

**PASSAIC VALLEY WATER COMMISSION
INTEROFFICE MEMORANDUM**

Date: June 15, 2015
To: Hon. Commissioners
From: J. Bella & J. Duprey
cc: L. Amodio
L. Beckering
G. Hanley
Re: Responses Received May 14, 2015 for Projects Solicited
Under the Fair and Open Process in Year 2015

Attached is a list of responses received on the above-referenced date for projects solicited under the Fair and Open process in Year 2015. An asterisk added next to the name of the firms on the attached list of Projects denotes those responders recommended by PVWC staff for award.

Projects indicated on the attached list as being handled separately would be advertised on an as-needed basis with prior notifications of their proposed advertisement dates provided to the Commission beforehand.

Additional requests will be submitted to the Commission for consideration separately as the need arises.

Enclosure

(SAMPLE RESOLUTION)

**RESOLUTION OF PASSAIC VALLEY WATER COMMISSION
DATE OF ADOPTION:**

Approved as to form and legality by Law Department on the basis of facts set forth by Executive Director, Purchasing, and Finance Departments.

Introduced by Commissioner: _____

Seconded by Commissioner: _____

WHEREAS, Passaic Valley Water Commission ("PVWC") has solicited for professional services (or extraordinary unspecifiable Services) for Project No. 15-P-__ entitled "_____"
_____ " (hereinafter the "Project"), with said solicitation and procurement of responses (and evaluation of same) undertaken through a fair and open process, as defined in N.J.S.A. 19:44A-20.7 (hereinafter the "Fair and Open Process"); and

WHEREAS, the Local Public Contracts Law, N.J.S.A. 40A:11-5(1)(a)(i) and the Fair and Open Process require that notice, with respect to contracts for professional services (or extraordinary unspecifiable services), procured through the Fair and Open Process and awarded without competitive bids, must be publicly advertised; and

WHEREAS, following public advertisement as required by New Jersey law, in accordance with an appropriate form of notice, and placement of the said notice on the official website of PVWC, as well as in the official newspaper of PVWC and any other such publications as may have been deemed appropriate, PVWC has received a response to provide professional services (or extraordinary unspecifiable services) related to the Project from at least one (1) professional (or provider of extraordinary unspecifiable services) provider; and

WHEREAS, each response received for the Project has been evaluated by PVWC based on criteria as set forth in the request for responses for the Project; and

WHEREAS, based on the said evaluation of each of the response(s) received, the firm(s) of _____ [the "Awardee(s)"] was/were, determined to be the most professionally qualified and capable of performing the required services with respect to the Project and its/their respective responses received May 14, 2015 for the Project [hereinafter the "Response(s)"]; and

WHEREAS, the Response(s), copies of which are on file in the office of the Administrative Secretary and available for inspection as indicated on Exhibit B attached hereto and made a part hereof, will be incorporated into the Contract, a form of which is also attached hereto and made a part hereof (the "Contract") as Exhibit A; and

WHEREAS, it is in the best interest of PVWC, its users and constituent municipalities to engage, or continue to engage, the services of the Awardee(s) at this time; and

WHEREAS, the services to be rendered pursuant hereto constitute professional services (or extraordinary unspecifiable services) within the meaning and intent of the Local Public Contracts Law; and

WHEREAS, in the event that a specific not-to-exceed amount has been established in the Response, and PVWC has subsequently accepted the same, PVWC's Comptroller has certified, with respect hereto, that funds are currently available for said purpose and said certificates are attached hereto as Exhibit C; and

WHEREAS, the said response, or responses to the Project and solicitation are also on file in the office of the Administrative Secretary and available for inspection;

NOW, THEREFORE, BE IT RESOLVED, by Passaic Valley Water Commission, in the County of Passaic, New Jersey:

1. That PVWC hereby awards the Contract(s) to the Awardee(s) in accordance with N.J.S.A. 40A:11-1 et seq. and N.J.S.A. 19:44A-20.7, and in accordance with said Responses, for services related to the Project; and

