

## REQUEST FOR PROPOSAL (RFP)

### South East Texas Hike and Bike Plan 2037 Update

Issue Date: October 11, 2019

**ACCEPTANCE DATE AND TIME:** October 11, 2019 by 2:00 PM

**RFP TITLE:** South East Texas Hike and Bike Plan 2037 Update

**ACCEPTANCE PLACE:**

South East Texas Regional Planning Commission  
Attn: Bob Dickinson  
2210 Eastex Freeway  
Beaumont, Texas 77703

**MARK ENVELOPE WITH:**

Name and Address of Proposing Firm  
and

"Attention: Transportation & Environmental Resources Division  
Request for Proposal for South East Texas Hike and Bike Plan 2037 Update  
Due November 15, 2019"

**PLEASE NOTE:**

Requests for information related to this RFP should be directed to:

Bob Dickinson  
Director, Transportation & Environmental Resources Division  
409-899-8444 x7520  
409-729-6511  
E-mail: [bdickinson@setrpc.org](mailto:bdickinson@setrpc.org)



## **PURPOSE**

The intent of this Request for Proposal (RFP) is to obtain the services of a qualified planning consultant to assist the South East Texas Regional Planning Commission Metropolitan Planning Organization (SETRPC-MPO) with an update to the South East Texas Hike and Bike Plan 2037. SETRPC-MPO will award a contract for all tasks based on negotiated costs once a consulting firm is selected.

## **South East Texas Hike and Bike Plan 2037**

The SETRPC-MPO in 2018 contracted with Texas Target Communities (TTC) program of Texas A&M to develop a long-range bike plan for the three county region, which includes Hardin, Jefferson and Orange Counties. The TTC team was a group of graduate planning students supervised by Texas A&M faculty. The TTC team held a number of public workshops during the development of the plan to ensure public input was received and integrated into the plan. Participation in the workshops was very good with citizens and local and state officials involved.

To date the plan has not been adopted by the Transportation Planning Committee. The plan needs to be refined and feasibility criteria developed. The feasibility criteria would be useful in determining which highways and roads would be acceptable for the addition of biking facilities.

## **OFFEROR'S MINIMUM QUALIFICATIONS**

- Offeror must demonstrate they have the resources and capability to provide the materials and services as described herein.
- Offeror shall submit documentation with their proposal indicating compliance with the minimum qualifications. Failure to include any of the required documentation may be cause for the proposal to be deemed non-responsive and rejected. The following criteria shall be met in order for the firm to be eligible for this contract:
  - Offeror must have a minimum of 5 years of experience in the field of hike and bike facility planning.
  - Offeror must demonstrate a working knowledge of hike and bike facility planning. Practical experience is preferred.

## **SCOPE OF SERVICES**

The SETRPC-MPO is soliciting written proposals from professional planners for their assistance in updating and refining the "Draft" Southeast Texas Hike and Bike Plan 2037. Additional information can be found in "Attachment 1"

## **PROJECT SCOPE**

- 1) Individual tasks may require supervision, manpower, materials, equipment and supplies necessary to complete any of the services outlined below and/or in "Attachment 1".
- 2) The services to be provided under this contract shall include but not be limited to the following:
  - a) Recommendations, cost and time estimates, reports, studies, and preparation of documents.
  - b) Professional involvement throughout all phases of the project, including but not limited to:
    - i) Processing of invoices for services
    - ii) Timely processing of project materials
- 3) The Consultant shall make every effort to keep the personnel assigned to a task consistent.
- 4) Fee/Rate Schedule: Fees established under this Contract shall include:
  - a) Administrative items such as fax transmissions, phone services, mailing services, courier services, printing and materials required in the preparation of presentations, and other expenses deemed typical in the conduct of business. The cost of all copies of reports and submittals that are required shall be included in the Consultant's hourly fee/rate for services, and shall not be deemed additional services.
  - b) Cell phones, personal computers, printers, cameras, video equipment, software, general office supplies, home office and administrative support and all overhead and incidental costs.

## **CONTRACT TERMS AND CONDITIONS**

A sample Contract is contained within "Attachment 5", and a Contract with the successful offeror will, at a minimum, contain all Contract Terms and Conditions contained within the sample contract.

## **BUDGET**

Funds of \$50,000 are available to complete the tasks described in "Attachment 1". The project is funded in part by a transit planning grant awarded by the Texas Department of Transportation. These grant funds are derived from the Federal Transit Administration (FTA). For this reason, the contract will be subject to both state and federal contracting requirements.

