

Request for Proposals (RFP)

Twitchell Dam Restoration Services RFP No. 23-0001

March 23, 2023



RFP/Proposal Timeline:

Date Issued: March 30, 2023

Deadline for Submittal of Questions: April 3, 2023 (5:00pm PDT)

Response to Questions: April 7, 2023 (5:00pm PDT)

Deadline for Submittal of Bids/Bid Opening: April 21, 2023 (5:00pm PDT)

Sole Point of Contact for Communications

Regarding this RFP:

**Casey Conrad, Chairman – Twitchell
Operations Committee**

Email: cconrad@smvwcd.org

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Section 1: Introduction

The Santa Maria Valley Water Conservation District (District or SMVWCD) operates and maintains Twitchell Dam and Reservoir on behalf of the United States, Department of the Interior, Bureau of Reclamation, with additional oversight by the Army Corps of Engineers. The Dam and Reservoir are essential to both ground water supply and flood protection for the Santa Maria Valley. Recent and ongoing winter storms deposited unprecedented quantities of sediment in the Reservoir as well as recharging a dried basin, in addition to sedimentation from prior weather and disaster events. Together, the events have significantly depleted the Reservoir's overall capacity.

The District is currently engaged in emergency operations related to water level stabilization as a result of the various weather events. Part of the emergency operations include accumulation and analysis of data of prior, historical sedimentation, and adverse impacts to infrastructure and operations because of the most recent weather events. Ultimately, the District seeks to obtain a comprehensive understanding of the quantities and types of material deposited in order to remediate prior sedimentation, rehabilitate Dam and Reservoir infrastructure, and update maintenance processes well into the future.

The District now seeks qualified firms to restore the reservoir's capacity back to pre-storm conditions, to provide water conservation and flood control resiliency in the face of current and future events.

Scope of Work

The primary responsibility of the Contractor will be to remove earthen and vegetative material from an approximate 6-acre submerged area around the dam intake structure and control gate areas of the Twitchell Reservoir to restore the function of the dam, on an emergency basis. The current estimated volume of material to be removed is approximately 150,000 to 180,000 cubic yards (CYS) or approximately 270,000 tons.

The secondary responsibility of the Contractor may be removing earthen and vegetative material from the reservoir that is determined to have been deposited as a result of the FEMA declared winter storm DR4683. The estimated volume material to be removed is approximately 1,000,000 cubic yards (CYS) or approximately 1,500,000 tons.

The tertiary responsibility of the Contractor may include sediment removal from Twitchell Reservoir to restore storage capacity decreased over time due to prior weather events and disasters, on a non-emergency basis.

The Contractor will be responsible for excavating/removing, transporting, off-loading, and delivery of debris to staging location(s) and to final deposition. The District has identified an upland disposal site/containment area for the convenience of the Contractor to use at their discretion.

All work to remove and dispose of the material will be conducted under the supervision of a designee from District and/or a third-party monitoring firm.

Work must be performed cautiously and with due respect to the sensitive environmental conditions that are present in the reservoir and surrounding areas, and shall not enlarge the dam but shall remove earthen and vegetative material determined to be deposited by storm activity, and/or prior disaster events. All proposed work performed by the Contractor shall comply with all Federal/State and local permit requirements, including but not limited to those authorizations issued by California Office of Emergency Services (Cal OES), the United States Army Corps of Engineers (USACE), California Fish and Wildlife, and the California State Water Resources Control Board. The Contractor will be responsible for

obtaining/retaining all necessary permits and notices to be in compliance with applicable local, state and federal laws, ordinances, permit requirements, and executive orders, prior to receiving a Notice to Proceed.

A Turbidity Curtain/Silt Curtain may be installed to enclose the active dredging area during dredging operations to reduce turbidity in the river. Turbidity testing must be performed continuously upstream and downstream of the dredging operation and a Daily Log of recorded turbidity measurements (NTUs) shall be maintained throughout the project. Testing as required shall be performed upon commencement of dredging and shall continue until such time as District notifies the Contractor that testing may cease. A weekly written Summary of Turbidity test results shall be provided to SMVWCD or designee by Friday of every week during operations.

Contract Term

The contract term, should a contractor be selected, is anticipated to be a five (5) year initial term with five (5) one (1) year renewal options with such renewals in the discretion of the District. Submitted prices shall remain firm for the initial 5-year term of this contract. Requests for consideration of a price adjustment must be made annually at least sixty (60) days prior to the contract anniversary date, in writing, to the District. Price adjustments are contingent upon written approval by the District Board of Directors. Surcharges will not be accepted in conjunction with this contract, and such charges should be incorporated into the pricing structure.

Section 2: Submission Requirements

When responding to this RFP, please follow all instructions carefully and exactly as directed. Bidders must not modify or deviate from the format, quantity, or content of the Bid Schedule in any way. Any modification including notations, deletions or additions to the Bid Schedule may result in rejection of the contractor's bid. Please submit bids according to the outline specified in Section 3 Response Format. Also, interested bidders should submit documents according to the instructions contained in this Section and elsewhere in this RFP. Please do not provide brochures, advertising, or any other attachments or promotional materials in addition to the required bid information specified. Failure to follow these instructions, specifically as instructed, may result in the Contractor's bid being considered non-responsive or non-conforming and the proposal will be eliminated from consideration.

Negligence or error on the part of any offeror in preparing their proposal confers no right of withdrawal or modification of their bid after the designated submittal deadline.

