

SEWERAGE AND WATER BOARD OF NEW ORLEANS

REQUEST FOR QUALIFICATIONS

ENGINEERING SERVICES FOR POWER FREQUENCY CONVERTER AT CARROLLTON WATER PLANT

The Sewerage and Water Board of New Orleans (SWBNO) is seeking a qualified firm to provide Professional Engineering services for the design and installation of a medium voltage frequency converter to be located at the Carrollton Water Plant, 8800 S. Claiborne Ave., New Orleans, Louisiana 70118. To mitigate the expense of using boilers and steam turbine generators to maintain 25 cycle power levels required for Drainage and Potable Water Pumping facilities the Board proposes to use Electrical Utility Power in conjunction with the frequency converter. Additionally, under conditions where utility power is not the optimal choice, the Board will utilize the frequency converter with the 60 cycle generation facilities to produce 25 cycle power required for use during such events.

The Firm selected shall be responsible for Design Services of the engineering, design and system integration, preparation of bid documents, bid evaluation, and Construction Management for a new Bidirectional 4160 Volt, 60 Hertz / 6600 Volt, 25 Hertz Voltage Pure Sinewave Static Frequency Converter in the power range of 20 to 25 Megawatts and all ancillary requirements.

Statement of Qualifications

The Firm shall submit a Statement of Qualifications that includes an overview of their expertise, resources, equipment, facilities, and experience related to the services identified in this RFQ. In addition the Firm will provide at least 5 references with an e-mail address and active phone number for use in contacting the reference.

Needed Services

The design shall include all elements required to integrate the frequency converter seamlessly into the existing Board power grid.

The scope of work includes, but is not limited to the following:

1. Preliminary Design Report for a new Bidirectional 4160 Volt, 60 Hertz / 6600 Volt, 25 Hertz Voltage Pure Sinewave Static Frequency Converter in the power range of 20 to 25 Megawatts and all ancillary requirements, stamped by a Professional Engineer, to be turned over to SWBNO as property of SWBNO upon acceptance.
2. Selection and specification of a static frequency converter compatible with SWBNO's existing electric motors.
3. Identify and determine the viability of a proposed location for the new equipment. All aspects location shall be studied from structural analysis to equipment clearances.
4. Design the switchgear additions and reconfigurations required for the integration of the new frequency converter into the existing system.
5. Design monitoring system for static frequency converter to integrate into existing SWBNO SCADA network.
6. Prepare design drawings and specifications for the purchase and installation of the equipment.

7. Plan for the integration of the new system functional design into the Board 60 hertz and 25 Hertz One-Line Diagram.
8. Design startup and phasing plan.
9. Furnish Contract Administration and Inspection Services during the construction phase.

All work shall be done in close coordination with SWBNO staff.

General Requirements

The selected engineering firms shall meet the following minimum Qualifications:

1. At least one of the principals of the firm shall be professionally competent in the field or fields of expertise required for the project.
2. At least one principal or responsible member of the firm shall have had a minimum of seven (7) years' experience in responsible charge of the field or fields involved.
3. At least one of the principals of the firm shall be licensed by the Louisiana State Licensing Board of Professional Engineers and Land Surveyors.
4. The Firm shall have a minimum of seven (7) years' experience in designing projects that include medium voltage frequency converters used in conjunction with large industrial motors.

Evaluation Process

The Contract Administrator will establish an Evaluation Committee with relevant subject-matter expertise to review and evaluate Responses to the RFQ in accordance with the Sewerage and Water Board's Professional and Personal Services Procurement Policy Memorandum No. 95.

Each Statement of Qualifications (SOQ) will be evaluated according to the following criteria:

- | | |
|-----|---|
| 30% | Professional qualifications necessary for satisfactory performance of required services; |
| 30% | Specialized experience and technical competence in similar work within the past seven (7) years; |
| 15% | Capacity to accomplish the work in the required time; |
| 15% | Willingness to promote full and equal business opportunities in accordance with the Board's State-Local Disadvantaged Business Enterprise Program; |
| 10% | Past performance on contracts with government agencies and private industry in terms of cost control, quality of work, and compliance with performance schedules; and |

Evaluation of experience and qualification of firms submitting under this announcement will be based on the information listed above. From the review of the submittals, SWBNO's technical selection committee shall score and rank all the submittals. SWBNO at its sole discretion may recommend a selection of Respondents for a short list based on the overall ranking. SWBNO reserves the right to assign the most qualified firm to perform the project based upon size and complexity.

During the review of any Submission, the Evaluation Committee may:

- Conduct reference checks relevant to the Project with any or all of the references cited in a Submission to verify any and all information, and rely on or consider any relevant information from such cited references in the evaluation of the Submissions;
- Consider publicly available information such as the firm’s website and published projects
- Seek clarification of a Submission from any or all Proposers and consider such supplementary information in the evaluation of Submissions; and
- Request interviews/presentations with any, some, or all Proposers or Team Members to clarify any questions or considerations based on the information included in Submissions during the evaluation process, and consider any supplementary information from interviews/presentations in the evaluation.

Note: A minimum score of 75% points out of 100% maximum score must be obtained for firm to be considered qualified for the above services. Any SOQ failing to receive the minimum score of 75% at the end of the Detailed Evaluation of Qualifications will not be evaluated further and will be ineligible for award.

Effect

This Request for RFQ Responses and any related discussion or evaluations by anyone create no rights or obligations whatsoever. SWBNO may cancel or modify this solicitation at any time at will, with or without notice. Anything to the contrary notwithstanding, the Professional Services contract executed by SWBNO and selected applicant, if any, is the exclusive statement of rights and obligations extending from this solicitation.

If SWBNO identifies a likely service provider, it may negotiate a final agreement with the provider and fix the relationship by Professional Services contract. Negotiations will establish fair and reasonable compensation prior to the execution of a contract. The agreement will be on a lump sum, fixed price basis or cost reimbursement “not to exceed” basis, with payment terms to be negotiated with the selected provider.

Price Negotiation

Once the firm selection is made, SWBNO will request that the successful Firm(s) submit detailed pricing proposal for the Preliminary Design Report and respective services identified in the Scope of Services.

The Standard Pricing (fee) negotiation will be based on review and discussion of the activities and level of effort associated with each task order relative to this labor hour and expense summary. Once the Preliminary Design Report is approved by SWBNO, fees will be negotiated for remainder of Scope of Services.

If satisfactory Standard Service fees cannot be successfully negotiated with the selected firm within thirty (30) calendar days of notice of selection, SWBNO may move to the next most qualified Firm for any negotiation period.

Inquiries

Inquiries and/or Requests for Clarification are due to SWBNO at the office of its Purchasing Agent on **(March 6, 2020) not later than 5:00 pm (local time)**. Inquiries may be either in writing or via email to pwallace@swbno.org. All responses will be posted by **March 9, 2020**.