2. That an appropriate official of PVWC, on behalf of PVWC, is hereby authorized and directed to execute the Contract(s) hereby awarded to the Awardee(s) and the Secretary of PVWC to attest to the Contract(s) and such other officers, employees and officials of PVWC are hereby authorized to perform such acts and execute such documents as are necessary to implement the terms and intentions of this Resolution, and

3. That this matter shall be advertised as required by New Jersey law, in accordance with an appropriate form of notice, and a copy of this Resolution and Agreement(s) shall be placed on file and made available for inspection at the office of the Administrative Secretary of Passaic Valley Water Commission.

RECORD OF COMMISSION VOTE ON FINAL PASSAGE

	AYE	NAY	ABSTAIN	ABSENT
SANCHEZ, R.	_____	_____	_____	_____
LEVINE, J.	_____	_____	_____	_____
GRADDY, R.	_____	_____	_____	_____
KOLODZIEJ, G.	_____	_____	_____	_____
BAZIAN M.	_____	_____	_____	_____
DE VITA, T.	_____	_____	_____	_____
CLEAVES, C.	_____	_____	_____	_____

Adopted at a meeting of Passaic Valley Water Commission.

President
CHRYSTAL CLEAVES

Secretary
THOMAS P. DE VITA

This Resolution, when adopted, must remain in the custody of the Administrative Secretary.

CERTIFICATION

I, LOUIS AMODIO, Administrative Secretary of the Passaic Valley Water Commission in the County of Passaic, and the State of New Jersey do hereby certify that the foregoing Resolution is a true copy of a legal quorum of the Original Resolution duly passed and adopted by a majority of the full membership of the Passaic Valley Water Commission at its meeting of June 17, 2015.

LOUIS AMODIO
Administrative Secretary

(SAMPLE AGREEMENT)

PASSAIC VALLEY WATER COMMISSION

**Solicitations for Professional Services
(or Extraordinary Unspecifiable Services)**

**FORM OF AGREEMENT
EXHIBIT A**

(SAMPLE AGREEMENT)

FORM OF AGREEMENT

PASSAIC VALLEY WATER COMMISSION
FORM OF AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT (hereinafter "AGREEMENT") made as of _____, 20__ between PASSAIC VALLEY WATER COMMISSION ("PVWC"), a Public Utility Company organized pursuant to its enabling statute (N.J.S.A. 40:62-108 et seq.), having its principal place of business at 1525 Main Avenue, Clifton, New Jersey 07011, and _____ a professional firm (hereinafter "PROFESSIONAL" and/or "contractor") having a place of business at _____.

WHEREAS, PVWC desires professional services as applicable, to assist PVWC in its ongoing efforts related to Project No. 15-P-__ entitled "_____" (hereinafter the "PROJECT"); and

WHEREAS, PVWC requires Professional Services to assist it in implementing the PROJECT; and:

WHEREAS, PROFESSIONAL represents that it has the experience and the required professional knowledge to provide the professional services, and/or extraordinary un-specifiable services, as applicable (hereinafter "PROFESSIONAL SERVICES"), and as required by PVWC in this regard as set forth in the "Public Notice", "Table of Contents", and the "Request for Proposals" of the "Request for Proposals for Professional Services (or Extraordinary Un-specifiable Services)", and Appendices A, B, C, & F of the Solicitation (and including, where applicable, Appendix D with additional technical and other requirements attached thereto); all of which, along with a copy of the PROFESSIONAL'S proposal dated May 14, 2015, are collectively referred to herein as the "PROPOSAL", and, along with ranking methodology (Appendix E), are attached hereto and made a part hereof as Exhibit A; and

WHEREAS, the AGREEMENT shall be for the period of time as set forth in Appendix D where applicable, or where not otherwise set forth in Appendix D, the Agreement shall be for up to a one year period of time commencing on the Effective Date of this AGREEMENT as defined in Paragraph 19 herein, and for any extended periods authorized by PVWC.

