

RAILROAD COMMISSION OF TEXAS
REQUEST FOR PROPOSAL
AML RECLAMATION SERVICES



Railroad Commission of Texas
1701 N. Congress Ave,
Austin, TX 78701

Solicitation No. 455-26-1019

Proposal Due Date:

May 21, 2026

Time (Central Time):

2:00 p.m.

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A.1 DEFINITIONS AND ACRONYMS

A.1.1 OVERVIEW, CONTENT, AND INSTRUCTIONS

When capitalized, the following terms and acronyms have the meaning set forth below. All other terms have the meaning set forth in Webster's II New College Dictionary.

Table 1: Definitions and Acronyms

Addendum/Addenda	Modification to this solicitation, issued by RRC and posted to the Texas Comptroller of Public Accounts ESBD website (http://www.txsmartbuy.com/esbd) prior to Response due date.
Changed Conditions	Subsurface or latent physical conditions differing materially from those indicated in the Contract or Work Order issued thereunder, or unknown, unusual physical conditions which could not reasonably be anticipated when considering and analyzing all information provided within the Solicitation and Contract documents and information readily accessible to Respondent and available upon Respondent's request prior to Respondent's submission of a Response.
Contract	The written agreement, if any, executed by the authorized representative of RRC and the Contractor, that formalizes the terms, provisions, covenants, and obligations, including but not limited to those contained in this solicitation, of the respective parties to the agreement.
Contractor	The individual or entity is qualified to provide the goods and/or services sought

	by RRC pursuant to this solicitation and who is ultimately selected to carry out the requirements stipulated in this solicitation and any resulting contract.
Days	The word “days” shall mean calendar days unless otherwise specifically noted. Business days shall mean Monday through Friday except holidays officially listed on the State of Texas Holiday Schedule and/or on which RRC headquarters office is closed.
Electronic State Business Daily (ESBD)	The designated website where state agencies, universities, and municipalities post formal solicitations (over \$25K), addenda to posted solicitations, and awards. The link to the ESBD is https://www.txsmartbuy.gov/esbd
Fiscal Year (FY)	RRC’s FY begins September 1 of one year and concludes August 31 of the following year.
Notice to Proceed (NTP)	The formal written authorization issued from RRC to Contractor, which indicates work under the Contract or Work Order issued thereunder is authorized to commence in accordance with the terms and conditions of the Contract and a Work Order issued thereunder and on, but not sooner than, the date specified within the Notice to Proceed.
Occupational Safety and Health Administration (OSHA)	OSHA is an agency of the United States Department of Labor to assure safe and healthful working conditions.

Reclamation Services	The combined process by which adverse environmental effects of surface mining are minimized and mined lands are returned to a beneficial end use.
Railroad Commission of Texas (RRC)	The state agency responsible for the issuance of this solicitation.
Respondent	An individual or entity who submits a response to this solicitation.
Response	An expression of interest submitted by a Respondent to RRC because of this solicitation that contains the Respondent's statement of qualifications and other information evidencing the Respondent's qualifications to perform the services and work required under the Contract
RRC Authorized Representative	The individual authorized to make decisions on behalf of RRC.
Request For Proposal (RFP)	The document so titled and all exhibits, attachments, and appendices thereto and/or that are incorporated by reference as though fully set forth within.
RRC Authorized Representative	The individual authorized to make decisions on behalf of RRC.
RRC Statewide Rules	The official rules of RRC and that are found in 16 TAC Part 1, Chapters 1 through 20. The TAC and RRC Statewide

	Rules may be found on the Office of the Secretary of State under the RRC Statewide Rules .
Solicitation and Contract Documents	Those documents identified as a component of the RFP, including all exhibits, attachments, and appendices thereto and/or that are incorporated by reference as though fully set forth within, and any Addenda that may be issued following issuance date of the original RFP document set, and those documents identified as a component of the Contract agreement between RRC and the Respondent awarded a contract arising from the RFP.
Statement of Services (SOS)	A broad description of activities, deliverables, and expectations applicable to work to be delivered under the resulting Contract or a Work Order issued thereunder.
Scope of Work (SOW)	A section within the SOS or within a Work Order issued under the Contract and that provides detailed specifications of the services to be provided.
TAC	Texas Administrative Code
TGC	Texas Government Code
Veteran Heroes United in Business (VetHUB)	As defined within Texas Government Code Chapter 2161 and amended by the Texas Comptroller of Public Accounts in

	its emergency rules, effective December 2, 2025.
Work Order	A description of a specific job or project arising under the Contract and that includes details applicable to the location(s), goods, services, and incidentals of work to be performed.

A.2 DESCRIPTION AND OVERVIEW

A.2.1 Description of Services

In accordance with applicable provisions of Texas Government Code Chapters 2155, and 2156, the Railroad Commission of Texas extends this RFP Solicitation to qualified entities to submit a Response detailing the entity's qualifications to provide Reclamation Services as further described herein and in accordance with all terms, conditions, and specifications contained within the Solicitation and Contract Documents. Responses to this Solicitation No. 455-26-1019 shall be received by the Railroad Commission of Texas, Contract Management Section, 1701 N. Congress Avenue, Austin, TX 78701 no later than 2:00PM (CT), Thursday, May 21, 2026 for RFP No. 455-26-1019, Reclamation Services.

A.2.2 Eligibility Information

The RRC seeks Reclamation Services to be performed for the RRC throughout the state of Texas. Contractor shall provide all labor, materials, equipment, tools, incidentals, and services necessary to deliver Reclamation Services for the RRC, as directed. All work under the Contract shall be performed in accordance with applicable federal, state, and local statutes, laws, ordinances, regulations, and rules, including RRC Statewide Rules, the specifications within **ATTACHMENT 1: Statement of Services** and any Work Order issued under the Contract, and all terms and conditions of the Contract.

This solicitation describes the requirements that must be met by the selected Respondents. Respondents are cautioned to carefully read the solicitation in its entirety. Selection of the most highly qualified Reclamation Services providers will be based on demonstrated competence, detailed credentials, evaluation criteria and other requirements as outlined in **Section A7: Evaluation of the Proposal** and **ATTACHMENT 3: Respondent's Qualification Statement**. Please read **Section A6: Disclosures** in its entirety. Failure to provide the mandatory required information will

automatically disqualify Respondent from consideration for award in connection with this solicitation. Selected Respondents shall be bound to the terms and conditions of this solicitation, and the RRC's Contract as finalized between the RRC and Respondent (see solicitation **ATTACHMENT 5: Sample RRC Contract**), any additional, specific terms and conditions applicable to a finalized, negotiated Work Order issued thereunder, and shall comply with all applicable local, state, and federal statutes, rules, regulations, and ordinances, including but not limited to those related to licensing, certification, and permitting requirements.

RRC reserves the right to award more than one Contract from this solicitation. A Contract arising from this solicitation shall not be exclusive; RRC may obtain Reclamation Services from other sources during the term of the Contract. A Contract shall have no monetary value and no guarantee that any Work Order will be issued thereunder. An award of a Contract arising from this solicitation shall not disqualify a Respondent from responding to a future RRC project-specific solicitation for Reclamation Services.

A.2.3 Term of Contract

Any Contract resulting from this RFP shall include an original term of one (1) year from date of the last Party's signature to the Contract and shall continue through August 31, 2027 ("Original Term") in accordance with RRC's fiscal year. At RRC's discretion, the original Contract term may be extended for up to three (3) additional one-year optional renewal terms ("Renewal Term"). Renewal Terms to any Contract shall be accomplished through a written amendment to the original Contract, fully executed prior to expiration of the Contract, and shall incorporate all terms and conditions of the original Contract as may be amended by mutual agreement between the RRC and Contractor.

A.2.4 Statement of Services

This procurement for Reclamation Services will allow the Railroad Commission to contract with a highly qualified service provider with experience in Reclamation Services best practices to assist RRC with implementing the requirements of this solicitation. RRC does not have sufficient personnel required to perform the Reclamation Services and seeks to prequalify a service provider deemed highly capable of completing all work required under a Contract arising from **Solicitation No. 455-26-1019** and any Work Order(s) issued thereunder. See **ATTACHMENT 1: Statement of Services**.

A.2.5 Minimum Qualifications

To be eligible for consideration of contract award, Respondent must meet all minimum qualification requirements as outlined in the Solicitation and Contract Documents,

including requirements stated within any part of this solicitation and the **ATTACHMENT 1: Statement of Services**. A Response must clearly demonstrate Respondent meets the following minimum qualifications:

- An experienced Project Manager (“PM”) with three (3) year’s experience in heavy earthwork reclamation and related services.
- Have stated qualifications as demonstrated on RFP **ATTACHMENT 3: Respondent’s Qualification Statement**.

A.2.6 Contractor Responsibilities

The RRC shall look solely to the Contractor(s) for compliance with all the requirements of this Solicitation and the resulting Contract(s). Contractor(s) shall be the sole point of Contract responsibility and shall not be relieved of non-compliance of any subcontractor.

Failure to meet service requirements and /or specifications authorizes the RRC to procure services of this Solicitation elsewhere and charge any increased costs for the services, including the cost of re-soliciting, to the Contractor.

A.3 FINANCIAL MATTERS

A.3.1 Payment Terms and Award Summary

Contractor shall submit by email to RRC’s designated point of contact all requests for payment. Payment requests shall be submitted upon Respondent’s completion of and RRC’s acceptance of work. When submitting request by email, Contractor shall include as attachments to the email Contractor’s invoice and all additional documents required by the Contract, as applicable to the payment request, as attachments to the email. Contractor shall also email the invoice to the RRC Contract Manager assigned to the Contract. Each Contractor’s invoice shall reflect a single Contract and all and only services related thereto which have been delivered, inspected, tested, evaluated, and accepted by RRC within the Contract performance period concluding on the invoice date.

A.3.2 Compliance with Texas Government Code Chapter 2251 Required

A Contractor awarded a Contract arising from this solicitation, and all Contractor’s subcontractors, if any, shall comply with all applicable provisions of Texas Government Code Chapter 2251 relating to prompt payment for goods and services under a contract issued by a state agency. Texas Government Code Chapter 2251 requires, in part, that a Contractor that receives payment from a state agency shall pay a subcontractor the appropriate share of the payment not later than the 10th day after the date the

Contractor receives the payment; and, the Contractor's subcontractor who receives a payment from the Contractor shall pay a person who supplies goods or a service for which the payment is made, the appropriate share of the payment not later than the 10th day after the date the subcontractor receives the payment. Contractor's compliance with this provision shall be strictly enforced by RRC. RRC reserves the right to request evidence of Contractor's compliance, and evidence of Contractor's subcontractor's compliance with this condition of the Contract.

A.3.3 Progress Payments

Note: A Contract arising from this solicitation shall require 0% retainage withheld on all progress payments, ***unless expressly required by supplemental terms and conditions within a Work Order issued under the Contract.*** Payment requests under the Contract shall be based on work completed per deliverable or per month unless otherwise approved in writing by RRC. Upon Respondent's completion of work, and upon RRC's acceptance thereof, Contractor shall submit a properly prepared, itemized invoice accompanied by all additional documents required by Contract, as a Contract progress payment equal to 100% of the value of the work invoiced as completed by Respondent and accepted by RRC.

A.3.4 Final Payments

Upon Respondent's completion of all final, not previously invoiced work, and upon RRC's acceptance thereof, Contractor shall submit a properly prepared invoice as Contractor's request for final payment under the Contract. Upon Contractor's submittal of a properly prepared, itemized invoice accompanied by all additional documents required by Contract, final payment may be made by RRC in accordance with Texas Government Code Chapter 2251. Contractor's final payment request shall reflect value for 100% of the value of work performed by Contractor and accepted by RRC, but not previously invoiced by Contractor, and shall include invoicing for all retainage, if any, previously withheld and not released under the Contract.

A.3.5 Invoice Requirements

Invoices for services performed or goods delivered during a month shall be due no later than the third (3rd) day of the following month (e.g. invoices for reclamation services performed on April 4th shall be submitted to RRC by May 3rd.). Notwithstanding the foregoing, invoices for services performed or goods delivered during the last week of a month shall not be due until the tenth (10th) day of the following month.

Contractor's invoice must clearly reflect the following:

- RRC Contract Number, Work Order, and Purchase Order number (as applicable);
- RRC bill to information;
- Contractor name;
- Contractor address;
- Contractor remit payment to information;
- Texas Contractor Identification Number assigned by Texas Comptroller of Public Accounts;
- Invoice date;
- Invoice number (may not be duplicate invoice number from prior invoice submitted);
- Date(s) of delivery of services and/or goods;
- Description of services, to include (per site):
 - • Operator name
 - • Lease/site name
 - • County
 - • Price
 - • Invoice total
- Invoices should be emailed to invoices@rrc.texas.gov and matthew.bowman@rrc.texas.gov; and;
- Contractor's invoices submitted to and received by RRC, but which fail to conform to all invoice requirements stipulated within the Contract Documents will be returned to Contractor unpaid or will be held by RRC until all requirements for submittal of revised invoice and/or additional documents required by the Contract are satisfied.
- Contractor's invoices are due on the third day of the next month following the date on which all goods or services are provided pursuant to a work order. For mailed invoices, the postmark date will be considered the date on which RRC receives the invoice. Late invoices will accrue an administrative surcharge of fifty dollars (\$50.00) per week. The administrative surcharges due for late invoices shall be capped at three hundred dollars (\$300.00) or the amount due to be paid on the invoice, whichever is less.

A.3.6 Authorization of Payment

Prior to authorizing payment to Contractor, RRC shall evaluate Contractor's performance in accordance with Contract requirements.

A.3.7 Non-Reimbursable Items

RRC will not reimburse for travel, meals, lodging, or other related expenses unless specifically provided for under the Contract and pre-approved in writing by both the

RRC Authorized Representative and RRC Contract Manager assigned to the Contract. In such an event, costs will be invoiced to RRC based on actual expenses, and RRC shall not be liable for reimbursement of expenses that (i) were not preapproved in writing by RRC, or (ii) exceed the current State Travel Regulations. Contractors are required to provide receipts to validate invoicing for reimbursable expenses. State Travel Reimbursement Rates may be found at:
<https://fm.x.cpa.texas.gov/fmx/travel/texttravel/rates/current.php>.

Contractors shall note: RRC shall not reimburse for sales tax, travel, meals, lodging, or other related expenses that may be reasonably anticipated as part of the Contract or a Work Order issued thereunder.

A.3.8 No Prepayments

RRC will not prepay for any services provided to RRC by Contractor in performance of services or work under the Contract. RRC shall not make down payments, deposits, pay advances, advance deposits, or any other payments that are not made specifically for properly documented completed services approved for payment by and satisfactorily provided to RRC.

A.3.9 Refunds

Upon Contractor's discovery of any erroneous payment from RRC to Contractor of any funds, or upon receipt of written notice of erroneous payments issued by RRC, Contractor shall promptly refund or credit within thirty (30) calendar days any funds erroneously paid by RRC or which are not expressly authorized under the Contract.

A.3.10 Adding New Services to the Contract After Award

Following the Contract award, additional Services of the same general category that could have been encompassed in the award of this Contract, and that are not already on the Contract, may be added. A formal written request may be sent to Awarded Contractor(s) to provide a proposal on the additional services and Contractor(s) shall submit proposals to the RRC as instructed.

All prices are subject to negotiation with a Best and Final Offer (BAFO). RRC may accept or reject any or all proposals and may issue a separate Solicitation for the services after rejecting some or all of the proposals. The services covered under this provision shall conform to the terms, conditions, specifications and requirements as outlined in the request. Any resulting contract may be amended only upon the issuance of a written amendment showing the revision(s) prior to the services being provided as agreed, approved and signed by both parties.

A.4 ANTICIPATED SCHEDULE OF EVENTS

A.4.1 Due Date for Proposals

Responses must be received by the Contract Management Section, Railroad Commission of Texas, Austin, Texas **NO LATER THAN** the date and time specified within this solicitation, or as revised by Addenda, if any, to this solicitation. **RESPONSES RECEIVED AFTER THE DEADLINE DATE AND TIME WILL NOT BE CONSIDERED.** Please see **Section A.8 Submitting the Response to RRC** below.

A.4.2 Schedule of Events

The ***Schedule of Events*** at **Table 2** below provides dates applicable to this solicitation. At the sole discretion of RRC, this schedule may be revised through written addendum posted to the Texas Comptroller's ESBD website, no later than the Response due date and time. At sole discretion of RRC, award may occur at any time after due date of Responses and completion of evaluation of Responses received.

Table 2: Schedule of Events

<i>EVENT</i>	<i>DATE</i>
Issuance of Solicitation	April 20, 2026
Submission of HSP for RRC Courtesy Review	April 28, 2026
Deadline for Submission of Written Inquiries (no later than 2:00PM CT)	May 4, 2026
Response to Written Inquiries, if any (Addendum posted to ESBD)	May 8, 2026
Deadline for Submission of HSP for courtesy review	May 8, 2026
Response Due Date (no later than 2:00PM CT)	May 21, 2026

Estimated Award Date	June 25, 2026
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A.4.3 Inquiries and Addenda

Respondent solely is responsible for thoroughly understanding the solicitation and all attachments, exhibits, forms, and addenda, if any, issued. Should any Respondent find any ambiguity, conflict, discrepancy, exclusionary specification, omission, or other error in the solicitation, or should Respondent be in doubt as to the exact meaning of information within the solicitation, Respondent should immediately notify in writing via email or email with editable attachment (i.e., MS Word® document) RRC's sole point of contact for this solicitation (see solicitation **Section A.4.4 Prohibited Communications/Sole Point of Contact**). RRC shall not be responsible for oral instructions or for misinterpretation of the Solicitation and Contract Documents.

Respondents submitting inquiries must reference the relevant solicitation document, section, and page and should submit all questions by the inquiry deadline stated within **Schedule of Events** of this solicitation. RRC reserves the right to amend answers prior to the Response submission deadline, and RRC reserves the right to respond to questions received after deadline for submission of written questions. When issuing response to questions submitted, RRC shall issue Addenda posted to the Texas Comptroller's ESBD website.

Addenda issued, if any, shall be posted by RRC to the Texas Comptroller's ESBD website (<https://www.txsmartbuy.gov/esbd>). It is solely the responsibility of Respondents to check the Texas Comptroller's ESBD website for any and all updates to the solicitation. A Respondent's failure to check the Texas Comptroller's ESBD website for updates shall not release Respondent from the requirements of Addenda or additional information published within any Addenda.

A.4.4 Prohibited Communications/Sole Point of Contact

Upon issuance of this solicitation, RRC, its representative(s), and partners (if any) will not answer questions or otherwise discuss the contents of this solicitation with any potential Respondent or their representatives(s), except for the written inquiries submitted in accordance with **instructions**, below. Attempts to ask questions by phone or in person will not be allowed or recognized as valid. **FAILURE TO ADHERE TO THIS RESTRICTION MAY DISQUALIFY RESPONDENT AND RESPONDENT'S RESPONSE.**

Respondents shall rely only on written statements issued through or by RRC's Contract Management Section. This restriction does not preclude discussions between affected parties for the purposes of conducting business not related in any way to this solicitation.

For information related to this solicitation No. 455-26-1019, the project, and administration of any resulting Contract, RRC's sole Point of Contact shall be Matthew Bowman, Contract Manager, whose contact information can be found in **Section A8: Submitting the Response to RRC**.

A.5 PROPOSAL CONTENTS (REQUIRED)

A.5.1 Attachments Included with this Solicitation

Table 3 RRC Attachments is provided *as a general guide only* so that Respondent may note certain RRC solicitation Attachments that may be required to be returned with the Response submitted. ***Table 3 RRC Attachments is not intended as a minimum, comprehensive, or exhaustive checklist of required elements of a Response.*** Respondent solely is responsible for review and understanding of the entire solicitation including all terms, conditions, specifications, attachments, and addenda, if any, issued and for ensuring a submitted Response contains all required elements and forms to be considered responsive to the solicitation.

Table 3: Attachments

<u>Attachments</u>	<u>Return with Response?</u>
Attachment 1: Statement of Services	No
Attachment 2: Respondent's Statements and Covenants *Respondents Statements and Covenants Form must be completed, signed, and returned.	Yes (TAB D)
Attachment 3: Respondent's Qualifications Statement form *Respondent's Qualifications Statement must be completed, signed, and returned.	Yes (TAB D)

Attachment 4: VetHUB Subcontracting Plan (HSP) & VetHub Instructions *VetHUB Subcontracting Form must be completed, signed, and returned.	Yes (TAB D)
Attachment 5: Sample RRC Contract	No
Attachment 6: RRC Terms and Conditions	No
Attachment 7: Performance Evaluation Standards	No
Attachment 8: Federal Terms and Conditions	No
Attachment 9: Federal Forms *Federal Forms must be completed, signed, and returned.	Yes (TAB D)
Attachment 10: Guidance on Adhering to Federal Terms and Conditions *Guidance on Adhering to Federal Terms and Conditions must be completed, signed, and returned.	Yes (TAB D)
Attachment 11 Mandatory Rate Submission Sheet *Mandatory Rate Submission Sheet must be completed, and returned.	Yes (TAB D)

A.5.2 Organization of the Proposal for Submission

All Responses shall have all pages numbered and be organized in a manner that directly corresponds with the identified tabs set forth within this solicitation section. Responses shall contain all required information, at a minimum, and be stated in a clear and concise manner. Vague and general responses shall be considered nonresponsive

and thereby disqualified from consideration of Contract award. Respondent shall include all information that Respondent believes is necessary and/or helpful to RRC determining Respondent's qualifications and ability to deliver all goods and services in accordance with this solicitation, including the specifications stated within the SOS, and all terms and conditions of the Contract. Respondent shall submit a Response that includes, at a minimum, the following:

TAB A-Title Page

The response title page must include:

- RRC's solicitation number: RFP No. 455-26-1019
- Respondent's name and physical address
- Respondent's Contractor Identification Number (11-digit number issued by the Texas CPA); and/or
- Respondent's Federal Employer Identification Number (9-digit number issued by the IRS); and
- Respondent's authorized agent's signature, printed name, title, and date of signature to Response.