Failure to return the required documents and information specified in this RFP may result in a determination that the proposal is non-responsive. All costs associated with preparing a proposal, including any mailing costs, publishing cost, etc. will not be reimbursed by SMVWCD.

All questions pertaining to this RFP must be submitted in writing no later than **April 3, 2023**. Only written questions will be considered as formal. Any questions District determines are pertinent to all bidders, will be published in a public forum as part of the RFP. All questions or inquiries concerning this RFP should be directed to Casey Conrad, Chairman – Twitchell Operations Committee at cconrad@smvwcd.org.

Contractors shall not communicate with or make direct contact with any District employee, board, or committee, or any person that may be involved with review, evaluation, or award of a contract resulting

from this RFP except as to questions and inquiries directed to cconrad@smvwcd.org as discussed above which shall be made public along with any answers. Only contact with the designated individual listed in this RFP is permissible. Any violation of the “cone of silence” requirement will result in a determination by the SMVWCD that your firm is ineligible to be awarded this contract.

All proposals must be signed by an officer or employee of the contractor having the authority to sign on behalf of the company. Bid bonds shall accompany all RFP responses using the appropriate forms and is discussed in more detail below.

Terms and Conditions provided in this RFP shall supersede any previous Terms and Conditions.

Submission of a bid by the contractor is not to be construed as an award or issuance of a purchase order.

Insurance Requirements

The awarded Contractor and any subcontractors shall not commence work until they have obtained all insurance coverage required by SMVWCD or by Federal or State requirements for performing the type of work requested in this RFP. Work must not commence until proof of all such insurance coverage has been submitted, by Contractor and subcontractors, to, and approved by SMVWCD, nor shall the Contractor allow any subcontractor to commence work until all insurance required of the subcontractor has been obtained and submitted for approval to SMVWCD. The Contractor and subcontractors shall provide and maintain, during the life of this contract, Workman’s Compensation Insurance for all employees employed at the project site(s) under this contract in compliance with California requirements. Note that work performed on navigable waters defined by 33 CFR, Part 329, or on Federal or State waters, or other public trust waterways may require specific maritime insurance to comply with the requirements of the Jones Act, and/or the Longshoreman and Harbor Workers Compensation Act. If these maritime Acts are applicable, the Contractor shall provide proof of insurance coverage and compliance with both Acts prior to commencement of work on navigable waters.

Minimum insurance requirement limits for this contract are as follows:

- Motor vehicle insurance-not less than State statutory limits
- Take out and keep in force during the contract at Contractor’s expense, public liability insurance and property damage insurance with companies approved by SMVWCD for protection against (1) liability to the public and the Project Site arising as an incident to the use of, or resulting from, any accident occurring in or about the Project Site; it shall not cover less than \$1,000,000 for injuries and accidental death with \$500,000 subject to same limit for each person and (2) damage to any portion of the Project Site. The limits of liability under this insurance are to be not less than \$3,000,000 combined limit and \$3,000,000 for property damage. These shall insure the contingent liability of SMVWCD, and SMVWCD shall be named as an additional insured. The Contractor must notify SMVWCD in advance of any cancellation of insurance.
- Proof of professional liability insurance if the project employs professionals with limits to be specified by the District.
- Other insurance requirements as may necessary based upon issuance of task orders

Proof of such insurance must be provided and proof of any new or different insurance obtained regarding the project, during the project, must be provided.

Insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the risk manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the District, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the Risk Manager.

Bonding Requirements

For any proposal to be considered or accepted by SMVWCD, the proposal must include at the time of filing, a bid bond in the amount of five percent (5%) of the total bid price. There shall also be a 5% retainage. The bid bond must be executed by a corporate surety licensed under the laws of California to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within ten (10) days after award or fails to give satisfactory surety as required herein.

Selected Contractor(s) will be required to post a Performance and Payment Bond in the amount of 100% of an event's estimated contract cost. SMVWCD reserves the right to establish the amount of Performance and Payment Bond based on the estimated contract price, in the Bid Schedule, at the time of the event. The estimated cost to complete the project will be based on the size, severity and type of debris generating event. The bond shall continue throughout the contract execution period, from when SMVWCD issues a Notice to Proceed and Task Order, until such time as the scope of work contained in the contract is completed as determined by SMVWCD.

Bonds shall remain in effect at least one (1) year after the date when final payment becomes due for a Task Order initiated project or until SMVWCD determines the bond may be reduced or is no longer required. The Performance Bond and the Payment Bond shall be executed by one or more surety companies legally authorized to do business in the State of California and shall become effective upon the execution of the Task Order.

The surety bonds must be in the form as provided by Surety Association of America, the American Institute of Architects (AIA-A312), Associated General Contractors of America, Engineers Joint Contract Documents Committee, American Consulting Engineers Council, American Society of Civil Engineers, and the Construction Specification Institute without any variations in the standard forms, or in any other forms authorized by California.

Section 3: Response Format

The Contractor understands and agrees to abide by all of the RFP specifications, provisions, terms and conditions, and all ordinances and policies of SMVWCD. The Contractor further agrees that if it is awarded a contract, the work will be performed in accordance with the provisions, terms and conditions of the contract.

To facilitate the fair evaluation and comparison of proposals, all proposals must conform to the guidelines set forth in this RFP.

Any portions of the proposal that do not comply with these guidelines must be so noted and explained in the Acceptance of Conditions section of the proposal. However, any proposal that contains such variances may be considered non-responsive.