WHEREAS, PVWC and PROFESSIONAL are desirous of entering into a consulting agreement to cover the PROFESSIONAL SERVICES authorized by PVWC and required for the PROJECT; and

NOW, THEREFORE, in consideration of the mutual promises herein, PVWC and PROFESSIONAL agree that the terms and conditions of this AGREEMENT are the following:

1. PROFESSIONAL shall provide the PROFESSIONAL SERVICES authorized by PVWC and required for the PROJECT. PROFESSIONAL'S obligations under this AGREEMENT are solely for the benefit of PVWC and no other party is intended to benefit or have rights hereunder.

2. PROFESSIONAL shall perform the PROFESSIONAL SERVICES as defined under this AGREEMENT at a level customary for competent and prudent professional service providers, all as applicable, performing such services at the time and place where the services are provided ("STANDARD OF CARE"). These services will be provided by professional service providers in the appropriate disciplines, and by other professionals and individuals skilled in other technical disciplines, as appropriate. PROFESSIONAL shall be responsible for the professional quality, technical accuracy, timely completion and the coordination of all aspects of its services including reports and other deliverables and services provided under this AGREEMENT. The services to be performed by PROFESSIONAL shall conform to the generally accepted codes and regulations applicable to the subject PROJECT. PROFESSIONAL agrees to indemnify and hold PVWC harmless from all losses and damages resulting from PROFESSIONAL'S failure to meet the STANDARD OF CARE. Further, PROFESSIONAL shall correct and re-perform any services not conforming to the required STANDARD OF CARE without additional compensation and cost to PVWC, (including, but not limited to pending written or oral testimony, reports, etc., which might occur from activities resulting from the performance of this AGREEMENT which were caused by PROFESSIONAL'S performance). In addition, PROFESSIONAL shall indemnify and hold harmless PVWC and its officers, agents and employees of PVWC from and against any losses, claims, damages, or liabilities to which PVWC may become subject insofar as they arise out of or are based upon the performance by the PROFESSIONAL, hereunder.

(SAMPLE AGREEMENT)

3. The cost of services performed by PROFESSIONAL pursuant to this AGREEMENT for PROJECT shall be as stipulated and/or required by PVWC in Appendix F, or, where not stipulated and/or required by PVWC in Appendix F, shall be in accordance with the PROPOSAL (refer to Exhibit A attached hereto). The Proposal shall include, on a separate page, a schedule of Professional's hourly rates for technical and related support services and non-labor expenses. PROFESSIONAL shall invoice PVWC its services hereunder after completion thereof and on the basis of reports and accompanying documents, if appropriate, on a monthly basis, including therein information as to progress in performance as against one hundred percent (100%) completion thereof and also showing amounts previously compensated hereunder, as against the total authorization. When the billing amount for actual work performed and costs incurred during the period covered by the invoice is less than \$1,000 the PROFESSIONAL shall add the service and costs to the next billing cycle. To the extent items appearing on invoices presented by PROFESSIONAL are not contested, PVWC will remit payment of the invoice as it can reasonably process same in the normal course of business and barring any failure of systems related thereto or unusual staffing shortages. If at any time it appears to PROFESSIONAL that the proposed scope of services to be performed on the different aspects of any PROJECT will exceed that which was authorized by PVWC, PROFESSIONAL shall clearly indicate same in its continuing written reports. The PROJECT shall be invoiced separately. Each invoice shall include a breakdown of hours expended along with the names of individual expending said hours, along with a breakdown of charges from subcontractors where applicable and out-of-pocket expenses chargeable to the PROJECT. Each invoice shall include a summary sheet including total amount billed for the time period covered by the invoice and the time period covered, total amount billed to date, total not-to-exceed dollar amount for cost of services (said amounts as set forth or defined in Paragraph 3 herein), and balance remaining.

4. PROFESSIONAL shall be responsible to PVWC for any subcontractors and outside associates or professional it engages to assist it in the performance of the services required under this AGREEMENT.

