breakdown shall be used in estimating the amount of partial payments to be made to the Contractor.

8. Workers' Compensation Insurance Coverage (as applicable, consistent with Texas Labor Code § 406.096)

- (a) The Contractor shall certify in writing that they provide workers' compensation insurance coverage for each employee of the Contractor employed on the public project.
- (b) Each Subcontractor on the public project shall provide such a certificate relating to coverage of the Subcontractor's employees to the general Contractor, who shall provide the Subcontractor's certificate to the governmental entity.
- (c) A Contractor who has a contract that requires workers' compensation insurance coverage may provide the coverage through a group plan or other method satisfactory to the governing body of the governmental entity.
- (d) The employment of a maintenance employee by an employer who is not engaging in

building or construction as the employer's primary business does not constitute engaging in building or construction.

(e) In this section:

- (1) "Building or construction" includes:
 - i. erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;
 - ii. remodeling, extending, repairing, or demolishing a structure; or
 - iii. otherwise improving real property or an appurtenance to real property through similar activities.
- (2) "Governmental entity" means this state or a political subdivision of this state. The term includes a municipality.

9. U.S. Iron and Steel and Manufactured Goods (Does not apply to State Participation or SWIFT Projects)

In the execution of the contract, the Contractor shall be familiar with and at all times shall observe and comply with all applicable federal, state, and local laws, ordinances and regulations concerned with the use of iron and steel and manufactured goods made in the United States which in any manner affect the conduct of the work, and shall indemnify and save harmless the Texas Water Development Board against any claim arising from violation of any such law, ordinance or regulation by the Contractor or by their Subcontractor or their employees

Consistent with Texas Water Code Section 17.183, iron and steel products and manufactured goods used in the project shall be produced in the United States, unless:

- (a) such products or goods are not:
 - (1) available in sufficient quantities;
 - (2) readily available; or
 - (3) of a satisfactory quality; or
- (b) the use of such products or goods will increase the total cost of the project by more than 20 percent.

10. Prevailing Wage Rates

This contract is subject to Government Code Chapter 2258 concerning payment of Prevailing Wage Rates. The Owner will determine what the general prevailing rates are in accordance with the statute. The applicable provisions include, but are not limited to the following:

§2258.021. Right to be Paid Prevailing Wage Rates

- (a) A worker employed on a public work by or on behalf of the state or a political subdivision of the state shall be paid:
 - (1) not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and
 - (2) not less than the general prevailing rate of per diem wages for legal holiday and overtime work.
- (b) Subsection (a) does not apply to maintenance work.

- (c) A worker is employed on a public work for the purposes of this section if the worker is employed by a Contractor or Subcontractor in the execution of a contract for the public work with the state, a political subdivision of the state, or any officer or public body of the state or a political subdivision of the state.

§2258.023. Prevailing Wage Rates to be Paid by Contractor and Subcontractor; Penalty

- (a) The Contractor who is awarded a contract by a public body or a Subcontractor of the Contractor shall pay not less than the rates determined under Section 2258.022 to a worker employed by it in the execution of the contract.
- (b) A Contractor or Subcontractor who violates this section shall pay to the state or a political subdivision of the state on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body awarding a contract shall specify this penalty in the contract.
- (c) A Contractor or Subcontractor does not violate this section if a public body awarding a contract does not determine the prevailing wage rates and specify the rates in the contract as provided by Section 2258.022.
- (d) The public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.
- (e) A municipality is entitled to collect a penalty under this section only if the municipality has a population of more than 10,000.

§2258. 024. Records

- (a) A Contractor and Subcontractor shall keep a record showing:
 - (1) the name and occupation of each worker employed by the Contractor or Subcontractor in the construction of the public work; and
 - (2) the actual per diem wages paid to each worker.
- (b) The record shall be open at all reasonable hours to inspection by the officers and agents of the public body.

§2258. 025. Payment Greater Than Prevailing Rate Not Prohibited

This chapter does not prohibit the payment to a worker employed on a public work an amount greater than the general prevailing rate of per diem wages.