Proposals should be prepared simply and economically, providing a straightforward concise description of the Contractor's approach and ability to meet SMVWCD's needs, as stated in this RFP. All proposals should be presented as described in this RFP with sections clearly delineated and pages numbered.

The items listed below shall be submitted with each proposal and should be submitted in the order shown. Failure by a Contractor to include all listed items may result in the rejection of their proposal.

Section I: Required Forms (10 Points): Provide the Proposal Form in Attachment A and all required forms in the order listed in the checklist of the Proposal Form.

Section II: Cover Letter / Management Summary (Maximum 2 pages): Provide a cover letter, signed by an authorized officer of the firm, indicating the underlying philosophy of the firm in providing the services stated herein. Include the name(s), telephone number(s) and email(s) of the authorized contact person(s) concerning proposal. Submission of a signed Proposal is Contractor's certification that the Contractor will accept any awards as a result of this RFP. List all proposed subcontractors who will participate on the team.

Section III: Approach and Methodology (Maximum 10 pages; Maximum 50 Points): Provide a project approach on how you plan on accomplishing the scope of work, deliverables and objectives stated throughout this RFP. Include a timeline of proposed activities. The timeline shall illustrate or indicate the number of days/months projected to perform all work scope requested in this RFP.

Section IV: Cost (Maximum 15 Points): Provide a complete price proposal in Attachment C for all services to be provided.

Section V: Qualifications/Experience (Maximum 3 pages; Maximum 15 Points): Provide information that documents successful and reliable experience in past performance in similar size and scope, especially those performances related to the requirements of this Request for Proposal. Related experience shall be restricted to those assignments undertaken within the last five (5) years. List prior experience in California as well as all current projects in the State of California. The Contractor must show capability and experience performing reservoir restoration, sediment removal, and general heavy civil construction practices preferably with federally funded projects.

This section should include any and all licensing information such as Department of Industrial Relations identification number. This section should also affirm that the bidder has not been debarred.

Section VI: References (Maximum 10 Points): Complete Attachment B for similar projects only, who can attest to the firm's knowledge, quality of work, timeliness, diligence, and flexibility. Include a contact person, phone number and an email address for all references.

SMVWCD may initiate, in-person or virtual, interviews with any or all contractors selected from the review process to discuss work scope, costs, schedule, or resources possessed by the Contractor. Once interviews are complete, SMVWCD may conduct negotiations with offerors being considered for final selection and may obtain Best and Final Offers (BFOs) prior to contract award.

Section 4: Terms and Conditions

The following Terms and Conditions apply to this RFP solicitation process and will be incorporated into the resulting contract with Contractor, and the selected Contractor shall ensure all subcontracts incorporate these terms and attachments by reference. Any exceptions to the following requirements or other sections of this RFP should be addressed in the offeror's proposal.

At SMVWCD reserves the right, at its discretion, to take the following actions in connection with this RFP:

- To request additional information from any or all offerors
- To use judgment in selecting the successful bidder that SMVWCD determines to provide the greatest benefit to SMVWCD
- To disregard minor omissions, errors, or imperfections in the submittals or the RFP if they are determined to have no material adverse impact on the overall selection, budget, or project schedule
- To reject any or all proposals if it determines that bids are not responsive to the RFP
- To reject any or all bids if it determines doing so is in the best interest of SMVWCD
- To reconsider any bid submitted at any phase of the procurement
- To meet with select offerors at any time to gather additional information
- To hold discussions with offerors that it deems to fall within a competitive range
- To enter into negotiations separately with offerors
- To consider the proposed timeline/schedule for completing all work requested
- To award a contract, based on initial bids received, without discussion and without conducting further negotiations. Under such circumstance, the acceptance of a bid by SMVWCD shall be deemed to be acceptance of an offer and such acceptance will be binding upon both parties.
- To reissue the RFP or extend the deadline if the District does not receive at least two bids. This reissuance or extension is required to occur if there are not at least two bidders.

ENTIRE AGREEMENT

This RFP, all attachments to this RFP, Plans & Specifications, and any additional or supplementary documents incorporated herein by reference, any resulting contract, and the selected offeror's submitted proposal contain all the Terms and Conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this contract or any part thereof shall have any validity or bind any of the parties hereto. This contract shall not be modified, altered, changed, or amended unless in writing and signed by the parties hereto.

CONFLICT BETWEEN DOCUMENTS

In the event of a conflict between the contract documents, including these Terms and Conditions and the terms of a purchase order or related document issued by SMVWCD the contract documents shall control.

NON-DISCRIMINATION

Contractor will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program which is the subject of this agreement because of race, creed, color, sex, age, disability, or national origin. To the extent applicable, Contractor will comply with all provisions of Executive Order No. 11246 the Civil

Rights Act of 1964, (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable federal, state, and local laws, ordinances, rules, regulations, orders, instructions, designations, and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this agreement and may result, at SMVWCD option, in a termination or suspension of this agreement in whole or in part.

LAWS AND REGULATIONS

The Contractor shall keep fully informed of all federal, state, and local laws, ordinances, and regulations that in any manner affect the conduct of the work. The Contractor shall at all times observe and comply with all such laws, ordinances, and regulations.

RIGHTS UNDER ANTITRUST LAWS

The offeror assigns to SMVWCD any and all rights that it may have under the antitrust laws of the United States and the State of California in any way arising from or pertaining to this proposal. This provision is remedial in nature and is to be liberally construed by any court in favor of SMVWCD.