## **EVALUATION OF PROPOSALS: SELECTION FACTORS**

The schedule for the selection process and the criteria that will be used to determine the successful offeror is as follows:

**1) Schedule:**

Proposals Due:	November 15, 2019
Final Ranking Announcement:	November 19, 2019
Interviews:	December 9-12, 2019
Consultant Selection:	December 20, 2019

**2) Evaluation Process:**

The review and evaluation of each proposal (and subsequent selection) will be made based on the criteria listed below.

- a) Management Skills and Technical Expertise (25 Points)
- b) Credentials of the Project Team (25 points)
- c) Task Understanding (25 Points)
- d) Compliance with Contractual Terms (15 points)
- e) Overall Quality and Completeness of Proposal (10 points)

Once each proposal has been read and evaluated, a preliminary ranking will be developed. At its sole discretion, SETRPC *may or may not* conduct interviews with offerors.

**INSTRUCTIONS FOR SUBMITTING PROPOSALS**

Submission of Proposals:

The proposal submission must be completely and properly identified. The proposal shall indicate the RFP title and date of acceptance. Proposals may either be mailed or hand delivered to:

South East Texas Regional Planning Commission  
Attn: Bob Dickinson  
2210 Eastex Freeway  
Beaumont, Texas 77703

Faxed and e-mailed proposals will NOT be accepted.

Questions, Inquiries, and Modifications:

Questions and inquiries, both verbal and written, will be accepted from any and all offerors. Bob Dickinson, Director of the Transportation and Environmental Resources Division at SETRPC is the sole point of contact for this solicitation unless otherwise instructed herein. Unauthorized contact with SETRPC staff regarding the RFP may result in the disqualification of the offeror. Inquiries pertaining to the Request for Proposal must give the RFP title and acceptance date. Material questions will be answered in writing with an addendum. All questions must be received at least ten (10) days in advance of the proposal acceptance date.

SETRPC may also modify the RFP, no later than 48 hours prior to the date and time fixed for submission of proposals, by issuance of an addendum.

All addenda will be numbered consecutively beginning with Addendum No. 1 and posted on the SETRPC website. Respondents are responsible for ensuring all addenda are attached to the proposal. It is the responsibility of all offerors to ensure that they have received all addenda.

Open Records:

All proposals that have been submitted shall be available and open for public inspection after the contract is awarded. Any material that is to be considered as confidential in nature must be clearly marked as such and will be treated as confidential by SETRPC to the extent allowable in the Texas Open Records Act.

Ownership of Proposal:

All proposals become the property of SETRPC and will not be returned to the offeror.

Authority to Bind Firm in Contract:

Proposals MUST give full firm name and address of offeror. Failure to manually sign proposal may disqualify it. Person signing proposal will show TITLE or AUTHORITY TO BIND THE FIRM IN A CONTRACT. Firm name and authorized signature must appear on proposal in the space provided on the pricing page. Those authorized to sign are as follows:

- If a sole proprietorship, the owner may sign.
- If a general partnership, any general partner may sign.
- If a limited partnership, a general partner must sign.
- If a limited liability company, a "member" may sign or "manager" must sign if so specified by the articles or organization.
- If a regular corporation, the CEO, President or Vice-President must sign.
- Others may be granted authority to sign but SETRPC requires that a corporate document authorizing him/her to sign be submitted with proposal.

Preparation and Submission of Proposals:

- A. All proposals shall be signed in ink by the individual or authorized principals of the firm.
- B. All attachments to the Request for Proposal requiring execution by the firm are to be returned with the proposals.
- C. Proposals must be received by SETRPC prior to 2:00 p.m. Central Standard Time on November 15, 2019. Requests for extensions of this time and date will not be granted. Offerors mailing their proposals shall allow for sufficient mail time to ensure receipt of their proposals by SETRPC by the time and date fixed for acceptance of the proposals. Proposals or unsolicited amendments to proposals received by SETRPC after the acceptance date and time will not be considered. Proposals will be publicly accepted and

logged in at the time and date specified above.

- D. Each firm shall submit one (1) original and five (5) copies of their proposal to SETRPC as indicated on the cover sheet of this Request for Proposal. The original proposal shall be clearly marked.

Withdrawal of Proposals:

- A. All proposals submitted shall be valid for a minimum period of ninety (90) calendar days following the date established for acceptance.
- B. Proposals may be withdrawn on written request from the offeror at the address shown in the solicitation prior to the time of acceptance.
- C. Negligence on the part of the offeror in preparing the proposal confers no right of withdrawal after the time fixed for the acceptance of the proposals.