TAB B-Executive Summary

Respondent's Executive Summary should include a clear, comprehensive summary of Respondent's qualifications and experience applicable to the requirements of this solicitation, Respondent's Executive Summary should include, at a minimum, the following:

- Summary of Respondent's qualifications, including licenses and/or certifications if applicable and/or required by this solicitation, and a statement of Respondent's ability to meet or exceed required minimum qualifications;
- Summary of Respondent's experience in delivery of same or substantially similar services as those required under this solicitation, and a statement of Respondent's ability to meet or exceed required minimum experience;
- Clear, concise, detailed explanation of Respondent's exceptions taken, if any, to the terms and/or conditions of this RFP.

TAB C-Experience and Qualifications

Tab C shall include elaboration of, and details related to, the three (3) projects identified within **ATTACHMENT 3: Respondent's Qualification Statement**. Submitted projects shall demonstrate the capability of providing expertise in all applicable codes and standards including but not limited to:

- a. Title 16 Texas Administrative Code Chapter 12, Sub Chapter R;

- b. Surface Mining Control and Reclamation Act of 1977 Title IV (SMCRA)
- c. Clean Water Act (CWA)

Respondent may provide details of additional projects in addition to the three (3) identified in **ATTACHMENT 3: Respondent's Qualification Statement**. Any additional projects provided shall demonstrate Respondent's ability to meet or exceed the minimum qualifications and experience required to deliver the Reclamation Services described within **ATTACHMENT 1: Statement of Services**.

Respondent is solely responsible for providing sufficient details to ensure RRC's evaluation committee members can determine Respondent's understanding of the solicitation, the Statement of Services, and scope of work and specifications applicable to performance of the Reclamation Services.

TAB D-Respondent's Submittals

Required RRC Solicitation Attachments

Tab D shall include properly completed Required RRC Solicitation Attachments identified within this section. Failure to include each and all the Required RRC Solicitation Attachments shall result in the Response being deemed nonresponsive to the solicitation and disqualified from consideration of Contract award. The Required RRC Solicitation Attachments applicable to this solicitation include:

- **ATTACHMENT 2:** Respondent's Statements and Covenants
- **ATTACHMENT 3:** Respondent's Qualification Statement
- **ATTACHMENT 4:** VetHUB Subcontracting Plan (HSP)
- **ATTACHMENT 9:** Federal Forms
- **ATTACHMENT 10:** Guidance on Adhering to Federal Terms and Conditions
- **ATTACHMENT 11:** Mandatory Rate Submission Sheet

*****Please Note** submission of PDF's must be submitted independently of one another and titled as such.***

In addition to the Required RRC solicitation Attachments, a Respondent shall include within Tab D Respondent's Submittals section any additional statements, including any statements arising from this solicitation, or such other information Respondent deems necessary, valuable, and appropriate to fully inform RRC of Respondent's qualifications, expertise, and superiority in selection as a Contractor for Contract award.

A.6 DISCLOSURES

Each Response shall include (within Tab D Respondent's Submittals) Respondent's statements addressing the following disclosures:

A.6.1 Changes in Ownership Conditions

Respondent shall include a statement certifying Respondent will notify RRC of:

- Any change in ownership during the period prior to Contract award, and
- Any change in ownership during the term of the Contract or any extension or renewal period(s) thereof.

Respondent shall notify RRC in writing, immediately on or before the change in ownership occurs or is identified. Failure of Respondent and/or Contractor to notify RRC as required herein shall be grounds for rejection of the Response and/or termination of the Contract.

A.6.2 Legal Actions

Respondent shall identify any pending or completed legal actions that were brought against Respondent, Respondent's agents, officers, and/or Respondent's subcontractors, within the five-year period immediately preceding the Response due date and that relate to failure to perform contracted services, breach of contract, mismanagement of a contract, and/or assessment of any penalties or liquidated damages under any contract with any governmental entity. Respondent shall provide details related to jurisdiction of legal action or contract dispute, reason for penalties or liquidated damages, and penalties or liquidated damages amount for each incident.

A.6.3 Other

In addition to the disclosures stated above, Respondent shall include any disclosures necessary to conform with solicitation *ATTACHMENT 2:*

Respondents Statements and Covenants. Respondent is strongly encouraged to carefully and thoroughly review each statement and covenant within the solicitation to determine applicability of disclosures and to ensure Respondent's Response includes all mandatory disclosure statements applicable to Respondent including, but not limited to, conflicts or potential conflicts of interest

A.7 EVALUATION OF THE PROPOSAL

RRC intends to award one or more Contract(s) for Reclamation Services, throughout the state of Texas. To determine highly qualified providers, Responses first shall be

evaluated to determine pass/fail of criteria demonstrating responsiveness to this solicitation. Responses deemed responsive shall advance to weighted criteria evaluation and scoring. At conclusion of weighted evaluation and scoring RRC shall determine, in its sole discretion, whether to request pricing and/or oral presentations and/or engage in the Best and Final Offer (“BAFO”) process. RRC reserves the right to continue to evaluate Responses until achievement of best value to the State as defined by and in accordance with Texas Government Code §2155.074 and §2155.075.

A.7.1 Responsiveness

Each Response shall be evaluated to determine responsiveness to this Solicitation. Determination of responsiveness shall include, but may not limited to, pass/fail determination of a Response in:

- Compliance with Costs of Response Preparation;
- Compliance with Veteran Heroes United in Business (VetHUB) Requirements (including all subsections); Compliance with Organization of Response (including all subsections); and
- Compliance with RRC General Terms and Conditions.

A Respondent’s failure to comply with one or more requirements of this Solicitation may result in the Response being deemed non-responsive and thereby disqualified from further consideration of award of a Contract. The list within this subsection is intended for general guidance only and is not intended as an exhaustive list of responsiveness criteria related to this Solicitation. It is Respondent’s sole responsibility to thoroughly review the Solicitation and Contract Documents of this Solicitation, including all attachments and addenda issued, if any, to ensure understanding of requirements for responsiveness. All determinations of responsiveness to this Solicitation shall be final.

A.7.2 Evaluation and Award of Contract

A Contract may be awarded by RRC to the Awarded Contractor(s) in response to this solicitation.

The RRC reserves the right to award Contract(s) without any negotiations and reserves the right to not make awards. Submission of a Proposal confers no rights on Respondent to an award or to a subsequent Contract, if there is one. The issuance of this solicitation does not guarantee that a Contract will ever be awarded. RRC reserves the right to withdraw the solicitation entirely for any reason solely at RRC’s discretion. An individual Proposal may be rejected if it fails to meet any requirements of this solicitation. RRC may seek clarification from Respondent at any time during the evaluation period, and failure to respond may be cause for rejection of a Proposal.

Upon execution of a Contract resulting from this solicitation, the term “Respondent” shall have the same meaning as “Contractor”.

The Contractor shall not begin or provide services until issuance of a Contract, Purchase Order, and Notice to Proceed by RRC.

The Respondent is strongly encouraged to provide its best price in its Proposal.

RRC shall award a Contract(s) to the Respondent(s) whose proposal is considered to be the best value to the state, as defined in §2155.074, Gov't Code. **ATTACHMENT 5: RRC Sample Contract** of this solicitation represents the anticipated Contract (along with its incorporated exhibits) which will be entered into with the Contractor(s) and lists the additional terms and conditions governing this solicitation. The RRC may make its award to Respondent(s) based on any combination, including, but not limited to line item that provides best value to the State.

The State of Texas may consider, at its option, alternative services for award which may not meet the full specifications, however, represent a best value to the State of Texas within the listed service classification.

Each evaluated Proposal will be reviewed and scored according to **Table 4 Weighted Criteria below**.

A.7.3 Evaluation Criteria for Each of the Proposal Components

Responses that are deemed responsive shall undergo evaluation of weighted criteria and scoring to determine highly qualified Respondents based upon demonstrated competence and detailed credentials. Weighted criteria evaluation shall apply the best value standard for purchase of goods or services as set forth in Texas Government Code §2155.074. Factors that may be considered include:

- Qualifications of Respondent, Respondent's personnel, and/or Respondent's subcontractors;
- Respondent's ability to perform Reclamation Services required under the Contract and to promptly and timely provide Services without delay or interference;
- Respondent's ability to perform Mining Industry Reclamation Services is preferred. Mining Industry Reclamation Service project experience will be evaluated at a greater weight;
- Indicators of Respondent's probable performance under the Contract. Indicators may include but not be limited to Respondent's past performance on RRC projects, Respondent's financial resources, and Respondent's experience or

demonstrated capability and responsibility in delivery of same or substantially similar services;

- Respondent's compliance with Solicitation Response submission requirements; and
- Respondent's acceptance of terms and conditions.

The criteria and respective weight to be used in determining the best value for the State are indicated below.

WEIGHTED CRITERIA

Table 4: Weighted Criteria

<u>CRITERIA</u>	<u>WEIGHTED</u>
Reclamation Qualifications and Experience	60%
Price/Cost	30%
Overall Clarity and Responsiveness	10%
Total Percentage Points	100%

A.7.4 Evaluation and Scoring

- **Respondent Qualifications 60%.** Evaluation and scoring shall include, but is not limited to, contents in Response ***TAB B Executive Summary*** including Respondent's ability to meet and exceed minimum qualifications stated in this RFP, contents in Response ***TAB C Experience And Qualifications*** that demonstrate Respondent's experience and success in delivery of same or substantially similar services as those required under this RFP, contents in Response ***TAB D Respondent's Submittals***, and Respondent's past performance as evidenced by Texas CPA Contractor Performance Tracking System score (if any).
- **Price/Cost 30%** Evaluation and scoring shall be evaluated based upon the extension totals of the line items, compliance with advertised specifications, terms and conditions, proposal requirements and the qualifications of the respondent and its personnel. The estimated quantities stated in the RFP

ATTACHMENT 11: *Mandatory Rate Submission Sheet*, are not guaranteed and are solely for response evaluation purposes. Payments under this contract will be based on the unit prices accepted by RRC multiplied by the actual quantities resulting from performance of the services.

- **Overall Clarity and Responsiveness 10%.** Evaluation and scoring shall include, but is not limited to, overall organization and presentation of Response, demonstration of understanding of solicitation requirements.

A.7.5 Past Performance

A Respondent's past performance on a State contract, if any, shall be assessed in compliance with applicable provisions of Texas Government Code Chapters 2155 and 2156. Respondents may fail this selection criterion should one or more of the following conditions apply to Respondent:

- A score of less than C or Legacy Unsatisfactory in the [Texas Comptroller's Contractor Performance Tracking System](#);
- Currently under a Corrective Action Plan through RRC;
- Having repeated negative Contractor Performance Reports for the same reason;
- Having a record of repeated non-responsiveness to Contractor Performance issues; and/or
- Having one or more Purchase Orders that have been cancelled for non-performance in the previous 12 months.

To evaluate and score Respondent's past performance, RRC may also make inquiry with other entities including Respondent's references within solicitation **ATTACHMENT 3: *Response Qualification Statement*** and/or any federal, state, or local government agency. RRC may conduct research and investigation as deemed necessary to fully evaluate Respondent's past performance and may consider notices of termination, cure notices, assessment of liquidated damages, litigation, audit reports, contract non-renewals, and other performance related facts, reports, actions, or information. Any such investigations shall be at the sole discretion of RRC and any negative findings, as determined by RRC, may result in non-award to the Respondent.

A.7.6 Contract Negotiation

RRC reserves the option to negotiate with one or more Respondents deemed highly qualified to provide the Reclamation Services sought by RRC. Negotiation elements may include, but shall not be limited to pricing, (type description of service here) Services included in a Contract award, and terms and conditions. RRC reserves the right to continue negotiations until the best value for RRC and the State has been achieved as determined in RRC's sole discretion.

A.7.7 Best and Final Offer (“BAFO”)

At the sole discretion of RRC, after completion of weighted criteria evaluation, scoring, and oral presentations (if any), RRC may award a Contract or may request BAFOs from one or more Respondents whose scores are sufficient to qualify the Respondent(s) for further consideration and negotiation as determined exclusively by RRC. In event RRC issues a request for BAFO, Respondents may be permitted to modify an original Response, and the RRC Contract Management Section shall evaluate the BAFOs received.

A.7.8 Multiple awards

The RRC may award multiple Contracts from this solicitation. The Respondent(s) providing the best value to the State may be chosen as the State’s primary or “best value contractor”. Additional Respondents may be awarded Contract at the sole discretion of RRC in order to provide alternate resources for meeting the requirements of the requested services.

A.8 SUBMITTING THE RESPONSE TO RRC

Responses must be emailed to the Contract Management Section, RRC Contract Manager listed in **Table 5: Response Submittal Options** below NO LATER THAN the date and time specified within this RFP, or as revised by Addenda, if any, to this RFP. **RESPONSES RECEIVED AFTER THE DEADLINE DATE AND TIME WILL NOT BE CONSIDERED.**

In order for response to be considered responsive Contractor must submit one (1) electronic copy submitted by email to the Contract Manager whose information is listed in **Table 5: Response Submittal Options**.

RESPONSES THAT DO NOT MEET ALL REQUIREMENTS OR CONTAIN ALL REQUIRED DOCUMENTATION SPECIFIED IN THIS RFP WILL BE REJECTED AS NON- RESPONSIVE.

ANY RESPONSE SUBMITTED BY FACSIMILE, MAIL, OR OTHER METHOD WILL BE REJECTED. ONLY EMAIL RESPONSES ARE ACCEPTABLE. FAILURE TO ADHERE TO THESE REQUIREMENTS WILL CAUSE THE CONTRACTOR TO BE CONSIDERED NON-RESPONSIVE AND DISQUALIFIED FROM AWARD.

Table 5: Response Submittal Options

<u>E-Mail Delivery</u>
RFP 455-26-1019 Railroad Commission of Texas Contract Management Section Matthew Bowman, Contract Manager matthew.bowman@rrc.texas.gov

A.9 ADDITIONAL INSTRUCTIONS

A.9.1 Accuracy of the Proposal

The Respondent's Proposal shall be true and correct and shall contain no cause for claim of omission or error. Proposals may be withdrawn in writing at any time prior to the submittal deadline.

A.9.2 Confidential Information; Public Information Act

RRC is a governmental body subject to the Texas Public Information Act ("PIA"), Texas Government Code Chapter 552. Any Response and other information submitted to RRC by Respondent are subject to release as public information by RRC. A Response and other submitted information are presumed subject to disclosure unless a specific exception to disclosure under the PIA applies. If it is necessary for Respondent to include proprietary or otherwise confidential information in its Response or other submitted information, the Respondent must clearly label that proprietary or confidential information and identify the legal basis for confidentiality. Merely making a blanket claim that the entire Response is protected from disclosure because it contains some proprietary information is not acceptable and will make the entire Response subject to release under the PIA. In order to trigger the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the Response that are considered by the Respondent to be proprietary or confidential must be clearly labeled as described above. Any information which is not clearly identified by the Respondent as proprietary or confidential will be deemed subject to disclosure pursuant to the PIA. Respondent will be deemed to have irrevocably waived, and to have agreed to fully indemnify the State of Texas and the RRC against, any claim of infringement by RRC regarding the intellectual property rights of Respondent or any third party for any materials appearing in the Response.

Respondent is required to make any information created or exchanged with a state governmental entity (as defined by Texas Government Code §2252.907(d)) pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public

Information Act, available in at least one of the following formats that is accessible by the public at no additional charge to the State of Texas and/or RRC. Acceptable formats include, but are not limited to, .PDF format compatible with the latest version of Adobe Acrobat®; Microsoft Word®; Microsoft Excel®; or, hard copy (paper).

If Respondent's Response contains any information which Respondent claims is confidential and not subject to release under the PIA, Respondent must prepare and submit by email to the Contract Manager whose information is listed in **Table 5: Response Submittal Options**, two separate PDF documents containing the following information:

One PDF document containing complete copies of all of Respondent's submissions pursuant to this solicitation. Respondent must label this PDF document "**Complete Response Documents, [Respondent's Name], RRC Solicitation No. 455-26-1019. CONTAINS CONFIDENTIAL INFORMATION.**"

One PDF document containing copies of all of Respondent's submissions with all information claimed as confidential excised, blacked out, or otherwise redacted. This document must also contain an appendix which contains clear references to all redacted information including a general description of the redacted information. Respondent must label this PDF document "**For Public Release: Redacted version of [Respondent's Name], RRC Solicitation No. 455-26-1019.**"

A.9.3 Irrevocability of the Proposal

The Proposal is irrevocable for ninety (90) calendar days following the Proposal Opening Date and Time identified in this solicitation. This period may be extended at the RRC's request with the Respondent's written agreement.

A.9.4 Affirmations and Required Clauses

Pursuant to TGC, Section 2262.003, contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, agency or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards.

Pursuant to Texas Government code, Title 10, Subtitle D, Section 2155.004(a), the bidder has not received compensation for participation in the preparation of specifications for this solicitation.

Pursuant to Texas family code, title 5, Subtitle D, Section 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, any bidder subject to Section 231.006 must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award.

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 that is owed to the State of Texas.

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

A.9.5 Conflicting Solicitation Language

In the event that language contained in a particular Section of the solicitation is found to be in conflict with language in another Section, the most stringent requirement(s) shall prevail.

Statement of Services

1. Introduction

Contractor shall provide all labor, materials, equipment, tools, incidentals, and services necessary to deliver Reclamation Services for the RRC, as directed. All work under the Contract shall be performed in accordance with applicable federal, state, and local statutes, laws, ordinances, regulations, and rules, including RRC Statewide Rules, the specifications within this SOS and any Work Order issued under the Contract, and all terms and conditions of the Contract.

2. Background

Texas Natural Resources Code Chapter 134 and Texas Administrative Code Title 16 Chapter 12 provide that, in connection with surface coal mining and reclamation, the RRC may perform activities necessary or expedient to protect the public health, safety, or general welfare and to restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices (collectively, Reclamation Services).

The Abandoned Mine Land program division of the RRC is tasked with the reclamation of abandoned surface mines which usually consists of the following: earthwork (highwall reduction and spoil recontouring) burial or treatment of unsuitable spoil (usually acidic or naturally occurring radioactive spoil) and installation of erosion and water control structures and revegetation. Dangerous abandoned underground mine openings are usually closed by one of the following methods: backfilling, capping (concrete or metal grating) or metal gating.

The RRC does not have the personnel or the equipment required to perform Reclamation Services and seeks to prequalify Reclamation Firms deemed highly capable of completing all work required under a Contract arising from RFP No. 455-26-1019 and any Work Order issued thereunder.

3. Scope of Services

Contractor shall deliver Reclamation Services including but not limited to services detailed under this **Section 3. Scope of Services** for the RRC. Contractor shall deliver the Services in accordance with the terms and conditions of the Contract while adhering to the highest of applicable professional standards. All Respondents to this Solicitation must submit qualifications for Reclamation Services to be considered for a Contract.

Under the direction of RRC staff, Contractor shall be solely responsible for performance of all work required under the contract. Contractor's responsibilities shall include, but not be limited to, the following services:

- Determine and provide the necessary personnel, equipment, services, and materials required to reclaim mines included in a Work Order.
- Reclaim abandoned mine lands and contamination through earthwork which includes, but is not limited to:

- Remediation of ground subsidence features including but not limited to: underground and surface mine subsidence and depressions
- Surface and groundwater remediation, including but not limited to: stream, wetland, and pond remediation in accordance with Clean Water Act 402 and 404 permits; water treatment facilities, dewatering/pumping systems, water control channels
- Obtain necessary TPDES permits and implement a stormwater pollution prevention plan
- Soil handling including but not limited to: excavation and soil segregation, stockpiling and redistribution, highwall and spoil ridge reduction
- Contractor shall locate a source for clean clay and/or fill material and haul to work site, or use borrow area on site for backfilling operations
- Revegetation including the use of natives and/or like for like species
- Construction of roads, gates, fencing, wildlife exclusion fencing
- Burning, clearing, grubbing, and waste removal and disposal
- Implement erosion and sediment control measures, and appropriate final grading techniques
- Drilling and grouting operations
- Acid forming materials remediation
- Acid seep remediation per design
- Restore land to a habitable condition
- Respondent shall perform reclamation observation and post-reclamation/post-construction monitoring at AML sites
- Compare feasibility and cost-effectiveness of remedial solution
- Other tasks as required

4. Work Order Process

Respondents awarded a Contract arising from this RFP shall be subject to RRC's Work Order process for work required under the Contract. RRC's Work Order process shall include RRC first selecting the most suitable Contractor of RRC's pre-qualified Contractors, in terms of ability to provide the particular Reclamation Services required, proximity to the worksite, availability, and any other relevant factors at the sole determination of RRC. It is at RRC sole discretion to negotiate Work Order price with pre-qualified Contractor using the following process:

- RRC shall submit to Contractor a Work Order request which shall include a scope of work to be performed at one or more sites specified within the Work Order.
- Within the number of days specified within a Work Order request, Contractor shall complete and return the information requested by RRC, including applicable pricing for all work required to deliver all Reclamation Services specified within the Work Order request.
- Contractor's failure to return to RRC the information requested within the required days specified within the Work Order request may result in RRC retracting the Work Order request from Contractor and submitting to another Contractor some or all Reclamation Services specified within the Work Order request.