Submittal Requirement

Prospective firms that meet the requirement of this RFQ and are experienced in these areas as described within the RFQ are invited to submit an original plus six (6) copies (total of seven) of the Statement of Qualifications, and one (1) electronic version (CD or flash drive) to:

The Sewerage & Water Board of New Orleans (SWBNO)
Purchasing Department
625 St. Joseph Street, Room 133
New Orleans, LA 70165

No later than (11:00 a m) local time on or before March 20, 2020. Responses, amendments, and any other information received after this date and time will not be considered.

Prospective firms are solely responsible for the timely delivery of their proposals. S W B N O will not acknowledge by mail or telephone timely receipt of responses.

The one (1) copy marked ORIGINAL shall contain a cover letter with original signature of person(s) authorized to contractually bind the prospective firm. The cover letter shall also include an affirmation that there is not a conflict of interest of the respondent and the proposed team in performing work for the Sewerage and Water Board of New Orleans or identify any possible conflicts that might impair their ability to perform if awarded the contract, including any familiar or business relationships that the respondent and the proposed team have with SWBNO and its employees.

Any Statements of Qualifications may be rejected if it is conditional or incomplete, deemed non-responsive, or if it contains any alterations of form or other irregularities of any kind. The SWBNO may reject any or all Statements and may waive any immaterial deviation in a Statements. The SWBNO waiver of immaterial defect shall in no way modify the RFQ or excuse the prospective group from full compliance with all requirements if selected and engaged.

Mandatory Pre-submittal Conference

A mandatory pre-proposal meeting for this project will be held at **10:00 am local time, March 4, 2020** the 2nd floor Executive Boardroom at the SWBNO main office building located at 625 Saint Joseph Street in New Orleans, Louisiana. At this meeting, staff will discuss the minimum qualifications, proposal requirements, and submittal requirements.

As an option, proposers may attend this mandatory meeting via a skype teleconference by joining the meeting via telephone with the following access information:

[Join Skype Meeting](#)

Join by phone

Toll number: +1 (504) 224-8698,802176356# (Dial-in Number) (Dial-in number) English (United States)

Conference ID: 802176356

All visitors to SWBNO Headquarters are required to check in with the security guard and present a state-issued pictured I.D. for a visitor's badge. Attendees are encouraged to arrive up to one (1) hour prior to the start of the pre-proposal meeting to allow enough time for the check-in process and ensure on-time meeting attendance. No parking is provided by SWBNO.

Copies of the request for qualification and related information are available from the SWB's website at www.swbno.org. Click on Doing Business, then Advertisement and Specifications, then Proposal of Interest.

Bidders are solely responsible for obtaining any and all addendum/addenda regarding the interested proposal from the Sewerage & Water Board of New Orleans website: www.swbno.org

SUBMITTAL

Responses shall be as thorough and as detailed as possible such that SWBNO may properly evaluate the respondent's capabilities to provide the required services. Respondents are required to submit the following information/items as a complete RFQ Response in tabs as noted below:

1. Cover Sheet – See Attachment A

2. Transmittal Letter

By signing the letter, the Respondent certifies that the signatory is authorized to bind the Respondent. The letter should include:

- i. A brief statement of the Respondent's understanding of the scope of the work to be performed;
- ii. A confirmation that the Respondent meets the minimum requirements specified in the **QUALIFICATIONS** section above;
- iii. A confirmation that the Respondent meets the appropriate state licensing requirements to practice in the State of Louisiana;
- iv. A confirmation that the Respondent has not had a record of substandard work within the last seven years;
- v. A confirmation that the Respondent has not engaged in any unethical practices within the last seven years;
- vi. A confirmation that, if awarded the contract, the Respondent acknowledges its complete responsibility for the entire contract, including payment of any and all charges resulting from the contract;
- vii. Any other information that the Respondent feels appropriate; and
- viii. The signature of an individual who is authorized to make offers of this nature in the name of the Respondent submitting the qualifications.

3. Standard Form 330 (08/2016)

Respondents must include a fully completed and signed SF 330. A link to electronic versions of SF 330 is provided below:

<https://www.gsa.gov/forms-library/architect-engineer-qualifications>

Use Section H of the SF330 to provide information demonstrating past performance on contracts with Government agencies and private industry, and any other pertinent information you wish to include with the submittal.

Ownership

All Responses, including any submitted documents, to this RFQ or any resulting solicitation are the property of the Board for all purposes. Respondents must clearly mark individual documents or information that the applicant claims are exempt from public record disclosure and specifically justify the exemption. The Board does not guarantee the confidentiality of submissions.

Disadvantaged Business Enterprise (DBE) Program

In accordance with the adoption of Resolution R231-97, the Sewerage & Water Board of New Orleans has established a race and gender-neutral Disadvantaged Business Enterprise (DBE) Plan. The prime consultant shall be required to make a demonstrated good faith effort to award thirty-five percent (35%) of the work to be performed under the contract to certified disadvantaged business enterprises as service providers or suppliers performing commercial useful functions which are consistent with the services or supplies required on this contract. (See attachment C.)

Unless a waiver of DBE requirement was granted prior to the release of a solicitation, responses shall include a comprehensive plan for DBE participation including:

1. Name and contact information of DBE firm(s)
2. Scope of work for which the DBE firm(s) will be responsible
3. Projected percentage of work of the total project to be performed by DBE firm(s)
4. Letter of participation from DBE firm(s) on their letterhead affirming proposed level of participation

No dollar amount is to be included in the response. Dollar amount(s) will be submitted by successful respondent upon completion of selection process.

Consultant agrees to use its best efforts to carry out this policy by utilizing the current listings of approved DBE vendors available at the Board’s website at www.swbno.org, or link to https://www.swbno.org/business_disadvantagedbusinessprogram.asp

Schedule Summary

Event	Dat	Local Time
Mandatory Pre-submittal Meeting	March 4, 2020	10:00 AM (Local time)
Deadline for SWBNO receipt of written questions from Respondents	March 6, 2020	5:00 PM (Local time)
Responses to questions/clarification	March 9, 2020	
Statement of Qualifications due	March 20, 2020	11:00 AM (local time)
Evaluation Committee meeting, open to public	TBD	
Board approval of evaluation committee recommendation	TBD	

The Board will make every effort to administer the RFQ process in accordance with the terms and dates discussed in this solicitation. However, the Board reserves the right to modify the RFQ process and dates as deemed necessary at its sole discretion.

Attachment A. Response Cover Sheet

Services: _____

Proposer:

Company Name: _____

Company Address: _____

Proposer's Contact Person:

Name: _____ Title: _____

Address: _____

Telephone No.: (____) _____ FAX No.: ____ (____) _____

Subconsultants (add lines as necessary):

<u>Name</u>	<u>Written commitment attached (Y/N)</u>
_____	_____
_____	_____

I hereby certify that:

1. This statement will remain in effect for at least ninety (90) days from _____.
2. I possess an established system of accounting and financial controls adequate to permit the effective administration of this contract or willingness to modify the present system to meet SWBNO requirements.
3. I will be ready and able to begin work within ten (10) days after contract award.
4. I am authorized to represent and can commit the organization to all provisions of this proposal.