Sub-consultants:

Offerors shall include a list of all sub-consultants with their proposal. Proposals shall also include a statement of the sub-consultants' qualifications. SETRPC reserves the right to reject the successful offeror's selection of sub-consultants for good cause. If a sub-consultant is rejected the offeror may replace that sub-consultant with another sub-consultant subject to the approval of SETRPC. Any such replacement shall be at no additional expense to SETRPC nor shall it result in an extension of time without SETRPC's approval.

Late Proposals:

Late proposals will be returned to offeror *UNOPENED*, if RFP title, acceptance date and offeror's return address is shown on the container.

Rights of SETRPC:

SETRPC reserves the right to award this contract in accordance with the applicable laws of the State of Texas, to waive any formality or irregularity, to make awards to more than one Respondent, to reject any or all proposals in whole or in part, and award the contract to best serve the interest of SETRPC.

Proposed Changes to Scope of Services:

If there is any deviation from that prescribed in the Scope of Services, the appropriate line in the scope of services shall be ruled out and the substitution clearly indicated. SETRPC reserves the right to accept or reject any proposed change to the scope.

Miscellaneous Requirements:

- A. SETRPC will not be responsible for any expenses incurred by an offeror in preparing and

submitting a proposal. All proposals shall provide a straight-forward, concise delineation of the offeror's capabilities to satisfy the requirements of this request. Emphasis should be on completeness and clarity of content.

- B. Offerors who submit a proposal in response to this RFP *may* be required to make an oral presentation of their proposal. SETRPC will schedule the time and location for this presentation.
- C. Selected contents of the proposal submitted by the successful offeror and this RFP will become part of any contract awarded as a result of the Scope of Services contained herein. The successful offeror will be expected to sign a contract with SETRPC.
- D. SETRPC reserves the right to accept or reject, in whole or in part, or negotiate any response it receives pursuant to this RFP.

Notice of Award:

The successful offeror will be notified in writing.

W-9 Form Required:

Each offeror shall submit a completed W-9 form with their proposal. In the event of contract award, this information is required in order to issue purchase orders and payments to your firm. A copy of this form can be downloaded from <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.

Conflict of Interest Questionnaire Required:

HB 914 Conflict of Interest Questionnaire: Texas House Bill 914, codified as Chapter 176 of the Local Government Code, requires bidders/offers contracting or seeking to do business with SETRPC to file a conflict of interest questionnaire (CIQ). The required questionnaire is located at the Texas Ethics Commission website (<http://www.ethics.state.tx.us/forms/CIQ.pdf>) and a copy is included with this RFP package in "Attachment 4". The CIQ must be completed and filed with the proposal response. Consultants that do not include the form with the response may be disqualified from consideration by SETRPC.

Bidder/Offeror Affirmations Required:

Each offeror shall submit a completed Bidder/Offeror Certification, contained in "Attachment 3" of this RFP package.

Insurance Coverage:

Offerors shall include with their proposal a copy of their current Certificate of Insurance that illustrates the current level of coverage the offeror carries. The Certificate can be a current file copy and does not need to include any "additional insured" language for SETRPC.

## **PROTEST PROCEDURES**

Any actual or prospective Bidder/Offeror who is aggrieved in connection with a purchase transaction may file a grievance. The grievance may be filed at any phase of the procurement. In order for an above mentioned party to enter the grievance process, a written complaint must be sent to the procurement contact person by certified mail within seven calendar days of the close of the procurement which identifies the following:

- Name, mailing address and business phone number of the complaint.
- Appropriate identification of the procurement being questioned.
- A precise statement of reasons for the protest.
- Supporting exhibits, evidence or documents to substantiate any claims.

The grievance must be based on an alleged violation of SETRPC's Procurement Procedures, a violation of State or Federal law (if applicable), or contract agreements to which SETRPC is a party. Failure to receive a procurement award from SETRPC in and of itself does not constitute a valid grievance. Upon receipt of a grievance, the procurement contact person will initiate the expedited resolution process.



Attachment 1  
Scope of Services

# Scope of Services

The scope of services requires the professional economic development firm selected to assist the South East Texas Economic Development District with:

## **Task 1**

Kick off meeting with local and state officials and with biking enthusiasts to explain the emphasis of the project. Task 4 could be partially incorporated into the kick-off meeting.