- RRC shall review the Contractor's response to the Work Order request to determine whether the response is fair and reasonable, negotiating if necessary any unacceptable terms, conditions, and pricing of the Work Order, until the RRC and Contractor enter into written acceptance of the Work Order or formally end negotiations between RRC and the Contractor for that Work Order.
- Upon RRC's and Contractor's written acceptance of a Work Order, RRC shall issue a written NTP for Reclamation Services to be delivered in accordance with the Work Order.
- Contractor shall submit any and all Insurance, or other specified documents to RRC prior to RRC issuing a written NTP.
- Contractor shall not commence work under a Work Order prior to receipt of RRC's written NTP to Contractor for the Work Order.
- Upon receipt of RRC's written NTP, Contractor shall promptly commence performance of the Services in accordance with the Work Order and work schedule specified therein.
- Contractor shall perform all work with sufficient diligence to ensure timely completion of all Reclamation Services to be delivered under the Work Order.

5. Work Schedule

TIME IS OF THE ESSENCE AND IS AN ESSENTIAL ELEMENT OF THE CONTRACT.

Within the time specified within RRC's written NTP, Contractor shall mobilize all necessary equipment, materials, and personnel to one or more sites in accordance with the Work Order specifications. The Contractor shall remain on the job until the RRC Authorized Representative has deemed all Reclamation Services required have been completed on all sites specified in the Work Order. Contractor shall comply with the following Work Schedule requirements:

- At least 24 hours prior to scheduled move-in date applicable to a Work Order, Contractor may submit to the RRC Authorized Representative a written request for an extension to the move-in date.
- It is the sole discretion of RRC to approve any requested extension to a move-in date.
- RRC shall issue approved extensions in writing.
- Only extensions authorized by RRC in writing shall be honored by RRC as acceptable delay to the move-in date.
- Should Contractor fail to move in by the designated deadline, RRC reserves the right to unilaterally revoke the Work Order and/or terminate the Contract. In the event of Work Order revocation and/or Contract termination under this provision, RRC may award the Work Order and/or Contract to the next qualified Contractor offering the best value to the state as determined by RRC.
- Contractor shall diligently conduct work during daylight hours, daily, Monday through Friday, weather permitting. Any alterations to the work schedule shall be submitted in writing by Contractor to RRC and must be approved in writing by RRC's Authorized Representative prior to Contractor's change in the work schedule.

- At RRC's discretion, Saturdays and Sundays may be approved as workdays.
- Contractor shall not perform any work without authorization of RRC's onsite Authorized Representative. Any work performed by Contractor without prior written authorization from the RRC's Authorized Representative or without presence of an RRC onsite Authorized Representative shall be deemed undertaken and performed at Contractor's risk of rejection of work and/or subject to Contractor's sole responsibility for all costs associated with work necessary to repair or improve work rejected by RRC.
- Contractor shall prepare and submit a daily work report to RRC's onsite Authorized Representative at the end of each workday or prior to start of the subsequent workday.
- Failure to submit daily reports may result in termination of Contract.
- The daily work report shall be in a format designated by RRC's Authorized Representative and shall include, but is not limited to, the following information:
 - A brief description of the services delivered by Contractor that day;
 - As applicable, itemized costs attributable to services provided that day and a total cost of all services delivered that day;
 - A listing of each of Contractor's subcontractors used that day;
 - The type and volume of all waste removed, if any, from the site that day and a listing of each of Contractor's disposal and/or recycling facilities receiving waste from the project that day; and
 - A listing of each service provider's names for each of Contractor's waste haulers used that day and each of their respective RRC WHP number(s).
- Failure of Contractor to comply with requirements of the RRC Authorized Representative under this section may result in Contractor performance being deemed unsatisfactory and/or insufficient to ensure completion of the work under the Contract or Work Order within the time specified in the Contract or Work Order. In such an event, RRC may terminate Contractor's right to proceed with the work, or any separable part of the work, in accordance with Contract terms and conditions.

6. Contractor Responsibilities

Contractor shall determine and provide all labor, materials, equipment, tools, incidentals, and services, including coordination and supervision of Contractor's staff and subcontractors and all staff and subcontractor work activities, necessary to access site locations and perform Reclamation Services in accordance with all terms, conditions, and specifications of the Contract and any Work Order issued thereunder.

Contractor shall conduct and deliver services in accordance with procedures approved by the RRC and in accordance with applicable RRC Statewide Rules.

Contractor shall obtain written approval of the RRC Authorized Representative prior to making or commencing with any changes to an approved Work Order's work plan or procedure.

Contractor shall schedule and manage resources to ensure safe and efficient prosecution of all Reclamation Services.

Contractor shall maintain all appropriate training, licenses, permits, certifications, and registrations applicable to performance of work and delivery of Reclamation Services throughout the lifetime of the Contract.

Contractor shall conduct daily onsite safety meetings prior to Contractor commencing work, if applicable. Contractor's safety meetings shall include, at a minimum, a review of safety protocols and procedures applicable to the day's work and discussion of Contractor's work plan for the project(s) that day.

Contractor shall maintain a safe work environment and ensure Contractor's staff and subcontractors comply with all applicable safety laws, rules, policies, and standards including but not limited to those put forth by the U.S. Department of Labor Occupational Safety and Health Administration ("OSHA").

Contractor shall ensure all Contractor's personnel, including Contractor's subcontractors, observe prudent safety practices, including but not limited to the use of gloves, foot protection, eye protection, hearing protection, head protection, safety vests, and other personal protective equipment appropriate to the work place and hazards of the project and in accordance with OSHA and industry accepted standards.

Contractor's onsite safety practices shall include, at a minimum, the following:

- When a negotiated Work Order requires excavation, Contractor shall comply with all laws, rules, and ordinances applicable to damage prevention of underground utilities and underground pipelines.
- In emergencies affecting the safety or protection of persons, work, or property on the site or adjacent thereto, Contractor, without special instructions or authorization from the RRC Authorized Representative, is obligated to act to prevent threatened damage, injury, or loss, and to be fully responsive to directives issued by authorized official emergency personnel, including any emergency response Contractor contracted by RRC. Contractor shall give prompt notification to the RRC Authorized Representative in event such emergency occurs.
- Under no circumstances shall Contractor's employees, subcontractors, or subcontractors' employees enter any excavation, pit, or vessel without applying proper safety precautions and without observing all applicable safety regulations.

Any health and safety program or manual required under the Contract and such site-specific health and safety plan as may be required by the RRC Authorized Representative or law shall remain and be maintained at the site, readily accessible for review by all Contractor's employees, Contractor's subcontractors, and subcontractors' employees, and by the RRC Authorized Representative.

Contractor shall invoice RRC in accordance with the terms and conditions of the Contract.

Respondent's Statements and Covenants

By signature hereto, Respondent makes and agrees to the following certifications, covenants, representations, statements, and warranties, as applicable:

1. The provisions in **RFP No. 455-26-1019** apply to Respondent and all of Respondent's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or who otherwise are interested in the RFP or the Contract arising therefrom.
2. Respondent certifies Respondent's intent to furnish the requested goods and/or services at the prices quoted in its Response, and notwithstanding any disclaimers in Respondent's Response and notwithstanding any other provision of the RFP or the Contract to the contrary, Respondent warrants and guarantees that all goods and services shall meet all specifications of the Contract.
3. Respondent certifies Respondent's prices include all costs of Respondent in providing the requested items that meet all specifications of this RFP, and that its prices will remain firm for acceptance for a minimum of one hundred eighty (180) calendar days from deadline for submission of Response or issuance of Work Order.
4. Each of Respondent's employees, including replacement employees hired in the future, shall possess the qualifications, education, training, experience, and certifications required to perform the services in the manner required by the RFP.
5. Respondent represents and warrants that Respondent's provision of goods and/or services, or other performance under the Contract, will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
6. Pursuant to Texas Government Code Section 2155.003, Respondent has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract.
7. Respondent represents and warrants that RRC's payments to Respondent and Respondent's receipt of appropriated or other funds under the Contract are not prohibited by Texas Government Code §§556.005 or 556.0055.
8. Respondent represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed to the State of Texas under Texas Tax Code Chapter 171. In addition, if Respondent is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the following certification applies:

Contractor certifies that it holds a permit issued by the Texas Comptroller to collect or remit all state and local sales and use taxes that become due and owing as a result of the individual's or entity's business in Texas, or certifies that it does not sell tangible personal property or services that are subject to the state and local sales and use tax.

9. Respondent represents and warrants that Respondent shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, state, or local income, sales, or excise taxes of Respondent and Respondent's employees. RRC shall not be liable for any taxes resulting from this Contract.
10. Respondent represents and warrants that in accordance with Texas Government Code §2155.005, neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent, nor anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Texas Business and Commerce Code Chapter 15, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Response to any competitor or any other person engaged in the same line of business as Respondent.

Respondent assigns to RRC all of Respondent's rights, title and interest in and to all claims and causes of action Respondent may have under the antitrust laws of Texas or the United States for overcharges associated with this RFP or any resulting contract.

11. By submitting a Response, Respondent represents and warrants that the individual submitting this **Respondent's Statements and Covenants** and the documents made part of the Response is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract that may result from the submission of the Response.
12. Respondent certifies that if a Texas address is shown as the address of Respondent within the Response, Respondent qualifies as a Texas Bidder as defined in Texas Government Code §2155.444(c).
13. Under Texas Family Code §231.006, regarding child support, Respondent certifies that the individual or business entity named in the Response and any Contract resulting from the Response to this RFP is not ineligible to receive the specified payment and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, pursuant to Texas Family Code §231.006(j), in event of Contract award, Respondent agrees to provide, prior to Contract award, the name and Social Security Number for each person with 25% or greater ownership interest in the business entity.

14. Under Texas Government Code §669.003, Respondent certifies that it does not employ, or has disclosed its employment of, any former executive head of RRC. Respondent must provide the following information in the Response.

Name of Former Executive: _____

Name of State Agency: _____

Date of Separation from State Agency: _____

Position with Respondent: _____

Date of Employment with Respondent: _____

15. Respondent has not been the subject of allegations of deceptive trade practices violations under Texas Business and Commerce Code Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit, and Respondent has not been found to be liable for such practices in such proceedings.

Respondent certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of deceptive trade practice violations or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers have not been found to be liable for such practices in such proceedings.

16. In accordance with Texas Government Code §2155.4441, Respondent agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
17. Pursuant to Texas Government Code §2271.002, Respondent certifies that either (i) it meets an exemption criterion under Texas Government Code §2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Contract resulting from this solicitation. **Respondent shall state any facts that make it exempt from the boycott certification in its Proposal.**
18. Pursuant to Texas Government Code §2273.003, Respondent certifies that either (i) it meets an exemption criterion under Texas Government Code §2273.003; or (ii) it is not an abortion provider or an affiliate of an abortion provider during the term of the Contract resulting from this solicitation.
19. Pursuant to Texas Government Code §2276.002, Respondent certifies that it (i) does not boycott energy companies; and (ii) will not boycott energy companies during the term of the contract.
20. Pursuant to Texas Government Code §2274.002, Respondent certifies that it (i) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (ii) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

21. Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Texas Government Code §2252.152.
22. Respondent certifies that it is not listed in the prohibited Contractors list authorized by Executive Order 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.
23. If Respondent is submitting a Response for the purchase or lease of computer equipment, then Respondent certifies its compliance with Texas Health and Safety Code Chapter 361, Subchapter Y, and Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.
24. Respondent shall ensure that any Respondent employee or subcontractor employee who has access to a state computer system or database shall complete a cybersecurity training program certified under Texas Government Code §2054.519. Such training is required to occur during the Contract term and the renewal period. Respondent shall provide RRC with verification of the completion of the requisite training.
25. Respondent represents and warrants that within the five (5) calendar years immediately preceding the submission of the Response, Respondent is not aware of and has received no notice of any court or governmental agency actions, proceedings, or investigations, etc., pending or threatened against Respondent, or any of the individuals or entities included in Respondent's Response, that would or could impair Respondent's performance under any contract resulting from this RFP, relate to the solicited or similar goods or services, or otherwise be relevant to RRC's consideration of the Response. If Respondent is unable to make such representation and warranty, Respondent instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Respondent's performance under any contract resulting from this RFP, relate to the solicited or similar goods or services, or otherwise be relevant to RRC's consideration of the Response. In addition, Respondent represents and warrants that it shall notify RRC in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update RRC shall constitute breach of contract and may result in immediate termination of any agreement resulting from this RFP.
26. Respondent represents and warrants that Respondent and each of Respondent's subcontractors have the requisite resources, qualifications, and independence to conduct the services free from outside direction, control, or influence, and subject only to the accomplishment of RRC's objectives.

27. Respondent represents and warrants that neither Respondent nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, identified in the Response has been convicted of a felony criminal offense, or that if such a conviction has occurred Respondent has fully advised RRC of the facts and circumstances in its Response.
28. Respondent has read and agrees to all terms and conditions of this RFP, unless Respondent specifically takes an exception and proposes an alternative provision in Respondent's Response (see RFP Terms and Conditions, Section 1.16 Order of Precedence; Prohibited Exceptions.)
29. Pursuant to Texas Government Code §572.069, Respondent warrants and certifies Respondent will not employ any RRC officer or employee, who in any manner participated in a procurement process or contract negotiations for RRC involving Respondent within two (2) years after the date that the contract is signed or the procurement is terminated or withdrawn. This certification only applies to former state officers and employees whose state service or employment ceased on or after September 1, 2015.

Respondent shall disclose any current or former employees or subcontractors who are current or former employees of the State of Texas and shall disclose their role or position relative to the provision of services under the Contract, as well as their hire or contract date. Respondent shall also disclose any proposed personnel who are related by marriage or within the second degree of consanguinity to any current or former employees of the State.

Failure to fully disclose the information required under this paragraph may result in disqualification of Respondent's Response or termination of the Contract.

30. Respondent represents and warrants that if selected for award of a Contract arising from this RFP, prior to submitting the signed Contract to RRC, Contractor shall comply with Texas Government Code §2252.908, relating to Disclosure of Interested Parties, by accessing the Texas Ethics Commission ("TEC") portal (<https://www.ethics.state.tx.us/>), reviewing the instructional video, creating a username and password, and completing and electronically filing with the TEC the "Certificate of Interested Parties".
31. Respondent certifies that for contracts for services Respondent shall utilize the **U.S. Department of Homeland Security's E-Verify system** during the term of the Contract to determine the eligibility of:
 - a) All persons employed by Respondent to perform duties within Texas; and
 - b) All persons, including subcontractors, assigned by Respondent to perform work pursuant to the Contract, within the United States of America.If it is determined that Respondent has violated the certification set forth in this section, the (1) Respondent shall be in breach of the Contract, (2) RRC shall have the option to terminate the Contract for cause without prior notice, and (3) in

addition to any other rights or remedies available to RRC under the Contract, Respondent shall be responsible for all costs incurred by RRC to obtain substitute services to replace the terminated Contract.

32. Respondent acknowledges and agrees that, to the extent Respondent owes any debt including, but not limited to, delinquent taxes, delinquent student loans, and child support owed to the State of Texas, any payments or other amounts Respondent is otherwise owed under the Contract may be applied toward any debt Respondent owes the State of Texas until the debt is paid in full. These provisions are effective at any time Respondent owes any such debt or delinquency.
33. In accordance with Texas Government Code §552.372, Respondent agrees to (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to RRC for the duration of the Contract, (2) promptly provide to RRC any contracting information related to the Contract that is in the custody or possession of the Respondent on request of RRC, and (3) on termination or expiration of the Contract, either provide at no cost to RRC all contracting information related to the Contract that is in the custody or possession of the Respondent or preserve the contracting information related to the Contract as provided by the records retention requirements applicable to RRC. Except as provided by Texas Government Code §552.374(c), the requirements of Texas Government Code Chapter 552, Subchapter J, may apply to the Contract and the Respondent agrees that the Contract can be terminated if the Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.
34. Pursuant to 34 Texas Administrative Code §20.306, if applicable to the RFP, Respondent claims the preference(s) checked below:
- | | |
|--|--|
| ☐ Supplies, materials, or equipment produced in TX or Offered by TX bidder or TX bidder that is owned by a service-disabled veteran | ☐ Rubberized asphalt paving material |
| ☐ Agricultural products produced or grown in TX | ☐ Foods of Higher Nutritional Value |
| ☐ Agricultural products and services Offered by TX bidders | ☐ Recycled motor oil and lubricants |
| ☐ USA produced supplies, materials, or equipment | ☐ Products produced at facilities located on formerly contaminated property |
| ☐ Products of persons with mental or physical disabilities | ☐ Products and services from economically depressed or blighted areas |
| | ☐ Contractors that meet or exceed air quality standards |

☐ Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel

☐ Recycled or Reused Computer Equipment of Other

35. Pursuant to Texas Government Code §§2155.004, 2155.006, 2155.0061, and 2261.053, Respondent certifies that the individual or business entity named in this Response is not ineligible to receive the Contract and acknowledges that the Contract may be terminated, and payment withheld if this certification is inaccurate.
36. Respondent represents and warrants Respondent currently is, and for the Contract term duration shall remain, in compliance with the requirements of 42 U.S.C. Ch. 126, §12101, et. seq., the Americans With Disabilities Act, and its implementing regulations, as each may be amended.
37. Respondent represents and warrants Respondent currently is, and for the Contract term duration shall remain, in compliance with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §§8101-8106.) and maintain a drug-free work environment. The final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget (2 C.F.R. Part 182) to implement the provisions of the Drug-Free Work Place Act of 1988 is fully incorporated by reference and shall constitute part of the Contract, and Contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.
38. Respondent agrees Respondent shall comply with all applicable provisions found within 41 CFR §60-1.4, related to Equal Employment Opportunity. Applicable provisions include, but are not limited to, the following: Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or age. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or age.
39. Respondent represents and warrants that all articles and services provided by Respondent and Respondent's subcontractors under the Contract shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15), state, local, and industry related statutes, rules, regulations, and codes.
40. Respondent represents and warrants that Respondent currently is, and for the Contract term duration shall remain, in compliance with all requirements of the Immigration and Nationality Act (8 U.S.C. §1101 et seq.) and all subsequent

immigration laws and amendments; additionally, Respondent shall not place any Respondent's employee at a worksite and Respondent shall not permit any Respondent employee, or any employee of Respondent's subcontractor to perform any work on behalf of or for the benefit of the State of Texas and/or RRC without first ensuring the employee's authorization to lawfully work in the United States.

41. Respondent certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the [State of Texas Debarred Contractor List](#) maintained by the Texas Comptroller of Public Accounts and the [System for Award Management \(SAM\)](#) maintained by the U. S. General Services Administration.
42. Respondent represents and warrants that all statements and information prepared and submitted in this document and the Response are current, complete, true, and accurate. Submitting a Response with a false statement, and/or material misrepresentations made during the performance of a Contract, each are a material breach of the Contract and may void the submitted Response and the resulting Contract.

Authorized representative on behalf of Respondent must complete and sign the following:

_____ Respondent Name	_____ Federal Employer Identification Number
_____ Signature of Authorized Representative	_____ Date signed
_____ Printed Name & Title of Authorized Representative	

RESPONDENT'S QUALIFICATIONS STATEMENT

THIS FORM MUST BE FULLY COMPLETED AND INCLUDED WITH RESPONSE SUBMITTALS. Failure to answer any question or provide the requested information may result in the Response being deemed non-responsive. Complete all blocks; if a question or information request is not applicable to Respondent, complete that item with "not applicable" or "N/A". If additional space is required for a complete response, provide the additional information on 8 x 11 ½ paper with Respondent's letterhead, and include reference to specific page number, item, and section of this Qualifications Statement applicable to the information.

COMPANY			
ADDRESS			
PHONE		FAX	
E-MAIL			
Company is organized as: Individual _____ Partnership _____ Corporation _____			
If incorporated, under the laws of the State of _____ with principal place of business in _____			

PRINCIPALS IN COMPANY AND YEARS EXPERIENCE: RECLAMATION SERVICES

NAME	TITLE	PHONE	NO. OF YEARS

COMPANY HISTORY: List company existence below, including any other business names used.