11. Employment of Local Labor (only applicable to projects funded by EDAP)

The Contractor shall, to the maximum feasible extent, employ local labor for construction of the project. The Contractor and every Subcontractor undertaking to do work on the project which is, or reasonably may be done as on-site work, shall employ qualified persons who regularly reside within the political subdivision boundary of the Owner and the economically distressed area where the project is located (Texas Water Code, Section 17.183).

12. Payments

(a) Progress Payments:

- (1) The Contractor shall prepare their requisition for progress payment as of the last day of the month and submit it, with the required number of copies, to the Engineer for review. Except as provided in paragraph (3) of this subsection, the amount of the payment due the Contractor shall be determined by adding to the total value of work completed to date, the value of materials properly stored on the site and deducting: (1) five percent (5%) minimum of the total amount, as a retainage and (2) the amount of all previous payments. The total value of work completed to date shall be based on the actual or estimated quantities of work completed and on the unit prices contained in the agreement (or cost breakdown approved pursuant to section 7b relating to lump sum bids) and adjusted by approved change orders. The value of materials properly stored on the site shall be based upon the estimated quantities of such materials and the invoice prices. Copies of all invoices shall be available for inspection by the Engineer.
- (2) The Contractor shall be responsible for the care and protection of all materials and work upon which payments have been made until final acceptance of such work and materials by the Owner. Such payments shall not constitute a waiver of the right of the Owner to require the fulfillment of all terms of the Contract and the delivery of all improvements embraced in this contract complete and satisfactory to the Owner in all details.
- (3) This clause applies to contracts when the Owner is a District or Authority. The retainage shall be ten percent of the amount otherwise due until at least fifty percent of the work has been completed. After the project is fifty percent completed, and if the District or Authority's Board finds that satisfactory progress is being made, then the District may authorize any of the remaining progress payments to be made in full. The District is not obligated to pay interest earned on the first 50% of work completed (Texas Water Code Sec. 49.276(d)).
- (4) The five percent (5%) retainage of the progress payments due to the Contractor may not be reduced until the building of the project is substantially complete and a reduction in the retainage has been authorized by the TWDB.

(b) Withholding Payments. The Owner may withhold from any payment otherwise due the Contractor so much as may be necessary to protect the Owner and if so elects may also withhold any amounts due from the Contractor to any Subcontractors or material dealers, for work performed or material furnished by them. The foregoing provisions shall be construed solely for the benefit of the Owner and will not require the Owner to determine or adjust any claims or disputes between the Contractor and their Subcontractors or Material dealers, or to withhold any monies for their protection unless the Owner elects to do so. The failure or refusal of the Owner to withhold any monies from the Contractor shall in no way impair the obligations of any surety or sureties under any bond or bonds furnished under this contract.

(c) Payments Subject to Submission of Certificates. Each payment to the Contractor by the

Owner shall be made subject to submission by the Contractor of all written certifications required of the Contractor, their Subcontractors and other general and special conditions elsewhere in this contract.

(d) Final Payment.

- (1) Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract or as a termination settlement under this contract the Contractor shall execute and deliver to the Owner a release of all claims against the Owner arising under, or by virtue of, this contract, except claims which are specifically exempted by the Contractor to be set forth therein. Unless otherwise provided in this contract, by state law or otherwise expressly agreed to by the parties to this contract, final payment under this contract or settlement upon termination of this contract shall not constitute a waiver of the Owner' s claims against the Contractor or their sureties under this contract or applicable performance and payment bonds.
- (2) After final inspection and acceptance by the Owner of all work under the Contract, the Contractor shall prepare their requisition for final payment which shall be based upon the carefully measured or computed quantity of each item of work at the applicable unit prices stipulated in the Agreement or cost breakdown (if lump sum), as adjusted by approved change orders. The total amount of the final payment due to the Contractor under this contract shall be the amount computed as described above less all previous payments.
- (3) The retainage and its interest earnings, if any, shall not be paid to the Contractor until the TWDB has authorized a reduction in, or release of, retainage on the contract work.
- (4) Withholding of any amount due to the Owner, under general and/or special conditions regarding "Liquidated Damages" shall be deducted from the final payment due the Contractor.