IMMIGRATION REFORM AND CONTROL ACT OF 1986

The offeror certifies that he/she does not and shall not during the performance of the contract for goods and services in the State of California, knowingly employ unauthorized aliens as defined in the Federal Immigration Reform and Control Act of 1986, as amended.

ASSIGNMENT OF CONTRACT

A contract shall not be assignable by the Contractor in whole or in part without the written consent of SMVWCD.

DEFAULT

In event of default by the Contractor, SMVWCD reserves the right to procure the goods and/or services and/or services from other sources and hold the Contractor liable for any excess cost occasioned thereby.

INDEPENDENT CONTRACTOR

The Contractor and any employees, agents, or other persons or entities acting on behalf of the Contractor shall act in an independent capacity and not as officers, employees, or agents of SMVWCD.

TASK ORDER REQUIRED

SMVWCD will not be responsible for any equipment, supplies, and/or services delivered without a Task Order signed by SMVWCD and assumes no obligation for products or services shipped or delivered in excess of the quantity ordered. Any unauthorized products or services are subject to SMVWCD rejection and shall be returned at the Contractor's expense. Contractor shall provide a monthly written schedule and performance report.

GOOD STANDING

Contractor represents and warrants that it, and any and all of its subcontractors, are qualified to perform the work required hereunder and that they are validly existing duly organized business entities in good standing under applicable laws. Contractor and any and all of its subcontractors, warrant they

have complied with, are not in violation of, and have not received any notice of violations with respect to any federal, state or local statute, rule or regulation with respect to the conduct of their businesses, or the ownership of their businesses. Contractor warrants it (and any and all of its subcontractors) are and will remain during performance properly licensed, qualified, experienced, bonded (as may be required under California law for contractors doing business with public agencies), and equipped to perform.

CONTRACTOR FAILURE TO DELIVER

In the event of Contractor's failure to deliver as and when specified, or to perform as and when specified, SMVWCD reserves the right to cancel this order, or any part thereof, without prejudice to its other rights, and Contractor agrees that the SMVWCD may return part of any shipment so made and may charge Contractor with any loss expense sustained as a result of such failure to deliver or perform.

TAXES

Contractor shall pay all sales or use taxes that are or become due in connection with any products or services provided hereunder and shall indemnify and save harmless the SMVWCD from any damages, costs, fees, expenses, or penalties on account of such taxes. Contractor is required to list all applicable taxes as separate lines on the face of the invoice.

RIGHT OF INSPECTION AND REJECTION

Equipment, supplies, and services supplied by Contractor shall be received subject to the SMVWCD's inspection and approval either during manufacturing or delivery (with prior arrangement), or within a reasonable time after delivery, notwithstanding prior payment. If specifications or warranties are not met, material and equipment may be returned at Contractor's expense. No material or equipment returned to Contractor as defective shall be replaced except upon the SMVWCD's formal authorization. SMVWCD shall also have the right to inspect and request a copy of all documents related to the project, including invoices and receipts, products and warranty information, procurements, subcontracts, lien releases, bid-related documents, costs, and expenditures related to the project, and shall also be entitled to a close-out package of documents.

INDEMNIFICATION

Contractor agrees to defend, indemnify, and hold harmless SMVWCD, its employees, officers and Board members, for all losses, damages, liability, claims, costs, fees, or expenses (including reasonable attorney's fees) arising from bodily injury, including death or property damage, to any person or persons caused in whole or in part by the negligence or misconduct of the Contractor, except to the extent same are caused by the negligence or willful misconduct of SMVWCD. It is the intent of this section to require Contractor to indemnify SMVWCD, its employees, officers and Board members to the extent permitted under California law.

Contractor will defend, indemnify, and save the SMVWCD, its employees, officers and Board members harmless from any and all loss, damages, liability, claims, costs, fees, and expenses incurred on account of any and all claims, suits, or judgments alleging that any product or service provided under this purchase order violates any patent, copyright, trade secret, trade name, or any other intellectual property right of any nature.

If any product provided hereunder is defective in any respect whatsoever, Contractor will defend, indemnify, and save SMVWCD, its employees, officers and Board members harmless from all loss, damages, liability, claims, costs, fees, (including reasonable attorneys' fees) and expenses incurred by reason of such defect, including without limitation all liability arising from any accidents, injuries, or damages to persons or property that may result in whole or in part from such product.

If Contractor performs services or constructs, erects, inspects, or delivers hereunder, Contractor will defend, indemnify and save harmless the SMVWCD, its employees, officers and Board members from all loss, damages, liability, claims, costs, fees (including reasonable attorneys' fees), or expenses incurred in connection with any accidents, injuries, or damages to persons or property that may result in whole or in part from the performance thereof.

STRICT COMPLIANCE

The SMVWCD may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous custom, practice, or course of dealing.

TIME OF THE ESSENCE

Time shall be of the essence for the performance of any and all work by Contractor and Subcontractors.

EARLY TERMINATION

Termination for Convenience. SMVWCD may terminate this Agreement for convenience by giving thirty (30) calendar days written notice to Contractor. In the event SMVWCD elects to terminate the Agreement without cause, it shall pay Contractor for services satisfactorily provided up to that date.

