

CONSTRUCTION DOCUMENTS

DIVISION 1 – GENERAL REQUIREMENTS

SECTION 01000 – SPECIAL CONDITIONS

PART 1 – GENERAL

1.01 RELATED DOCUMENTS:

Drawings and general provisions of Contract, including Uniform General and Supplementary General Conditions and other Division 1 specification sections, apply to work of this section.

1.02 DESCRIPTION OF WORK:

Furnish all labor, materials, tools, equipment and incidentals necessary for performance of all work associated with Project information below, such work being as more particularly described in these Special Conditions, the drawings, and elsewhere in these Invitation for Bids and Contract Documents. ****The 2-year service agreement noted in Exhibit B - Sanitarian Design will be a separate contract, NOT INCLUDED IN THIS CONTRACT, procured directly by State Parks Division, at time of permitting by installer.***

Project No.	1210853
Project Location	Bonham State Park
Project Title	Replace Septic System at Park

1.03 INTENT OF THE CONTRACT DOCUMENTS: **(See also UGC, Article 6)**

- A. The intent of the Contract Documents is to include all of the work for the contract price and within the contract time. Contract Documents are to be considered as cooperative. All work not specified and/or not shown on the drawings, but which is necessary for the completion and/or functioning and operation of the project, shall be understood and implied as part of the contract to be performed by the Contractor for the contract price. Such work shall be executed by the Contractor in the same manner and with the same character of material as other portions of the contract without extra compensation.
- B. It is the intention of the Contract Documents to call for finished work, tested, and ready for operation.
 - 1. Any apparatus, material or work described in the Contract Documents and any incidental accessories necessary to make the work complete in all respects and ready for operation (even though not particularly specified) shall be furnished, delivered, and installed by the Contractor without additional expense to the Owner.

2. Minor details not usually shown or specified but necessary for proper installation and operation are included in the work just as if herein specified or shown.
- C. All work shall be performed and furnished by the Contractor in accordance with accepted construction industry practices.
- D. A duplication of work is not intended by the Contract Documents and any duplication shall not become a basis for extra cost to the Owner.
- E. Explanatory notes on the drawings shall take precedence over conflicting drawn-out indications. Figured dimensions on drawings shall take precedence over scale measurements. Where figures are lacking, scale measurements may be followed, but in all cases the measurements are to be checked from the work in place and those measured dimensions taken at the site shall take precedence over scale dimensions in drawings.
- F. Upon discovery by Contractor of errors, omissions or inconsistencies in the Contract Documents, Contractor shall promptly report them to the Owner and shall wait for instruction from Owner prior to proceeding with the work.
- G. In the event of conflict between the Special Conditions, the Supplementary Conditions, and the Uniform General Conditions, the following priority order shall apply in resolving such conflicts: Special Conditions, Supplementary Conditions, and then Uniform General Conditions.
- H. The drawings consist of all project drawings and any drawings issued by addenda.

1.04 AGENCY PROJECT MANAGEMENT SYSTEM

TPWD utilizes a Project Management Information System called eBuilder® to manage its construction projects. eBuilder is a cloud-based system that is accessible anywhere there is a web connection. eBuilder® will be used by the Owner, Architect/Engineer and the Contractor for tasks including, but not limited to the following:

- A. Contractor Application for Payment request(s)
- B. Submittals
- C. Request for Information (RFI)
- D. Construction Reports
- E. Architect Supplemental Information (ASI)
- F. Change Order documentation
- G. Progress Meeting Minutes
- H. Site Observation Reports
- I. Inspection Reports
- J. Outsourced (3rd party) Testing Reports
- K. general correspondence

- L. any other Owner requested tasks and/or documents

The TPWD Project Manager will provide an overview of the system and coordinate training for the Contractor's use of the system. The TPWD Project Manager will also assign users with login credentials and ensure required levels of access are established.