13. Archaeological Discoveries and Cultural Resources

No activity which may affect properties listed or properties eligible for listing in the National Register of Historic Places or eligible for designation as a State Archeological Landmark is authorized until the Owner has complied with the provisions of the National Historic Preservation Act and the Antiquities Code of Texas. The Owner has previously coordinated with the appropriate agencies and impacts to known cultural or archeological deposits have been avoided or mitigated. However, the Contractor may encounter unanticipated cultural or archeological deposits during construction.

If archeological sites or historic structures which may qualify for designation as a State Archeological Landmark according to the criteria in 13 TAC Chapter 26, or that may be eligible for listing on the National Register of Historic Places in accordance with 36 CFR Part 800, are discovered after construction operations are begun, the Contractor shall immediately cease operations in that particular area and notify the Owner, the TWDB, and the Texas Historical Commission, 1511 N. Colorado St. , P. O. Box 12276, Capitol Station, Austin, Texas 78711-2276. The Contractor shall take reasonable steps to protect

and preserve the discoveries until they have been inspected by the Owner's representative and the TWDB. The Owner will promptly coordinate with the State Historic Preservation Officer and any other appropriate agencies to obtain any necessary approvals or permits to enable the work to continue. The Contractor shall not resume work in the area of the discovery until authorized to do so by the Owner.

14. Endangered Species

No activity is authorized that is likely to jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the Federal Endangered Species Act (ESA), and/or the State of Texas Parks and Wildlife Code on Endangered Species, or to destroy or adversely modify the habitat of such species.

If a threatened or endangered species is encountered during construction, the Contractor shall immediately cease work in the area of the encounter and notify the Owner, who will immediately implement actions in accordance with the ESA and applicable State statutes. These actions shall include reporting the encounter to the TWDB, the U.S. Fish and Wildlife Service, and the Texas Parks and Wildlife Department, obtaining any necessary approvals or permits to enable the work to continue, or implement other mitigation actions. The Contractor shall not resume construction in the area of the encounter until authorized to do so by the Owner.

15. Hazardous Materials

Materials utilized in the project shall be free of any hazardous materials, except as may be specifically provided for in the specifications.

If the Contractor encounters existing material on sites owned or controlled by the Owner or in material sources that are suspected by visual observation or smell to contain hazardous materials, the Contractor shall immediately notify the Engineer and the Owner. The Owner will be responsible for the testing and removal or disposal of hazardous materials on sites owned or controlled by the Owner. The Owner may suspend the work, wholly or in part during the testing, removal or disposal of hazardous materials on sites owned or controlled by the Owner.

16. Changes

*Provisions identified with an asterisk below are consistent with Local Government Code 271.060. Counties and Municipalities may modify the identified provisions, when applicable, to conform to Local Government Code 252.048 (Counties) or 252.048 (Municipalities).

- (a) The Owner may at any time, without notice to any surety, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including but not limited to changes:
 - (1) In the specifications (including drawings and designs);
 - (2) In the time, method or manner of performance of the work;
 - (3) To decrease or increase the quantity of work to be performed or materials, equipment or supplies to be furnished;

- (b) *The total price of a contract may not be increased by a change order unless provision has been made for the payment of the added cost by the appropriation of current funds or bond funds for that purpose, by the authorization of the issuance of certificates, or by a combination of those procedures.
- (c) *A contract with an original contract price of \$1 million or more may not be increased by more than 25 percent. If a change order for a contract, with an original contract price of less than \$1 million, increases the contract amount to \$1 million or more, subsequent change orders may not increase the revised contract amount by more than 25 percent.
- (d) *A governing body may grant authority to an official or employee responsible for purchasing or for administering a contract to approve a change order that involves an increase or decrease of \$50,000 or less.
- (e) Changes that involve an increase in price will be supported by documentation of the cost components. For projects funded through the EDAP program, or with grant proceeds, TWDB staff may request this information to be provided in a format equivalent to the Cost and Pricing Information form (No. WRD-277).
- (f) Any change orders involving a change in the project requiring a relocation of project components, sizing, or process may require additional environmental approval. A map and description of the proposed changes should be sent to the TWDB Environmental Reviewer for coordination and approval as soon as possible to avoid any delay.