Termination for Cause. If either party breaches this Agreement by failing to timely or satisfactorily perform any of its obligations or otherwise violates the terms of this Agreement, the other party may terminate this Agreement by giving written notice thirty (30) calendar days prior to the effective date of termination, specifying the reason and the effective date of the termination. The parties shall meet and confer during the thirty day period to attempt to resolve the issue, and if the terminating party confirms in writing to the other party that the meet and confer was not successful, the termination will be effective at the end of the 30 days. Contractor shall be entitled to payment for all services satisfactorily provided, as determined by SMVWCD, up to the effective date of termination, except that SMVWCD may deduct from that payment the amount of costs SMVWCD incurred, if any, because of Contractor's breach of the Agreement.

PREVAILING WAGES

Contractor shall pay prevailing wages as required by the laws of the state of California or federal law. Contractor and all subcontractors shall pay the higher of the California or federal prevailing wage for the project, and shall certify and report compliance. SMVWCD shall have the right to audit Contractor documents and information for the purpose of ensuring compliance with this provision.

DISADVANTAGED BUSINESS ENTERPRISES

Qualified small businesses, minority-owned businesses, women-owned businesses, and otherwise disadvantaged businesses are encouraged to submit offers in response to this RFP. The Contractor is

encouraged to seek and solicit disadvantaged business enterprises for any work scopes where such businesses could provide services and/or wares.

GOVERNING LAW

The Agreement will be governed and interpreted under the laws of the State of California, except as to the interpretation of any federal laws cited in the agreement, in which case federal laws shall be interpreted under federal law. Venue for any legal disputes shall be in the Superior Court of California, County of Santa Barbara.

SUCCESSORS

The contract shall be binding on successors and assigns.

NO CONFLICT AND NON-COLLUSION WARRANTIES

Consultant warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any District official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Consultant further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any District official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Consultant is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of the District or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of the District in the performance of this Agreement.

Compliance with Uniform Rules for Procurement

Contracts funded with federal grant funds must be procured in a manner that conforms with all applicable Federal laws, policies, and standards. The following additional Terms and Conditions are incorporated into this RFP and any resulting contract, as required by the Uniform Rules for procurement published by the U.S. Office of Management and Budget's (OMB) Super Circular or the Code of Federal Regulations, Title 2, Chapter 200 (2 C.F.R. 200) as effective December 26, 2014.

See Attachment E for all requirements. This form is required to be signed and turned in with the submittal.

ATTACHMENT A: PROPOSAL FORM

Completed, signed, and notarized form shall be submitted with the proposal.

OFFEROR INFORMATION:

Firm/Company Name (legal name):

Mailing Address:

Payment Address (if different from mailing address):

Firm Telephone Number:

Federal Employer Identification Number (FEIN):

Representative Name/Title:

Representative Telephone Number:

Representative Email Address:

AUTHORIZATION TO TRANSACT BUSINESS IN CALIFORNIA

By signature of this form, I certify that the firm identified above is legally authorized to transact business in the State of California. *A copy of the Certification of Existence or registration is attached to this form.*

ADDENDA

Offeror hereby acknowledges receipt of and incorporation of all requirements of any addenda issued for this RFP:

Addendum No.

Dated:

Addendum No.

Dated:

Addendum No.

Dated:

EXCEPTIONS

Indicate if the Bidder notes exceptions to the RFP by acknowledging the appropriate statement below, as applicable, and explain if so:

- ☐ Offeror understands and agrees to all terms, conditions, requirements, and specifications stated herein.
- ☐ Offeror takes exception to terms, conditions, requirements, or specifications stated herein Offeror must itemize all exceptions below (attach additional pages if necessary):

The following exceptions to this RFP are noted (attach additional sheets if necessary):

NOTE: Exceptions taken from the stated terms and/or specifications may be cause for proposals to be deemed "non-responsive".

PROPOSAL CHECKLIST

This checklist is provided to assist offerors in submitting proposals. The proposal should include the following information Section 2 Submission Requirements.

- ☐ Proposals developed according to the outline specified in Section 3 Response Format and according to the instructions in Section 2 Submission Requirements and elsewhere in this RFP.
- ☐ Attachment A: Proposal Form

- ☐ Attachment B: References Form
- ☐ Attachment C: Fee Schedule
- ☐ Attachment D: Bid Bond Form
- ☐ Attachment E: 2 CFR 200 Appendix II Required Clauses
- ☐ Attachment F: Bid Protest and Appeal Procedures

CONFLICT OF INTEREST

The offeror certifies that their proposal has not been arrived at collusively or otherwise in violation of federal, state, or local laws. Any purchase order, check requisition or contract from which any agent, officer, or employee of SMVWCD or any relative thereof, will realize a financial gain, directly or indirectly, shall be void, except that before the execution of a purchase order, check requisition or contract, SMVWCD shall have the authority to waive compliance with this section when it finds such action to be in the best interest of SMVWCD.

AUTHORIZATION

In accordance with the terms, conditions and specifications of this RFP, the undersigned agrees to furnish the items and/or services requested. The undersigned acknowledges that the proposal is valid for a period of 180 days from the due date and certifies he/she has read, understands, and agrees to all terms, conditions, and requirements of this RFP and is authorized to contract on behalf of firm named below.

Firm Name: _____
Print Name: _____
Title: _____
Signature: _____
Date: _____

Subscribed and sworn to before me this ____ day of _____, 2023.

Notary Public: _____

My Commission expires: _____

ATTACHMENT B: REFERENCES

Completed form shall be submitted with the proposal. Provide three references. References must be for similar services provided and must have been completed within the past 5 years.

