



By my signature below I accept that I have reviewed and acknowledge any addendums that have been issued for this solicitation.

ADDENDUM NUMBER: 1

**Please complete the following information:**

RESPONDENT (Company Name) \_\_\_\_\_

RFP Title: \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY, ST, ZIP \_\_\_\_\_

PHONE \_\_\_\_\_

E-Mail \_\_\_\_\_

**THIS SIGNATURE PAGE MUST BE SIGNED WITH AN ORIGINAL HANDWRITTEN SIGNATURE EXECUTED IN INK AND RETURNED WITH YOUR STATEMENT OF QUALIFICATIONS FOR YOUR STATEMENT OF QUALIFICATIONS TO BE CONSIDERED!**

Original Signature \_\_\_\_\_

Please type or Print Name Title

\_\_\_\_\_ DATE \_\_\_\_\_

## TERM SHEET

### Mountain Home Air Force Base Sustainable Water Supply Project

#### RFQ# 2018-001

This Term Sheet is intended to provide Respondents to this RFQ a general description of certain major contract terms for the design, construction, and operation of the Mountain Home Air Force Base Sustainable Water Supply Project (Project) that are expected to be included in the proposed DBO Contract.

A draft DBO Contract will be provided along with the Draft RFP to shortlisted Respondents for comment. A further refined draft DBO Contract will be issued with the final RFP. The terms listed in this Term Sheet are subject to further development as the procurement progresses, and the terms in the draft DBO Contract will supersede this Term Sheet.

Respondents are encouraged to provide comments to this Term Sheet in their SOQs as outlined in Section 7.4 of the RFQ.

General Terms and Conditions	
Definitions and Acronyms	All definitions and acronyms provided in Section 1.5 of the RFQ apply to this Term Sheet. Additional terms defined below and forthcoming.
DBO Contract Term	The total Term of the DBO Contract shall be 20 years, which covers design, construction, and operation of the Project. Possible 5-year extension for operations.
Compliance with Applicable Law	The Project will be designed, constructed, operated, and maintained to comply with all federal, state, and local laws and regulations, as well as applicable codes and standards.
Facility Ownership	The DBO Entity shall acknowledge and agree that the IWRB shall exclusively own the Facility (including: pump station, pipeline, storage, treatment facilities and new distribution systems) and any other materials produced or maintained as a result of the DBO Contract.
Labor	For local labor disputes among its employees and/or employees of its subcontractors, the DBO Entity is responsible. The IWRB assumes the risk for national general strikes.
Access to MHAFB	DBO Entity will be required to maintain all clearances required by MHAFB to access the Project site. In addition, DBO Entity will be required to follow all rules, procedures, and orders from MHAFB regarding the Project site on the Base.
Key Personnel	The DBO Entity must use Key Personnel identified in the procurement process. Key Personnel may not be substituted without the IWRB's prior written consent.