From		to		Firm Name	
From		to		Firm Name	
From		to		Firm Name	
From		to		Firm Name	

Has company, 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 yes, provide details of most recent occurrence on separate sheet(s) and attach to this form as instructed within the introduction of this form.

RESPONDENT'S CAPABILITIES:

COMPANY'S AVERAGE ANNUAL GROSS REVENUE \$ _____
 Percentage of this revenue by categories:

Earthwork Services _____%		Other Services _____%
---------------------------	--	-----------------------

FINANCIAL CAPABILITIES:**FINANCIAL INFORMATION SUMMARIZED BELOW WAS PREPARED BY:**

Accounting Firm or Respondent's Staff		Address	
City/State/Zip		E-Mail	
Prepared by (name, title):		Phone	

FINANCIAL STATEMENT SUMMARY:

Current Assets		Current Liabilities	
Fixed Assets		Net Worth	
Total Assets		Total Liab. & Net Worth	

BANKING REFERENCE

BANK		Address	
City/State/Zip		E-Mail	
Bank Contact Name		Phone	
Checking Acct. Numbers		Fax	
Loan Acct. Numbers			
CD/MM Acct. Numbers			

RESPONDENT'S EXPERIENCE RECORD:

Provide three (3) successful **Non-RRC** projects that are 100% complete and have been completed within the last five (5) years measured backwards from the issue date of this RFP, and that best demonstrate current qualifications related to the work described within **RFP ATTACHMENT 1: Statement of Services**.

1.

Project Name					
Project Location		Contract Amount	Beginning \$	Ending \$	
Project Owner Name & Type (Private, Gov't)		Address			
City		State		Zip	
Project Owner's Rep familiar with project		Phone		Email	
Contract Start Date (Date of Notice to Proceed)		Contract Duration (Calendar Days)			
If time extensions were added to the contract as a result of Respondent's responsibilities, provide a short explanation of each occurrence/extension.					
Describe Project, Respondent's types of services delivered under the project, and explanation of project comparability to RFP work.					

2.

Project Name					
Project Location		Contract Amount	Beginning \$	Ending \$	
Project Owner Name & Type (Private, Gov't)		Address			
City		State		Zip	
Project Owner's Rep familiar with project		Phone		Email	
Contract Start Date (Date of Notice to Proceed)		Contract Duration (Calendar Days)			
If time extensions were added to the contract as a result of Respondent's responsibilities, provide a short explanation of each occurrence/extension.					
Describe Project, Respondent's types of services delivered under the project, and explanation of project comparability to RFP work.					

RESPONDENT'S EXPERIENCE RECORD (CONTINUED):**3.**

Project Name					
Project Location		Contract Amount	Beginning \$	Ending \$	
Project Owner Name & Type (Private, Gov't)		Address			
City		State		Zip	
Project Owner's Rep familiar with project		Phone		Email	
Contract Start Date (Date of Notice to Proceed)		Contract Duration (Calendar Days)			
If time extensions were added to the contract as a result of Respondent's responsibilities, provide a short explanation of each occurrence/extension.					
Describe Project, Respondent's types of services delivered under the project, and explanation of project comparability to RFP work.					

RESPONDENT'S VetHUB STATUS*:

*HUB status information is not a factor considered for contract award but is collected for purposes of RRC's analysis in determining and achieving agency HUB goals.

Please indicate if Respondent is a **Texas Certified** Veteran Heroes United in Business (VetHUB): _____ YES
 _____ NO

RESPONDENT'S PREVIOUS RRC WORK EXPERIENCE:

Has Respondent ever performed prior work under contract or subcontract with RRC? _____ YES _____ NO

If yes, list the most recent contract number(s) and name(s): _____

RESPONDENT'S CERTIFICATION AND CONSENT STATEMENT:

By signature below, I certify all information provided within this Qualifications Statement and any supplemental or attached documents is true and correct, and I authorize the Railroad Commission of Texas to contact the references provided within this Qualifications Statement and authorize release of information from such references to the Railroad Commission of Texas.

 Respondent Name

 Signature of Owner or Officer

 Title of Person Signing

 Date

Veteran Heroes United in Business (VetHUB) Requirements

Pursuant to [Texas Government Code Chapter 2161](#), state agencies are required to make a good faith effort to increase the contract awards for the purchase of goods or services the state agencies expect to make to **Veteran Heroes United in Business (VetHUB)** during a fiscal year. **VetHUBs** are strongly encouraged to respond to this solicitation.

VetHUB Subcontracting Plan. In accordance with Texas Government Code Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, responses, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. RRC has determined subcontracting opportunities are probable under a contract arising from this solicitation, therefore:

ALL RESPONDENTS, INCLUDING TEXAS CERTIFIED VETHUBS, MUST SUBMIT A COMPLETED VETHUB SUBCONTRACTING PLAN (“HSP”) FORM (SEE ***VETHUB SUBCONTRACTING PLAN (HSP) FORM***) WITH THE RESPONSE FOR THE RESPONSE TO BE CONSIDERED RESPONSIVE. A RESPONDENT’S FAILURE TO INCLUDE A COMPLETED HSP FORM WILL BE DEEMED A MATERIAL FAILURE TO COMPLY WITH SOLICITATION REQUIREMENTS AND SHALL RESULT IN RRC’S REJECTION OF THE RESPONSE AND RENDERING THE RESPONSE INELIGIBLE FOR AWARD OF A CONTRACT ARISING FROM THIS SOLICITATION.

RESPONDENTS MUST SUBMIT A COMPLETED VETHUB HSP FORM WITH THEIR PROPOSAL; NO ALTERNATE FORMS, INCLUDING ALTERNATE OR PRIOR VERSIONS OF HSP FORMS, WILL BE ACCEPTED.

Preliminary VetHUB HSP Review. A Respondent may submit a draft of Respondent’s VetHUB HSP for a preliminary review by RRC’s VetHUB team. Respondents wishing to take advantage of the preliminary VetHUB HSP review must submit the VetHUB HSP no later than the deadline for submission of VetHUB HSP for preliminary review stated within ***TABLE 2: Schedule of Events***. Respondents are strongly encouraged to utilize this opportunity for a preliminary review of the VetHUB HSP. The preliminary review is not an official review of the VetHUB HSP for determination of responsiveness or contract award but is a preliminary review for compliance with VetHUB HSP form instructions and required Good Faith Effort.

Good Faith Effort Required. In accordance with 34 Texas Administrative Code §20.285(d), any person submitting a bid, response, offer, or other applicable expressions of interest in response to this solicitation shall submit a completed VetHUB Subcontracting Plan form demonstrating evidence of good faith effort in developing that

plan. Good faith effort shall be in full conformance with all directions for demonstration and submission specified in the **VetHUB Subcontracting Plan (HSP)**.

RRC has identified potential areas of subcontracting opportunities which are listed within **TABLE 1: Potential VetHUB Subcontracting NIGP Codes** below. Full commodity and service descriptions may be found on the Texas Comptroller's website (<https://comptroller.texas.gov/purchasing/nigp/>). The list is for information purposes only and is not intended as an exhaustive list of subcontracting opportunities related to this solicitation. It is solely the responsibility of a Respondent to determine what if any, subcontracting opportunities are most applicable to the Respondent's business in the performance of work under a Contract arising from this solicitation. Respondent is not required to include within a VetHUB HSP form any or all the commodities or services listed in **TABLE 1: Potential VetHUB Subcontracting NIGP Codes** of this solicitation below. Respondents should review the VetHUB HSP form for instructions applicable to the identification of specific commodities or services intended for subcontracting.

TABLE 1: Potential VetHUB Subcontracting NIGP Codes

NIGP Class	NIGP Item	Description (Commodities and Services)
330	13	Fencing, chain link, including fabric, gates and posts
790	70	Topsoil & Fill Dirt
962	39	Hauling services
962	69	Personnel Services
968	88	Tree & Shrub Removal
988	14	Erosion Control Services

VetHUB Subcontracting Plan Prime Contractor Progress Assessment Report (HSP PAR). Pursuant to 34 Texas Administrative Code §20.285(f)(1), as a condition of payment, a prime contractor shall maintain business records documenting compliance with the VetHUB Subcontracting Plan and shall submit a compliance report to the state contracting agency each month. Therefore, as a condition of payment under the Contract, from the start date of the Contract through the completion date of Contract, a prime contractor awarded a Contract arising from this solicitation shall monthly submit a VetHUB Subcontracting Plan Prime Contractor Progress Assessment Report (HSP PAR) for each active Work Order prior to RRC's approval of payment under the Contract.

RRC's VetHUB Program Administration. For an explanation of the RRC's VetHUB program or assistance in completing the VetHUB HSP form, Respondents are encouraged to contact RRC's VetHUB Administration via Phone: 737-308-1842, 512-463-7211; or email: VetHUB@rrc.texas.gov.



HUB Subcontracting Plan (HSP)

QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- **If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
 - Section 2 c. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - No
 - Section 4 - Affirmation
 - GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
 - Section 3 - Self Performing Justification
 - Section 4 - Affirmation

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

- - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent does not have a continuous contract in place for more than five (5) years shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: _____ State of Texas VID #: _____
 Point of Contact: _____ Phone #: _____
 E-mail Address: _____ Fax #: _____
- b. Is your company a State of Texas certified HUB? ☐ - Yes ☐ - No
- c. Requisition #: _____ Bid Open Date: _____

(mm/dd/yyyy)

Enter your company's name here: _____ Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- ☐ - **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b of this SECTION and continue to Item c of this SECTION.)
- ☐ - **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If **No**, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- **No** (If **No**, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- **No** (If **No**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____

Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____ Requisition #: _____

SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature

Printed Name

Title

Date
(mm/dd/yyyy)

Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b.

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IMPORTANT: If you responded “Yes” to **SECTION 2, Items c or d** of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method A (Attachment A)” for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-a.pdf>

Item Number: Description:

Page 1 of 1
(Attachment A)

HSP Good Faith Effort - Method B (Attachment B)

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Enter your company's name here: _____ Requisition #: _____

IMPORTANT: If you responded “No” to **SECTION 2, Items c and d** of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method B (Attachment B)” for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in **SECTION B-1**, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If Yes, continue to SECTION B-4.)
- No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be “day zero” and does not count as one of the seven (7) working days.

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas’ Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code “A” signifies that the company is a Texas certified HUB.
- b. List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company’s Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID (Do not enter Social Security Numbers.)	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			- Yes - No
			- Yes - No
			- Yes - No

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to **two (2)** or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program’s webpage at <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.
- d. List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		- Yes - No
		- Yes - No

HSP Good Faith Effort - Method B (Attachment B) Cont.

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Enter your company's name here: _____ Requisition #: _____

SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: _____ Description: _____

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.	Approximate Dollar Amount	Expected Percentage of Contract
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is not a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in **Section B** has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in **Section C, Item 2**, reply no later than the date and time identified in **Section C, Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name: _____

State of Texas VID #: _____

Point-of-Contact: _____

Phone #: _____

E-mail Address: _____

Fax #: _____

SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____

Point-of-Contact: _____

Phone #: _____

Requisition #: _____

Bid Open Date: _____

(mm/dd/yyyy)

SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,

we must receive your bid response no later than _____ on _____ .
Central Time Date (mm/dd/yyyy)

In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).

(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications:

- Not Applicable

4. Bonding/Insurance Requirements:

- Not Applicable

5. Location to review plans/specifications:

- Not Applicable



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HUB Subcontracting Plan (HSP)

Prime Contractor Progress Assessment Report

This form must be completed and submitted to the contracting agency each month to document compliance with your HSP.

Contract/Requisition Number: _____ Date of Award: _____ Object Code: _____
(mm/dd/yyyy) (Agency Use Only)

Contracting Agency/University
Name: Railroad Commission of Texas

Contract Administrator Name: _____

Contractor (Company) Name: _____ State of Texas VID #: _____

Point of Contact: _____ Phone #: _____

Reporting (Month) Period: _____ Total Amount Paid this Reporting Period to Contractor: \$ _____

Report HUB and Non-HUB subcontractor information

*Note: Texas certified HUB status can be verified on line at: <https://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp>

Subcontractor's Name	*Texas certified HUB? (Yes or No)	Subcontractor's VID or HUB Certificate Number (Required if Texas certified HUB)	Total Contract \$ Amount from HSP with Subcontractor	Total \$ Amount Paid This Reporting Period to Subcontractor	Total Contract \$ Amount Paid to Date to Subcontractor	Object Code (Agency Use Only)
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
TOTALS:			\$	\$	\$	

Signature: _____ Title: _____ Date: _____

Railroad Commission of Texas
Sample Contract No. 455-26-Sample for
Reclamation Services

THIS AGREEMENT (“Contract”) is made and entered into by the State of Texas, through the **RAILROAD COMMISSION OF TEXAS** (“RRC”), a state agency located at 1701 N. Congress Avenue, Austin, Texas 78701 and **CONTRACTOR LEGAL NAME** (“Contractor”), located at **CONTRACTOR PHYSICAL ADDRESS** (individually “Party”; collectively “Parties”).

WITNESSETH

WHEREAS, Texas Government Code Chapter 2155 and Texas Natural Resources Code Chapter 134 provide for RRC’s authority to procure goods and services in connection with surface coal mining and reclamation activities, and RRC intends to purchase certain goods and/or have performed certain services, namely Reclamation Services; and

WHEREAS, in accordance with applicable provisions of Texas Government Code Chapters 2155 and 2156, RRC has selected Contractor to provide the desired namely Reclamation Services referenced within RRC’s Request for Proposal No. **455-26-1019** (“**RFP No. 455-26-1019**”), and Contractor has agreed to provide the desired professional environmental engineering services referenced within **RFP No. 455-26-1019**, subject to the terms and conditions hereinafter set forth

WHEREAS, all terms and conditions of **RFP No. 455-26-1019**, including but not limited to insurance, and specifications within the Statement of Services, constitute part of this Contract No. **455-26-SAMPLE**.

NOW, THEREFORE, RRC and Contractor, for and in consideration of the mutual promises, obligations, and benefits hereof, contract as follows:

I. CONTRACT DOCUMENTS.

1.01. SERVICES REQUIRED. In accordance with the terms and conditions of the Contract, including all Contract Documents incorporated by reference, Contractor shall deliver throughout the term of the Contract including renewal or extension periods (if any), Professional Environmental Engineering Services (“Services”), including all labor, qualified personnel, management, coordination, equipment, materials, insurance, and incidentals to fulfill all requirements and deliver all goods and/or services required under the Contract in accordance with applicable method protocols, industry/trade best practices, and all rules, regulations, and laws related thereto. “Contract Documents” include:

- a.** This **Contract No. 455-26-SAMPLE**;
- b.** Exhibit A, **RFP No. 455-26-1019**, including all associated attachments, appendices, exhibits, and addenda; and
- c.** Exhibit B, Contractor’s Response, dated Month dd, yyyy (“Contractor’s Response”).

1.02. INCORPORATED BY REFERENCE. All elements listed in 1.03.a. through 1.03.c. are attached hereto and hereby incorporated by reference and constitute part of the Contract as if fully set forth herein.

1.03. ORDER OF PRECEDENCE. For purposes of interpretation of the Contract and in the event of conflict within the Contract Documents, this **Contract No. 455-26-SAMPLE** shall take precedence over the other Contract Documents. Any inconsistency among the Contract Documents shall be resolved applying the order of priority as listed below:

- a. This Contract No. **455-26-SAMPLE**; then
- b. Exhibit A, **RFP No. 455-26-1019**, including all associated attachments, appendices, and addenda; then
- c. Exhibit B, Contractor's Response.

II. TERM.

2.01. CONTRACT AWARD.

- a. The original term of this Contract shall be from date of the last Party's signature, and shall continue through August 31, 2027 ("Original Term"), unless terminated earlier as provided in **RFP No. 455-26-1019**, Section 1.29. of the solicitation Terms and Conditions, and/or Section 2.02. set forth below.

This Contract is non-renewable unless renewal terms are specified in this subsection and may be extended only through written amendment to the Contract fully executed prior to expiration of the Contract term in effect prior to execution of the applicable amendment to the Contract. RRC reserves the right to renew the Contract unilaterally for three (3) additional one (1)-year renewal terms.

- b. Notwithstanding the termination or expiration of this Contract, any provisions regarding indemnification, confidentiality, dispute resolution, intellectual property rights, audit rights, limitation of liability, limitation of distribution, and warranties shall survive the termination or expiration dates of this Contract.

2.02. TERMINATION.

- a. **Termination for Cause.** RRC may terminate this Contract immediately for cause by providing written notice to Contractor of such termination if Contractor fails to execute the work properly, performs work in an unsatisfactory manner, or fails to perform any provision of the Contract. In the event of abandonment or default, Contractor will be responsible for paying damages to RRC as permitted by state law. Notwithstanding the foregoing, Contractor shall not be liable for damages that Contractor could not reasonably foresee on entry into this Contract. In the event of termination for cause, Contractor will not be eligible for consideration in the re-solicitation, if any, and may not be considered in future solicitations for the same type of work unless the scope of work is significantly changed.
- b. **Termination for Convenience.** RRC may, at its sole option and discretion, terminate this Contract at any time, for any reason whatsoever, in whole or in part, by giving written notice ("Notice of Termination") to Contractor at least thirty (30) days prior to the effective date of termination or reduction in the scope of work. In the event of termination by RRC under this subsection, Contractor shall be governed by the terms and conditions, and shall perform the acts outlined in Section 2.02.c., below.
- c. **Implementation of Termination.** Contractor shall terminate all work under the Contract to the extent and on the date specified in the Notice of Termination and until such date shall, to the extent stated in the Notice of Termination, do such work as may be necessary and be compensated only for such work as may be necessary, as determined by RRC to preserve the work in progress. In the event of termination by RRC, RRC shall pay Contractor for all work satisfactorily performed up to the effective date of termination.

2.03. NO LIABILITY UPON TERMINATION. If this Contract is terminated for any reason, RRC and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other

amounts arising from or related to any such termination absent an award of damages pursuant to Texas Government Code Chapter 2260.

III. CONSIDERATION AND SERVICES.

3.01. CONTRACT LIMIT, FEES AND EXPENSES. The total amount of fees to be paid under this Contract through the Original Term and extension terms, if any, (collectively, "Contract Term") shall not exceed **CONTRACT AMOUNT IN WORDS (\$#,###,###.##)**.

3.02. SERVICES.

- a. Contractor shall provide the goods and services necessary and reasonably inferable to complete the work required by and described in **RFP No. 455-26-1019**.
- b. Contractor's services shall include all disciplines agreed upon between the Parties and all related usual and customary consultant and other services necessary and reasonably inferable to complete the work in accordance with RRC's specifications and the terms and conditions of this Contract.
- c. Additional goods and services are those services which shall be provided ONLY if authorized or confirmed in writing by RRC, and which are in addition to the goods and services contained within the scope and content of RRC's specifications and Contractor's Response in response to **RFP No. 455-26-1019**. In the event additional goods and services are proposed by Contractor, Contractor shall not proceed therewith except only after Contractor's receipt of RRC's written acceptance of the additional services proposed.
- d. The Statement of Services (**RFP No. 455-26-1019 ATTACHMENT I**) describes the intended scope and character of work. The Parties agree it is Contractor's responsibility to review and understand requirements of the Statement of Services and to provide all goods and services to achieve those objectives.
- e. Contractor agrees and acknowledges that RRC is entering into this Contract in reliance on Contractor's represented professional abilities with respect to performing the services, duties, and obligations under this Contract. Contractor, and Contractor's consultants and subcontractors (if any) shall perform all services pursuant to this contract diligently and shall endeavor to further the interest of RRC in accordance with RRC's requirements and procedures and the standards of care and performance as described herein. Contractor agrees to use its best efforts to perform the Services (i) in accordance with the usual and customary professional standards of care, skill and diligence consistent with industry best practices for Contractors that provide services for projects that are similar in size, scope, and budget to that within this Contract and any Work Order issued thereunder, and (ii) in compliance with all applicable federal, state, and local statutes, laws, ordinances, regulations, codes, and rules and with those of any other body having jurisdiction. There are no obligations, commitments, or impediments of any kind known to Contractor that will limit or prevent performance by Contractor of the Services required under the Statement of Services and the Contract. Contractor hereby agrees to correct, at its own cost, any of its Services, and the Services of its consultants and subcontractors (if any) that do not meet this standard of care.
- f. Contractor's Services shall be reasonably accurate and free from any material errors or omissions. Neither acceptance nor approval of Contractor's Services by RRC shall relieve Contractor of any of its duties or release it from any liability, it being understood that RRC is, at all times, relying upon Contractor for its skill and knowledge in performing Contractor's Services. RRC shall have the right to reject any of Contractor's goods and/or services in accordance with the terms and conditions of **RFP No. 455-26-1019**.
- g. Contractor agrees to furnish efficient business administration and superintendence and to use Contractor's best efforts to fulfill the Contract and Work Order requirements in an

expeditious and economical manner consistent with the interest of RRC and Contractor's professional skill and care.

- h.** Contractor shall allocate adequate time, personnel, and resources as necessary to deliver goods and/or perform services and work under the Contract and Work Orders issued thereunder. Changes of Contractor's key personnel identified in Contractor's Response shall not be made without prior written approval of RRC. Contractor's day-to-day project team will be led by Contractor's Project Manager unless otherwise directed by RRC or prevented by factors beyond the control of Contractor. Contractor's Project Manager shall act on behalf of Contractor with respect to all aspects of Contractor's goods and/or services delivery and shall be available as required for the benefit of each project and RRC.