Reference 1:

Name of Entity or Business: _____

Street Address: _____

City, State and Zip Code: _____

Contact Name and Title: _____

Phone Number: _____

Email Address: _____

Contract Dates: _____

Contract Amount: _____

Description and Date of Services Provided: _____

Reference 2:

Name of Entity or Business: _____

Street Address: _____

City, State and Zip Code: _____

Contact Name and Title: _____

Phone Number: _____

Email Address: _____

Contract Dates: _____

Contract Amount: _____

Description and Date of Services Provided: _____

Reference 3:

Name of Entity or Business: _____

Street Address: _____

City, State and Zip Code: _____

Contact Name and Title: _____

Phone Number: _____

Email Address: _____

Contract Dates: _____

Contract Amount: _____

Description and Date of Services Provided: _____

NOTE: Do not include or attach additional pages.

ATTACHMENT C: NOT TO EXCEED FEE SCHEDULE

Item No.	Description of Work	Quantity*	Units	Unit Price(\$)	Extended Amount (\$)
1	Mobilization	1	LS		
2	Water Based Sediment Removal, Transportation, Staging and Disposal to TDMS or Final Disposal	1,200,000	TN		
3	Water Based Vegetative Removal, Transportation, Staging and Disposal to TDMS or Final Disposal	20,000	TN		
4	Land Based Sediment Removal, Transportation, Staging and Disposal to TDMS or Final Disposal	1,200,000	TN		
5	Land Based Vegetative Removal, Transportation, Staging and Disposal to TDMS or Final Disposal	20,000	TN		
6	Sediment Disposal from TDMS to Final Disposal	1,200,000	TN		
7	Vegetative Disposal from TDMS to Final Disposal	20,000	TN		
8	Disposal Fees at Final Disposal	1,220,000	TN	At Cost	At Cost
9	BMPs, erosion control and other permitting and/or agreement requirements	1^	Month		
10	Turbidity Testing	1^	Month		
11	Demobilization	1	LS		

***QUANTITY LISTED IS FOR EVALUATION PURPOSES ONLY, NOT REFLECTIVE OF ESTIMATE OR ACTUAL QUANTITY**

^NUMBER OF MONTHS WILL BE BASED ON PROPOSED TIMELINE FOR EVALUATION PURPOSES

Total=

Mobilization: This is a one time, lump sum value to include all costs to mobilize personnel, equipment and all resources to the project upon formal notice to mobilize.

Water Based Sediment Removal, Transportation, Staging and Disposal to TDMS or Final Disposal: This a per ton rate to include all personnel, operators, equipment and other resources necessary to remove, transport, stage, manage and dispose of the material to a temporary staging/storage area OR directly to final disposal. This line item would be used for on-water based equipment.

Water Based Vegetative Removal, Transportation, Staging and Disposal to TDMS or Final Disposal: This a per ton rate to include all personnel, operators, equipment and other resources necessary to remove, transport, stage, manage and dispose of the material to a temporary staging/storage area OR directly to final disposal. This line item would be used for on-water based equipment.

Land Based Sediment Removal, Transportation, Staging and Disposal to TDMS or Final Disposal: This a per ton rate to include all personnel, operators, equipment and other resources necessary to remove, transport, stage, manage and dispose of the material to a temporary staging/storage area OR directly to final disposal. This line item would be used for when the reservoir basin does not contain water and equipment can be utilized in the bed.

Land Based Vegetative Removal, Transportation, Staging and Disposal to TDMS or Final Disposal: This a per ton rate to include all personnel, operators, equipment and other resources necessary to remove, transport, stage, manage and dispose of the material to a temporary staging/storage area OR directly to final disposal. This line item would be used for when the reservoir basin does not contain water and equipment can be utilized in the bed.

Sediment Disposal from TDMS to Final Disposal: This a per ton rate to include all personnel, operators, equipment and other resources necessary to transport and dispose of the material from a temporary staging/storage area to final disposal in the case where the material is not transported directly to final disposal.

Vegetative Disposal from TDMS to Final Disposal: This a per ton rate to include all personnel, operators, equipment and other resources necessary to transport and dispose of the material from a temporary staging/storage area to final disposal in the case where the material is not transported directly to final disposal.

Disposal Fees at Final Disposal: This is a pass-through fee at cost charged by an entity to cover the rate of disposal of material at a final disposal charging a “tipping fee” or other cost to disposal of material.

BMPs, erosion control and other permitting requirements: This is a month rate to include all personnel, operators, equipment and other resources necessary to comply with all permitting or statutory requirements to fulfill the project scope of work such as erosion control, seeding, etc. other than Turbidity Testing.

Turbidity Testing: This is a month rate to include all personnel, operators, equipment and other resources necessary to comply with Turbidity Testing.

Demobilization: This is a one time, lump sum value to include all costs to demobilize personnel, equipment and all resources from the project upon completion and notification the project is completed.

Note: cost plus procurements, or supplies marked up by a percentage, are not permitted.

ATTACHMENT D: BID BOND

BID BOND <i>(See instructions on reverse)</i>	DATE BOND EXECUTED <i>(Must not be later than bid opening date)</i>	OMB Control Number: 9000-0045 Expiration Date: 8/31/2025
Paperwork Reduction Act Statement - This information collection meets the requirements of 44 USC § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget (OMB) control number. The OMB control number for this collection is 9000-0045. We estimate that it will take 1 hour to read the instructions, gather the facts, and answer the questions. Send only comments relating to our time estimate, including suggestions for reducing this burden, or any other aspects of this collection of information to: General Services Administration, Regulatory Secretariat Division (M1V1CB), 1800 F Street, NW, Washington, DC 20405.		
PRINCIPAL <i>(Legal name and business address)</i>		TYPE OF ORGANIZATION <i>("X" one)</i> <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION <input type="checkbox"/> OTHER <i>(Specify)</i>
		STATE OF INCORPORATION
SURETY(IES) <i>(Name and business address)</i>		

PENAL SUM OF BOND				BID IDENTIFICATION		
PERCENT OF BID PRICE	AMOUNT NOT TO EXCEED				BID DATE	INVITATION NUMBER
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS	FOR <i>(Construction, Supplies or Services)</i>	

OBLIGATION:

We, the Principal and Surety(ies) are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has submitted the bid identified above.