## **Task 2.**

Ensure that the plan (<http://www.setrpc.org/wp-content/uploads/2018/08/Bike-Plan-Final-for-Adoption-with-Watermark-08132018.pdf>) is compatible with any locally adopted plans.

## **Task 3.**

Develop criteria to determine the feasibility of adding biking amenities to regional highways and roads being rehabilitated, upgraded, or built new.

## **Task 4.**

Interview local officials, biking enthusiast and local bike club members to determine if any additional items need to be added to the plan.

## **Task 5.**

Update the plan so that the plan language is compatible with contemporary bike terminology and contains any additional information derived from Task 1 through Task 4.

## **Task 6.**

Close out public meeting to present the final bike plan for adoption by the Transportation Planning Committee.



Attachment 2  
Proposal Submission Form

## PROPOSAL SUBMISSION FORM

THE FIRM OF: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

FEIN: \_\_\_\_\_

The following shall be returned with your proposal. Failure to do so may be cause for rejection of proposal as non-responsive. It is the responsibility of the Offeror to ensure that he has received all addenda.

**ITEM:**

1. References.
2. Addenda, if any.
3. One (1) original and six (6) copies.
4. Proposal Response Information.
5. W-9 Form.
6. Certificate of Insurance.

Person to contact regarding this proposal: \_\_\_\_\_

Title: \_\_\_\_\_ Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Name of person authorized to bind the Firm: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Attachment 3  
Bidder/Offeror Certification

## **BIDDER/OFFEROR AFFIRMATIONS**

SETRPC requires Respondents to affirm their compliance with state and federal laws. Respondent affirmations become part of the procurement and are binding terms and conditions of any resulting contract, purchase order, or Respondent agreement. Any misrepresentation or false statement is a breach of contract which shall void or make voidable any solicitation or resulting contract. Respondent shall affirm all of the following:

- (A) The Respondent has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the submitted bid.
- (B) The Respondent has not received compensation from SETRPC for participation in the preparation of specifications for this procurement.
- (C) The Respondent certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified grant or contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- (D) The Respondent shall defend, indemnify and hold harmless SETRPC and all of its officers and employees from and against all claims, actions, suits, demands, proceedings, costs, damages and liabilities arising out of, connected with, or resulting from any acts or omissions of the Respondent, employee, subcontractor, or supplier of contractor in execution or performance of the contract.

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Name of Bidder/Offeror

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Signature of Authorized Representative

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Printed/Typed Name of Authorized Representative

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Date

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Title of Authorized Representative

## Attachment 4

### Conflict of Interest Questionnaire



# CONFLICT OF INTEREST QUESTIONNAIRE

**FORM CIQ****For vendor or other person doing business with local governmental entity**

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

**OFFICE USE ONLY**

Date Received

**1 Name of person who has a business relationship with local governmental entity.****2** ☐ **Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

**3 Name of local government officer with whom filer has employment or business relationship.**

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Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

☐ Yes ☐ No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐ Yes ☐ No

D. Describe each employment or business relationship with the local government officer named in this section.

**4**

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Signature of person doing business with the governmental entity

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Date

Attachment 5  
Sample Contract

*Sample Contract*

## **CONTRACT**

### **STATE OF TEXAS**

### **KNOW ALL MEN BY THESE PRESENTS:**

### **COUNTY OF JEFFERSON**

That the SOUTH EAST TEXAS REGIONAL PLANNING COMMISSION, acting through Shanna Burke, its duly authorized Executive Director ("SETRPC") and \_\_\_\_\_ acting through \_\_\_\_\_, its duly authorized \_\_\_\_\_ ("Consultant"), hereby make and enter the following Contract.

### **ARTICLE I COVENANT**

The CONSULTANT covenants and agrees to perform \_\_\_\_\_ for the Jefferson, Orange, Hardin, Regional Study (JOHRTS) region. The work to be performed for this Contract is described in detail in the Scope of Services in Appendix A of this Contract (the "Work"), such Appendix A being attached hereto and, by this reference, incorporated herein, for all intents and purposes. Such work shall be performed in accordance with the terms of this Contract and for the consideration stated herein. The CONSULTANT covenants and agrees to perform this work and assures that the work will be accurate and performed according to the schedule in Appendix A. The CONSULTANT also agrees to furnish Transportation Planning Assistance to the JOHRTS staff on an as-needed basis.

The CONSULTANT also agrees to submit the reports described in Appendix A. To conduct the Work and prepare all of the various reports and data required as part of the Work, the CONSULTANT agrees to furnish and supervise such personnel as are required to accomplish the Work set forth in Appendix A.