17. Operation and Maintenance Manuals and Training

- (a) The Contractor shall obtain installation, operation, and maintenance manuals from manufacturers and suppliers for equipment furnished under the contract. The Contractor shall submit three copies of each complete manual to the Engineer within 90 days after approval of shop drawings, product data, and samples, and not later than the date of shipment of each item of equipment to the project site or storage location.
- (b) The Owner shall require the Engineer to promptly review each manual submitted, noting necessary corrections and revisions. If the Engineer rejects the manual, the Contractor shall correct and resubmit the manual until it is acceptable to the Engineer as being in conformance with the design concept of the project and for compliance with information given in the contract documents. Owner may assess Contractor a charge for reviews of same items in excess of three (3) times. Such procedure shall not be considered cause for delay.
- (c) Acceptance of manuals by Engineer does not relieve Contractor of any requirements of terms of Contract.
- (d) The Contractor shall provide the services of trained, qualified technicians to check final equipment installation, to assist as required in placing same in operation, and to instruct operating personnel in the proper manner of performing routine operation and maintenance of the equipment.

- (e) Operations and maintenance manuals specified hereinafter are in addition to any operation, maintenance, or installation instructions required by the Contractor to install, test, and start-up the equipment.
- (f) Each manual is to be bound in a folder and labeled to identify the contents and project to which it applies. The manual shall contain the following applicable items:
 - (1) A listing of the manufacturer's identification, including order number, model, serial number, and location of parts and service centers.
 - (2) A list of recommended stock of parts, including part number and quantity.
 - (3) Complete replacement parts list.
 - (4) Performance data and rating tables.
 - (5) Specific instructions for installation, operation, adjustment, and maintenance.
 - (6) Exploded view drawings for major equipment items.
 - (7) Lubrication requirements.
 - (8) Complete equipment wiring diagrams and control schematics with terminal identification.

18. As-built Dimensions and Drawings

- (a) Contractor shall make appropriate daily measurements of facilities constructed and keep accurate records of location (horizontal and vertical) of all facilities.
- (b) Upon completion of each facility, the Contractor shall furnish the Owner with one set of direct prints, marked with red pencil, to show as-built dimensions and locations of all work constructed. As a minimum, the final drawings shall include the following:
 - (1) Horizontal and vertical locations of work.
 - (2) Changes in equipment and dimensions due to substitutions.
 - (3) "Nameplate" data on all installed equipment.
 - (4) Deletions, additions, and changes to scope of work.
 - (5) Any other changes made.

19. Close-Out Procedures

To close-out the contract and release final retainage, the following steps must be completed:

- (a) TWDB Staff must conduct a construction contract final inspection (CCFI).
- (b) The following submittals must be received, reviewed, and accepted by TWDB:
 - (1) The final change order, adjustment of quantities, or a statement that all change orders have previously been submitted and there will be no more change orders;
 - (2) The final pay request from the Contractor;
 - (3) An affidavit by the Contractor that all bills have been paid;
 - (4) Certification by the consulting Engineer that the work has been completed and was constructed in accordance with the approved plans and specifications and sound engineering principles and construction practices;
 - (5) Acceptance of the project by the Owner in the form of a written resolution or other formal action;

- (6) Notification of the beginning date of the warranty period for the contract; and
- (7) Confirmation that the Owner has received as-built drawings from the Contractor.

(c) TWDB will issue a Certificate of Approval allowing the release of retainage.

IV. FORMS AND GUIDANCE LIST

The following documents, mentioned throughout this guidance are available on the TWDB website at: <http://www.twdb.texas.gov/financial/instructions/index.asp>

Forms:

The following forms must be included in the bid documents:

- TWDB-0459, Vendor Compliance with Reciprocity of Non-Resident Bidders.
- Site Certificate (ED-101)
- Contractor's Act of Assurance (ED-103)
- Contractor's Act of Assurance Resolution (ED-104)
- Bidder's Certifications Form (WRD-255)

Guidance Document:

- Requirements for U.S. Iron and Steel and Manufactured Goods (TWDB-1105)