Signature

Date

Attachment B. Contract Terms

I. THE CONSULTANT'S OBLIGATIONS.

Consultant's obligations are fully described in any Consultant Work Order Proposal, numbered consecutively and dated accordingly. It is the intent of this agreement to provide for additional consultant work orders as deemed necessary by the Sewerage and Water Board and as acceptable to the Consultant. Consultant Work Order No. 1, dated _____, is attached and hereby made a part of this agreement upon execution by all parties. Any additional future consultant work orders will be made a part of this agreement by amendment.

A. Services. The Consultant will, in accordance with the schedule approved by the Board:

1. Perform all other services and obligations as set forth in Consultant Work Order No. ____ dated _____.
2. Submit complete and accurate invoices, maintain records, submit to audits and inspections, maintain insurance, and perform all other obligations of the Consultant as set forth in this Agreement;
3. Promptly correct any errors or omissions and any work deemed unsatisfactory or unacceptable by the Board, at no additional compensation;
4. Monitor, supervise, and otherwise control and be solely responsible for all persons performing work on its behalf;
5. Perform all requirements set forth in La. R.S. 38:2192, including without limitation the payment of any associated costs, and submit a copy of any recorded documents to the Board within thirty (30) days after the approval of the associated plan change or amendment; and
6. Provide a project organizational chart depicting the production staff proposal for the work under this agreement. Board approval will be required for the initial version including any subconsultant services and any proposed revisions.
7. Consultant shall provide a corporate resolution attesting to the authority of the execution of this agreement on its behalf.
8. Cooperate with the Board and any person performing work for the Board.

The Board's officers and employees are not authorized to request or instruct the Consultant to perform any work beyond the scope or duration of this Agreement in the absence of an executed amendment to this Agreement.

B. Standards. The Consultant, and any person performing work on its behalf, will perform all work under this Agreement in accordance with industry standards for design and engineering.

C. Compliance with Laws. The Consultant, and any person performing work on its behalf, will comply with all applicable federal, state, and local laws and ordinances.

D. Schedule.

1. The Consultant will perform all work under this Agreement according to the schedule detailed in the applicable Consultant Work Order Proposal.

The Consultant will submit a proposed progress schedule to the Board within fourteen (14) calendar days of receiving written authorization to proceed from the Board and then monthly with each invoice thereafter. As a minimum, the schedules must include a description of the work completed during the reporting period, an update of the remaining work to be complete in the form of an estimate of the fee necessary to complete the balance of the Consultant Work Order, explanation of any extra work completed beyond the scope of services along with documentation authorizing such services.

2. The Board has the sole right to approve, reject, or require changes to all schedules relating to the performance of this Agreement, including, without limitation, any proposed progress schedule and any requests for modifications.

3. The Consultant acknowledges and agrees that time is of the essence in the performance of this Agreement.

E. Invoices.

1. The Consultant will submit monthly invoices for work performed under this Agreement to the Board no later than ten (10) calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the Board is not liable. All invoices must be signed by an authorized representative of the Consultant under penalty of perjury attesting to the validity and accuracy of the invoice.

2. All invoices will be in a form approved by the Board and shall be accompanied by labor and expense documentation. All direct expenses charged shall be itemized and in accordance with No. 3, below. The Board may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices.

3. All invoices shall include the Consultant's DBE % contract goal, the DBE % accrued to-date, the DBE % paid to-date, the DBE % accrued within the current invoice period, and the projected DBE % for the balance of the agreement.

4. The Consultant will submit to the Board one (1) original invoice and four (4) copies with any of back-up or verification documentation required by the Board. The invoices will be in a formal previously approved by the Board and must show at a minimum all services performed in the prior month, all time expended in the performance of those services, the rates for each service provided, the costs for which Consultant seeks reimbursement, and the amount that the Consultant claims is due for those services.

5. Any reimbursement for travel expenses will be capped at the CONUS rates set by the United States General Services Administration for the applicable locality in question (primarily New Orleans unless travel is to another location for Board business and is pre-approved in writing by Sewerage and Water Board Management).

6. Personal vehicle mileage shall be reimbursed in accordance with the current IRS standard.

7. Air travel must be at the least expensive of published advance-fare coach fares based upon travel times which minimize the total cost to the Board of the air fares and any associated labor expense. Any last-minute airfare ticket purchases will be reimbursed at the applicable 14 day advance fare unless pre-approved by Sewerage and Water Board Management. Seating upgrades are not reimbursable.

F. Records and Reporting.

1. The Consultant will maintain all books, documents, papers, accounting records, invoices, materials records, payrolls, work papers, personnel records, and other evidence pertaining to the performance of services under this Agreement, including, without limitation, of costs incurred through the later of three years from: (a) the completion of this Agreement (including any renewal or extension periods); or (b) from the resolution of any dispute relating to the Agreement. If this Agreement is terminated for any reason, the Consultant will deliver to the Board all plans and records of work compiled through the date of termination.

2. The Consultant will provide reports as requested by the Board.

3. The Consultant is solely responsible for the relevance and accuracy of all items and details included in any reports relating to the work performed under this Agreement, regardless of any review by the Board.

G. Audit and Inspection.

1. The Contractor will submit to any SWBNO audit, inspection, and review and, at the SWBNO's request, will make available all documents relating or pertaining to this Contract maintained by or under the control of the Contractor, its employees, agents, assigns, successors and subcontractors, during normal business hours at the Contractor's office or place of business in Louisiana. If no such location is available, the Contractor will make the documents available at a time and location that is convenient for the SWBNO.

2. Administrative and financial records shall be made and kept by the contractor in accordance with generally accepted accounting principles and practices. Records shall include, but are not limited to, accounting records, daily reports, change order requests, correspondences and subcontract files (hard copies as well as computer readable data, if it can be made available). Records must be retained and made available upon request for a minimum of five (5) years following completion or formal acceptance of the contracted project.

3. The Contractor will abide by all provisions of City Code § 2-1120, including but not limited to City Code § 2-1120(12), which requires the Contractor to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the Contract. The Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

H. Quality Assurance/Quality Control.

1. All Consultant project deliverables and/or contract documents must undergo a quality assurance/quality control including constructability reviews (where construction documents are part of the project deliverables) before documents are submitted to the Board. These reviews yield more accurate deliverables, including but not limited to cost estimates and schedule projections, fewer Consultant contract amendments, higher quality proposal documents, responsive and project

submittals, fewer change orders during construction, and fewer consultant claims. QA/QC-C review costs are part of the project budget.

2. The primary responsibility for this task falls on the Consultant to ensure that necessary coordination is occurring between the Board and the Consultant as well as the various project Subconsultants and Stakeholders. The Consultant must submit a Quality Control Plan (QCP) before beginning work on the project. The QCP is the document against which the Consultant's QA/QC-C compliance efforts are measured.

3. The Consultant must assign QA/QC-C review tasks to a qualified person(s) that are not engaged in day-to-day activities related to the project. If the firm does not have an independent person available, they should retain a QA/QC-C Subconsultant. Please note that the Board's review of the Consultant's QA/QC-C program in no way releases the Consultant of their professional liability regarding the project submittals and deliverables.