THEREFORE:

The above obligation is void if the Principal - (a) upon acceptance by the Government of the bid identified above, within the period specified therein for acceptance (sixty (60) days if no period is specified), executes the further contractual documents and gives the bond(s) required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of the forms by the principal; or (b) in the event of failure to execute such further contractual documents and give such bonds, pays the Government for any cost of procuring the work which exceeds the amount of the bid.

Each Surety executing this instrument agrees that its obligation is not impaired by any extension(s) of the time for acceptance of the bid that the Principal may grant to the Government. Notice to the surety(ies) of extension(s) is waived. However, waiver of the notice applies only to extensions aggregating not more than sixty (60) calendar days in addition to the period originally allowed for acceptance of the bid.

WITNESS:

The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

PRINCIPAL				
SIGNATURE(S)	1.	2.	3.	Corporate Seal
	(Seal)	(Seal)	(Seal)	
NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.	3.	

INDIVIDUAL SURETY(IES)		
SIGNATURE(S)	1.	2.
	(Seal)	(Seal)
NAME(S) <i>(Typed)</i>	1.	2.

CORPORATE SURETY(IES)				
SURETY A	NAME & ADDRESS	STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.	

SURETY B	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

INSTRUCTIONS

1. This form is authorized for use when a bid guaranty is required. Any deviation from this form will require the written approval of the Administrator of General Services.
2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
3. The bond may express penal sum as a percentage of the bid price. In these cases, the bond may state a maximum dollar limitation (e.g., 20% of the bid price but the amount not to exceed _____ dollars).
4. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitations listed therein. The value put into the LIABILITY LIMIT block is the penal sum (i.e., the face value) of the bond, unless a co-surety arrangement is proposed.

(b) When multiple corporate sureties are involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identifier corresponding to each of the sureties. Moreover, when co-surety arrangements exist, the parties may allocate their respective limitations of liability under the bond, provided that the sum total of their liability equals 100% of the bond penal sum.

(c) When individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.
5. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.
6. Type the name and title of each person signing this bond in the space provided.
7. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror."

ATTACHMENT E: 2 CFR 200 APPENDIX II REQUIRED CLAUSES

ATTACHMENT E: 2 CFR 200 APPENDIX II REQUIRED CLAUSES

2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses

Requirements under the Uniform Rules. A non-Federal entity's contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. 2 C.F.R. § 200.326. For some of the required clauses we have included sample language or a reference a non-Federal entity can go to in order to find sample language. Please be aware that this is sample language only and that the non-Federal entity alone is responsible ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II. We do not include sample language for certain required clauses (remedies, termination for cause and convenience, changes) as these must necessarily be written based on the non-Federal entity's own procedures in that area.

1. Remedies.

- a. Standard: Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, ¶ A.
- b. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

2. Termination for Cause and Convenience.

- a. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, ¶ B.
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

3. Equal Employment Opportunity.

- a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C.
- b. Key Definitions.

- (1) Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
 - (2) Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.
- c. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.
- d. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause:
- “During the performance of this contract, the contractor agrees as follows:
- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
 - (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section,

and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States."

4. Davis Bacon Act and Copeland Anti-Kickback Act.

- a. Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**
- b. All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40

U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D.

- c. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
- d. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- e. In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.
- f. The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the next subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. As such, FEMA requires the following contract clause:

"Compliance with the Copeland "Anti-Kickback" Act.

- (1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

5. Contract Work Hours and Safety Standards Act.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E.
- c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

“Compliance with the Contract Work Hours and Safety Standards Act.

- (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 (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. 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 watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 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 (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or 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, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

6. Rights to Inventions Made Under a Contract or Agreement.

- a. Stafford Act Disaster Grants. This requirement **does not apply to the Public Assistance**, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- b. If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by

FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

- c. The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.
7. Clean Air Act and the Federal Water Pollution Control Act. Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.
 - a. The following provides a sample contract clause concerning compliance for contracts of amounts in excess of \$150,000:

“Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal

government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.”

8. Debarment and Suspension.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Non-federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).
- c. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ I; and Chapter IV, ¶ 6.d and Appendix C, ¶ 2. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530; Chapter IV, ¶ 6.d and Appendix C, ¶ 2.
- d. In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any nonprocurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipient.
- e. Specifically, a covered transaction includes the following contracts for goods or services:
 - (1) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.

- (2) The contract requires the approval of FEMA, regardless of amount.
 - (3) The contract is for federally-required audit services.
 - (4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.
- d. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified:

“Suspension and Debarment

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

9. Byrd Anti-Lobbying Amendment.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ J; 44 C.F.R. Part 18; Chapter IV, 6.c; Appendix C, ¶ 4.
- c. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or

attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. See Chapter IV, ¶ 6.c and Appendix C, ¶ 4.

- d. The following provides a Byrd Anti-Lobbying contract clause:

“Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.”