3.03. PAYMENTS TO CONTRACTOR.

- a.** Payments to Contractor will be made in accordance with the terms and conditions of the Contract, and within thirty (30) days from receipt of a complete, correct, and approved invoice or statement of payment in accordance with Texas Government Code Chapter 2251, Texas Prompt Payment Act. An invoice is considered received on the date it is date stamped by RRC. Contractor shall be paid for completion of work accepted and approved by RRC.
- b.** Contractor shall invoice RRC for work performed and accepted by RRC. Contractor shall submit invoices as specified in **RFP No. 455-26-1019**.

IV. FUNDING.

4.01. STATE FUNDING. It is understood that all obligations of RRC hereunder are subject to the availability of state funds, federal grant(s) and/or other federal funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In such event, the Parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

V. CONTRACTOR PERSONNEL.

5.01. REQUIRED QUALIFICATIONS. At all times during the term of the Contract, Contractor shall have available, under direct employment and supervision and/or subcontract agreement fully incorporating the terms and conditions of the Contract Documents, the required qualified and properly licensed (as applicable) personnel to properly fulfill all the terms and conditions of the Contract.

VI. NOTICES.

6.01. LEGAL NOTICES.

- a.** Any legal notice required or permitted to be delivered under this Contract shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to RRC or Contractor at the address set forth below:

For RRC:

	<u>Railroad Commission of Texas</u>
	<u>Operations Division – Contract Management</u>
	<u>P.O. Box 12967</u>
	<u>Austin, Texas 78711-2967</u>
Attention:	<u>Theresa Lopez Director of Operations</u>
Phone:	<u>512-463-6953</u>
Email:	<u>theresa.lopez@rrc.texas.gov</u>

For Contractor:

Contractor Legal Name

Full mailing address

Attention:

Phone:

Email:

- b. Legal notice given in any other manner shall be deemed effective only if, and when, received by the Party. Either Party may change its address for notice by written notice to the other Party as provided herein.

VII. MISCELLANEOUS PROVISIONS.

7.01. GOVERNING LAW AND VENUE. This Contract shall be governed by and construed in accordance with the laws of the State of Texas without regard to conflicts of law provisions. The venue of any suit brought under this Contract is fixed in any court of competent jurisdiction in Travis County, Texas unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the RRC. Contractor irrevocably waives any objection, including any objection to personal jurisdiction or proper venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the filing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. **Nothing in this Section shall be construed as a waiver of sovereign immunity by RRC.**

7.02. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this **Contract No. 455-26-SAMPLE** shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

7.03. PROPER AUTHORITY. The Parties hereto represent and warrant that the person executing this Contract on behalf of each Party has full power and authority to enter into this Contract. Contractor acknowledges Contract is effective for the period specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

7.04. SOVEREIGN IMMUNITY. The Parties expressly agree that nothing contained in **RFP No. 455-26-1019** or this Contract is in any way intended to constitute a waiver by the State of Texas or RRC of any immunities from suit or from liability that the State of Texas or RRC may have by operation of law. Further, the Parties agree that nothing contained in **RFP No. 455-26-1019** or this Contract will in any manner be construed as a waiver of sovereign immunity or official immunity by RRC, its employees, or the State of Texas.

7.05. FALSE STATEMENTS; BREACH OF REPRESENTATIONS. By signature to this Contract, Contractor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Contractor signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Contractor shall be in default under this Contract, and RRC may terminate or void this Contract for cause and pursue other remedies available to RRC under this Contract and applicable law.

7.06. ENTIRE CONTRACT AND MODIFICATION. This **Contract No. 455-26-SAMPLE** and all Contract Documents referenced in Section 1.01. herein constitute the entire agreement of the Parties and are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless otherwise expressly authorized by the terms of this Contract, no modification, renewal, extension or amendment to this Contract shall be binding upon the Parties unless the same is in writing and signed by the respective Parties hereto.

EXECUTION SIGNATURES. The Parties agree the Contract and any written Amendments thereto necessary for the consummation of the transaction contemplated by the Contract may be accepted, executed or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act ("E-Sign Act"), Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act ("UETA") and any applicable state law. Any document accepted, executed, or agreed to in conformity with such laws will be binding on each Party as if it were physically executed. The Parties to this Contract have electronically executed this Contract which shall be deemed an original. By the signatures below, each signatory represents and warrants that they have the authority to enter into this Contract on behalf of the respective Parties.

RAILROAD COMMISSION OF TEXAS

CONTRACTOR NAME

By: _____
Wei Wang
Executive Director

By: _____
Printed Name
Title:

Date of Execution: _____

Date of Execution: _____

RRC use only below this line.

Division Director: _____ Date: _____

Chief Administrative Officer: _____ Date: _____

Director of Operations: _____ Date: _____

Office of General Counsel: _____ Date: _____

TERMS AND CONDITIONS

1. **General Terms and Conditions.** The terms and conditions herein shall be fully incorporated into and constitute part of the RFP and any resulting Contract. Respondent/Contractor shall comply, and Respondent/Contractor shall require all subcontractors of all tiers to comply with the terms and conditions of the Contract. In the absence of express exclusion in whole or in part from the Response, all terms and conditions are deemed incorporated therein.
- 1.1. **Compliance with RFP and Contract.** By submitting a response, acknowledging and accepting the Contract, or delivering any services under the Contract, Respondent/Contractor acknowledges, accepts, and agrees to all terms, conditions, specifications, provisions, statements, and guidelines of the Contract, including, but not limited to, the RFP. All parts of the RFP are fully incorporated into and constitute part of the Contract for all purposes intended. RRC, in its sole discretion, may disqualify a Response from consideration if RRC determines a Response is non-responsive and/or non-compliant, in whole or in part, with the requirements set forth in this RFP.
- 1.2. **Misunderstanding or Lack of Information.** Respondents must be thoroughly informed concerning all relevant facts, data, site conditions, and estimates required for the purpose of assembling a Response and concerning all difficulties that may be encountered in managing or operating a project under the Contract or a Work Order issued thereunder.
No plea of ignorance of existing site conditions or difficulties that may be encountered during the performance of a Work Order issued under the Contract shall be accepted as an excuse for any failure or omission by Contractor to fulfill in every detail all requirements of the Contract or shall be accepted as a basis for any claim whatsoever for additional compensation to a finalized, negotiated Work Order.
By submitting a Response, each Respondent acknowledges and agrees that it fully understands and shall abide by the terms and conditions of the RFP, and that the Respondent shall not make any claims for, or has any rights to, cancellation or relief without consequences because of any misunderstanding or lack of information.

- 1.3. **Ambiguity, Conflict, Exclusionary Specification, or Omission.** If Respondent discovers any ambiguity, conflict, discrepancy, exclusionary specifications, omission, or other error in the RFP, Respondent must immediately notify in writing RRC's point of contact for the RFP. If Respondent fails to notify RRC's point of contact for the RFP of any error, ambiguity, conflict, discrepancy, exclusionary specification, or omission, Respondent's submittal of a Response is done so at Respondent's own risk, and if awarded a Contract, Respondent shall not be entitled to additional compensation, relief, or time by reason of the error or its later correction.
- 1.4. **Right to Amend, Modify, or Withdraw the RFP.** RRC reserves the right to alter, amend, or modify any provisions of the RFP or to rescind, revoke, or withdraw the RFP, in whole or in part, at any time prior to Contract award if such action is determined by RRC to be in the best interest of the State of Texas and/or RRC.
- 1.5. **No Alterations or Withdrawals of Response after Deadline.** Responses may not be altered or amended after the Response due date and time specified in the RFP. Any alterations made before the Response due date and time must be initialed by Respondent or Respondent's authorized agent. Responses submitted may not be withdrawn after submission deadline. However, upon receipt of Respondent's written request to withdraw their Response, RRC may, but not must, in its sole discretion approve the request to withdraw a Response.
- 1.6. **Attachments.** Any terms and conditions attached to a Response will not be considered unless specifically referred to in the Response. RRC reserves the right, in its sole discretion, to reject any Respondent terms and conditions or other documents or attachments as part of Respondent's Response.
- 1.7. **Binding Effect of Response.** Unless otherwise agreed in writing and signed by RRC, Respondent agrees to and is bound by the information and documentation provided with the Response. Upon award of Contract, negotiated prices shall remain fixed and guaranteed for the entire Contract period.
- 1.8. **Binding Effect of Contract.** An awarded Contract shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees and delegates.

- 1.9. **Rejection of Response and Cancellation of RFP.** Issuance of this RFP does not constitute a commitment on the part of RRC to award a contract. RRC is under no obligation to award any contract as a result of this RFP. RRC maintains sole right and discretion to reject any or all Responses and to cancel the RFP if RRC deems such action as in the best interest of the State of Texas and/or RRC. RRC's waiver of any deviations in any Response will not constitute a modification of the RFP and will not preclude RRC from asserting all rights against Contractor for failure to fully comply with all terms and conditions of the RFP.
- 1.10. **Respondent Costs.** Respondent shall bear all costs and expenses associated with the preparation and submission of a Response, including costs associated with travel to and attendance of pre-Response site visits, and submission of all required documents and all required copies of documents.
- 1.11. **Respondent Identification.** Prior to the award of the Contract, Contractor must provide the Contractor's Texas Identification Number (TIN) issued by the Texas Comptroller of Public Accounts.
- 1.12. **Contract Award, Copyright, Reissuance.** A response to the RFP is an offer to contract with the State of Texas through RRC based upon the specifications, terms, and conditions contained in the RFP. The Response shall not become a contract with RRC unless, until, and to the extent, RRC issues a fully executed Contract and Notice of Award to a successful Contractor. RRC in its sole discretion reserves the right to reject any or all Responses, all or any part of any Response, waive minor technicalities, negotiate pricing and Contract terms and conditions with all Contractors or no Contractors, and award a Contract in the best interest of the State of Texas and RRC.
- Copyrighted Responses are unacceptable and are subject to disqualification as nonresponsive; in addition, RRC reserves the right to disqualify any Response that asserts any copyright on any RRC forms designated by the RFP as a form required to be submitted with Respondent's Response.
- Prior to the issuance of a Contract, RRC reserves the right to make any corrections or include additional requirements necessary for RRC's compliance with all federal and state laws, regulations, rules, policies, and best practices. RRC reserves the right to at any time reissue the RFP or issues another RFP for the goods and/or services described in this RFP.

- 1.13. Limitation on Authority, No Other Obligations.** Respondent/Contractor shall have no authority to act for or on behalf of the State of Texas and/or RRC except as expressly provided in the fully executed Contract. No other authority, power, or use is granted or implied. Contractor may not incur any debt, obligation, expenses, or liability of any kind on behalf of RRC or the State of Texas.
- 1.14. No Other Benefits.** Contractor has no exclusive rights or benefits other than those set forth within the Contract.
- 1.15. Amendments to the Contract.** The Contract may be amended only upon written agreement between RRC and Contractor; however, the Contract may not be amended in a manner that conflicts with the laws of the United States or of the State of Texas. Contractor agrees to amend the Contract and to cooperate in the execution of any contract amendments necessary to effectuate compliance with laws of the State of Texas when such laws require RRC to include additional language in the Contract. During the term of the Contract and any extensions or renewals thereof, RRC reserves the right to request amendments or modifications to the Contract when RRC determines such action to be in the best interests of the State of Texas and/or RRC and for compliance with all applicable state and federal laws, regulations, requirements, and guidelines. Except as otherwise provided in negotiated terms and conditions expressly identified and formalized in the Contract, the entire agreement between RRC and Contractor shall consist of the following documents: the Contract, amendments to the Contract, Purchase Orders, Work Orders and, Change Notices (if any), the RFP (including addenda, if any), and the Response.
- 1.16. Order of Precedence; Prohibited Exceptions.**
- 1.16.1. Order of Precedence.** In the event of a conflict between the RFP and the Contract Documents, the following documents, in order of precedence, shall apply in resolving such conflicts:
- a. The Contract (including expressly identified, negotiated terms and conditions) and Amendments to the Contract, Purchase Orders, Work Orders, and Change Notices (if any).
 - b. The RFP and Addenda (if any), and
 - c. Contractor's Response.
- 1.16.2. Prohibited Exceptions.** Unless expressly accepted in writing by RRC, the following exceptions within any Respondent's Response shall be rejected:
- a. Incorporation of laws of a state other than Texas,
 - b. Any requirements for prepayment,
 - c. Any limitations on RRC's remedies,
 - d. Any requirements that RRC indemnify the Respondent,

- e. Any requirements that Respondent's documents control in case of conflicts,
 - f. Any requirements that Respondent's documents control even if Respondent accepts or acknowledges the Contract,
 - g. Any requirements to reduce or eliminate required insurance coverages, types, endorsements and limits, and
 - h. Any disclaimer of warranties.
- 1.17. **Statement of Services, Performance.** Contractor shall provide the requested Site Remediation Services in the manner described in this RFP. In the event of Contractor's failure to conform to all requirements of this RFP, consequences may include, but not be limited to, RRC's withholding of acceptance and payments under the Contract, RRC's cancellation of all or part of the Contract, RRC's revocation of any prior acceptance and Contractor's refund of amounts paid prior to revocation of acceptance.
- 1.18. **Response to Work Order Mandatory.** Contractor shall submit a response for each work order that RRC issues. Failure to respond to a work order is a breach of contract.
- 1.19. **Time Limits Enforced.** Time is of the essence in the performance of this Contract. Contractor shall strictly comply with all deadlines, requirements, and standards of performance for this Contract and any Work Order issued thereunder and in the execution of the work. Contractor acknowledges and accepts all time limits will be strictly construed and rigidly enforced.
- 1.20. **Changes and Changed Conditions.**
RRC's Authorized Representative may, in writing, order changes in the work within the general scope of the Contract or Work Order issued thereunder. In the event Contractor identifies Changed Conditions, Contractor shall not further proceed with work until Contractor has submitted a written notice of Changed Conditions to RRC's Authorized Representative and received from RRC's Authorized Representative authorization to continue with work.
If Changed Conditions increase or decrease the cost of, or time required for performing the work, Contractor shall assert a claim in writing prior to the making of final request for payment under the Contract, and RRC may issue a written equitable adjustment by change order. However, no adjustment shall be made in favor of Contractor unless Contractor has timely submitted written notice of Change Conditions and written assertion of claim in conformance with the terms of the Contract. Notwithstanding the forgoing, in absence of a written notice of Changed Conditions having been timely submitted by Contractor, RRC in its sole discretion may waive the requirement therefore and approve Contractor's claim. In the event RRC and Contractor cannot agree upon an equitable adjustment, the

dispute shall be decided pursuant to the dispute resolution process contained within the terms and conditions of the Contract.

It is recognized and agreed to by RRC and Contractor that information provided within the RFP, including specifications, attachments and addenda, if any, may not be complete or free from errors, omissions and imperfections, or that the information may require changes or supplementation in order for the work to be completed to the satisfaction of RRC. Accordingly, it is the express intention of RRC and Contractor, notwithstanding any other provisions in the Contract, that any errors, omissions or imperfections in such specifications, exhibits to the RFP, and addenda, if any, or any changes in or supplementation to same or to a Work Order issued by RRC and any resulting delays in the work or increases in Contractor's costs and expenses arising out of such errors, omissions or imperfections 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 RRC shall be liable to Contractor for the sum stated to be due Contractor in any change order approved and signed by both RRC and Contractor, it being agreed hereby that such sum, together with any extension of time contained within the approved change order, shall constitute full compensation to Contractor for all costs, expenses, and damages to Contractor as permitted under Texas Government Code Chapter 2260.

1.21. Contract Completion and Liquidated Damages.

1.21.1. Performance Period. The performance period for work under a Work Order arising under the Contract shall commence on the date stated within the Work Order issued from RRC to the Contractor, and all work under the Work Order shall be completed not later than the specified period within the Work Order.

1.21.2. Liquidated Damages Value. RRC has determined that the completion of the work under a Work Order arising under the Contract is critical to the removal of the threat of pollution in Texas. Contractor's failure to complete any work within the required time specified on the Work Order will or may cause damage to RRC and operations related to Site Remediation Services efforts. Since exact damages are difficult to determine or forecast, ***the sum of Two Hundred Dollars (\$200.00) per calendar day per incomplete Work Order*** is hereby established by the Parties as a reasonable estimate of just compensation to RRC for failure of Contractor to complete work specified by the date set forth in writing within the Work Order or a written, authorized extension thereto. In the event RRC deems liquidated damages are necessary and appropriate, the total sum of liquidated damages shall be deducted from the money due or to become due to Contractor, not as a penalty, but as liquidated damages and added expense including administrative and any resampling cost(s). Inspection costs for each and every calendar day the work or any portion thereof remains incomplete after the expiration of the performance period set forth within the Work Order issued from RRC to Contractor or a written, authorized extension thereto.

1.21.3. Calculation of Liquidated Damages. Charges for liquidated damages will begin accumulating on the first calendar day following the final completion date set forth within the Work Order or Purchase Order issued from RRC to Contractor or a written, authorized extension thereto, and continue until the date of actual, final completion as established by RRC. Final completion of the Contract will not be issued until all required work under the Contract has been verified by RRC's Authorized Representative as complete.

1.22. Assignments and Subcontractors. Respondent/Contractor shall not assign its rights, or delegate the performance of Contractor's duties, under the Contract without prior written approval of RRC. Any attempted assignment in violation of this provision is void and without effect.

Contractor must submit to RRC's Authorized Representative any proposed subcontractor and shall receive from RRC's Authorized Representative, written approval of the subcontractor prior to Contractor authorizing subcontractor's performance of any work under the Contract.

Subcontractors providing service under the Contract shall meet the same requirements and level of experience as required of the Contractor.

No subcontract under the Contract shall relieve the Contractor of responsibility for delivery of work and services required under the Contract. If Contractor uses a subcontractor for any or all work required, the following conditions shall apply under the listed circumstances:

- a. Respondents planning to subcontract all or a portion of the work to be performed under this Contract shall identify each proposed subcontractor on the HSP form (see **RFP Attachment 4 VetHUB Subcontracting Plan Form (HSP)**).
- b. Subcontracting shall be at Contractor's expense.
- c. RRC retains the right to review any subcontractor's background and approve or reject the use of Contractor's proposed subcontractors.
- d. Contractor shall be the only Contractor for RRC for the Contract. Contractor shall manage Contractor's subcontractors, if any. Contractor shall provide contact information, including mobile phone number and email address, of Contractor's designated point of contact to which RRC and Contractor's subcontractors shall submit any inquiries.

1.23. Payments to Contractor. Contractor shall submit by email to RRC's designated point of contact all requests for payment. Payment requests shall be submitted upon Respondent's completion of and RRC's acceptance of work. When submitting request by email, Contractor shall include as attachments to the email Contractor's invoice, all additional documents required by Contract, and a completed "Contractor's Progress Payment Affidavit" or "Contractor's Final Payment Affidavit," as applicable to the payment request. Contractor shall also mail within three (3) business days the original, signed and notarized Contractor's Progress Payment Affidavit or Contractor's Final Payment Affidavit, as applicable to the payment request, to the RRC designated Contract Manager. Each Contractor's invoice shall reflect a single Contract and all and only services related thereto which have been delivered, inspected, tested, evaluated, and accepted by RRC within the Contract performance period concluding on the invoice date.

1.23.1. Compliance with Texas Government Code Chapter 2251 required. A Contractor awarded a Contract arising from this RFP, and all Contractor's subcontractors, if any, shall comply with all applicable provisions of Texas Government Code Chapter 2251 relating to prompt payment for goods and services under a contract issued by a state agency. Texas Government Code Chapter 2251 requires, in part, that a Contractor that receives payment from a state agency shall pay a subcontractor the appropriate share of the payment not later than the 10th day after the date the Contractor receives the payment; and, the Contractor's subcontractor who receives a payment from the Contractor shall pay a person who supplies goods or a service for which the payment is made, the appropriate share of the payment not later than the 10th day after the date the subcontractor receives the payment. Contractor's compliance with this provision shall be strictly enforced by RRC. RRC reserves the right to request evidence of Contractor's compliance, and evidence of Contractor's subcontractor's compliance with this condition of the Contract.

