

Section 00500

Agreement

THIS AGREEMENT made and effective as of the _____ day of _____, 2013 by and between ST. CHARLES PARISH, 15045 River Road, Hahnville, LA 70057, acting herein by and through its Parish President, V. J. St. Pierre, Jr., who is duly authorized to act on behalf of said Parish, hereinafter called the OWNER, and, SCIENCE APPLICATIONS INTERNATIONAL CORPORATION, 2301 LUCIEN WAY, SUITE 120, MAITLAND, FL. 32751, acting herein by and through its Contracting Officer, hereinafter called CONTRACTOR. Whereas the OWNER desires to employ a professional consulting firm for MONITORING OF DISASTER GENERATED DEBRIS REMOVAL AND DISASTER MANAGEMENT AND TECHNICAL ASSISTANCE SERVICES, St. Charles Parish Project No. P090903.

The OWNER hereby contracts with the CONTRACTOR to perform all necessary professional debris managing and monitoring services and technical assistance as described herein and in accordance with the following documents, hereinafter referred to collectively as the Contract Documents:

- This Agreement.
- Section 00030 – Request for Proposal
- Section 00100 – Instructions to Proposer
- Section 00300 – Price Schedule, Addendum No 1, Score Sheets
- Section 00470 – Attestation Clause
- Section 00475 – Employment Status Verification
- Section 00480 – Non-Collusive and Non-Sollicitation Affidavit
- Section 00485 – Authority to Execute Contract
- Section 00650 – Insurance Requirements and Insurance Certificate
- Section 00820 – Compliance Provisions for Federally Assisted Contracts and Subcontract
- Section 02000 – Monitoring of Disaster Generated Debris Removal and Disaster Management and Technical Assistance
- Exhibit A SAIC Submitted Proposal
- Exhibit B SAIC Tier 2 Submittal
- Exhibit C SAIC Rate Sheet

The contract term shall expire on **December 31, 2016**. Upon mutual consent of the OWNER and the CONTRACTOR, the contract term may be extended one (1) additional calendar year or portion thereof.

SECTION 1 GENERAL

The purpose of this contract is to provide personnel and technical expertise for monitoring of disaster debris removal and disposal, disaster management, and other related disaster services. To assist the OWNER in monitoring the removal, reduction, and environmentally approved disposal of debris and other obstacles resulting from these disasters consistent with FEMA and State requirements for federal disaster cost reimbursement, and to provide supplementary services to the OWNER, when requested, in disaster mitigation and planning.

While in the performance of services or carrying out other obligations under this agreement, the

CONTRACTOR shall be acting in the capacity of independent contractors and not as employees of OWNER. The OWNER shall not be obliged to any person, firm or corporation for any obligations of the CONTRACTOR arising from the performance of their services under this agreement. The CONTRACTOR shall be authorized to represent the OWNER with respect to services being performed, dealings with other agencies, and administration and control of construction contracts as intended by the provisions of SECTION 2 hereof.

It is understood and agreed by the parties hereto that the CONTRACTOR is entering into this Agreement in the capacity of an independent contractor and that nothing contained in the Agreement is intended to be construed as creating any other relationship between OWNER and CONTRACTOR. The parties hereto acknowledge and agree that OWNER shall not: (a) withhold federal or state income taxes; (b) withhold federal social security tax (FICA); (c) pay federal or state unemployment taxes for the account of the CONTRACTOR; or (d) pay workman's compensation premiums for coverage for CONTRACTOR. CONTRACTOR agrees to be responsible for and to pay all applicable federal income taxes, federal social security tax (or self-employment tax in lieu thereof) and any other applicable federal or state unemployment taxes. CONTRACTOR agrees to indemnify and hold OWNER harmless for any and all federal and/or state income tax liability, including taxes, interest and penalties, resulting from OWNER's treatment of CONTRACTOR as independent contractor. CONTRACTOR further agrees to reimburse OWNER for any and all costs it incurs, including, but not limited to, accounting fees and legal fees, in defending itself against any such liability.

SECTION 2 SERVICES

Section 02000 covers in detail description of services to be provided by CONTRACTOR relating to monitoring disaster debris removal and disposal. Some of these provisions were amended by Addendum #1. Following are the more pertinent provisions:

Mobilization – Within 24 hours of Notice to Proceed, the CONTRACTOR shall provide adequate number of personnel to perform truck certifications and complete preparations to begin debris monitoring. Within 48 hours of Notice to Proceed, the CONTRACTOR shall provide adequate personnel to monitor 20 debris removal crews and 1 debris management site.