Key Terms Include:

Quality Assurance

A comprehensive program that verifies a process, software application, hardware system, project organization, facility, structure, system or component will perform satisfactorily and safely in service. A recognized benchmark is International Organization for Standardization (ISO) Standard 9001 "Quality Management Systems".

Quality Control

The process of identifying and applying appropriate technical and professional standards when producing project documents that meet or exceed the user's requirements.

Constructability

A review process using experienced persons with extensive construction knowledge early and throughout the design phase to ensure projects are buildable, while also being cost effective, biddable, and maintainable.

I. Insurance.

1. Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, the Consultant will maintain the following insurance in full force and effect for the duration of the work under this Agreement:

Consultant shall maintain at his own expense and in good standing, such insurance as will protect the Board, the City of New Orleans, their officers, officials, employees, boards, commissions, and volunteers, and the Consultant himself, from and against any and all claims or damages to public or private property or personal injury, including death, to employees or the public, which may arise from any operations under this contract or any of its subcontracts. The coverage shall contain no special limitations on the scope of protection afforded to the Board or the City. Both the Board and the City shall appear as "Additional Insured" on all Commercial General Liability and Business Automobile Insurance. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Board and the City, their officers, officials, employees, boards and commissions, and volunteers. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Consultant and its insurers shall agree to waive all rights of subrogation, except on their Professional Liability Policy, against the Board, the City, and their officers, officials, employees, boards and commissions, and volunteers for losses arising from work performed by the Consultant for the Board and the City. Each insurance policy required by this contract shall be endorsed to state that coverage shall not be suspended, voided or canceled by either party, or reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, that has been given to the Risk Manager of the Board. In general, insurance is to be placed with insurers with a Best's rating of at least A- V, although this requirement may be reviewed and modified by the Risk Manager of the Board in the best interest of the Board. The Risk Manager may also consider performing such review upon written request from Consultant. Consultant shall furnish the Board with certificates of insurance affecting coverage required by this contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

The certificates of insurance are to be received and approved by the Risk Manager of the Board before work commences. In the event of a claim, Consultant shall make applicable insurance policies available for review by the Board. Consultant shall retain its rights to restrict disclosure of Consultant's proprietary information.

The following are the types of insurance policies and the minimum limits of insurance coverage which shall be maintained by Consultant during the entire term of the Contract:

- a) **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE**, as will protect him from claims under Workers' Compensation Laws. The Workers' Compensation section of the policy shall afford statutory limits and be in accordance with all Louisiana Workers' Compensation Statutes. The Employers' Liability limit shall not be less than \$1,000,000 each accident for bodily injury by accident and \$1,000,000 each employee/policy limit for bodily injury by disease. Whenever any vessel or floating equipment is involved, the insurance shall afford coverage under the Federal Longshoremen's and Harbor Workers' Act, and shall also include

protection for injuries and/or death to Masters and Members of the crews of vessels with statutory limits in accordance with the Jones Act.

- b) **COMMERCIAL GENERAL LIABILITY INSURANCE**, with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate, including Explosion, Collapse, and Underground Property Damage Hazards. The Products-Completed Operations aggregate limit shall not be less than \$1,000,000 each occurrence. The general aggregate limit shall apply separately to this project.
- c) **BUSINESS AUTOMOBILE INSURANCE**, which shall cover liability arising out of any auto (including owned, hired, and non-owned vehicle). The limit of liability shall not be less than \$1,000,000 each accident for all injuries, property damage, and/or death resulting from any one occurrence.
- d) **ERRORS AND OMISSIONS/PROFESSIONAL LIABILITY INSURANCE**, with a limit of not less than \$5,000,000 each Claim/Aggregate and sufficient to protect the Consultant, the Board, and the City, for a five (5) year period from completion of this contract, against any and all claims which may arise from the Consultant's negligent performance of work described herein.

In addition, Consultant shall be required to furnish to the Risk Manager of the Board all copies of investigative reports with regard to any and all claims filed with the Consultant and his insurance carriers relative to the contract, with the exception of claims filed against his Workers' Compensation Insurance. Such reports shall include date, location, and description of loss as well as amounts of settlements or judgments in order that annual aggregate limits may be monitored by the Board for Consultant's compliance with these specifications.

The furnishing of insurance as provided above shall not relieve Consultant of its responsibility for losses not covered by insurance. Prior to the signing of the contract, evidence of all such applicable insurance satisfactory to the Board shall be filed with the Risk Manager of the Board. All policies shall be in insurance companies authorized to do business in Louisiana and shall remain in full force and effect until the final completion of the work and acceptance thereof by the authority of the Board. Consultant and/or his insurer shall notify the Risk Manager of the Board at least thirty (30) days in advance of any insurance coverage to be canceled or of any insurance coverage that will expire.

Consultant shall simultaneously furnish the Board evidence of new coverage to be effective the same day and hour of the expired or canceled coverage. In the event Consultant fails to submit this evidence of new coverage five (5) days prior to cancellation date or expiration date of any policy or policies, the Board will obtain the required coverage to become effective on date of cancellation or expiration of said policies. The cost of such new coverage shall be at the expense of Consultant and any expenditure incurred by the Board of this coverage will be deducted from any balance due to Consultant.

2. The Consultant will provide the Board with the following documents within ten (10) calendar days of this Agreement's effective date and at any other time at the Board's request:

- a. Proof of coverage for each policy of insurance required by this Agreement;
 - b. Copies of all policies of insurance, including all policies, forms, and endorsements; and
 - c. Statements disclosing any policy aggregate limit.
3. Without notice from the Board, the Consultant will:

- a. Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;
- b. Substitute insurance coverage acceptable to the Board within thirty (30) calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement; and
- c. Notify the Board's Risk Manager in writing within forty-eight (48) hours of its receipt of any notice of non-renewal, cancellation, or reduction in coverage or limits affecting any policy of insurance maintained under this Agreement.

J. Indemnity.

1. To the fullest extent permitted by law, the Consultant will indemnify, defend, and hold harmless the Board, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the "Indemnified Parties") from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Released Parties: for loss of life or injury or damage to persons or property arising from or relating to any act or omission or the operation of the Consultant, its agents, subconsultants, or employees while engaged in or in connection with the discharge or performance of any work under this Agreement; and for any and all claims and/or liens for labor, services, or materials furnished to the Consultant in connection with the performance of work under this Agreement.

2. The Consultant's indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the Consultant nor any of its agents, subconsultants, or employees contributed to such gross negligence or willful misconduct.

3. The Consultant has an immediate and independent obligation to, at the Board's option: (a) defend the Board from or (b) reimburse the Board for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (a) the allegations are or may be groundless, false, or fraudulent; or (b) the Consultant is ultimately absolved from liability.

K. Safety.

1. If this transaction requires the Consultant or subconsultant's employees to enter the Board's facilities or job sites, a senior employee of the Consultant and/or any subconsultant will review the Board's Safety Orientation Notice (Notice) and will explain this Notice to every employee who will enter Board facilities. This Notice is included as a part of the specifications for this contract. In addition, the Consultant shall provide proof of its own safety plan and documentation of its application of Consultant's safety plan to this contract.