5. PVWC will provide to PROFESSIONAL all available information, including previous reports and any other data in its possession relevant to the subject PROJECT. Further, PVWC will be responsible for providing PROFESSIONAL access to all public and private property in connection with services to be performed for the PROJECT.

6. Both PVWC and PROFESSIONAL understand that the goal of this AGREEMENT is to complete all phases of the subject PROJECT in a reasonably expeditious fashion. To this end each pledges to the other full cooperation.

7. The services to be performed under this AGREEMENT for the PROJECT shall be deemed to be completed when the scope of work authorized by PVWC for the PROJECT has satisfactorily been fulfilled.

8. By notice in writing at any time, PVWC may change the general scope of services required by PROFESSIONAL as set forth herein. In such event an equitable adjustment, if appropriate, in compensation shall be agreed to in writing prior to PROFESSIONAL'S performing the changed services.

9. PROFESSIONAL shall hold secret and confidential all information designated by PVWC as confidential. PROFESSIONAL shall not reveal any designated confidential information to a third party unless the disclosing party was lawfully possessed with the information before receipt of same from the party claiming confidentiality and whose information has been designated as described herein as being confidential, or applicable law, regulation, court order or any agency of competent jurisdiction requires its disclosure; or the failure to disclose the information would pose an imminent and substantial threat to human health or the environment.

10. PROFESSIONAL shall maintain insurance against the following risk during the term of this AGREEMENT:

a) Worker's Compensation in statutory amounts and Employer's Liability for PROFESSIONAL'S employees' for the PROJECT for related injuries or disease; and

b) General Liability and Automobile Liability (each including excess coverage as required) and each in the amount of not less than \$1,000,000 for personal injury or property damage to third parties which arises from PROFESSIONAL'S performance under this AGREEMENT; and

c) Professional Liability in the amount of not less than \$1,000,000 for legal obligations arising out of PROFESSIONAL'S failure to meet the STANDARD OF CARE or other items covered under such Professional Liability policy.

(SAMPLE AGREEMENT)

PROFESSIONAL shall provide to the PVWC certificates of insurance as to each of the above which evidence that the policies are in effect.

11. This AGREEMENT shall be interpreted in accordance with the laws of the State of New Jersey and any litigation/arbitration relating to the AGREEMENT shall be venued in New Jersey. In the event of litigation, the parties agree and consent to the action being initiated in the Superior Court of New Jersey, Passaic County.

12. PROFESSIONAL represents that it is an independent professional and not an employee of PVWC.

13. If a dispute or complaint arises concerning this AGREEMENT, PVWC and PROFESSIONAL will negotiate a resolution of the dispute. Should negotiations be unsuccessful, the resolution of the dispute shall be submitted to arbitration in accordance with the current Construction Industry Arbitration Rules of the American Arbitration Association and the arbitration proceeding shall be venued in New Jersey. Any decision rendered by the arbitrators shall be final. Judgment may be entered upon the decision in any court having jurisdiction. The decision shall not be subject to modification or appeal except to the extent permitted by Sections 10 and 11 of the Federal Arbitration Act (9 U.S.C. 10, 11). Notwithstanding the aforementioned, disputes which have a total value (exclusive of interest) in excess of the dollar amount for cost of services (said dollar amount as stipulated in paragraph 3 herein) shall not be arbitrated but shall be litigated.

14. All notices required or intended under this AGREEMENT may be delivered in person, by facsimile or express mail. All notices shall be effective upon the date of receipt by the parties. Notices shall be delivered or sent to the other party at the address appearing in this AGREEMENT. An address may only be changed by written notice to the other party.

15. During the performance of this contract, the contractor agrees as follows:

a) The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation and gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth the provisions of this nondiscrimination clause.

b) The contractor or subcontractor, where applicable, will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

c) The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d) The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq. as amended and supplemented from time to time and the Americans with Disabilities Act.

e) The contractor or subcontractor agrees to make good faith efforts to afford equal employment opportunities to minority and women workers consistent with Good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2, or good faith efforts to meet targeted county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.