The eBuilder® website is: (<https://gov.e-builder.net>)

1.05 SUBMITTAL REVIEW AND PROCESSING: (Refer also to UGC, Article 8)

A. GENERAL

Any and all costs, direct or indirect, incurred by Owner in reviewing submittals in excess of two (2) times will be charged to the Contractor and deducted from the total price for the work in accordance with the Uniform General Conditions, Article 10, 10.3.3. (refer also to 1.04 of this Section 01000)

1. Contractor will be provided, in Owner's Notice to Proceed, an Excel spreadsheet of the list of expected submittals from the Architect / Engineer of Record for their use in creating a submittal register per the requirements of the Uniform General conditions, Article 8.3.1.
2. Once received from the Contractor, TPWD will upload the Contractor's submittal register into eBuilder and the Contractor may begin the submittal process. Training will be provided by the Owner to the Contractor.

1.06 CONTRACT COMPLETION: (**See also UGC, Article 9**)

- A. Unless specifically stated as "working day," the term "day" or "calendar day" shall mean every day of the calendar year. Along with the Work Progress Schedule, the Contractor shall submit his schedule for normal working days.
- B. **Liquidated Damages:** The Owner has determined that the completion of the work in this contract is critical to the proper operation of the facility, and the Contractor's failure to complete the work within such time will cause damage to the Owner. Since exact damages are difficult to determine or forecast, the sum of **\$339.22** per calendar day is hereby established by the parties as a reasonable estimate of just compensation to the Owner for the failure of the Contractor to complete the work by the time set forth in the contract or authorized extension thereto. Said sum will be deducted from the money due or to become due to the Contractor, not as a penalty but as liquidated damages from added expense, including administrative and inspection costs, for each and every calendar day the work or any portion thereof remains incomplete after the expiration of the time limit set in the contract or authorized extension.

- C. Charges for liquidated damages will begin accumulating on the first calendar day following the final contract completion date and continue until the date of final acceptance as established by the Owner. Final acceptance will not be issued until all punch list items have been completed.
- D. Expiration or termination of the contract for any reason does not release Respondent from any liability or obligation set forth in the contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

1.07 SPECIAL INSURANCE REQUIREMENTS: **(See also UGC, Article 5)**

- A. Builder's Risk (or Installation Floater for Equipment Installation Only): Builder's Risk is a requirement of this Invitation for Bids and Contract Documents.

1.08. REFERENCES AND STANDARDS:

All contractors, including sub-contractors shall ensure all personnel follow the adopted Standardized Building Codes in all design and construction work.

1.09 NON-APPROPRIATION OF FUNDS:

The contract is subject to termination or cancellation, without penalty to TPWD, either in whole or in part, subject to the availability of state funds. TPWD is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If TPWD becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render TPWD's or contractor's delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, TPWD will not be liable to contractor for any damages, which are caused or associated with such termination, or cancellation and TPWD will not be required to give prior notice.

1.10 ANTIQUITIES:

Contractor shall take precaution to avoid disturbing primitive records and antiquities of archaeological, paleontological or historical significance. No objects of this nature shall be disturbed without written permission of Owner and the Texas Historical Commission. When such objects are uncovered unexpectedly, the Contractor shall stop all Work in close proximity and notify the ODR and the Texas Historical Commission of their presence and shall not disturb them until written permission and permit to do so is granted. All primitive rights and antiquities, as defined in Chapter 191, Texas Natural Resource Code, discovered on the Owner's property shall remain property of State of Texas, the Texas Historical Commission. It is

determined by Owner, in consultation with the Texas Historical Commission that exploration or excavation of primitive records or antiquities on Project Site is necessary to avoid loss, Contractor shall cooperate in salvage work attendant to preservation.