II. REPRESENTATIONS AND WARRANTIES.

A. The Consultant represents and warrants to the Board that:

1. The Consultant, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement;
2. The Consultant has the requisite expertise, qualifications, staff, materials, equipment, licenses, permits, consents, registrations, and certifications in place and available for the performance of all work required under this Agreement;

3. The Consultant is bonded, if required by law, and fully and adequately insured for any injury or loss to its employees and any other person resulting from the actions or omissions of the Consultant, its employees, or its subconsultants in the performance of this Agreement;

4. The Consultant is not under any obligation to any other person that is inconsistent or in conflict with this Agreement or that could prevent, limit, or impair the Consultant's performance of this Agreement;

5. The Consultant has no knowledge of any facts that could prevent, limit, or impair the performance of this Agreement, except as otherwise disclosed to the Board and incorporated into this Agreement;

6. The Consultant is not in breach of any federal, state, or local statute or regulation applicable to the Consultant or its operations;

7. Any rate of compensation established for the performance of services under this Agreement are no higher than those charged to the Consultant's most favored customer for the same or substantially similar services;

8. The Consultant has read and fully understands this Agreement and is executing this Agreement willingly and voluntarily; and

9. All of the representations and warranties in this Article and elsewhere in this Agreement are true and correct as of the date of this Agreement by the Consultant and the execution of this Agreement by the Consultant's representative constitutes a sworn statement, under penalty of perjury, by the Consultant as to the truth of the foregoing representations and warranties.

B. Convicted Felon Statement. The Consultant complies with City Code § 2-8(c) and no principal, member, or officer of the Consultant has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

C. Non-Solicitation Statement. The Consultant has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The Consultant has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.

D. Employee Verification. The Consultant swears that (i) it is in compliance with La. R.S. 38:2212.10, and is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subconsultants to submit to the Consultant a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination, and may further result in the Consultant being ineligible for any public contract for a period of three years from the date the violation is discovered. The Consultant further acknowledges and agrees that it shall be liable for any additional costs incurred by the Board occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of La. R.S. 38:2212.10. The Consultant will provide to the Board a sworn affidavit attesting to the above provisions if requested by the Board.

The Board may terminate this Agreement for cause if the Consultant fails to provide such the requested affidavit or violates any provision of this paragraph.

E. The Consultant acknowledges that the Board is relying on these representations and warranties and Consultant's expertise, skill, and knowledge and that the Consultant's obligations and liabilities will not be diminished by reason of any approval by the Board.

III. THE BOARD'S OBLIGATIONS.

A. Administration. The Board will:

1. Administer this Agreement through the Engineering Department;
2. Provide the Consultant documents deemed necessary for the Consultant's performance of any work required under this Agreement; and
3. Provide access to Department personnel to discuss the required services during normal working hours, as requested by the Consultant.

B. Payment. The Board will make payments to the Consultant at the rate of compensation established in this Agreement based upon the Consultant's certified invoices, except:

1. The Board's obligation to pay is contingent upon the Consultant's: (a) submission of a complete and accurate invoice; (b) satisfactory performance of the services and conditions required by this Agreement;
2. The Board, in its discretion, may withhold payment of any disputed amounts, and no interest shall accrue on any amount withheld pending the resolution of the dispute;
3. The Board may set off any amounts due to the Consultant against any amounts deemed by the Board to be owed to the Board by the Consultant pursuant this Agreement; and
4. All compensation owed to the Consultant under this Agreement is contingent upon the appropriation and allocation of funds for work under this Agreement by the Board.
5. The Board is not obligated under any circumstances to pay for any work performed or costs incurred by the Consultant that: exceed the maximum aggregate amount payable established by this Agreement; are beyond the scope or duration of this Agreement; arise from or relate to the any change order within the scope of the Agreement; are for services performed on days on which services were suspended, due to circumstances beyond the control of the Board, and no work has taken place; arise from or relate to the correction of errors or omissions of the Consultant or its subconsultants; or the Board is not expressly obligated to pay under this Agreement.
6. The Board, in its discretion, may withhold payment of any disputed amounts, and no interest shall accrue on any amount withheld pending the resolution of the dispute.
7. If this Agreement is terminated for any reason, the Board will pay the Consultant only for the work requested by the Board and satisfactorily performed by the Consultant through the date of termination, except as otherwise provided in this Agreement.

IV. COMPENSATION.

A. Rate of Compensation.

1. Compensation for each and any not-to-exceed Consultant Work Order will be paid as provided in any accepted Consultant Work Order and in accordance with the terms of this agreement.

2. This Agreement does not guarantee any amount of work or compensation except as specifically authorized by the Board in accordance with the terms and conditions of this Agreement.

3. The stated compensation is inclusive, and includes no additional amounts for, the Consultant's costs, including without limitation all expenses relating to overhead, administration, subconsultants, employees, bid preparation, bonds, scheduling, invoicing, insurance, record retention, reporting, inspections, audits, the correction of errors and omissions, or minor changes within the scope of this Agreement. The Board will not consider or be obligated to pay or reimburse the Consultant any other charges or fees and the Consultant will not be entitled to any additional compensation or reimbursement, except as otherwise specifically provided in any approved Consultant Work Orders made a part of this Agreement.

B. Maximum Amount. The maximum amount payable by the Board under this agreement is the aggregate total fee of each Consultant Work Order authorized by this agreement and any subsequent amendments.

V. DURATION AND TERMINATION.

A. Initial Term. The initial term of this Agreement is one (1) year from the Effective Date.

B. Extension. The Board may extend the term this Agreement for no more than five (5) one (1) year periods pursuant to validly executed amendments, provided that: any extension of this Agreement is subject to and contingent upon the encumbrance of funds; the Board determines that the extension facilitates the continuity of services provided under this Agreement; and

C. Termination for Convenience. The Board may terminate this Agreement at any time during the term of the Agreement by giving the Consultant written notice of the termination at least thirty (30) calendar days before the intended date of termination.

D. Termination for Non-Appropriation. This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement without the requirement of notice and the Board will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

E. Termination for Cause. The Board may terminate this Agreement immediately for cause by sending written notice to the Consultant. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with the requirements of the Board's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective thirty (30) days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

F. Suspension. The Board may suspend this Agreement at any time and for any reason by giving two (2) business day's written notice to the Consultant. The Consultant will resume work upon five (5) business day's written notice from the Board.

VI. DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROGRAM.

A. DBE Program Compliance. The Consultant will hereby agree to meet the Sewerage and Water Board DBE goal of 35% for this contract to fully and completely carry out the applicable requirements of the Board's DBE Program in the award and administration of this Agreement, including, without limitation, all reporting requirements and specific DBE participation goals. The Consultant's failure to carry out these requirements, as determined in good faith by the Board's DBE Compliance Officer, shall be deemed a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as set forth in the Board's Policy Memorandum for the DBE Program.