### **ARTICLE II SCOPE OF SERVICES**

The CONSULTANT shall perform and carry out all services necessary to accomplish the Work and produce the products described in the Scope of Services in Appendix A, which is incorporated herein by reference and is hereby made a part of this Contract. The Scope of Services to be performed by the CONSULTANT and the schedule for that work shall be further defined by any conditions set forth in written Notices to Proceed provided by SETRPC. CONSULTANT is obligated to perform the Work and to comply with the prevailing professional standards consistent with the level of care and skill ordinarily exercised by members of the same profession currently practicing in the same locality under similar conditions, including reasonable, informed judgments and prompt timely actions. CONSULTANT further warrants that in the event of its failure to fulfill all or part of the warranty in this Contract, CONSULTANT shall take all necessary or appropriate actions to correct such failure at no costs to SETRPC.

### **ARTICLE III ADDITIONAL PROVISIONS**

All maps, data, reports, research documentation, graphic presentation materials, etc., prepared by the CONSULTANT as part of the work under the Contract shall become the property of SETRPC upon completion of this Contract or any phase thereof or, in the event of termination under Article X hereof, at the time of payment in accordance with Article X.

Upon completion or termination of this Contract, all documents prepared by the CONSULTANT shall be delivered to and become the property of SETRPC. All such documents, photographs, calculations, programs and other data prepared or used under this Contract shall be used by SETRPC and the Texas Department of Transportation without restriction or limitation of further use.

The CONSULTANT shall not assign any interest in this Contract nor delegate the performance of any of its duties hereunder without the prior written consent of SETRPC, and any attempted assignment or delegation without prior written consent of SETRPC shall be void.

The CONSULTANT shall provide to SETRPC by the fifteenth (15th) of each month a written Progress Report for the preceding calendar month's work. Each Progress Report shall briefly describe the work accomplished, problems arising, proposed remedies for those problems, products completed and the status of the schedule and budget for the project.

The parties hereto may as necessary, change the scope of services, time of performance, CONSULTANT'S compensation, or any other provision of this Contract only by written amendment approved by SETRPC and the CONSULTANT. The CONSULTANT shall notify SETRPC verbally and in writing immediately when the CONSULTANT anticipates that 75 percent of the funds provided for this Contract have been expended.

### **ARTICLE IV TIME OF PERFORMANCE**

The CONSULTANT agrees to commence work on this project within fifteen (15) days after receipt of written Notice to Proceed from SETRPC. All work under the Contract shall be completed within the time period specified in Appendix A, except as modified by subsequent Notices to Proceed from SETRPC.

### **ARTICLE V ALLOWABLE COST**

The total cost to SETRPC, for performance of the work in this Contract shall not exceed \$25,000, and the CONSULTANT agrees to perform the work specified in Appendix A and all other obligations under this Contract for no more than this cost, as detailed in the Budget attached hereto as Appendix B. SETRPC shall not be obligated to pay the CONSULTANT any

costs in excess of this cost except as amended in accordance with Article III. Any compensation due the CONSULTANT for performance of this Contract must be approved in accordance with Articles V and VI of this Contract and shall be payable only after approval of this project by SETRPC and the receipt of grant funds from the Texas Department of Transportation. There shall be no obligation whatsoever to pay for performance of this Contract from the monies of SETRPC.

A regular employee of the CONSULTANT shall be assigned responsible charge of the performance of work under this Contract and designated as CONSULTANT'S project manager. The personnel listed in Appendices A and B of this Contract shall be provided by the CONSULTANT for within fifteen percent of the amount of time for each individual indicated in Appendices A and B. Changes in personnel listed in Appendices A and B must be approved in writing by SETRPC.

The CONSULTANT shall be paid allowable costs, as outlined below, for the performance of work under this Contract. Allowable costs are the direct and indirect costs incurred in or allocable to the performance of the services under this Contract and are the type of charges that would be allowable under OMB Circular A-87, "Cost Principles for State and Local Governments."