1.23.2. Invoice requirements.

Contractor's invoice must clearly reflect the following:

- a. RRC Contract Number, Work Order, and Purchase Order number (as applicable);
- b. RRC bill to information;
- c. Contractor name;
- d. Contractor address;
- e. Contractor remit payment to information;
- f. Texas Contractor Identification Number assigned by Texas Comptroller of Public Accounts;

- g.** Invoice date;
- h.** Invoice number (may not be duplicate invoice number from prior invoice submitted);
- i.** Date(s) of delivery of services and/or goods; and
- j.** Description of services, to include (per site):
 - Operator name
 - Lease/site name
 - County
 - State Managed Cleanup Code number
 - Price
 - Invoice total.
- k.** Contractor's invoices submitted to and received by RRC, but which fail to conform to all invoice requirements stipulated within the Contract Documents will be returned to Contractor unpaid or will be held by RRC until all requirements for submittal of revised invoice and/or additional documents required by the Contract are satisfied. Contractors will have five (5) business days to correct and resubmit non-conforming invoices after which administrative surcharges will begin accruing as set forth below.
- l.** Contractor's invoices are due on the third day of the next month following the date on which all goods or services are provided pursuant to a work order. For mailed invoices, the postmark date will be considered the date on which RRC receives the invoice. Late invoices will accrue an administrative surcharge of fifty dollars (\$50.00) per week. This administrative surcharge is not a penalty but an estimated cost of delays in processing delayed invoices. The administrative surcharges due for late invoices shall be capped at three-hundred dollars (\$300.00) or the amount due to be paid on the invoice, whichever is less. Administrative surcharges will be deducted from sums due pursuant to the invoice, but RRC in its sole discretion may elect not to deduct this surcharge for good cause shown. Election by RRC not to deduct the surcharge shall not be construed as a general waiver of the administrative surcharge for future invoices.

- 1.23.3. Authorization of Payment.** Prior to authorizing payment to Contractor, RRC shall evaluate Contractor's performance in accordance with Contract requirements.
- 1.23.4. Non-Reimbursable Items.** RRC will not reimburse for travel, meals, lodging, or other related expenses unless specifically provided for under the Contract and pre-approved in writing by both the RRC Authorized Representative and RRC Contract Manager assigned to the Contract. In such an event, costs will be invoiced to RRC based on actual expenses, and RRC shall not be liable for reimbursement of expenses that (i) were not preapproved in writing by RRC, or (ii) exceed the current State Travel Regulations. Contractors are required to provide receipts to validate invoicing. State Travel Reimbursement Rates may be found at: <https://fmx.cpa.texas.gov/fmx/travel/textravel/rates/current.php>. Contractors shall note: RRC shall **not** reimburse for travel, meals, lodging, or other related expenses that may be reasonably anticipated as part of the Contract or a Work Order issued thereunder. Contractors shall **not** be reimbursed for travel, meals, lodging, or other related expenses that are reasonable and ordinary in the course of providing Site Remediation Services.
- 1.23.5. No Prepayments.** RRC will not prepay for any services provided to RRC by Contractor in performance of services or work under the Contract. RRC shall not make down payments, deposits, pay advances, advance deposits, or any other payments that are not made specifically for properly documented completed services approved for payment by and satisfactorily provided to RRC.
- 1.23.6. Refunds.** Upon Contractor's discovery of any erroneous payment from RRC to Contractor of any funds, or upon receipt of written notice of erroneous payments issued by RRC, Contractor shall promptly refund or credit within thirty (30) calendar days any funds erroneously paid by RRC or which are not expressly authorized under the Contract.
- 1.24. Records Maintenance, Retention, and Audit.** Respondent shall maintain and retain all records relating to the performance of the Contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records shall be maintained and retained by Respondent for a period of seven (7) years after the contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later. Respondent shall make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Respondent pertaining to the contract for purposes of inspecting, monitoring, auditing, or evaluating by Agency and the State of Texas.

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

1.25. Indemnification.

1.25.1. Acts or Omissions. RESPONDENT/CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND RRC, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF RESPONDENT/CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT/CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT/CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. CONTRACTOR AND RRC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

1.25.2. Texas/Workers' Compensation/Unemployment Insurance; Including Indemnity. CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. RRC AND/OR THE STATE SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY. CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS RRC, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX

LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND RRC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

1.26. Infringement: Patent, Trademark, Copyright, and Other Intellectual Property.

1.26.1. Claims. RESPONDENT SHALL DEFEND, INDEMNIFY, SAVE, AND HOLD HARMLESS THE STATE OF TEXAS AND RRC, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS, OR INFRINGEMENT OF ANY PATENT, TRADEMARK, SERVICE MARK, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL, INTANGIBLE PROPERTY, PUBLICITY, OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF RESPONDENT PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND OR (3) RRC'S AND/OR RESPONDENT'S USE OF OR ACQUISITION OF ANY SERVICE OR OTHER ITEMS PROVIDED TO RRC BY RESPONDENT OR OTHERWISE TO WHICH THE STATE OF TEXAS AND/OR RRC HAS ACCESS AS A RESULT OF RESPONDENT'S PERFORMANCE UNDER THIS CONTRACT. RESPONDENT AND RRC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. RESPONDENT SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL ("OAG") WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, RESPONDENT WILL REIMBURSE AGENCY AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF AGENCY DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF RESPONDENT OR IF THE

AGENCY IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, AGENCY WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND RESPONDENT WILL PAY ALL REASONABLE COSTS OF AGENCY'S COUNSEL.

- 1.26.2. Notice.** If Contractor becomes aware of an actual or potential claim, or RRC provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against RRC, shall), at Contractor's sole option and expense; (i) procure for RRC the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that RRC's use is non-infringing.
- 1.26.3. Limitations.** Contractor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Contractor's written approval, (iii) any modifications made to the product by the Contractor pursuant to RRC's specific instructions, (iv) any intellectual property right owned by or licensed to RRC, or (v) any use of the product or service by RRC that is not in conformity with the terms of any applicable license agreement.

1.27. Personal Injury, Property Damage. Contractor shall be liable for any bodily injury or personal injury to any individual caused by any of Contractor's employees during any assignment under the terms of the Contract. In the event of loss, destruction, or damage to any State of Texas or RRC property by Contractor's employees, Contractor shall indemnify the State of Texas and RRC and pay to the State of Texas and/or RRC the full cost of repair, reconstruction, or replacement at RRC's election. Contractor shall reimburse the State of Texas and/or RRC for such property damage within thirty (30) calendar days after Contractor's receipt of RRC's written notice of amount due. This provision survives the termination or expiration of the Contract.

1.28. Insurance Requirements. Time is of the essence. Contractor shall submit to RRC a complete, current, certificate of insurance not later than ten (10) calendar days after RRC's issuance of written Notice of Intent to Award of a Contract. Contractor's certificate of insurance shall be fully compliant with all terms and conditions of the Contract. Contractor shall maintain required insurance coverages in accordance with the terms and conditions of the Contract throughout the entire Contract term (including warranty, if applicable.) Contractor shall not proceed with any work under the Contract without RRC's approval of certificate of insurance.

All required insurance coverage must issue from a company or companies that:

- a.** Have both a Financial Strength Rating of "A" or better from A.M. Best Company, Inc.; and
- b.** Have a Financial Size Category Class of "VII" or better from A. M. Best Company, Inc.

All insurance policies for required coverage must be issued by companies authorized to do business in, and under the laws of, the State of Texas.

Certificates of insurance shall be issued on a form approved by the Texas Department of Insurance and be satisfactory to RRC. Certificates of insurance shall specify and/or set forth the following:

- a.** RRC as certificate holder with correct mailing address;
- b.** Insured's name which must match Contractor's legal name on and within this Contract;
- c.** Insurance company(ies) affording each coverage, policy number of each coverage, policy dates of each coverage, all coverages and limits described herein, and signature of authorized representative of the insurance company(ies);
- d.** Producer of the certificate of insurance with correct address and phone number listed;
- e.** Additional insured status as required herein;

- f. Amount of any deductibles and/or retentions;
- g. A 30-day Notice of Cancellation, non-renewal, or reduction in coverage;
- h. Contractual liability coverages as required herein;
- i. Primary and non-contributing endorsement. All insurance coverage required herein shall be primary to and shall seek no contribution from all insurance available to RRC, with RRC's insurance being excess, secondary, and non-contributing;
- j. Waiver of Subrogation endorsement; and
- k. Listing of all exclusions and limitations added by endorsement to general liability coverage; however, no endorsements shall restrict, limit, or exclude in any manner whatsoever, coverage required.

All certificates of insurance for required coverage other than workers' compensation and professional liability (as applicable) shall name the State of Texas, RRC, and its officers, directors, and employees as additional insured. Respondent's Response shall include proof of minimum required insurance types and limits of coverage. Proof of insurance may be provided in the form of current certificates of insurance (e.g., an Acord™ form).

1.28.1. Minimum Contractually Required Insurance Types and Coverage:

TABLE 5: INSURANCE REQUIREMENTS

Insurance Type	Each Occurrence/Aggregate Limits
<u>Workers' Compensation</u> <u>Required for all Contracts awarded</u>	Within statutory limits/Texas Workers' Compensation Act.
<u>Employer's Liability</u> Bodily Injury by Accident Bodily Injury by Disease <u>Required for all Contracts awarded</u>	\$1,000,000 Each Accident \$1,000,000 Each Employee \$1,000,000 Policy Limit
<u>Commercial General Liability</u> Includes liability arising out of all locations and operations of Contractor, including but not limited to liability assumed under this Contract (including the tort liability of another assumed in a business contract). Defense shall be provided as an additional benefit and not included within the limits of liability. <u>Required for all Contracts awarded</u>	Bodily Injury and Property Damage \$1,000,000 Each Occurrence/\$2,000,000 General Aggregate \$2,000,000 Product-Completed Operations Aggregate \$1,000,000 Personal Injury and Advertising Liability \$5,000 Medical Expense each person

<u>Automobile Liability</u> Must include liability arising out of any auto and be on business auto form. <u>Required for all Contracts awarded</u>	\$1,000,000 Combined Single Limit (for each accident)
<u>Commercial Umbrella</u> <u>Excess Liability</u> <u>Required for all Contracts awarded</u>	\$1,000,000 Each Occurrence/\$1,000,000 General Aggregate \$1,000,000 Each Occurrence/Person

1.28.2. Failure to Obtain, Maintain, or Renew Required Insurance. Failure to obtain, maintain, and/or renew the required insurance shall constitute a material breach of and default under this Contract. If Contractor fails to remedy such breach within five (5) business days after written notice by RRC, Contractor shall be liable for any and all costs, liabilities, damages and penalties resulting to the State of Texas and RRC from such breach, unless a written waiver of the specific insurance requirement(s) is provided to Contractor by RRC. In the event of any failure by Contractor to comply with the provisions of this Contract, RRC may, without in any way compromising or waiving any right or remedy at law or in equity, on written notice to Contractor, purchase such insurance, at Contractor's expense, provided that RRC shall have no obligation to do so and if RRC shall do so, Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

1.29. Termination and Cancellation. The Contract may be terminated, canceled, or cancellation of services may occur, in whole or in part, in any one or more of the following circumstances:

1.29.1. Termination or Cancellation for Convenience.

- a. Mutual Agreement.** Upon the mutual written agreement of RRC and Contractor, the Contract may be terminated or canceled.
- b. RRC Cancellation upon Thirty (30) Days' Notice.** RRC may in its sole discretion terminate, cancel the Contract, or cancel specific services of the Contract with thirty (30) calendar days' written notice to Contractor.

1.29.2. Termination or Cancellation for Cause.

- a. Breach of Material Term.** Either party may, upon giving thirty (30) calendar days' written notice identifying specifically the basis of such notice, terminate the Contract for breach of a material term or condition of the Contract, provided the breaching party must not have cured such breach within the thirty (30) calendar days' period. In the event of such termination, Contractor will be paid for all services accepted prior to the date of the termination. No additional charges or fees will be assessed to RRC for the termination or cancellation.

- b. Contractor Nonperformance.** If Contractor defaults on the Contract after award has been made, RRC reserves the right to cancel the Contract without notice and either reissue the RFP or award the Contract to the next qualified, responsive and responsible Contractor offering the best value to the state as determined by RRC. In such event, the defaulting Contractor will not be considered for award for any Contract arising under the re-solicitation and may not be considered in future solicitations for the same type of work unless the specifications or scope of work differ substantially from the work and/or services under the Contract on which Contractor defaulted. The length of any period of suspension shall be determined by RRC based on the seriousness of the default. In the event of nonperformance default, Contractor shall remain liable for all covenants and indemnities under the Contract. Contractor shall be liable for all costs and expenses, including any attorneys' fees and court costs, incurred by RRC with respect to the enforcement of any remedies listed herein.
- c. Bankruptcy.** Upon the filing of a petition for bankruptcy, or upon the judgment of bankruptcy or insolvency by or against Contractor, RRC may terminate the Contract for cause without notice. Such termination shall be effective upon the date of such filing or upon the date of judgment.
- d. Availability of State Funds, Legislative Action, Necessity of Performance.** The Contract is subject to termination or cancellation, without penalty to RRC, either in whole or in part, subject to the availability of state funds.
- e. Legal Remedies and Damages from Breach of Contract.** RRC expressly reserves all legal remedies to which it may be entitled to collect and all damages directly or indirectly resulting from breach of contract by Contractor or any of its agents, representatives, subcontractors, employees, or any other party acting on behalf of Contractor. RRC reserves the right to pursue all applicable rights and remedies if the Contract is terminated for any reason and RRC expressly waives no such rights or remedies.
- f. Substitution of Services.** In the event of RRC's termination or cancellation of the Contract for cause, RRC may procure, upon such reasonable terms and in such manner as RRC deems appropriate, substitute services similar to services terminated or canceled. Contractor shall be liable to RRC for any excess or additional costs incurred by RRC in acquiring such services plus court costs and attorneys' fees. RRC's recovery of costs under this section is in addition to any other remedies available to RRC under the Contract and/or under applicable law.

1.29.3. Miscellaneous Termination Provisions.

- a. Recovery of Funds.** RRC reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to RRC under the Contract

or under applicable law, including, but not limited to, attorneys' fees and court costs, if termination or cancellation is at Contractor's request or if termination or cancellation is for cause. This right is in addition to any other remedies available to RRC under the Contract or under applicable law. RRC reserves the right to pursue all applicable rights and remedies if the Contract is terminated for any reason, and RRC expressly waives no such rights or remedies.

b. Notice of Termination or Cancellation Delivery. Any termination by RRC of the Contract which requires written notice may be accomplished by RRC's delivery to Contractor of a notice of termination or cancellation specifying that the Contract is terminated or canceled.

1.30. Federal, State, and Local Requirements. Contractor shall demonstrate onsite compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Forms W-2 to common law employees. Contractor shall be solely responsible for both federal and state unemployment insurance coverage and standard Worker's Compensation Insurance coverage for Contractor's employees. Contractor shall comply with all federal and state employment tax laws and withholding requirements. The State of Texas shall not be liable to Contractor and Contractor's employees for any unemployment, workers' compensation, or federal or state tax withholding requirements. Contractor shall indemnify the State of Texas and RRC and shall pay all costs, penalties, or losses resulting from Contractor's omission or breach of this section.

1.31. Independent Contractor. Contractor shall serve as an independent Contractor in providing services under the Contract. Contractor's employees are not and shall not be construed as employees or agents of the State of Texas. Subject only to the terms of this Contract, Contractor shall have the sole right to supervise, manage, operate, control, and direct performance of its duties under this Contract. Nothing contained in the Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for RRC whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and RRC shall have no obligation with respect to:

- a.** Withholding of income taxes, FICA, or any other taxes or fees;
- b.** Industrial worker's compensation insurance coverage;
- c.** Participation in any group insurance plans available to employees of the State of Texas;
- d.** Participation or contributions by State of Texas to the State Employees Retirement System;

- e. Accumulation of vacation or sick leave, or
- f. Unemployment compensation coverage provided by the state.

- 1.32. **Force Majeure.** Any delays in or failure of performance by either party, except in respect of the obligation of payments under the RFP or Contract, shall not constitute default hereunder if and to the extent such delays or failure of performance are caused by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such party is unable to prevent, herein called "Force Majeure," including acts of God or the public enemy, sabotage, war, mobilization, revolution, civil unrest, riots, strikes, lockouts, epidemics, fires, accidents, breakdowns, floods, earthquakes, hurricanes or any other natural disaster or governmental actions. In any such event, the party claiming Force Majeure shall promptly notify the other party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The party claiming Force Majeure shall exercise due diligences to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, RRC may terminate the Contract immediately upon written notification to the Respondent.
- 1.33. **Labor Activity.** Notwithstanding the foregoing paragraph, in the event any strike, boycott, picketing, work stoppage, slowdown, or other labor activity is directed against Contractor at RRC's facility and such labor activity results in the curtailment or discontinuation of services performed under the Contract, RRC shall have the right during said period to employ any means legally permissible to have the work performed.
- 1.34. **Dispute Resolution.** Disputes arising under the Contract shall be resolved in accordance with the dispute resolution process provided in Texas Government Code Chapter 2260 and in accordance with 16 Texas Administrative Code Chapter 20, Subchapter A, Division 2.
Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the Contract by

RRC nor any other conduct of any representative of RRC relating to the Contract shall be considered a waiver of sovereign immunity to suit.

- 1.35. **Compliance with Other Laws.** Respondent shall comply with all laws, regulations, requirements and guidelines applicable to a Contractor providing services and products required by the Contract to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as amended throughout the term of the Contract. RRC reserves the right, in its sole discretion, to unilaterally amend the contract prior to award and throughout the term of the Contract to incorporate any modifications necessary for RRC's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.
- 1.36. **Permits, Licenses, Certifications.** Contractor shall obtain and maintain all permits, licenses, or other authorizations as may be required for performance of the work under the Contract. Upon request by RRC, Contractor shall furnish to RRC certified copies of required permits, licenses, or other required authorizations. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Contractor shall be responsible for payment of any such government obligations not paid by Contractor's subcontractors during performance of the Contract.
- 1.37. **Legal Notices.** Any legal notice required or permitted to be delivered under the RFP and/or Contract shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to RRC or Respondent. Notice given in any other manner shall be deemed effective only when received by the party to be notified. Either party may change its address for notice by providing written notice to the other party in accordance with the terms and conditions herein.
- 1.38. **Governing Law and Venue.** The RFP and Contract shall be governed by and construed in accordance with the laws of the State of Texas without regard to conflicts of law provisions. The venue of any suit brought under the RFP and/or Contract is fixed in any court of competent jurisdiction in Travis County, Texas unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the RRC. Contractor irrevocably waives any objection, including any objection to personal jurisdiction or proper venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the filing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. **Nothing in this Section shall be construed as a waiver of sovereign immunity by RRC.**

- 1.39. **No Waiver.** Failure of either Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the contract will not be construed as a waiver of any continuing or successive breach.
- 1.40. **Confidential Information; Public Information Act Disclosures.** Information, documentation, and other material in connection with this Solicitation or any resulting Contract may be subject to public disclosure pursuant to Texas Government Code Chapter 552 (the "Public Information Act"). In accordance with Texas Government Code §2252.907, Respondent is required to make any information created or exchanged with the State pursuant to the 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 additional charge to the State. Specific forms acceptable to RRC include MS Word®, MS Excel®, and *.pdf files.
- 1.41. **Disaster Recovery Plan.** Upon request of RRC, Respondent shall provide to RRC the descriptions of Respondent's business continuity and disaster recovery plans.
- 1.42. **Public Disclosure.** Respondent shall not use RRC's name, logo, or other likeness in any press release, marketing material, or other announcement without prior written approval of RRC. RRC does not, and shall not, endorse any Respondent, Contractor, commodity, or service. Respondent shall not, and is not authorized to, make or participate in any media releases or public announcements pertaining to the Solicitation, a contract arising from this RFP, the Response, or the services to which they relate with RRC's prior written consent, and then only in accordance with explicit written instructions from RRC.

- 1.43. **Entire Contract And Modification.** The Contract and its integrated attachment(s) constitute the entire agreement of the parties and are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements made in connection with the subject matter hereof. Unless an integrated attachment to the RFP and Contract expressly states a mutual intent to amend a specific article, section, item, term, or condition of the RFP and/or Contract, general conflicts in language between any attachment and the RFP and Contract shall be construed in favor of the terms and conditions of the RFP and Contract. Unless expressly authorized by the terms of this Contract, no modification, renewal, extension, or amendment to the RFP and Contract shall be binding upon the parties unless the same is in writing and signed by all Parties through an authorized representative of each Party with authority to bind the Party to the Contract.
- 1.44. **Severability.** If any provision contained in this RFP and the Contract is held to be unenforceable by a court of law or equity, the RFP and Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.
- 1.45. **Counterparts.** The Contract issued pursuant to this RFP may be executed in any number of counterparts, each of which shall be an original, and each such counterpart shall together constitute but one and the same agreement.
- 1.46. **Respondent's Statements and Covenants Required.** Respondents must sign and return the ***Respondent's Statements and Covenants*** form (see **RFP Attachment 2 Respondent's Statements and Covenants**) which shall be part of Respondent's Response and shall be fully incorporated by reference and constitute part of the Contract if awarded to Respondent. Failure to include a signed ***Respondent's Statements and Covenants*** form shall result in a Response being deemed nonresponsive and ineligible for Contract award.
- 1.47. **Supplemental Terms and Conditions Applicable to RFP No. 455-26-1019.**
- 1.47.1. **Federal Funds.** Work Orders issued under a Contract arising from this RFP may be funded with federal dollars, including grant dollars. Respondents shall note the following:
- 1.47.1.1. **Federal Forms.** A Work Order issued under a Contract arising from this RFP may be funded with federal dollars, including but not limited to grant dollars. A Work Order funded with federal dollars shall require, as applicable, completion of required federal forms and compliance with federal statutes, rules, and regulations.