B. DBE Compliance Reporting. The Consultant will provide written reports to the Board's EDDBE Office on all expenditures made to achieve compliance with the DBE participation goals for this Agreement. The report shall, at a minimum, include the following:

1. The name and business address of each DBE involved in the contract;
2. A description of the work performed and/or the product or service supplied by each DBE;
3. The date and amount of each expenditure made to a DBE; and
4. Such other information as may assist the DBE Compliance Officer in determining compliance with the DBE Program and the status of any DBE performing any portion of the contract.

C. Access to Books and Records. The Consultant will grant the Board's DBE Compliance Officer reasonable access to its books and records for purposes of verifying compliance with the DBE Program in accordance with the inspection provisions of this Agreement.

D. Disqualification from Future Contracts. If the Board terminates this Agreement in connection with any misrepresentation of the Consultant's DBE status, the Consultant may be disqualified from contracting with or participating in any contracts with the Board.

VII. NON-DISCRIMINATION.

A. Equal Employment Opportunity. In all hiring or employment made possible by, or resulting from this Agreement, the Consultant (1) will not be discriminate against any employee or applicant for employment because of race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Consultant's employees are treated during employment without regard to their race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, 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. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, age, physical or mental disability, national origin, sexual

orientation, creed, culture, or ancestry.

B. Non-Discrimination. In the performance of this Agreement, the Consultant will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex (gender), sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the Board working with the Consultant in any of Consultant's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Consultant. The Consultant agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

C. Incorporation into Subcontracts. The Consultant will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subconsultants to comply with those provisions.

D. The Board may terminate this Agreement for cause if the Consultant fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

VIII. INDEPENDENT CONSULTANT.

A. Independent Consultant Status. The Consultant is an independent consultant and shall not be deemed an employee, servant, agent, partner, or joint venture of the Board and will not hold itself or any of its employees, subconsultants or agents to be an employee, partner, or agent of the Board.

B. Consultant Subcontracts. This agreement is between the Board and Consultant only. Any terms that are stated within any Consultant Proposals included within any Work Order to this contract or which will exist as part of any subcontract between the Consultant and any of its subconsultant firms relative to this prime agreement are exclusive to the Consultant and its subconsultants and have no bearing upon this prime agreement nor obligate the Sewerage and Water Board of New Orleans in any way or matter.

C. Exclusion of Worker's Compensation Coverage. The Board will not be liable to the Consultant, as an independent consultant as defined in La. R.S. 23:1021(6), for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana. Under the provisions of La. R.S. 23:1034, any person employed by the Consultant will not be considered an employee of the Board for the purpose of Worker's Compensation coverage.

D. Exclusion of Unemployment Compensation Coverage. The Consultant, as an independent consultant, is being hired by the Board under this Agreement for hire and defined in La. R.S. 23:1472(E) and neither the Consultant nor anyone employed by it will be considered an employee of the Board for the purpose of unemployment compensation coverage, which coverage same being hereby expressly waived and excluded by the parties, because: (a) the Consultant has been and will be free from any control or direction by the Board over the performance of the services covered by this contract; (b) the services to be performed by the Consultant are outside the normal course and scope of the Board's usual business; and (c) the Consultant has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

E. Waiver of Benefits. The Consultant, as an independent consultant, will not receive from the Board any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the Board under this Agreement.

IX. NOTICE.

Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested as follows:

1. To the Board:

General Superintendent
Sewerage and Water Board of New Orleans
625 St Joseph Street, Room 311
New Orleans, LA 70165
(504) 585-2365

AND

8800 South Claiborne Avenue, Room 102
New Orleans, LA 70118
(504) 865-0412
badams@swbno.org

2. To the Consultant:

_____ (name)
_____ (firm name)
_____ (address)
_____ (phones)
_____ (email)

Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery. Each party is responsible for notifying the other in writing that references this Agreement of any changes in its address(es) set forth above.

X. ADDITIONAL PROVISIONS.

A. Limitations of the Board's Obligations. The Board has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

B. Order of Documents. In the event of any conflict between the provisions of this Agreement any incorporated documents, the terms and conditions of the documents will apply in this order: the Agreement; the Consultant Work Order Proposal; the Task Cost Report.

C. Ownership Interest Disclosure. The Consultant will provide a sworn affidavit listing all natural or artificial persons with an ownership interest in the Consultant and stating that no other person holds an ownership interest in the Consultant via a counter letter. For the purposes of

this provision, an “ownership interest” shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Consultant fails to submit the required affidavits, the Board may, after thirty (30) days’ written notice to the Consultant, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

D. Subconsultant Reporting. The Consultant will provide a list of all natural or artificial persons who are retained by the Consultant at the time of the Agreement’s execution and who are expected to perform work as subconsultants in connection with the Consultant’s work for the Board. For any subconsultant proposed to be retained by the Consultant to perform work on the Agreement with the Board, the Consultant must provide notice to the Board within 30 days of retaining that subconsultant. If the Consultant fails to submit the required lists and notices, the Board may, after 30 days’ written notice to the Consultant, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

E. Prohibition of Financial Interest in Agreement. No appointed or elected official or employee of the Board shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any appointed or elected official or employee of the Board shall be deemed to be a financial interest of such appointed or elected official or employee of the Board. Any willful violation of this provision, with the expressed or implied knowledge of Consultant, shall render this Agreement voidable by the Board and shall entitle the Board to recover, in addition to any other rights and remedies available to the Board, all monies paid by the Board to Consultant pursuant to this Agreement without regard to Consultant’s otherwise satisfactory performance of the Agreement.

F. Conflicting Employment. To ensure that the Consultant’s efforts do not conflict with the Board’s interests, and in recognition of the Consultant’s obligations to the Board, the Consultant will decline any offer of other employment if its performance of this Agreement is likely to be adversely affected by the acceptance of the other employment. The Consultant will promptly notify the Board in writing of its intention to accept the other employment and will disclose all possible effects of the other employment on the Consultant’s performance of this Agreement. The Board will make the final determination whether the Consultant may accept the other employment.

G. Non-Exclusivity. This Agreement is non-exclusive and the Consultant may provide services to other clients, subject to the Board’s approval of any potential conflicts with the performance of this Agreement and the Board may engage the services of others for the provision of some or all of the work to be performed under this Agreement.

H. Assignment. This Agreement and any part of the Consultant’s interest in it are not assignable or transferable without the Board’s prior written consent.

I. Terms Binding. The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.

J. Jurisdiction. The Consultant consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas or exceptions of jurisdiction on account of the residence of the Consultant.

K. Choice of Law. This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of law provisions.

L. Construction of Agreement. Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement shall be construed or resolved in favor of or against the Board or the Consultant on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

M. Severability. Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part the Agreement.

N. Survival of Certain Provisions. All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, choice of law, shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

O. No Third Party Beneficiaries. This Agreement is entered into for the exclusive benefit of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this Agreement.