1. Direct Costs

- a. Personnel. The CONSULTANT shall be reimbursed for the services of personnel working on this project for the time such personnel work on this project. The reimbursement for personnel shall be based on the hourly rates not to exceed those listed in Appendices A and B or on amendments to Appendices A and B approved in writing by SETRPC. The rates listed in Appendices A and B may be amended from time to time if approved in advance in writing by SETRPC. The compensation for personnel not listed in that table shall be the salary of record, paid to said personnel by the CONSULTANT during the time of their performance on this Contract.
- b. Travel Expenses and Subsistence. The CONSULTANT shall be paid the U.S. General Services Administration rates for lodging, meals and incidentals. Transportation costs shall be reimbursed at the lowest reasonably available fare, but in no case more than coach class or comparable fare. Transportation by private automobile shall be reimbursed at permitted mileage reimbursement at the state rate. The actual costs for subsistence shall be reimbursed, but subsistence reimbursements, excluding car rental, shall not exceed State of Texas Comptroller's current state rate. Rental car expenses shall be reimbursed at actual cost of compact car or smaller if reasonably available.
- c. Computer. Computer use must be approved in advance by SETRPC, and

subsequent to approval, will be reimbursed at the cost to the CONSULTANT, but computer cost reimbursements shall not exceed the amount shown in Appendices A and B.

- d. Other Direct Costs. The CONSULTANT shall be reimbursed for the actual amount of other costs or expenses incurred and certified as directly related to and necessary for performance of this Contract. This reimbursement shall not exceed the amount shown in Appendices A and B. The CONSULTANT shall notify SETRPC in writing of any changes in auditable direct costs.
- e. Subcontractors. The CONSULTANT shall be reimbursed for the costs and fee charged the CONSULTANT by subcontractors for work on this project. Only costs for those subcontractors shown in Appendices A and B shall be eligible for reimbursement, and reimbursements for subcontractor costs shall not exceed the amounts shown in Appendices A and B. The subcontractors and associated costs in Appendices A and B may be amended if approved in advance in writing by SETRPC. Subcontractor costs to be reimbursed are limited by the provisions in this Contract applying to allowable costs incurred by the CONSULTANT.

2. Indirect Costs/Overhead

The CONSULTANT shall be reimbursed for indirect expenses, overhead, and personnel benefits at the rates shown in Appendices A and B and verified. The rates in Appendices A and B may be amended from time to time if approved in advance in writing by SETRPC.

## **ARTICLE VI PAYMENTS**

For the performance of this Contract, SETRPC shall pay the CONSULTANT allowable costs in accordance with the terms and conditions set forth in Article V above and as certified by the CONSULTANT in monthly invoices. The CONSULTANT shall submit invoices by the fifteenth (15th) of each month in accordance with instructions provided by SETRPC.

SETRPC shall pay the CONSULTANT the amount of costs claimed and certified on each invoice, subject to approval of claimed costs by SETRPC. Payment shall be made within 30 days after receipt of each invoice by SETRPC.

When the project has been completed to the satisfaction of SETRPC, the CONSULTANT shall submit an invoice clearly labeled "Final Invoice" and claiming any remaining allowable costs.

## **ARTICLE VII RECORDS**

The CONSULTANT shall maintain complete and accurate records of allowable costs incurred under this Contract and shall make such materials available at its office during the period covered and for three years from the date of final payment under the Contract. Such materials shall be made available during the specified period for inspection by the Texas Department of Transportation, the U.S. Department of Transportation and the Office of the Inspector General, and any of their authorized representatives for the purpose of making audits, examinations, excerpts, and transcriptions. All such records shall be maintained on a generally accepted accounting basis and shall be clearly identified and readily accessible.

## **ARTICLE VIII**

### **U.S. DEPARTMENT OF TRANSPORTATION REQUIREMENTS**

- A. Audit and Inspection of Records. The CONSULTANT shall permit the authorized representatives of SETRPC, the Texas Department of Transportation, the U.S. Department of Transportation, and the Comptroller General of the United States to inspect and audit all data records of the CONSULTANT relating to CONSULTANTS performance under the Contract until the expiration of three (3) years after final payment and resolution of audit under this Contract. The CONSULTANT shall transmit these data to SETRPC upon request.

The CONSULTANT further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that SETRPC, the Texas Department of Transportation, the U.S. Department of Transportation, and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment and resolution of audit under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontractor. The subcontractor shall transmit all data records to SETRPC upon request.

The term "subcontract" as used in this clause excludes:

- (1) Purchase orders not to exceed \$10,000 and
- (2) Subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

The CONSULTANT shall be responsible for any funds determined to be ineligible for reimbursement under this Contract, and shall reimburse SETRPC the amount of any such funds previously provided to it by SETRPC.

- B. Inspection of Work. SETRPC, the Texas Department of Transportation, the U.S. Department of Transportation, and any authorized representative thereof, have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed.