(SAMPLE AGREEMENT)

f) The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

g) The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personal testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

h) In conforming with the applicable employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

i) The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

- Letter of Federal Affirmative Action Plan Approval
- Certificate of Employee Information Report
- Employee Information Report Form AA302

j) The contractor and its subcontractor shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.

16. This AGREEMENT is subject to termination at the conclusion of all of the Contract work, time being of the essence as described herein, unless extended by the mutual agreement of the Parties. PVWC retains the right to terminate the PROFESSIONAL upon 15 days' notice to the PROFESSIONAL, which notice shall be effective when given to the PROFESSIONAL in writing at the PROFESSIONAL'S place of business by way of certified mail return receipt requested and regular mail. No other Notice shall be necessary. Should termination under this Article take place, the PROFESSIONAL shall be entitled to compensation for all authorized Contract work completed satisfactorily to the date of termination. PVWC shall be the sole judge of satisfactory work.

17. This AGREEMENT, including any schedules, attachments and referenced documents, is the entire agreement between PVWC and PROFESSIONAL. Any prior or contemporaneous agreements, promises, negotiations or representations not expressly stated herein are of no force and effect. Any changes to this AGREEMENT shall be in writing and signed by the PVWC and PROFESSIONAL.

18. A waiver or breach of any term, condition or covenant by a party shall not constitute a waiver or breach of any other term, condition or covenant. If any court of competent jurisdiction declares a provision of the AGREEMENT invalid, illegal or otherwise unenforceable, the remaining provisions of the AGREEMENT shall remain in full force and effect.

19. The effective date of this AGREEMENT shall be as of the date set forth hereinabove, or where such date is not indicated, the effective date of the AGREEMENT shall be when the last of the two parties is in full possession of a fully executed AGREEMENT document.

20. PROFESSIONAL'S hourly rates for technical and related support services and non-labor expenses shall be as set forth in the PROPOSAL.

21. PROFESSIONAL understands and agrees that upon submission to PVWC and upon receipt of proper payment as provided for in this AGREEMENT, any reports, data, logs or other information provided to PVWC pursuant to the terms and conditions of this AGREEMENT (and which are not designated in accordance with Paragraph 9 of this AGREEMENT as being confidential) are deemed to be non-proprietary to the extent that PVWC, in its sole discretion, may utilize the information submitted for whatever purposes it

(SAMPLE AGREEMENT)

deems necessary or desirable without seeking permission from PROFESSIONAL, and without providing any additional compensation to PROFESSIONAL; provided, however, that PVWC shall have sole responsibility for use of such work products in applications for which they may not originally have been intended. Reports, data, logs and other information provided to PVWC by PROFESSIONAL shall become the property of PVWC provided, however, that PROFESSIONAL shall have unrestricted right to their use.

22. PVWC designates the Executive Director, the Director of Engineering, or the General Counsel of the PVWC as its designated representative having authority to give instructions, receive information, define PVWC'S policies, and make decisions with respect to the scope of the work to be performed. PVWC reserves the right to change these designees from time to time and will notify PROFESSIONAL of any change(s) in writing.

23. Except as otherwise approved by PVWC, for the PROJECT, PVWC will be responsible for furnishing all approvals and permits from governmental authorities and other entities having jurisdiction over the scope of the work to be performed and approvals from others as may be necessary for the timely completion of the said work, including payment of all permit fees.

24. This AGREEMENT may be executed in several counterparts and all so executed documents shall constitute one agreement, binding on all the parties hereto, notwithstanding that all the parties are not signatory to the original or the same counterpart.

IN WITNESS WHEREOF, the parties hereto have made and executed this AGREEMENT by their duly authorized officers, and have affixed their corporate seals, as of the day and year shown on the cover page.

PROFESSIONAL FIRM

Witness or Attest

By: _____
Secretary
(Seal)

By: _____
Authorized Signatory

PASSAIC VALLEY WATER COMMISSION

By: _____
LOUIS AMODIO
Administrative Secretary

By: _____
CHRYSTAL CLEAVES
President