P. Amendment. No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Agreement.

Q. Non-Waiver. The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

R. Entire Agreement. This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

END OF SECTION

Attachment C. Policy to Enhance the Use of Disadvantage Business Enterprise (DBE) Vendors

In accordance with the adoption of Resolution R231-97, the Sewerage and Water Board of New Orleans has established a race and gender-neutral Disadvantaged Business Enterprise (DBE) Plan. The prime contractor shall be required to make a demonstrated good faith effort to award (35%) percent of the amount of the contract to certified disadvantaged business enterprises as **service providers or suppliers performing commercial useful functions which are consistent with the services or supplies required on this contract.** The percent participation having been determined for this specific contract by recommendation of the **Staff Contract Review Committee (SCRC)**, which is comprised of Sewerage and Water Board staff members. This percentage requirement shall be considered an informality which is subject to modifications and may be waived or adjusted by the Sewerage and Water Board of New Orleans if the prime contractor, after having demonstrated a good faith effort, is unable to comply with the requirement.

Demonstrated Good Faith Efforts

Before receiving an award of the contract, the consultant must meet the DBE goals or prove that he/she has made a demonstrated good faith effort. To determine whether a particular contract respondent has made demonstrated good faith efforts to reach the DBE participation goal, the Board and its staff will consider the following:

- a. whether the consultant attended all pre-submittal meetings that may have been scheduled by the Board to inform DBE firms of subcontracting opportunities and/or requested the Board Directory of Certified DBE firms;
- b. whether the consultant advertised in general circulation and trade association publications, concerning the DBE subcontracting opportunities, and allowed the subconsultants reasonable time to respond;
- c. whether the consultant provided written notice to a reasonable number of individually named DBE firms and allowed sufficient time for the DBE firms to participate effectively;
- d. whether the consultant followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested in participating;
- e. whether the consultant selected specific portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goals (including breaking down contracts into smaller units to facilitate DBE participation);
- f. whether the consultant provided interested DBEs with adequate information about the plans, specifications and requirements of the contract;

- g. whether the consultant negotiated in “good faith” with interested DBEs and did not reject DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities;
- h. if the consultant did reject a DBE as unqualified, the consultant must state his or her reason for doing so in writing;
- i. whether the consultant has used the services of available community organizations and small and/or disadvantaged business groups; local, state and federal small or disadvantage business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBE firms;
- j. whether the consultant has made sufficient efforts to negotiate with DBEs for specific scope of work, including at a minimum:
 - (1) names, addresses, telephone numbers of DBEs that the consultant contacted,
 - (2) a description of information provided to those DBE firms, and
 - (3) a statement of why additional agreements with DBEs were not reached to include but not limited to proof the DBEs’ price exceeded that of non-DBEs.

1. Policy:

It is the policy of the Board that DBE firms, as defined in the Board’s Disadvantaged Business Enterprise Plan, shall have the maximum allowable opportunity to compete for the award of the participation in the performance of the Board’s publicly bid contracts. Consequently, the SCRC and the Board have set the DBE participation goal applicable to this Professional Service and/or Goods and Service contract.

2. DBE Obligation:

The Board and its consultants agree to ensure that DBEs, as defined in the Board’s Disadvantaged Business Enterprises Plan, shall have the maximum allowable opportunity to compete for the award of the participation in the performance of contracts and subcontracts provided under this agreement. In this regard, consultants shall take all necessary and reasonable steps in accordance with this DBE Plan to ensure that DBEs have the maximum allowable opportunity to compete for such contracts. The Board and its consultants shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of the Board’s publicly bid contracts.

3. Utilization of DBE Vendor Listings:

All respondents are required to utilize the most recent Sewerage and Water Board State-Local Disadvantaged Business Enterprise Program Approved Vendor Listings for **Goods & Services/Professional Services**, in their selection of DBE entities to meet DBE participation goals. **Respondents are required to utilize DBE’s as service providers or**

suppliers only in the areas for which they are certified. A description of the areas of work that DBE's can provide is contained in these vendor listings. In addition, an alphabetical list of vendors/consultants is provided indicating the name of the company, address, name of owner, telephone number, fax number, the date the company became certified, and a description of the work that these entities are certified to perform. **Companies that are already certified as a DBE cannot fulfill the DBE requirements by listing themselves as the subconsultant to meet the DBE goal. The prime consultant shall select another DBE from the Sewerage and Water Board's Approved Vendor Listing.**

4. Contacting DBE's and Obtaining a Firm Price

All prime consultants/vendors are required to contact DBE's and obtain a firm price before listing the DBE's on the Participation Summary Sheet. As confirmation of established contact, respondent will include with their Participation Summary Sheet submission a signed correspondence from the SLDBE subconsultant on their own letterhead that reaffirms negotiated terms such as scope of work and monetary compensation.

5. Failure to Carry Out DBE Policy:

All respondents, potential consultants, or subconsultants for this Board contract are hereby notified that failure to comply with the DBE policy and DBE obligations, set forth above, shall constitute a breach of contract which may result in termination of the contract or such other remedy as deemed appropriate by the Board, to include excluding respondent from bidding on future Board contracts.

6. Setting Minimum Participation Goals:

The stated minimum percentage DBE participation goal recommended by SCRC and approved by the Board applies to the work of this contract. Solicitation responses which are not accompanied by a properly completed Economically Disadvantaged Business Participation Summary Sheet showing that at least the percentage goal of the total work to be performed will be subcontracted or otherwise awarded through procurement action to DBEs will not receive DBE percentage credit, unless:

- a. An affidavit is furnished by the respondent with its bid showing that the DBE goals cannot be met for the following reasons:
 - 1) No DBE firms made offers. Here, it must be shown, documented and demonstrated that good faith efforts (as defined in Part III, D, 2. of the Board's DBE plan) were made by the respondent to obtain the participation of DBE firms and that they did not respond, or
 - 2) The DBE offers made and accepted for subcontract and/or material supplies do not total the stated goal for participation, but total a lesser percentage, and
 - 3) The respondent was unable to obtain DBE further participation, despite his or her demonstrated good faith efforts (as defined in Part III, D, 2 of the Board's DBE Plan) to obtain additional participation by DBE firms.
- b. Each of the assertions made by the respondent must be supported by documentary evidence.

8. Other Clauses Unaffected:

Nothing contained herein shall invalidate, change, annul, release, restrict, or affect the liability on the bonds or insurance given by the consultant, or the time required for completion of the contract.

9. Determination of Efforts to Meet Goals:

Initial determination of respondent efforts to meet the DBE participation goal shall be based on the DBE participation representations submitted with the bid. Respondents shall submit all the forms required herein with their bids, and the DBE office will examine the contents thereof. The Board's DBE Officer may, if deemed advisable, request further information, explanation, or justification from any respondent.