1.11 PROPRIETARY OR CONFIDENTIAL INFORMATION; TEXAS PUBLIC INFORMATION ACT:

- A. Any proprietary, trade secret or otherwise confidential information Bidder includes in its Bid must be clearly labeled as proprietary or confidential information, and Bidder must identify the specific exception to disclosure in the Public Information Act (PIA). Merely making a blanket claim the entire Bid is protected from disclosure because it contains some proprietary information is not acceptable and shall make the entire Bid subject to release under the PIA. In order for the Owner to initial the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the Bid that are considered by the Bidder to be proprietary or confidential must be clearly labeled as described herein. Any information which is not clearly identified as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA.
- B. Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code ("the Texas Public Information Act").
- C. In accordance with Section 2252.907 of the Texas Government Code, Bidder is required to make any information created or exchanged with the State pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no charge to the state. Bidder will make sure information not excepted from disclosure available in an electronic format that is accessible to the public unless Contractor receives written approval from Owner to provide information in a different format, and such approval becomes a part of this Contract.

1.12 CONTRACTING INFORMATION RESPONSIBILITIES:

In accordance with Section 552.372 of the Texas Government Code, Contractor agrees to (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Owner for the duration of the contract, (2) promptly provide to the Owner any contracting information related to the contract that is in the custody or possession of the Contractor on request of the Owner, and (3) on termination or expiration of the contract, either provide at no cost to the Owner all contracting information related to the contract that is in the custody or possession of the Contractor or preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply

to the contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

1.13 RIGHT TO AUDIT/RECORDS RETENTION:

Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, TPWD or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including providing all records requested. Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under any contract or indirectly through a subcontract under the contract. The acceptance of funds by the Contractor or any other entity or person directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Contractor or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Contractor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract funds were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and the State's property for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the work of this Contract. Contractor and the subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Contractor must retain all work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by TPWD and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor. Contractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. Contractor's failure to comply with this Section shall constitute a material breach of this Contract and shall authorize TPWD and the State of Texas to immediately assess appropriate damages for such failure.

1.14 IMMIGRATION REFORM:

The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) enacted on September 30, 1996.

1.15 CIVIL RIGHTS:

The Contractor agrees that no person shall, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. The Contract shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor."

1.16 FEDERAL, STATE AND LOCAL REQUIREMENTS:

Contractor shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Contractor is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation insurance coverage. Contractor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Contractor or its employees for any Unemployment or Worker's Compensation coverage or federal or State withholding requirements. **Contractor shall indemnify the State of Texas and shall pay all costs, penalties or losses resulting from Contractor's omission or breach of this Section.**

1.17 SEVERABILITY CLAUSE:

If any provision of this Contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein, but all other provisions will remain in full force and effect.

1.18 SOVEREIGN IMMUNITY:

Nothing in this Contract shall be construed as a waiver of the Owner's or the State's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies or immunities available to the Owner or the State of Texas. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies or immunities available to the Owner

or the State of Texas under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies or immunities or be considered as a basis for estoppel. The Owner does not waive any privileges, rights, defenses or immunities available to the Owner by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

1.19 DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES:

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com Code, Chapter 17 or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers have not been found to be liable for such practices in such proceedings.

1.20 FELONY CRIMINAL CONVICTIONS:

Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred, Contractor has fully advised the Owner in writing of the facts and circumstances surrounding the convictions.

1.21 ASSIGNMENTS:

The Contractor shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the Owner. Any attempted assignment in violation of this provision is void and without effect.

1.22 INDEPENDENT CONTRACTOR:

Contractor and Contractor's employees, representatives, agents, subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the contract. Neither Contractor nor Owner is an agent of the other and neither may make any commitments on the other party's behalf. Should Contractor subcontract any of the services required in the contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), Owner is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract. Contractor shall have no claim against Owner for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any

kind. The contract shall not create any joint venture, partnership, agency, or employment relationship between Contractor and Owner.

1.23 PATENTS, TRADEMARKS OR COPYRIGHTS:

Contractor agrees to defend and indemnify the Owner and State from claims involving infringement or violation of patents, trademarks, copyrights, trade secrets, or other proprietary rights, arising out of the Owner's or the State's use of any good or service provided by the Contractor as a result of this solicitation.

1.24 FORCE MAJEURE:

Neither Contractor nor Owner shall be liable to the other for any delay in, or failure of performance, of any requirement included in the contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. The Owner may grant relief from performance of contract if the Contractor is prevented from performance by such an act. The burden of proof for the need of such relief shall rest upon the Contractor. To obtain release based on force majeure, the Contractor shall file a written request with the Owner.