If any inspection or evaluation is made on the premises of the CONSULTANT or its subcontractor, the CONSULTANT shall provide and require its subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties.

All inspections and evaluations shall be performed in such a manner that will not unduly delay the work.

- C. Interest of Members of Congress. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising there from.
- D. Interest of Public Officials. No member, officer, or employee of the public body or of a local public body during his tenure or for one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.
- E. Non-collusion. The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working for it, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this contract. If the CONSULTANT breaches or violates this warranty, SETRPC shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, brokerage fee, gift, or contingent fee.
- F. Gratuities. Any person doing business with or who reasonably speaking may do business with SETRPC, the Texas Department of Transportation, or the U.S. Department of Transportation under this contract may not make any offer of benefits, gifts or favors to employees of SETRPC, the Texas Department of Transportation, or the U.S. Department of Transportation. Failure on the part of the CONSULTANT to adhere to this policy may result in termination of this contract.
- G. Debarment/Suspension. The CONSULTANT is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. The CONSULTANT and its subcontractors shall comply with the "Debarment Certification" which is included as Appendix C of this agreement.
- H. Restrictions on Lobbying. Pursuant to Section 319 of Public Law 101 -121, which generally prohibits recipients of federal funds from using those monies for lobbying purposes, the CONSULTANT shall comply with the "Lobbying Certification for Contracts, Grants, Loans and Cooperative Agreement" and "Disclosure of Lobbying

Activities” which are included as Appendix D of this agreement.

- I. Environmental Protection and Energy Efficiency. The CONSULTANT agrees to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 USC 1957 [h]); Section 508 of the Clean Water Act (33 USC 1368); Executive Order 11738 and Environmental Protection Agency regulations (40 CFR, Part 15). The CONSULTANT further agrees to report violations to SETRPC.
- J. Nondiscrimination on the Basis of Disability. The CONSULTANT agrees that no otherwise qualified disabled person shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under the project. The CONSULTANT shall insure that all fixed facility construction or alteration and all new equipment included in the project comply with applicable regulations regarding Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefitting from Federal Financial Assistance, set forth in 49 CFR, Part 27 and any amendments thereto.
- K. Control of Drug Use. CONSULTANT agrees to comply with the terms of the Federal Transit Administration regulation, "Control of Drug Use in Mass Transportation Operations," set forth in 49 CFR, Part 653.
- L. Equal Employment Opportunity. As required by 41 CFR, Part 60, the CONSULTANT shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The CONSULTANT shall take affirmative actions to ensure that applicants are employed, and that employees are treated, during their employment, without regard to their race, religion, color, sex, or national origin. Such actions 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 CONSULTANT further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.
- M. Disadvantaged Business Enterprise. It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises as defined in 49 CFR Part 23, Subpart A, shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with federal funds under this agreement. Consequently the DBE requirements of 49 CFR Part 23, exclusive of Subpart D, apply to this agreement. SETRPC and its subcontractors agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 23, Subpart A, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, SETRPC and its subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23, exclusive of Subpart D, to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. SETRPC and its subcontractors shall not discriminate on the basis of race,

creed, color, national origin, or sex in the award and performance of contracts funded in whole or in part with federal funds. These requirements shall be physically included in any subcontract entered into by the CONSULTANT. Failure to carry out the requirements set forth shall constitute a breach of contract and may result in termination of the Contract by SETRPC or other such remedy, as SETRPC deems appropriate.

- N. Compliance With Regulations. During the performance of this Contract, the CONSULTANT, for itself, its assignees, and successors agrees to comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21 and Title 23, Code of Federal Regulations, Part 710.405(b), as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
- O. Substitution of Subcontractors. SETRPC must approve all substitutions of subcontracts and will determine if the disadvantaged business enterprise percentage goal will be decreased by substituting a majority contractor for a disadvantaged business contractor.
- P. Disputes and Remedies. Should disputes arise concerning the Scope of Services or additional work to be performed under this Contract, the CONSULTANT and SETRPC shall negotiate in good faith toward resolving such disputes. SETRPC shall be responsible to its funding agencies for the settlement of all contractual and administrative issues arising out of procurement entered into in support of the Professional Engineering Services Project. Violation or breach of contract terms by the CONSULTANT may be grounds for termination, and should said disputes be irreconcilable, SETRPC shall terminate the agreement by default. The CONSULTANT shall pay any increased costs arising from the termination.
- Q. Property Management and Procurement Procedures. CONSULTANT shall comply with procurement standards for federal grant programs contained in 49 CFR 18, "Uniform Administrative Requirements and Cooperative Agreements with State and Local Governments," as may be revised or superseded.
- R. Copyrights. Except as otherwise provided in the terms and conditions of the Contract, SETRPC is free to copyright any books, publications, or other copyrightable materials developed in the course of or under a federal agreement. Except as otherwise provided in the terms and conditions of the Contract, the federal grantor agency shall reserve a royalty-free nonexclusive and irrevocable right to produce, publish, or otherwise use, and to authorize others to use, the work for government purposes.
- S. Subcontracts. The prime contractor is required to perform all work except specialized services or other tasks specifically exempted in the contract, except that governmental recipients of 23 U.S.C. 104(f) or 402 funds may subcontract as necessary to accomplish approved work program activities. All subcontracts exceeding \$10,000 in cost shall contain all required provisions of the prime contract.