Reporting – in addition to the load tickets and logs, the CONTRACTOR shall utilize mobile electronic units to assist with debris crew tracking, debris volume removed, daily reports, and web based graphical representation of the data.

SECTION 3 PAYMENTS

Payment for all services under Section 2 will be paid for in accordance with the Price Schedule in Section 00300. Payment for work completed may be invoiced on a monthly basis and all invoices submitted shall include time sheets showing actual hours worked by each individual, their classifications, and a brief description of the work performed.

Consumer Price Index. The unit prices set forth in Section 00300 shall be adjusted upward or downward on January 1, 2015, and annually thereafter to reflect the change in the cost of doing business, as measured by fluctuations in the Consumer Price Index (CPI), applicable to the New Orleans – Baton Rouge area, published by the U.S. Department of Labor, Bureau of Labor Statistics. (If this CPI computation is discontinued during the term of this contract, then a similar type of index which is published and available during the remainder of the term of this contract shall be applied, upon the mutual

agreement of both parties.) On or before ninety (90) days prior to January 1, 2015, and each succeeding year thereafter the CONTRACTOR shall compute the most recent percent increase or decrease in the CPI which is then available and the unit prices, as previously adjusted, shall be further adjusted. The CONTRACTOR shall furnish the OWNER at that time with a copy of the CPI upon which it bases its calculation. However, in no event, shall any increase or decrease in the unit prices for any one year exceed seven (7%) percent. The unit prices, as adjusted, shall automatically become effective on the first day of the next anniversary, January 1, 2015, each year thereafter.

SECTION 4 SUPPLEMENTARY SERVICES

The OWNER will normally coordinate all debris related activities between St. Charles Parish and State and Federal Agencies. In the event that the OWNER may need assistance with these activities, the OWNER may request assistance from the CONTRACTOR. These activities include but are not limited to performing assessments of debris, assisting with the development and administration of grants, planning and permitting of temporary or permanent disposal facilities, and any other services necessary to ensure all Local, State, and Federal requirements are met so the OWNER will successfully achieve the maximum reimbursement that is available.

The OWNER may request the services of an experienced professional to assist St. Charles Parish with development of disaster plans. The CONTRACTOR shall supply, when requested, a professional who is experienced in developing such plans. **The OWNER reserves the right to participate in the selection of the professional who will assist the Parish.**

The OWNER may request Engineering Services from the CONTRACTOR to implement emergency flood control measures or other construction type projects following a natural disaster. Engineering Services to be provided include those normally used on public bid construction projects such as, but not limited to, design, material and equipment selection and specification, construction oversight, and startup. **The OWNER also has to right to utilize other Engineering Firms to provide these services either exclusive of or in addition to the CONTRACTOR.** The CONTRACTOR shall supply, when requested, engineering personnel having valid Louisiana Engineering Licenses. The professional and technical adequacy and accuracy of designs, drawings, specifications, documents, and other work products furnished under this AGREEMENT will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the engineering profession. Where OWNER must have work done by change order or addition resulting from an error or omission by the CONTRACTOR, CONTRACTOR shall provide, at no costs to OWNER, all professional services attributable to the change order. This is in addition to OWNER'S right to recover from CONTRACTOR damages for CONTRACTOR'S errors and omissions.

Compensation to the CONTRACTOR for the above supplemental services shall be on a time basis and according to the rate sheet attached to this contract. All invoices submitted covering supplemental services rendered shall include time sheets showing actual hours worked by each individual, their classifications and a brief description of the work performed. Payments to the CONTRACTOR for Supplementary Services shall be made **monthly** upon presentation of the invoice for work performed during the preceding month.

SECTION 5 TERMINATIONS

Termination of this agreement for cause

1. OWNER may terminate this agreement for cause based upon the failure of CONTRACTOR to comply with the terms and/or conditions of the Agreement, or failure to fulfill its performance obligations pursuant to this agreement, provided that the OWNER shall give the CONTRACTOR written notice specifying the CONTRACTOR's failure. If within thirty (30) days after receipt of such notice, the CONTRACTOR shall not have corrected such failure or, in the case of failure which cannot be corrected in (30) days, begun in good faith to correct such failure and thereafter proceeded diligently to complete such correction, then the OWNER may, at its option, place the CONTRACTOR in default and the Agreement shall terminate on the date specified in such notice.
2. The CONTRACTOR may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the OWNER to comply with the terms and conditions of this agreement, provided that the CONTRACTOR shall give the OWNER written notice specifying the OWNER's failure and a reasonable opportunity for the OWNER to cure the defect.