1.25 DISASTER RECOVERY PLAN:

Upon request of Owner, Contractor shall provide descriptions of its business continuity and disaster recovery plans.

1.26 U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM:

Contractor certifies that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

- A. All persons employed to perform duties within Texas, during the term of the Contract; and
- B. All persons, including subcontractors, assigned by the Contractor to perform work pursuant to the Contract, within the United States of America.

The Contractor shall provide, upon request of Texas Parks and Wildlife Department, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment

to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.

If it is determined that Contractor has violated the certifications set forth in this Section, then (1) Contractor shall be in breach of contract, (2) TPWD shall have the option to terminate the contract for cause without prior notice, and (3) in addition to any other rights or remedies available to TPWD under the contract, Contractor shall be responsible for all costs incurred by TPWD to obtain substitute services to replace the terminated Contract.

1.27 NAME CHANGES AND SALES:

If the Contractor changes its name or is sold to another entity, it must provide written notification to TPWD. The Contractor, in its notice, shall describe the circumstances of the name change or sale, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform the Contract. If the change entails personnel changes for personnel performing the responsibilities of the Contract for the Contractor, the Contractor shall identify the new personnel and provide resumes to TPWD, if resumes were originally required by the Solicitation. TPWD may request other information about the change and its impact on the Contract and the Contractor shall supply the requested information within five (5) working days of receipt of the request.

TPWD may terminate the Contract due to a sale of or change to the Respondent that materially alters the Respondent's ability to perform under the Contract. The TPWD has the sole discretion to determine if termination is appropriate.

1.28 CYBERSECURITY TRAINING:

If required by TPWD, Contractor shall ensure that any Contractor employee or subcontractor employee who has access to a state computer system or database shall complete a cybersecurity training program certified under Section 2054.519 of the Texas Government Code. Such training is required to occur during the contract term and the renewal period. Contractor shall provide Owner with verification of the completion of the requisite training.

1.29 DAMAGE TO GOVERNMENT PROPERTY:

In the event of loss, destruction or damage to any Agency or State of Texas property by Respondent or Respondent's employees, agents, subcontractors, and suppliers, Respondent shall be liable to Agency and the State of Texas the full cost of repair, reconstruction or replacement of the lost, destroyed or damaged property. Respondent will reimburse Agency and the State of Texas for such property damage within ten (10) calendar days after Respondent's receipt of Agency's notice of amount due.

1.30 **RESERVED**

PART 2 – EXECUTION

2.01 CONSTRUCTION SITE AND JOB CONDITIONS:

Any temporary connections, appurtenances or extensions for any utilities shall be provided by the Contractor at no cost to the Owner and removed from the premises at the conclusion of the contract. Contractor shall provide cellular telephone service at all times and shall keep Owner informed of telephone number.

A. Utilities:

1. Water: TPWD water service is not available for Contractor use.
2. Electric: TPWD Electrical power is not available for Contractor to connect to.
3. Internet / data: Due to TPWD IT security requirements, Contractor cannot access the internet through the facility's private network. Contractor will be responsible for obtaining internet service for their use during the project.

B. Project Identification: There shall be no project signs of any size or type allowed on the project site or surrounding Texas Parks and Wildlife Department property at any time.

C. Fire Protection: The Contractor shall take stringent precautions against fire. Open fires are not allowed unless approved in writing by Owner. Any fires that start or encroach on the Contractor's limits of construction must be immediately reported to the Site Manager.

2.02 SITE OPERATIONS:

During construction of this project the site will remain open to public visitation. It is the responsibility of the Contractor to maintain convenient access and egress to park facilities in a manner to be approved by the Owner. The Contractor shall also be responsible for public safety at the construction site. All temporary fencing, barricades, warning lights, signs, and flagmen shall be provided and maintained by Contractor as needed. The Contractor shall maintain security of construction sites.

END OF SECTION