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, 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 an 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 contract, the making 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 Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients 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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date"

10. Procurement of Recovered Materials.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ K; 2 C.F.R. § 200.322; Chapter V, ¶ 7.
- c. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of

competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- d. The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:

“(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (ii) Meeting contract performance requirements; or
- (iii) At a reasonable price.

(2) Information about this requirement is available at EPA’s Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>.”

11. Additional FEMA Requirements.

- a. The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:
- b. Changes.

To be eligible for FEMA assistance under the non-Federal entity’s FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

- c. Access to Records.

All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and

agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (2013).

d. The following provides a contract clause regarding access to records:

“Access to Records. The following access to records requirements apply to this contract:

(1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.”

12. DHS Seal, Logo, and Flags.

- a. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, ¶ XXV (2013).
- b. The following provides a contract clause regarding DHS Seal, Logo, and Flags: “The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.”

13. Compliance with Federal Law, Regulations, and Executive Orders.

- a. All non-Federal entities must place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.
- b. The following provides a contract clause regarding Compliance with Federal Law, Regulations, and Executive Orders: “This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor

will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

14. No Obligation by Federal Government.

- a. The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- b. The following provides a contract clause regarding no obligation by the Federal Government: “The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

15. Program Fraud and False or Fraudulent Statements or Related Acts.

- a. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.
- b. The following provides a contract clause regarding Fraud and False or Fraudulent or Related Acts: “The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this contract.”

ATTACHMENT F: BID PROTEST AND APPEAL PROCEDURES

Under directive of the Twitchell Operations Committee, these procedures are administered by itself as Contracting Services Manager or its designee to be the Contracting Services Manager.

A. Applicability. This section applies to the procurement of competitively solicited goods, materials, and services. Protests shall be handled in accordance with the procedures listed herein.

B. Communications. All communication with a protesting party shall be coordinated with the Contracting Services Manager, while the protest is still under consideration unless the Protest Appeals Board designates another District representative.

C. Protest of Solicitations (Request for Bids, Request for Proposals, and Request for Qualifications)

1. A respondent must file a protest to the Contracting Services Manager, no later than five (5) working days prior to the bid/submittal due date in the solicitation in the event that the respondent believes the solicitation is:

- a. Unfairly restrictive.
- b. Contains conflicting or ambiguous provisions making the tendering of a bid/submittal impracticable.
- c. Would result in a contract that would be commercially impossible to perform.

2. The protest must be made in writing and must contain the following information:

- a. Name, address, and phone number of the protester.
- b. The title and solicitation number of the solicitation being protested.
- c. A detailed statement citing the provisions being protested, including the reason(s) for the protest.

3. The protest must be sent to the District's address, with an e-mail copy to the Contracting Services Manager (districtoffice@smvwcd.org).

4. The Contracting Services Manager or his/her representative will respond after an investigation of the facts citing any actions that will or will not be taken regarding the solicitation.

5. Late protests shall be dismissed.

D. Protest of Awards/"Prequalification" Selection

1. Legitimate protests of awards/selection are limited to situations where:

- a. There has been a miscalculation by District in determining a submitted price where price is identified as an evaluation factor.
 - b. There has been an identified irregularity in the evaluation process as outlined in the solicitation.
 - c. The selection was not in accordance with applicable laws, administrative code, or established District procedure.
2. Protest of Request for Bid awards must be received by the Contracting Services Manager no later than five (5) working days after the award information has been posted on District's website.
3. Protest of Request for Proposals or Request for Qualifications awards/selection must be received by the Contracting Services Manager no later than five (5) working days after the protester has been notified of its award and/or selection status.
4. The protest must be made in writing and include the following information:
 - a. Name, address, and phone number of the protester.
 - b. The title and solicitation number of the solicitation being protested.
 - c. Detailed statements of the legal and/or factual grounds supporting the protest.
 - d. Detailed statements explaining how the firm protesting would have otherwise received the award/selection had the situation not occurred.
 - e. The form of relief or remedy requested.

Protests should be directed to the Contracting Services Manager at the District.

The protest must be sent to the District's address, with an e-mail copy to the Contracting Services Manager at the District (districtoffice@smvwcd.org).

6. The Contracting Services Manager or his/her representative will respond after an investigation of the facts citing any actions that will or will not be taken regarding the award/selection.

7. Late protests shall be dismissed.

APPEALS:

A firm wishing to appeal the protest decision of the Contracting Services Manager may request a hearing to the District's Board of Directors. The appeal must be filed no later than five (5) working days from having received the decision of the Contracting Services Manager. The appeal must be in the form of a letter directed to the President of the Board stating the reasons for the appeal.

- B. The protest appeal must be sent to the District's address, with a copy to the President of the Board, (khadick@smvwcd.org).
- C. Upon receipt of the letter, the President may empanel the Protest Appeals Board if he/she determines that a hearing on the protest is appropriate.
- D. The Protest Appeals Board shall consist of three (3) members of the District's Board of Directors who are not designated as the Construction Services Manager.
- E. If the protester fails to appear and participate in the hearing, the Protest Appeals Board may summarily rule upon the protest based upon information then available.
- F. Hearing Protocol. The hearing protocol shall be promulgated by the Protest Appeals Board and provided to the protester not later than seven (7) working days prior to the scheduled appeal hearing.
- G. Protest Decision. After the hearing, the Protest Appeals Board shall render a decision in writing to the protester and the Contracting Services Manager approximately ten (10) working days after the hearing