- 1.47.1.2. Flow down terms and conditions.** Work Orders issued under a contract arising from this RFP may be funded by grant dollars received by RRC from agreements between RRC and the U.S. government. Such agreements shall have certain applicable federally funded contract provisions (“Flow Down Terms and Conditions”) that will be required to be made part of any agreement, Work Order, or Purchase Order issued by RRC for work funded using federal dollars. By submitting a response to this RFP, Respondent acknowledges understanding that in order to receive a Work Order funded by federal dollars, Respondent shall be provided opportunity to review any applicable agreement and any applicable Flow Down Terms and Conditions prior to negotiation of the Work Order and, if accepting of the applicable Flow Down Terms and Conditions, Contractor shall fully comply with the requirements thereof.
- 1.47.2. Possessory Rights of Material and Equipment.** Pursuant to certain provisions of Texas Natural Resources Code Chapter 91, upon entering into a contract to clean up a site or facility upon which equipment or hydrocarbons are stored, the State of Texas shall have first lien, superior to all preexisting and subsequent liens and security interests, on hydrocarbons stored at a site or facility and in any equipment that is located at the site or facility. A Contractor awarded a Contract under this RFP shall not obtain possessory rights, lien rights, salvage rights, or title to such hydrocarbons or equipment except by formal, written process and agreement in accordance with Texas Natural Resources Code Chapter 89 and any other applicable statute, law, or rule.
- 1.47.3. Electrical Items.** All electrical items, if required to perform Work under this contract, shall meet all applicable OSHA standards and regulations and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers’ Association (NEMA).
- 1.47.4. Prohibited Use of State Property.** Respondent is prohibited from using State Property for any purpose other than performing Site Remediation Services authorized under the Contract. State Property includes, but is not limited to, RRC’s office space, identification badges, RRC information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any RRC issued software, and the RRC Virtual Private Network (VPN client)), and any other resources of RRC.

1.47.5. Contractor's Identification of Key Personnel. Upon request of RRC and prior to start of any work related to such request, Contractor shall provide to the requesting RRC Authorized Representative a list of Contractor's personnel, including subcontractors, who shall be assigned to a project management, and/or operations management role and/or such other assignments to critical activities ("Key Personnel Roles"). Contractor's list shall include, at a minimum, identification of Contractor's senior staff within the following types of roles: Project Manager, Site Manager, Operations Manager.

Upon receipt of written approval of Contractor's list under this article, Contractor shall not reassign, transfer, or delegate any Key Personnel Roles, responsibilities, tasks or duties under the Work Order without prior written approval of the RRC Authorized Representative.

Contractor solely shall be responsible for ensuring, throughout Contract Term, that Contractor's personnel, including subcontractors, that are assigned to a Key Personnel Role, shall meet all minimum qualifications, certifications, licenses, and experience required by the Solicitation and Contract Documents and federal, state, and local laws, rules, regulations, and ordinances.

In event Contractor receives written approval from RRC to replace any personnel assigned a Key Personnel Role, Contractor shall ensure replacement of the personnel shall be with a qualified individual with equal or better qualifications of the previously approved Contractor personnel and at no additional cost to RRC.

1.47.6. Enhanced Contract Monitoring. RRC has determined any contract resulting from this RFP may require enhanced monitoring for performance and compliance with the Contract terms and conditions. Contractor receiving a Contract award resulting from this RFP shall be subject to applicable performance evaluation standards described within **RFP Attachment 7 Performance Evaluations Standards**.

Performance Evaluation Standards

In accordance with Texas Government Code Chapter 2261, RRC has determined any Contract resulting from this RFP may require enhanced monitoring for performance and compliance with the Contract terms and conditions. Enhanced monitoring may include, but is not limited to frequency of site visits, Contractor meetings, and documentation requirements deemed necessary by RRC to assess progress of the Contractor toward meeting the identified goals and outcomes established in response to assessments of unsatisfactory performance. The performance evaluation standards herein shall be applied during routine and/or enhanced monitoring of Contractors and work performed under the Contract. Performance evaluations resulting in deficiencies shall be considered in determining, in RRC's sole discretion, the appropriate corrective actions to be implemented to cure Contractor's deficiencies. Significant or repeat performance evaluation score deficiencies may result in termination of the Contract in accordance with provisions of **Attachment 6 Terms and Conditions** of the RFP.

- **Services Performed:** this standard is defined as the Contractors' daily execution of Reclamation Services. This includes supervision, planning, progress, and coordination of site reclamation activities to ensure effective utilization of resources. Contractor shall be evaluated daily and shall receive between zero (0) and thirty (30) points per day. Points shall be deducted in increments of three (3) points or more for each Contractor-controlled deficiency that results in unsatisfactory progress. Thirty (30) points shall be awarded if all Reclamation Services are performed as specified within the applicable Work Order.
- **Equipment:** this standard is defined as equipment, including any subcontractor equipment, necessary to complete daily tasks and properly perform Reclamation Services required under a Work Order in accordance with specifications and terms and conditions of the Contract and the applicable Work Order. Contractor shall be evaluated on the performance of equipment including subcontractor's equipment. Contractor shall receive between zero (0) and thirty (30) points each day. Points shall be deducted in increments of (3) points for each hour of downtime attributable to equipment failures within the Contractor's control.
- **Downtime:** this standard is defined any interruption in service due to equipment failure or otherwise within the Contractor's control. Contractor shall be daily evaluated on hours of downtime as a percentage of a full workday (i.e., 8-10 hours), and shall receive that percentage of points between zero (0) and twenty-five (25).
- **Personnel:** this standard considers Contractor's providing of fully trained personnel, including subcontractors' personnel, in accordance with specifications and terms and conditions of the Contract and the applicable Work Order. Contractor shall be daily evaluated and scored on Contractor's ability to maintain a fully trained crew that performs in accordance with the Contract and applicable Work Order at all times. Contractor shall receive up to fifteen (15) points for this standard. Three (3) points or more shall be daily deducted for each deficiency.
- **Safety:** this standard considers Contractor's maintenance of a documented safety program and Contractor's compliance with the safety program, OSHA, and established industry safety practices. Ten (10) points shall be deducted from Contractor's final performance rating for absence of a documented safety program and/or a lost time accident as a result

of failure to comply with Contractor's safety program, OSHA, and/or established industry safety practices. This is a one-time point assessment issued at Contract completion.

- **Availability:** this standard considers Contractor's compliance with mobilization date specified within RRC's Notice to Proceed issued to Contractor. Contractor's failure to complete mobilization no later than the established deadline within the Notice to Proceed shall result in a ten (10) points deduction issued at Contract completion.
- **Contractor's financial resources to deliver goods and services:** this standard is defined, in part, as Contractor's in-field demonstration of financial capability to timely deliver to the work site all goods and services necessary to comply with all Contract terms and conditions, including those related to performance period, and Work Order specifications. Contractor's failure to timely deliver any and all goods and services in accordance with Contract terms and conditions and Work Order specifications shall result in a ten (10) point deduction issued at Contract Completion.

Additional Terms and Conditions

Infrastructure Investment & Jobs Act Abandoned Mine Lands Work

Involving Department of Interior Grant Funds

Part I: Federal Compliance Notice & Disclaimer

1. Awarded Contractor (“Contractor”) pursuant to Solicitation No. 455-26-1019 is advised that work under this Contract pursuant to the abandoned mine lands program, (“Abandoned Mine Lands Program”) may be paid for in whole or in part using federal grant money from the Department of the Interior (“DOI”) as authorized in the Infrastructure Investment and Jobs Act (cited hereafter as “IIJA”; [Public Law 117-58](#)). Contractor shall comply with [DOI Standard Award Terms and Conditions](#) as applicable and as amended by DOI from time to time, as well as all additional terms and conditions as set forth in this Attachment 8 (“Federal Terms and Conditions”).
2. The Railroad Commission of Texas (“RRC”) through its authorized representative(s) shall notify Contractor in writing of whether DOI grant funds will be utilized for a particular work order or project. By proceeding with Abandoned Mine Lands Program work after notice by RRC that DOI grant funds will be utilized for that work, Contractor agrees to comply with all governing terms and conditions then in effect, including those identified in this Attachment 8 with Exhibits A-E and supplemental terms and conditions attached to any applicable work order.
3. Contractor accepts that the Federal Terms and Conditions may change from time to time, in which case, RRC shall notify Contractor as soon as possible.
4. **DOI, DOL, OR ANY APPLICABLE FEDERAL FUNDING AGENCY, REGARDLESS OF PRIVACY OF CONTRACT, SHALL BE TREATED AS A THIRD-PARTY BENEFICIARY FOR PURPOSES OF ENFORCING PARTS 4 & 5 (THE DAVIS-BACON ACT AND THE BUILD AMERICA BUY AMERICA PROVISIONS) OF THESE FEDERAL TERMS AND CONDITIONS. CONTRACTOR SHALL CAREFULLY READ AND ADHERE TO PARTS 4-5 OF THESE FEDERAL TERMS AND CONDITIONS. NOTWITHSTANDING ANY LIMITATION OF LIABILITY CLAUSE, DOI, DOL, OR ANY APPLICABLE FEDERAL FUNDING AGENCY, MAY RECOVER ANY DAMAGES AGAINST CONTRACTOR PERMITTED BY LAW WITHOUT LIMITATION OR QUALIFICATION.**
5. Contractor agrees that payment under this Contract utilizing DOI grant money is used, is expressly contingent on compliance with these additional terms and conditions as set forth in this Attachment 8 and federal law.

6. Contractor certifies that it or its authorized representative(s) have fully read Attachment 8 prior to receiving any applicable payment by means of DOI grant funds, and Contractor understands that no plea of ignorance will be accepted.
7. Contractor shall supply to RRC, DOI, or Department of Labor at its own expense any information requested by any of these agencies as necessary to comply with or verify compliance with the terms of any applicable DOI grant or other federal law.
8. Contractor shall cooperate with RRC, DOI, OSMRE, and Department of Labor to verify compliance with these additional terms and conditions, and any other applicable laws or regulations.
9. ***CONTRACTOR CERTIFIES THAT THESE ADDITIONAL TERMS AND CONDITIONS AS SET FORTH IN THIS ATTACHMENT 8 SHALL BE BINDING COVENANTS UPON ITS SUBCONTRACTOR(S) AT ALL LEVELS, IF ANY, AND THESE TERMS AND CONDITIONS SHALL BE AGREED TO IN WRITING BY SAID SUBCONTRACTOR(S) PRIOR TO ANY WORK BEING PERFORMED, AND THESE WRITTEN AGREEMENTS SHALL BE MADE AVAILABLE TO RRC, DOI, OR DEPARTMENT OF LABOR UPON REQUEST.***
10. Contractor consents that its employees, agents, and subcontractors may be subject to compliance verification interviews with or without notice, and interviewees may not be compelled or coerced to disclose the details of these interviews. Failure to cooperate with these interviews may result in suspension of a work order issued to Contractor.

Part 2: Lobbying, Debarment & Whistleblower Protection Certifications

11. Contractor agrees to the terms of the lobbying certification in Exhibit A and shall sign and return this certification to RRC prior to performing any AML work utilizing DOI grant funds.
12. If Contractor receives in excess of \$100,000 in payments by reason of DOI grant money and funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of a federal contract, federal loan, federal cooperative agreement, or extension, continuation, renewal amendment, or modification of any of the foregoing, Contractor shall submit a Form SF-LLL (Disclosure of Lobbying Activities) to RRC. Contractor shall file an updated Form SF-LLL at the end of every calendar quarter in which the information in the Disclosure of Lobbying Activities materially changes. This form is copied and reproduced in Exhibit B to this document. Please see [43 C.F.R. Part 18.110](#) for more information.

13. Contractor certifies that it is not debarred, suspended, disqualified, or otherwise excluded from participation in any activities involving federal financial or nonfinancial assistance and benefits. Furthermore, Contractor shall only provide services under this Contract in accordance with this certification. If this certification is no longer true, Contractor shall cease work under the Contract, notify RRC immediately, and refund any money paid to Contractor by reason of federal grant monies for work performed after the Contractor became debarred, suspended, disqualified, or otherwise excluded from participation in activities as described in this section.
14. Contractor certifies that it shall at all times comply with [41 U.S.C. Part 4712](#) pertaining to whistleblowers who report misuse or mismanagement of federal grant money as applicable. **CONTRACTOR SHALL ENSURE THAT THE FEDERAL WHISTLEBLOWER PROTECTIONS OF THIS STATUTE, INCLUDING THE RIGHT TO FILE A COMPLAINT FOR SUSPECTED WASTE OR MISMANAGEMENT OF FEDERAL FUNDS WITHOUT RETALIATION, ARE COMMUNICATED IN WRITING IN THE PREDOMINANT LANGUAGE OF THE WORKPLACE TO ALL PERSONNEL.**
15. Contractor certifies that it shall at all times comply with [Section 743 of Division E Title VII of Pub. L. 113-235](#) which prohibits the payment of federal money to entities that require certain internal confidentiality agreements of their employees.

Part 3: Civil Rights & Environmental Protection Certifications

16. Contractor certifies compliance with the applicable provisions of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, as well as any federal regulations implementing the foregoing statutes.
17. Contractor certifies that it shall comply with [Executive Order No. 11,246](#) on Equal Employment Opportunity as well as [41 C.F.R. Part 60-1.4\(b\)](#) implementing the same.

Part 4: Davis-Bacon Act Certifications

18. Contractor certifies that it shall comply with all applicable provisions of the Davis-Bacon Act, including all implementing regulations such as 29 C.F.R. Parts 1, 3, and 5, and [29 C.F.R. Section 5.5](#) incorporated into this Contract by reference, and shall pay all laborers and mechanics the prevailing rates of the locality where work is being performed in accordance with Subchapter IV of Chapter 31 of Title 40, U.S.C. The terms of 29 C.F.R. Section 5.5 are copied and reproduced in Exhibit E to this document. The applicable wage determinations establishing the prevailing wages to be paid all laborers and mechanics employed on federal worksites are incorporated by reference in Exhibit D to this document. Please note that Exhibit D is intentionally left blank at the solicitation stage, but this will be completed and incorporated by reference at the contract award stage when the counties where services are to be performed by Contractor are known. Contractor must abide by all applicable wage determinations. **DOL AND DOI SHALL HAVE THE RIGHT TO SUE AS A THIRD-PARTY BENEFICIARY TO ENFORCE THE DAVIS-BACON ACT AND TO RECOVER ALL LOSSES ATTRIBUTABLE TO THE VIOLATION OF DAVIS-BACON ACT, INCLUDING ATTORNEY'S FEES AND COURT COSTS, AND THE DAVIS-BACON ACT PROVISIONS HEREIN SHALL NOT BE MODIFIED OR WAIVED WITHOUT THE CONSENT OF DOI AND DOL.**
19. **CONTRACTOR CERTIFIES THAT IT CAN AND SHALL PAY ALL LABORERS OR MECHANICS, AS DEFINED IN THE DAVIS-BACON ACT, WEEKLY FOR SERVICES PERFORMED ON WORKSITES RECEIVING FEDERAL FUNDING. FAILURE TO PAY LABORERS OR MECHANICS WEEKLY IS A SERIOUS BREACH OF CONTRACT THAT MAY RESULT IN CONTRACT TERMINATION.**
20. Contractor shall install a WH-1321 Davis-Bacon Act poster in both English and Spanish in accordance with DOL specifications in a prominent location on every federally-funded worksite. Applicable wage determinations and conformances shall likewise be posted in an open, prominent, accessible location. The complete poster must be no smaller than 11 x 17 inches. A copy of this poster can be found at the following link: <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fedprojc.pdf>.
21. Contractor certifies that all subcontractors shall comply with the Davis-Bacon Act and these Federal Terms and Conditions on this subject. Contractor agrees to monitor subcontractors and to withhold payment from subcontractors as needed to ensure that laborers or mechanics employed on a federal worksite are paid weekly at least the federal prevailing wage plus overtime as applicable. Contractor shall within three (3) business days report non-compliant subcontractors to RRC, and Contractor shall promptly remove

non-compliant subcontractors. Contractor agrees that non-compliance of subcontractors shall be considered in evaluating Contractor's overall performance and may in extreme circumstances such as frequent or egregious violations of the Davis-Bacon Act constitute a material breach of contract by Contractor.

22. **CONTRACTOR CERTIFIES THAT IT SHALL COOPERATE WITH RRC IN COMPLETING REQUIRED WAGE CERTIFICATIONS, WHICH SHALL BE DUE WEEKLY**, and shall make use of any compliance software (currently eComply) supplied by RRC for this purpose. Cooperation includes, but it not limited to assisting federal and state auditors with compliance monitoring activities, maintaining organized Davis-Bacon documentation for at least three (3) years, and filling out and submitting conformances in cases in which a job classification is not covered by an applicable wage determination.
23. **CONTRACTOR SHALL REGISTER ANY SUBCONTRACTORS IN ECOMPLY (OR OTHER COMPLIANCE SOFTWARE AS DIRECTED BY RRC) THAT PROVIDE THE SERVICES OF LABORERS OR MECHANICS, AS DEFINED IN THE DAVIS-BACON ACT**, with the exception of sole proprietors who do not employ laborers or mechanics on the worksite, prior to these sub-contractors performing work on any site. Limited exceptions may apply for emergencies, but RRC must be consulted first.
24. Contractor agrees that any purchase order issued under this Contract may incorporate by reference as additional terms any applicable wage determinations for the county or counties in which work is to be performed.
25. Contractor certifies that it shall comply with the [Copeland Anti-Kickback Act](#), including 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable.
26. Contractor certifies its compliance with the [Contract Work Hours and Safety Standards Act](#), including but not limited to 40 U.S.C. Sections 3702 and 3704, as well as any federal regulations implementing the foregoing such as 29 C.F.R. Part 5.

Part 5: Buy America & Miscellaneous Certifications

27. Contractor certifies that it shall comply with Section 70914 of the [IIJA](#) ("Build America Buy America Act" or "BABA") providing that all iron, steel, manufactured goods, and construction materials purchased and consumed pursuant to a federal works project on public property or publicly accessible property be made in the United States; notwithstanding the foregoing, as specified in Section 70917 of the IIJA, this Contract provision does not apply to purchases of cement, cementitious materials, aggregates such as stone, sand, gravel, or aggregate binding agents or additives and inputs of construction material. Contractor warrants having read and understood the requirements of BABA and

that Contractor will maintain appropriate documentation for three (3) years to show that applicable purchased goods have been made in the United States prior to affixing them to qualifying infrastructure. If necessary, Contractor shall cooperate with RRC and DOI to obtain a BABA waiver. **DOI SHALL HAVE THE RIGHT TO SUE AS A THIRD-PARTY BENEFICIARY TO ENFORCE BABA AND TO RECOVER ALL LOSSES ATTRIBUTABLE TO THE VIOLATION OF BABA, INCLUDING ATTORNEY'S FEES AND COURT COSTS, AND THE BABA PROVISIONS HEREIN SHALL NOT BE MODIFIED OR WAIVED WITHOUT THE CONSENT OF DOI.**

28. **CONTRACTOR IS EXPLICITLY ADVISED THAT CONSTRUCTION OF GROUNDWATER MONITORING WELLS MUST COMPLY WITH BABA.**
29. Contractor shall sign and submit to RRC the BABA certification in Exhibit C before work begins pursuant to any purchase order governed by these Terms and Conditions.
30. As applicable and consistent with Section 6002 of the Solid Waste Disposal Act and 40 CFR Part 247, Contractor shall utilize available recycled products containing the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. Contractor shall document compliance with 40 CFR Part 247.
31. Consistent with 2 CFR Section 200.216, Contractor shall not acquire prohibited telecommunications or video equipment.
32. Contractor certifies its continued compliance with the False Claims Act during the term of this Contract; Contractor shall not make any false claim, statement, or certification to obtain any federal money, benefit, or other remuneration under this Contract.
33. To the extent applicable, Contractor shall abide by federal rules and regulations while performing abandoned mine lands work on federal lands or installations.
34. To the extent applicable, 2 CFR Part 200 Appendix II is incorporated by reference.
35. Contractor agrees that these additional terms and conditions may be amended if necessary to comply with RRC's grant agreement with DOI, and refusal to assent to said amendment(s) may prevent Contractor's continued participation in Abandoned Mine Lands Program activities financed by DOI grant funds.
36. For every applicable purchase of goods covered under BABA, Contractor shall maintain adequate sourcing documentation for three (3) years to show the goods were in fact compliant with BABA.

Federal Forms: Federally Funded Work Orders

A Work Order issued under a Contract arising from this RFP may, but not shall, be funded with federal dollars, including but not limited to grant dollars. A Work Order funded with federal dollars shall require, as applicable, completion of required federal forms, compliance with federal statutes, rules, and regulations, and agreement to and compliance with any applicable flow-down terms and conditions from a contract between RRC and a U.S. federal agency.

The federal forms listed below shall apply to only federally funded Work Orders. These forms are noted for information purposes only and shall not be returned with Respondent's Response to this RFP, however:

To be eligible for consideration as a Contractor for a federally funded Work Order request, a Respondent must be able to complete, return and comply with these federal forms.