<p>Bonds</p>	<p>On or before the effective date of the DBO Contract, the DBO Entity shall provide the Performance Bond and the Payment Bond in an amount equal to the design-build price as financial security for the faithful performance and payment of its design, construction, permitting, and acceptance testing obligations under the DBO Contract.</p> <p>DBO Entity will be required to maintain an Operations and Maintenance Bond, renewed annually for its obligations during the Operating Term under the DBO Contract.</p>
<p>Insurance</p>	<p>The DBO Entity shall obtain and provide evidence of the required insurance under the DBO Contract. It is anticipated that the required insurance will be substantially the same as the requirements contained in Attachment E to the RFQ.</p>
<p>Parent Guaranty</p>	<p>A parent guaranty(ies) will be required; terms will be dependent on the structure of the DBO Entity.</p>
<p>Indemnification</p>	<ol style="list-style-type: none"> <li>1. DBO Entity shall indemnify, defend, and save harmless the IWRB, its officers, agents, employees, and volunteers from and against any and all liability, claims, damages, losses, expenses, actions, settlements, attorneys' fees, and suits whatsoever caused by, arising out of, or in connection with DBO Entity's acts or omissions under this DBO Contract or DBO Entity's failure to comply with any state or federal statute, law, regulation, or rule.</li>   <li>2. Upon receipt of the IWRB's tender of indemnity and defense, DBO Entity shall immediately take all reasonable actions necessary, including, but not limited to, providing a legal defense for the IWRB, to begin fulfilling its obligation to indemnify, defend, and save harmless the IWRB. DBO Entity's indemnification and defense liabilities described herein shall apply regardless of any allegations that a claim or suit is attributable in whole or in part to any act or omission of the IWRB under this DBO Contract. However, if it is determined by a final judgment that the IWRB's negligent act or omission is the sole proximate cause of a suit or claim, the IWRB shall not be entitled to indemnification from DBO Entity with respect to such suit or claim, and the IWRB, in its discretion, may reimburse DBO Entity for reasonable defense costs attributable to the defense provided by any Special Deputy Attorney General appointed pursuant to section 3 below.</li>   <li>3. Any legal defense provided by DBO Entity to the IWRB under this section must be free of any conflicts of interest, even if retention of separate legal counsel for the IWRB is necessary. Any attorney appointed to represent the IWRB must first qualify as and be appointed by the Attorney General of the</li> </ol>

	State of Idaho as a Special Deputy Attorney General pursuant to Idaho Code §§ 67-1401(13) and 67-1409(1).
No Personal Liability	DBO Entity specifically understands and agrees that in no event shall any official, officer, employee, or agent of the IWRB and the State of Idaho be personally liable for any representation, statement, covenant, warranty, or obligation contained in, or made in connection with, this DBO Contract, express or implied.
Taxes	DBO Entity, with respect to its employees and those of its subcontractors, if any, shall pay, indemnify and hold the IWRB and the State of Idaho harmless from the payment of all taxes and contributions imposed by federal and state laws, including social security taxes, with respect to said employees and their remunerations, including all interest and penalties payable under said laws as the result of noncompliance therewith.
Relationship of the Parties	<ol style="list-style-type: none"> <li>1. The parties intend to create by the terms of this DBO Contract an independent contractor relationship between the IWRB and the DBO Entity.</li> <li>2. The parties do not intend to create by the terms of this DBO Contract the relationship of employer and employee. DBO Entity's status under this DBO Contract shall be that of an independent contractor and not that of an agent or employee of the State. DBO Entity shall be responsible for paying all employment-related taxes and benefits, such as federal and state income tax withholding, social security contributions, worker's compensation and unemployment insurance premiums, health and life insurance premiums, pension contributions and similar items. DBO Entity shall indemnify the State and IWRB and hold them harmless from any and all claims for taxes (including but not limited to social security taxes), penalties, attorneys' fees, and costs that may be made or assessed against the State and IWRB arising out of DBO Entity's failure to pay such taxes, fees or contributions.</li> </ol>
Retention of Records and Access to Facilities, Premises and Records	<ol style="list-style-type: none"> <li>1. The DBO Entity shall establish and maintain project budget accounts and records for work and services required by this DBO Contract in accordance with generally accepted accounting principles and practices.</li> <li>2. For operations, DBO Entity shall ensure recordkeeping as required by IDAPA 58.01.08.</li> </ol>
Public Records	Pursuant to Idaho Code § 74-101, et seq., information or documents received from the DBO Entity may be open to public inspection and copying unless exempt from disclosure. The DBO Entity shall clearly designate individual portions as "exempt" on each page of a document and shall indicate the basis for such exemption. The IWRB will not accept the marking of an entire document as exempt. In addition, the IWRB will not accept a legend or statement on one page that all, or substantially all, of the document is exempt from disclosure. The DBO