10. Contract Monitoring:

a. The Board's DBE Office will monitor consultant during the operation of the contract to insure that the consultant meets all of its DBE obligations as specified in the contract bid. The Board's DBE office shall establish rules and regulations, to be approved by the Board, for the ongoing monitoring of consultant compliance.

b. Disadvantaged Business Enterprise Program Office personnel or their designated representative shall be allowed to conduct periodic monitoring of consultants' compliance with the agreed to Disadvantaged Business Enterprise Program participation requirements. Consultants shall be required to complete and return to the Disadvantaged Business Enterprise Program Office in the time required all requests for information and data relative to the consultants' activities in meeting the required Disadvantaged Business Enterprise participation goal. Additionally, Disadvantaged Business Enterprise Office personnel or their designated representative shall have access to consultant and subconsultant(s) records pertaining to, but not specifically limited to labor, costs and materials supplied and used on the Board contract, as well as inspection and photocopying of any and all contracts, agreements and correspondence relative to the Disadvantaged Business Enterprise contract participation requirements. Such inspection will be performed during normal business hours, and will be conducted in such a fashion so as to minimize interference with production of the contract. Visits may be made to job sites, as well as to administrative offices of the consultant and subconsultant(s) participants. Such inspection and on-site visits may be scheduled with or without prior notice to the consultant or Disadvantaged Business Enterprise subconsultant participant. Consultants' failure to comply with these monitoring requirements may result in termination of the contract or such other remedy as deemed appropriate by Board.

11. Maintaining Records:

Subsequent to the completion of a contract, consultants are required to maintain for three (3) years such records as are necessary to determine compliance with their DBE obligations. During construction, or performance of the DBE obligations, consultants shall submit reports as requested to enable the DBE Office to monitor this compliance.

12. Umbrella Bonding:

On contracts where subcontracting exists and where practicable (i.e., when a substantial risk or financial hardship would not be incurred by the prime consultant), the consultant may use an umbrella bond to encompass the DBE firm.

13. Board Action to Seek Compliance:

The consultant consents to such appropriate actions taken to ensure that prime consultants and subconsultants comply with the DBE provisions, to include but not limited to:

- a. desk audits to review all material, and information concerning the consultant's compliance;
- b. on-site reviews that may include interviews, visits to project locations, and inspection of documents and/or information not available at the desk audit that pertains to the consultant's compliance;
- c. any additional investigation that may be called for by a lack of proper record keeping, failure of the prime consultant to cooperate; failure of DBEs to cooperate; visible evidence unsatisfactory performance; other evidence as may warrant further investigation.

14. Non-Compliance Finding:

The Board staff will make compliance determinations regarding its prime consultants. Documentation of noncompliance will include the specific areas in which the consultants failed to comply. In these instances, appropriate legal action consistent with the DBE and other contract provisions will be taken.

15. Consultant's Duties

a. Record Keeping

Successful respondents shall establish and maintain records and submit regular reports to the DBE office as required, which will identify and assess progress in achieving DBE subcontract goals and other DBE participation efforts.

b. Failure to Comply With EDBP Participation Requirements

Failure to comply with any of the EDBP requirements of this contract shall constitute a violation of the terms and conditions of this contract and a cause for the termination of the contract at the option of the Board.

Such violations shall include, but not limited to:

Failing to meet the percentage participation requirements as set out in the contract documents.

Failing to use certified EDBP consultants/vendors in performing the scope of work as identified in the contract documents (EDBP participation summary sheet).

Failing to comply with the “monitoring of EDBP requirements” included herein as part of the contract, such as consultants:

Failure to submit quarterly report and any other necessary reports timely and adequately as required by the EDBP Office.

Failure to grant access to consultant/subconsultant records by EDBP Office personnel, and

Failure to allow on-site investigations and visits, etc.

Failing to report the removal or termination of a certified EDBP vendor/subconsultant.

Failing to secure authorization for replacement of certified EDBP subconsultants from the Director of the Economically Disadvantaged Business Program.

In Lieu of termination the Board, through the EDBP Office, may impose the following penalties:

Withhold from the consultant in violation up to 10% of all future payments due to the consultant, until such time as the violations have been corrected.

Withhold from the consultant in violation, all future payments until such time as the violations have been corrected.

c. Subcontract Clause

All respondents and potential consultants must assure the Board that they will include the above clauses in all agreements, which offer further subcontracting opportunities.

d. Contract Award

Respondents are hereby advised that meeting DBE subcontract goals or making a demonstrated good faith efforts to meet such goals are conditions of being awarded and maintaining construction, procurement, or professional services contracts by the Board.

e. **Restrictions on DBE Subcontracting**

No **DBE** subconsultant or vendor selected to perform work as a **DBE** on a Sewerage and Water Board contract will be allowed to subcontract any portion of its work to a Non-Board certified **DBE**, unless the work to be performed is necessary for the execution of the contract and there are no Board certified **DBE**'s available to perform such work.

This process will require that each **DBE** participant performing work on a Sewerage and Water Board funded contract submit a request to subcontract out any portion of work deemed necessary for execution of the contract to the Board's **EDBP** office. On a form provided by the **EDBP** office, the **DBE** consultant or vendor will indicate the dollar amount of work to be subcontracted, the specific scope or nature of the work, the percentage of the total amount of work to be performed by the **DBE** subconsultant and vendor, and the entity to whom the work will be subcontracted.

Both prime and **DBE** subconsultants are advised that the failure to comply with these requirements may result in the loss of **DBE** certification and non-compliance by the prime consultant in meeting **DBE** contractual obligations.

f. **Changes in DBE Participation**

The prime consultant will not be allowed to make changes in DBE participation without submittal of a written request explaining reason, a revised Participation Summary Sheet and approval by the Director of the Economically Disadvantaged Business Program. Failure to comply with these requirements may result in non-compliance by the prime consultant in meeting DBE contractual obligations.

16. **POLICY TO ENHANCE THE USE OF DBE VENDORS**

All vendors/consultants are encouraged to identify and use S&WB certified **DBE** vendors to the fullest extent possible in major as well as minor purchases of heavy equipment, hardware supplies, etc.

The Sewerage and Water Board has a long-standing commitment to fairness and equal opportunity in hiring and contracting. As such, the workforce of consultants/vendors is encouraged to be representative of a diverse population. Achievement of the full benefits of diversity will only come when an attitude of inclusion is adopted.

The Sewerage and Water Board believes that developing such a policy would be a positive step to increase the dollar value of contracts awarded to **DBE** vendors and subconsultants.

17. **ACCESS TO APPROVED VENDOR LISTS**

The current listings of Vendors approved by the Sewerage and Water Board are available for use by the respondents on the Sewerage and Water Board external Website, WWW.SWBNO.ORG.

ECONOMICALLY DISADVANTAGED BUSINESS PARTICIPATION SUMMARY SHEET

Minimum Percentage Goal Participation for this Contract is _____%

Contract Name and # _____

Name and Address of Disadvantaged Business Enterprise Company	Name of Contact Person	Scope of Work to be Performed	Percentage of Work to be Performed

THIS FORM MUST BE COMPLETED AND SUBMITTED WITH THE SOLICITATION RESPONSE, ALONG WITH SIGNED CORRESPONDENCE FROM SLDDBE(S) ON THEIR LETTERHEAD REAFFIRMING NEGOTIATED TERMS.

NOTE: Signature required even if judged NOT APPLICABLE by the BIDDER

Prime Representative Name: _____
Print Name

Prime Signature: _____
Signature

Prime Company's Name: _____

Date: _____

Prime Address: _____

E-mail: _____

Telephone Number: _____