Termination of this agreement for convenience

The OWNER may terminate this Agreement at any time by giving thirty (30) days written notice to CONTRACTOR of such termination or negotiating with the CONTRACTOR an effective date. The CONTRACTOR shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily.

SECTION 6 NON-NEGOTIABLE CONTRACT TERMS

Non-negotiable contract terms include but are not limited to taxes, assignment of contract, audit of records, EEOC and ADA compliance, record retention, content of contract/order of precedence, contract changes, governing law, claims or controversies, and termination based on contingency of appropriation of funds.

SECTION 8 INSURANCE REQUIREMENTS

CONTRACTOR shall furnish the OWNER with certificates of insurance effecting coverage(s) required in Section 00650. 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 are to be received and approved by the OWNER before work commences. The OWNER reserves the right to require complete certified copies of all required policies, at any time.

SECTION 9 INDEMNIFICATIONS AND LIMITATION OF LIABILITY

- A. Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under this Agreement.
- B. CONTRACTOR shall be fully liable for the actions of its agents, employees, partners or SUBCONTRACTORS and shall fully indemnify and hold harmless the OWNER from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by CONTRACTOR, its agents, employees, partners or SUBCONTRACTORS in the performance of this contract, without limitation; provided,

however, that the CONTRACTOR shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the OWNER.

- C. CONTRACTOR will indemnify, defend and hold the OWNER harmless, *without limitation*, from and against any and all damages, expenses (including reasonable attorneys' fees), claims judgments, liabilities and costs which may be finally assessed against the OWNER in any action for infringement of a United States Letter Patent with respect to the Products, Materials, or Services furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the OWNER shall give the CONTRACTOR: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at CONTRACTOR's sole expense, and (iii) assistance in the defense of any such action at the expense of CONTRACTOR. Where a dispute or claim arises relative to a real or anticipated infringement, the OWNER may require CONTRACTOR, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner of Administration shall require.
- D. The CONTRACTOR shall not be obligated to indemnify that portion of a claim or dispute based upon: i) OWNER's unauthorized modification or alteration of a Product, Material, or Service; ii) OWNER's use of the Product, Material, or Service in combination with other products, materials, or services not furnished by CONTRACTOR; iii) OWNER's use in other than the specified operating conditions and environment.
- E. In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if CONTRACTOR believes that it may be enjoined, CONTRACTOR shall have the right, at its own expense and sole discretion as the OWNER's exclusive remedy to take action in the following order of precedence: (i) to procure for the OWNER the right to continue using such item(s) or part (s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with no infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the OWNER up to the dollar amount of the Contract.
- F. For all other claims against the CONTRACTOR where liability is not otherwise set forth in the Agreement as being "without limitation", and regardless of the basis on which the claim is made, CONTRACTOR's liability **for direct damages, shall be the greater of \$100,000, the dollar amount of the Contract, or two (2) times the charges for products, materials, or services rendered by the CONTRACTOR under the Contract.** Unless otherwise specifically enumerated herein mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the CONTRACTOR is required to back up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.
- G. The OWNER may, in addition to other remedies available to them at law or equity and upon notice to the CONTRACTOR, retain such monies from amounts due CONTRACTOR, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

SECTION 10 SUB CONTRACTORS

The CONTRACTOR shall assume responsibility for all items and services offered whether or not he produces or provides them. The OWNER shall consider the CONTRACTOR to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract. Responsibilities and requirements relating to SUB CONTRACTORS will follow Section 00100 subsections 2.19, and 3.07.

SECTION 11 ADDITIONAL REQUIREMENTS


For other terms and conditions included in this agreement refer to Section 00100 and specifically subsections 3.11 through 3.23

SECTION 9 EXCLUSIVE JURISDICTION AND VENUE

For all claims arising out of or related to this agreement, CONTRACTOR hereby consents and yields to the exclusive jurisdiction and venue of the Twenty-Ninth Judicial District Court for the Parish of St. Charles and expressly waives any (a) pleas of jurisdiction based upon CONTRACTOR'S residence and (b) right of removal to Federal Court based upon diversity of citizenship.

IN WITNESS WHEREOF, the OWNER and CONTRACTOR have agreed to the above requirements and entered into this contract on the above date.

SCIENCE APPLICATIONS
INTERNATIONAL CORPORATION



Ms. Betty Kamara
Contracts Administrator

Witnesses:



Jonathan Burgiel, Vice President



Ralph Natale, Director of Operations

ST. CHARLES PARISH

Witnesses:

V.J. St. Pierre, Jr.
Parish President