	Entity shall indemnify and defend the IWRB against all liability, claims, damages, losses, expenses, actions, attorneys’ fees, and suits whatsoever for honoring such a designation or for the DBO Entity’s failure to designate individual portions of documents as exempt. The DBO Entity’s failure to designate as exempt any document or portion of a document that is released by the IWRB shall constitute a complete waiver of any and all claims for damages caused by any such release.
Governing Law	This DBO Contract shall be governed as to validity, construction and performance by the laws of the State of Idaho and the parties hereto consent to the jurisdiction of the state courts of Ada County in the state of Idaho. The venue of any action brought by any parties to this DBO Contract shall be in a State of Idaho District Court.
<b>Design and Construction</b>	
Design and Construction	DBO Entity is responsible for design and construction in accordance with the DBO Contract.
Design and Construction Monitoring	The IWRB shall have the right to perform oversight and auditing of the work to determine that it is performed in accordance with the DBO Contract.
Differing Site Conditions	It is anticipated that the responsibility and risks associated with Differing Site Conditions will be consistent with the Preliminary Risk Allocation Matrix set forth in Attachment D to the RFQ.
Permits and Approvals	It is anticipated that the responsibility and risks associated with Permits and Approvals will be consistent with the Preliminary Risk Allocation Matrix set forth in Attachment D to the RFQ.
Nonconforming Work	IWRB may require the DBO Entity to correct any work that does not conform with the DBO Contract standards at the DBO Entity’s expense. If the DBO Entity fails to correct the nonconforming Work in a timely manner, IWRB may deduct the cost of doing so.
Force Majeure Events	Force Majeure Events will be specifically listed in the DBO Contract and will constitute uncontrollable circumstances for which time extensions and/or compensation may be provided.
Design & Construction Payment Obligations	The DBO Entity will be paid on a monthly basis upon the DBO Entity’s submittal of a payment request to, and approval by the IWRB, subject to retainage.
Warranties and Warranty Period	The DBO Entity shall warrant to IWRB that all design-build work shall be new, of recent manufacture, of good quality, and free of faults or defects (Project Warranties). The Project Warranties shall be in effect beginning on the Substantial Completion Date and run for a period of one year. However, the obligation of the Design-Builder to continue to achieve all performance standards and to operate and maintain the Project in accordance with standards set forth in the DBO Contract will continue through the Operating Term.
<b>Acceptance of the Facility</b>	
Substantial Completion	A Substantial Completion Date will be established in the DBO Contract. If Substantial Completion has not been achieved by the Substantial Completion Date, the DBO Entity shall have the right to

	<p>achieve Substantial Completion during the Extension Period, which will be identified in the DBO Contract. If the DBO Entity fails to achieve Substantial Completion by the end of the Extension Period, an event of default by the DBO Entity will be deemed to have occurred, and liquidated damages will be assessed according to the methodology outlined in the DBO Contract.</p> <p>Following Substantial Completion, the DBO Entity will complete punch list items and deliverable requirements in order to achieve Final Completion.</p>
Acceptance Testing	The DBO Entity shall submit to IWRB for approval an acceptance test plan. The DBO Entity shall conduct all acceptance tests in accordance with the DBO Contract standards and with the approved acceptance test plan.
<b>Operation and Maintenance</b>	
Operating Standards and Requirements	<p>DBO Entity shall operate and maintain the Facility in accordance with best management practices, the DBO Contract, and applicable laws and regulations.</p> <p>The IWRB is currently in negotiations with MHAFB for a Water Utility Supply Agreement (WUSA). The WUSA may dictate further requirements for Operating the Facility which will be included in the DBO Contract.</p>
O&M Monitoring	<p>The IWRB will perform oversight and audits relating to DBO Entity's work in accordance with the DBO Contract.</p> <p>DBO Entity will prepare and implement a quality assurance/quality control plan for the O&amp;M Work, which must comply with the performance standards and output specifications set forth in the DBO Contract.</p>
Repair and Replacement	A Repair and Replacement Fund for major maintenance and replacements will be maintained, for which availability thresholds will be established in the DBO Contract.
O&M Payment Obligations	The DBO Entity shall be entitled to payment on a monthly basis upon the DBO Entity's submittal of a payment request to, and approval by, the IWRB.
Access to the Facility	DBO Entity shall provide reasonable access to the Facility to both IWRB and MHAFB for inspection and monitoring.