- SBA Form 1624 (12/92) – 2 pages
- Standard Form 424B – 2 pages
- Standard Form LLL – 1 page

Exhibit A:
Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents of all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Organization: _____

Street address: _____

City, State, Zip: _____

CERTIFIED BY: (type or print)

TITLE:

(signature)

(date)

Exhibit B

Approved by OMB

0348-0046

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract ____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: a. bid/offer/application ____ b. initial award c. post-award	3. Report Type: a. initial filing ____ b. material change For material change only: Year _____ quarter _____ Date of last report _____
4. Name and Address of Reporting Entity: ____ Prime ____ Subawardee Tier____, if Known: Congressional District, if known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known:	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$	
10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i>	b. Individuals Performing Services <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

Exhibit C

Certificate of Compliance with Buy America Act Requirements

Contractor certifies that it shall comply with Section 70914 of the [IIJA](#) (“Build America Buy America Act” or “BABA”) providing that all iron, steel, manufactured goods, and construction materials purchased and consumed pursuant to a federal works project be made in the United States; notwithstanding the foregoing, as specified in Section 70917 of the IIJA, this Contract provision does not apply to purchases of cement, cementitious materials, aggregates such as stone, sand, gravel, or aggregate binding agents or additives and inputs of construction material. Contractor warrants having read and understood the requirements of BABA and that Contractor will maintain appropriate documentation for three (3) years to show that applicable purchased goods have been made in the United States prior to affixing them to qualifying infrastructure. If necessary, Contractor shall cooperate with RRC and DOI to obtain a BABA waiver.

By signing below, the signatory affirms the certification above under penalty of perjury and that the signatory has the authority to represent Contractor.

Date: _____

Name (Print): _____

Signature: _____

Title: _____

Contractor Company: _____

Exhibit D
Wage Determinations

.....

Intentionally left blank. This Exhibit will be filled in at contract award stage.

.....

Exhibit E:

Mandatory Contract Clauses (29 CFS § 5.5)

§ 5.5 Contract provisions and related matters.

- (a) **Required contract clauses.** The Agency head will cause or require the contracting officer to require the contracting officer to insert in full, or (for contracts covered by the Federal Acquisition Regulation (48 CFR chapter 1)) by reference, in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the laws referenced by § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) **Minimum wages —**

- (i) **Wage rates and fringe benefits.** All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of this section, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(v) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred

during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph (a)(4) of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (a)(1)(iii) of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) Frequently recurring classifications.

- (A) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph (a)(1)(iii) of this section, provided that:
 - (1) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
 - (2) The classification is used in the area by the construction industry; and
 - (3) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.
- (B) The Administrator will establish wage rates for such classifications in accordance with paragraph (a)(1)(iii)(A)(3) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

(iii) Conformance.

- (A) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:
 - (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is used in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.
- (C) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a

report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- (D) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (E) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs (a)(1)(iii)(C) and (D) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph (a)(1)(iii)(C) or (D) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iv) **Fringe benefits not expressed as an hourly rate.** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (v) **Unfunded plans.** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (vi) **Interest.** In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.
- (2) **Withholding —**
 - (i) **Withholding requirements.** The Railroad Commission of Texas may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in paragraph (a) of this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld

from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph (a)(3)(iv) of this section, the Railroad Commission of Texas may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(ii) **Priority to withheld funds.** The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:

- (A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (B) A contracting agency for its reprourement costs;
- (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (D) A contractor's assignee(s);
- (E) A contractor's successor(s); or
- (F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

(3) **Records and certified payrolls —**

(i) **Basic record requirements —**

- (A) **Length of record retention.** All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.
- (B) **Information required.** Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.
- (C) **Additional records relating to fringe benefits.** Whenever the Secretary of Labor has found under paragraph (a)(1)(v) of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan

or program described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

- (D) ***Additional records relating to apprenticeship.*** Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) ***Certified payroll requirements –***

- (A) ***Frequency and method of submission.*** The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the Department of the Interior if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the Department of the Interior. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.
- (B) ***Information required.*** The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph (a)(3)(i)(B) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347/.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).
- (C) ***Statement of Compliance.*** Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

- (1) That the certified payroll for the payroll period contains the information required to be provided under paragraph (a)(3)(ii) of this section, the appropriate information and basic records are being maintained under paragraph (a)(3)(i) of this section, and such information and records are correct and complete;
 - (2) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.
- (D) **Use of Optional Form WH-347.** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(C) of this section.
- (E) **Signature.** The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.
- (F) **Falsification.** The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.
- (G) **Length of certified payroll retention.** The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.
- (iii) **Contracts, subcontracts, and related documents.** The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.
- (iv) **Required disclosures and access —**
- (A) **Required record disclosures and access to workers.** The contractor or subcontractor must make the records required under paragraphs (a)(3)(i) through (iii) of this section, and any other documents that the Railroad Commission of Texas or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the Railroad Commission of Texas or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.
 - (B) **Sanctions for non-compliance with records and worker access requirements.** If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency

may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

- (C) **Required information disclosures.** Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the Department of Interior if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the Department of Interior, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

(4) **Apprentices and equal employment opportunity –**

(i) **Apprentices –**

- (A) **Rate of pay.** Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (B) **Fringe benefits.** Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage

determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

- (C) **Apprenticeship ratio.** The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph (a)(4)(i)(D) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(4)(i)(A) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.
- (D) **Reciprocity of ratios and wage rates.** Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.
- (ii) **Equal employment opportunity.** The use of apprentices and journey workers under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- (5) **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) **Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses contained in paragraphs (a)(1) through (11) of this section, along with the applicable wage determination(s) and such other clauses or contract modifications as the [write in the name of the Federal agency] may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.
- (7) **Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5,

6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility.**

- (i) By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or § 5.12(a).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or § 5.12(a).
- (iii) The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.

(11) **Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- (i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;
- (ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;
- (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or
- (iv) Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

(b) **Contract Work Hours and Safety Standards Act (CWHSSA).** The Agency Head must cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1) through (5) of this section in full, or (for contracts covered by the Federal Acquisition Regulation) by reference, in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses must be inserted in addition to the clauses required by paragraph (a) of this section or 29 CFR 4.6. As used in this paragraph (b), the terms "laborers and mechanics" include watchpersons and guards.

- (1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done

under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watch persons and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$33 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1).

(3) ***Withholding for unpaid wages and liquidated damages*** –

(i) ***Withholding process.*** The Railroad Commission of Texas may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this paragraph (b) on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

(ii) ***Priority to withheld funds.*** The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:

- (A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (B) A contracting agency for its procurement costs;
- (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (D) A contractor's assignee(s);
- (E) A contractor's successor(s); or
- (F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

(4) ***Subcontracts.*** The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs (b)(1) through (5) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (5). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

(5) **Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- (i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
- (ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
- (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
- (iv) Informing any other person about their rights under CWHSSA or this part.

(c) **CWHSSA required records clause.** In addition to the clauses contained in paragraph (b) of this section, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other laws referenced by § 5.1, the Agency Head must cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor must maintain regular payrolls and other basic records during the course of the work and must preserve them for a period of 3 years after all the work on the prime contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and social security number of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid; daily and weekly number of hours actually worked; deductions made; and actual wages paid. Further, the Agency Head must cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph must be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Railroad Commission of Texas and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview workers during working hours on the job.

(d) **Incorporation of contract clauses and wage determinations by reference.** Although agencies are required to insert the contract clauses set forth in this section, along with appropriate wage determinations, in full into covered contracts, and contractors and subcontractors are required to insert them in any lower-tier subcontracts, the incorporation by reference of the required contract clauses and appropriate wage determinations will be given the same force and effect as if they were inserted in full text.

(e) **Incorporation by operation of law.** The contract clauses set forth in this section (or their equivalent under the Federal Acquisition Regulation), along with the correct wage determinations, will be considered to be a part of every prime contract required by the applicable statutes referenced by § 5.1 to include such clauses, and will be effective by operation of law, whether or not they are included or incorporated by reference into such contract, unless the Administrator grants a variance, tolerance, or exemption from the application of this paragraph. Where the clauses and applicable wage determinations are effective by operation of law under this paragraph, the prime contractor must be compensated for any resulting increase in wages in accordance with applicable law.

Guidelines for Adhering to Federal Terms and Conditions

Instructions: During the term of the Contract, Contractor(s) must adhere to the Federal Terms and Conditions incorporated by reference in *Attachment 10* of Solicitation No. 455-26-1019 on file with the Railroad Commission of Texas (“*Attachment 10*”) as a pre-requisite to performing any work funded by federal grant money. Work pursuant to Solicitation No. 455-26-1019 (the “Solicitation”) may be funded in whole or in part by federal grant money. It is possible that no state money will be available for contractors that are unable or unwilling to follow the Federal Terms and Conditions in Attachment 10.

Particular care must be given to strictly complying with the Davis-Bacon Act at all levels (a violation of the Davis-Bacon Act at any level by any contractor or subcontractor is a violation at all levels unless immediate and decisive action is taken to remedy the violation(s)). **Strict adherence to these guidelines is required and will help ensure that Contractor(s) stay in compliance to avoid breaches of contract.**.....

Davis-Bacon Act Requirements Applicable to All

Weekly Payroll: All laborers or mechanics as those terms are defined in the Davis-Bacon Act, including laborers or mechanics employed by subcontractors, must be paid no less than once per week. The general subcontractor must withhold payment from any subcontractor if necessary to ensure that laborers or mechanics are paid timely.

Wage Certification Submittals: Wage certifications must be submitted to RRC once per weekly pay period in eComply. For example, if work is performed on Week 1, wage certifications for wages paid by reason of Week 1 must be filed during Week 2 and so on. For purposes of these guidelines, a week is a one calendar week. These wage certifications must be signed by a high-level officer in the company who can verify the facts stated therein under penalty of perjury and other sanctions such as the False Claims Act.

Conformances: Contractor(s) shall complete conformance application forms (SF-1444) for any work classifications not covered by an applicable wage determination. Work may proceed while awaiting a final determination of the conformance by Department of Labor. Conformance

application forms shall be submitted to and reviewed by RRC. RRC will be in charge of filing the conformance applications.

Davis-Bacon Act Poster Requirements: The poster below must be displayed in a prominent location at every federally-funded worksite in both English and Spanish according to the size requirements listed on Department of Labor's website. RRC shall provide the contact information to fill in the box below on the poster:

EMPLOYEE RIGHTS

UNDER THE DAVIS-BACON ACT

**FOR LABORERS AND MECHANICS
EMPLOYED ON FEDERAL OR
FEDERALLY ASSISTED
CONSTRUCTION PROJECTS**

PREVAILING WAGES You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243
TTY: 1-877-889-5627
www.dol.gov/whd



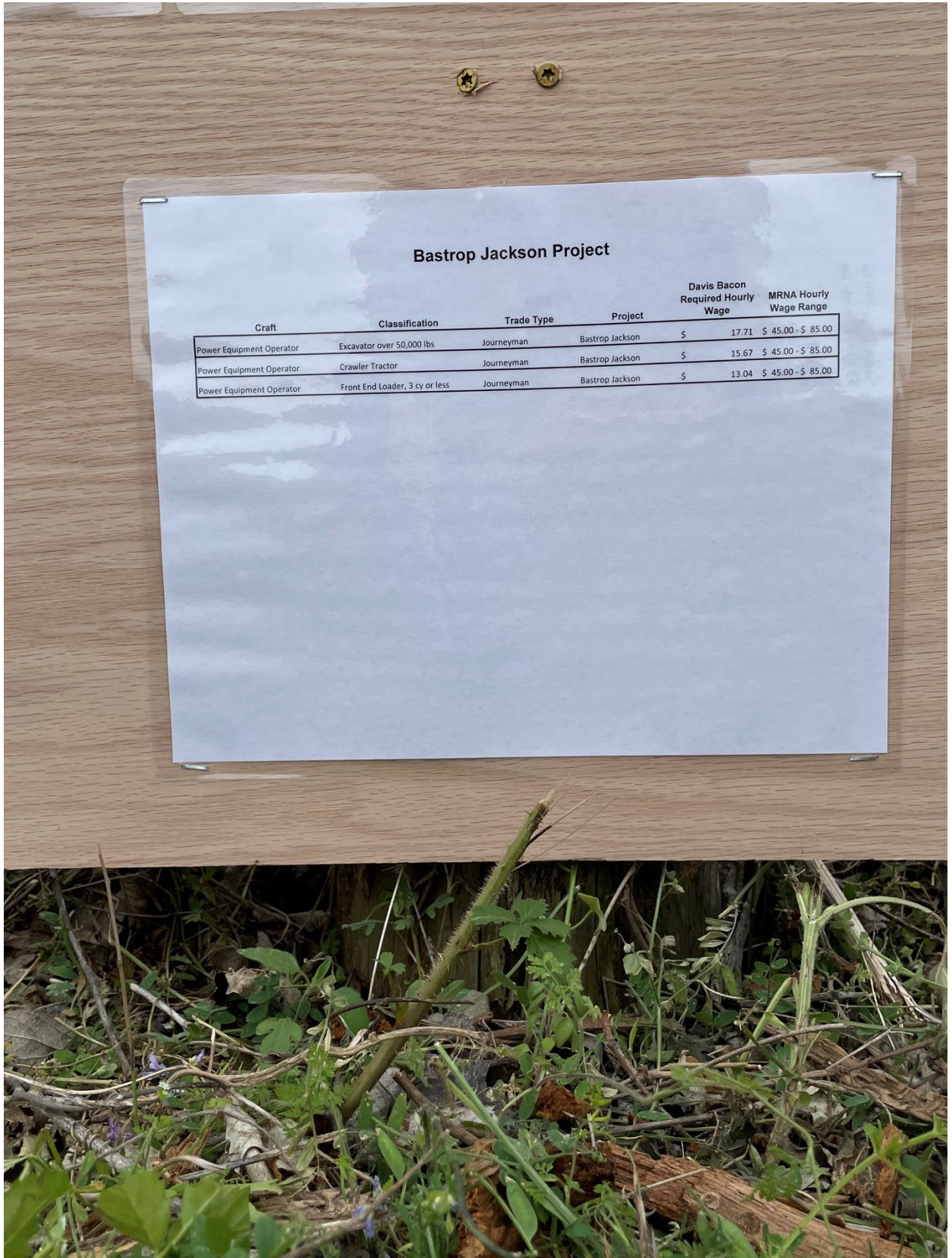
WH0321 REV 10/17

Davis-Bacon Act Audits: From time to time, representatives of RRC or Department of Labor may conduct confidential site interviews of workers to verify compliance with the Davis-

Bacon Act. Workers shall not be retaliated against or harassed for participating in these interviews, and Contractor(s) may not ask interviewees any questions about these site interviews. Vendor's employees and any subcontractor's employees shall cooperate and answer interview questions without any coaching by management.

Posting Requirements Generally: The Davis-Bacon Act posters (in English and Spanish), applicable wage determinations, and conformance documents listing the federal prevailing wages shall be displayed in a prominent location on every federally-funded worksite. Signage should not be obscured or hidden. One example of compliant signage meeting these requirements is provided in the pictures below.





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"General Decision Number: TX20230007 01/06/2023

Superseded General Decision Number: TX20220007

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: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least \$16.20 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 2023.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	Executive Order 13658 generally applies to the contract. The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2023.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at

<https://sam.gov/wage-determination/TX20230007/0>

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<http://www.dol.gov>

Modification Number
0

SUTX2011-006 08/1

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

ELECTRICIAN.....

FORM BUILDER/FORM ST Paving & Curb Structures.....

LABORER
Asphalt Raker..
Flagger.....
Laborer, Common
Laborer, Utility
Pipelayer.....
Work Zone Barrier
Servicer.....

PAINTER (Structures).

POWER EQUIPMENT OPERA
Agricultural Trai
Asphalt Distribut
Asphalt Paving M
Boom Truck.....
Broom or Sweeper.
Concrete Pavement
Finishing Machine
Crane, Hydraulic
or less.....
Crane, Lattice Bo
tons or less.....
Crane, Lattice Bo
80 tons.....
Crawler Tractor..
Directional Drill.
Locator.....
Directional Drill
Operator.....
Excavator 50,000 l
Less.....
Excavator over 50,
Foundation Drill,
Mounted.....
Front End Loader,
Less.....
Front End Loader, C
Loader/Backhoe....
Mechanic.....
Milling Machine....
Motor Grader, Fine
Motor Grader, Rough
Pavement Marking Ma
Reclaimer/Pulverizer

<https://sam.gov/wage-determination/TX>

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<http://www.dol.gov/whd/govcontracts>.

SAM.gov

Modification Number Publication Date
0 01/06/2023

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 **
Crane, 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 **

<https://sam.gov/wage-determination/TX20230007/0>

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<https://sam.gov/wage-determination/TX20230007/0>

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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 SIGNALIZATION:

Traffic Signal Installation

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 **

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

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** Workers in this classification may be entitled to a higher
minimum wage under Executive Order 14026 (\$16.20) or 13658
(\$12.15). Please see the Note at the top of the wage
determination for more information.

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
<https://www.dol.gov/agencies/whd/government-contracts>.

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)).

<https://sam.gov/wage-determination/TX20230007/0>

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negotiated/CBA rate of the union locals from which the rate is based.

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 National Office because National Office has 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

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<https://sam.gov/wage-determination/TX20230007/0>

Guidelines for Employing Subcontractors

Subcontractor Supervision: Contractor(s) shall not employ subcontractors that are unable to comply with *Attachment 10*. Subcontractors must strictly adhere to all federal terms and conditions, which Contractor(s) shall monitor. If Contractor(s) become aware of non-compliance, the subcontractor shall promptly correct the non-compliance or be dismissed.

Requirement of Written Subcontract: All subcontractors must enter into a written contract with Contractor(s) prior to performing services under the Solicitation. In an emergency situation involving imminent risk to human life, health, safety or welfare, a subcontractor may be employed that has not signed a prior written subcontract.

Form of Written Subcontract: No particular set of words is required in the written subcontract, but at minimum, the subcontract shall incorporate by reference the federal terms and conditions in *Attachment 8* along with exhibits, *Attachment 9* and this *Attachment 10*. This subcontract shall be signed by someone with authority to sign for the subcontractor. The written subcontract with all incorporated attachments and exhibits must be in a substantially form to the sample subcontract below:

Sample Subcontract

I, **[fill in name of undersigned]** acting as duly authorized representative of **[fill in entity name]** certify that **[fill in entity name]** shall comply with the appended Federal Terms and Conditions, Exhibits A-E, and the Guidelines for Adhering to Federal Terms and Conditions (collectively, “the Federal Terms and Conditions”) while performing services for **[fill in general contractor name]** on worksites funded in whole or in part by federal grant or cooperative agreement money. These Federal Terms and Conditions shall constitute a binding covenant upon any of **[fill in entity name]**’s subcontractors, successors, or assigns, and as such, these terms shall be incorporated in writing into any subcontracts in substantially the same form as this Subcontract. By affixing my signature below, I certify that I have read and understand the Federal Terms and Conditions and upon written notice by **[fill in general contractor name]** that a site is funded by federal grant or cooperative agreement funds, **[fill in entity name]** and any of **[fill in entity name]**’s contractors

will be expected to comply with the Federal Terms and Conditions, including but not limited to the Davis-Bacon Act and its weekly payroll and wage certification requirements.

Name [print]

Signature

Company Name

Subcontractor Registration in eComply: Prior to a subcontractor performing work under this Solicitation No. 455-26-1019 , a subcontractor must register in eComply. Subcontractors that employ laborers or mechanics on a site funded by federal grant money must register in eComply and submit weekly wage certifications. This provision does not apply to sole proprietors that do not employ laborers or mechanics.

Invoicing

Invoices for services performed other than invoices by a subcontractor must be submitted to RRC on a monthly basis to avoid incurring administrative late fees.

MANDATORY RATE SUBMISSION SHEET

Item No.	Item	Unit	Unit Price
1	Wheel Backhoe Loader - Cat 415	/hour.	
2	Wheel Loader - Cat 930	/hour.	
3	Wheel Loader - Cat 966	/hour.	
4	Motor Grader - Cat 12 (Cat 140 acceptable)	/hour.	
5	Skid Steer	/hour.	
6	Articulated Truck small - Cat 725 class	/hour.	
7	Articulated Truck medium - Cat 735 class	/hour.	
8	Articulated Truck large - Cat 745 class	/hour.	
9	Track Dozer small - Cat D5 LGP (Cat D4 acceptable)	/hour.	
10	Track Dozer medium - Cat D7 LGP (Cat D8 acceptable)	/hour.	
11	Track Dozer medium - Cat D7 with ripper (Cat D8 acceptable)	/hour.	
12	Water Truck 1000 gallon minimum	/hour.	
13	Standard Scraper - Cat 631	/hour.	
14	Push-Pull Scraper - Cat 637	/hour.	
15	Tractor with Plow Disc	/hour.	
16	Track Backhoe Excavator medium - Cat 330	/hour.	
17	Pickup	/day	
18	Site Foreman	/hour.	
19	Survey Crew	/hour.	

*Estimated items and quantities are not guaranteed.

**Equipment shown as Caterpillar for model and size reference only. Equivalent model substitute is acceptable.

***Equipment rates must include operator, fuel, and maintenance (does not include down time).

**** **Do not leave any category blank.**