## **ARTICLE IX INDEMNIFICATION**

The CONSULTANT covenants and agrees to indemnify, hold harmless, and defend and does hereby indemnify, hold harmless, and defend SETRPC, its officers and employees, from and against any and all suits or claims for damages or injuries, including death, to persons or property, whether real or asserted, arising out of any negligent act or omission on the part of the CONSULTANT, its officers, agents, servants, employees, or subcontractors, and the CONSULTANT does hereby assume all liability for injuries, claims or suits for damages to persons, property, or whatever kind of character, whether real or asserted, occurring during or arising out of the performance of this Contract as a result of any negligent act or omission on the part of the CONSULTANT, its officers, agents, servants, employees, or subcontractors to the extent permitted by law.

## **ARTICLE X TERMINATION OF CONTRACT**

SETRPC may terminate this Contract, or any portion of it, by serving a notice of termination on the CONSULTANT, which shall be effective on the date of the receipt of the notice of termination. The notice shall state whether the termination is for convenience of SETRPC or for default of the CONSULTANT. If the termination is for default, the notice shall state the manner in which the CONSULTANT has failed to perform the requirements of the Contract. The CONSULTANT shall account for and return to SETRPC any property in its possession paid for from funds received from SETRPC, or property supplied to the CONSULTANT by SETRPC. The CONSULTANT shall promptly submit its termination claim for reimbursement to SETRPC and the parties shall negotiate the termination settlement to be paid. If the termination is for the convenience of SETRPC, the CONSULTANT shall be paid its costs up to the time of notice to stop work, reasonable contract close-out costs, and a pro rata portion of the fee which reasonably reflects the quantity and quality of work performed up to the time of termination. If after serving a notice of termination for default, SETRPC determines that the CONSULTANT has an excusable reason for not performing, such as a strike, fire, flood, events which are not the fault of and are beyond the control of the CONSULTANT, SETRPC, after setting up a new work schedule, may allow the CONSULTANT to continue work, or treat the termination as a termination for convenience.

Notwithstanding the foregoing, this Contract will not terminate as a result of such default if CONSULTANT begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than thirty days of receipt thereof; provided, however, that if and to the extent such default cannot be reasonably cured within such thirty-day period, and if CONSULTANT has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided from herein shall extend up to, but in no case more than, sixty days after the date of receipt of the notice.

## **ARTICLE XI**

## **LEGAL CONSTRUCTION**

In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions thereof and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

## **ARTICLE XII VENUE**

Venue and jurisdiction of any suit, right, or cause of action arising under or in connection with this contract shall lie exclusively in Jefferson County, Texas.

**IN WITNESS HEREOF**, the parties hereto have executed this Contract in duplicate original at Beaumont, Jefferson County, Texas, this \_\_\_\_ day of \_\_\_\_\_, 2013.

## **SOUTH EAST TEXAS REGIONAL PLANNING COMMISSION**

\_\_\_\_\_  
Shaun P. Davis  
Executive Director

Name of Firm Selected

By: \_\_\_\_\_

Its duly authorized: \_\_\_\_\_

**APPENDIX A**  
**Scope of Services**

Sample Contract

**APPENDIX B**  
**Budget**

Sample Contract

**APPENDIX C**  
**Debarment Certification**

Sample Contract



**APPENDIX D**

**Lobbying Certification for Contracts, Grants, Loans and Cooperative Agreement**

Sample Contract

Attachment 6  
Lobbying Certificate

## **LOBBYING CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS**

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

(1) No federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal 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 disclosure accordingly.

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

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Signature

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Title