



# Review of NMS Technical Documents

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Bay Area Clean Water Agencies (BACWA)

Request for Proposal

10/20/2020

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A – BACWA’s Approach to the Nutrient Issue

B – Sample Agreement

# Request for Proposals

## *Provide Review of Technical Documents Produced as Part of the Bay Area Nutrient Management Strategy (NMS)*

### Introduction

**Background:** San Francisco Bay is recognized as a nutrient-enriched estuary. Historically, the San Francisco Bay has not been adversely impacted by nutrient loading even though it is nutrient-enriched compared to other estuaries around the country. Stakeholders in the Region wish to better understand this resiliency, and whether it may be threatened in the future.

The *San Francisco Bay Nutrient Management Strategy (NMS)*<sup>1</sup> is a locally-supported, multi-interest, long-term science strategy and an associated implementation program to provide information that is needed to support nutrient-related management decisions in the Bay. The NMS defines and guides this science, implementation, information-sharing, and public outreach approach. As such, the NMS and the work of stakeholders supporting the NMS will inform policies specifically decided by the San Francisco Regional Water Quality Control Board (Water Board). A *Charter*<sup>2</sup> establishes an organizational structure for implementing the NMS and sets forth the key entities that would be involved in the governance and implementation of the NMS and how they would function.

Since 2013 BACWA has been funding scientific studies being conducted by the San Francisco Estuary Institute (SFEI). BACWA voluntarily funded the initial studies in order to better understand the impacts of nutrients on the Bay. With the adoption of the Charter for governance, SFEI has been designated as the scientific body to conduct the studies for the NMS. The 2nd 5-year Nutrient Watershed Permit was adopted in 2019 and requires BACWA to contribute \$2.2M per year to SFEI to fund the scientific studies. BACWA is actively engaged in supporting the NMS for San Francisco Bay and is committed to continuing to engage in a collaborative approach to nutrient science and regulation. Our members participate in key governance activities of the NMS including the Steering Committee, the Planning Subcommittee, the Nutrient Technical Workgroup and the other small single-purpose working groups.

In 2015, BACWA developed a position on the nutrient issue entitled *BACWA's Approach to the Nutrient Issue* (see attachment A) which focuses on the need to protect San Francisco by relying on robust scientific investigations and prudent expenditures of public resources. More information about BACWA's involvement in nutrient issues can be found on our nutrient webpage<sup>3</sup>.

### **Scientific Studies and Technical Documents:**

As part of the NMS, SFEI has produced a Science Plan which sets forth a 5-year effort to answer key scientific questions regarding the impacts of nutrients on the beneficial uses of the Bay. SFEI provides a Science Manager and staff as well as contracts with other scientists to conduct the needed studies identified in the Science Plan.

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<sup>1</sup> <https://sfbaynutrients.sfei.org/>

<sup>2</sup> <https://sfbaynutrients.sfei.org/sites/default/files/SF%20NMS%20Charter%20Revised%2006082018.pdf>

<sup>3</sup> <https://bacwa.org/nutrients/>

Although BACWA has several volunteers who are engaged in monitoring the technical work being undertaken by the NMS science team, all of the BACWA volunteers have their regular workload at their agency or city and lack the time to immerse themselves in thoroughly reviewing all of the technical documents that have been produced or are in production. For this reason, BACWA is seeking to retain an outside expert to review key documents produced by the NMS science program from the perspective of a Publicly Owned Treatment Works (POTW). The independent review would help inform the BACWA membership on key aspects of the scientific reports as they relate to a public utility, pointing out areas of study or conclusions that have the potential to impact future management or policy decisions and assessing the scientific underpinnings of those conclusions and recommendations. It is also the expectation that the addition of technical support in this capacity will help support the NMS in developing more robust and defensible work products.

## Current Status

There are several documents that have been or are in the process of being developed as part of the Science Plan. Previous documents can be found on the SFEI website<sup>4</sup> and were prepared by or under the direction and oversight of the science team at SFEI. Recent documents include the following:

- [Dissolved oxygen dynamics in Lower South Bay slough and creek habitats](#) and [Appendices](#)
- [Water quality at perimeter sites in San Francisco Bay](#)
- [NMS Numerical Modeling Update](#)
- [Lower South Bay hypsographic analysis](#)

As part of the NMS process, an Assessment Framework is being developed to provide the conceptual basis for regulatory determinations of impairment. This Assessment Framework will be used to provide the scientific underpinnings for potential regulatory decisions regarding nutrient management actions by POTWs. A work plan for the Assessment Framework is currently in development. An expert panel is being convened through the NMS in early 2021 to inform decision making related to the Assessment Framework.

## Project Description

The Project consists of providing ongoing review of key technical documents being produced as part of the NMS and the Science Plan. The consultant will be asked to review technical documents from a POTW perspective, and provide technical interpretation. Using the *BACWA's Approach to the Nutrient Issue* as a guide to understanding BACWA's position, the consultant will be asked to provide a narrative to the BACWA community about the key conclusion of NMS products. They will review NMS work products to provide their findings as to the scientific soundness of the assumptions, findings, and recommendations of the documents reviewed. They will also be asked to help develop charge questions to expert panels convened by the NMS for work product review. BACWA is specifically interested in the implications of the assumptions made in preparing the scientific studies, the potential for the documents to provide a basis from which management or

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<sup>4</sup> <https://sfbaynutrients.sfei.org/books/reports-and-work-products>

policy decision may ultimately be made, and other areas of study that may be warranted in order to answer key question on the nutrient issue.

A brief summary of findings from the technical review would be prepared and a briefing scheduled with the BACWA Board or a specialty workgroup made up of BACWA members that would be convened for the purpose of discussing NMS work products. Written reports on the technical soundness and consideration for alternative approaches may be requested from the consultant. The consultant also may be asked to provide written or verbal comments to the Science Team on BACWA's behalf. Attendance at meetings with the Science Team, regulators, or relevant NMS workgroups, may also be requested.

The intent is to enter into an omnibus agreement whereby BACWA would retain the consultant and call upon the consultant's technical expertise on an as-needed basis.

## **Request for Proposal**

BACWA seeks the services of an individual(s), a firm, or team (consultant) to provide as-needed technical review of documents produced as part of the NMS as well as consultations on strategy to ensure that the BACWA's Approach to the Nutrient Issue is achieved. This Request for Proposal (RFP) includes the information needed for proposal preparation and includes various links and attachments associated with proposal preparation and contractual requirements, including a sample agreement (Attachment B). The Scope of Work and all attachments included are intended to provide the needed background and documentation for the Consultant to prepare a brief letter proposal to BACWA.

## **Scope of Work**

Technical review will be requested on an as-needed basis. The outside expert will not be responsible for assessing the competence of the scientific work or any modeling efforts or re-doing any work completed but rather reviewing the existing documents from a POTW perspective and raising issues and questions for BACWA consideration. The key elements of the scope of work for the outside expert for the *SF Bay Numerical Modeling Update* review include the following:

1. Review key assumptions, critical referenced reports, conclusions and recommendations.
2. Provide a summary of the work product from the POTW perspective
3. Identify major issues and important questions
4. Identify where additional explanations from the authors are needed.
5. Discuss policy and permit ramifications.
6. Develop comments, critiques, and/or questions for the Science Team.
7. Develop charge questions for expert advisory panels convened through the NMS

A presentation to the BACWA Board with key findings, conclusions and recommendations should be prepared. An estimate for additional in-person meetings should be provided on a per meeting basis. All meetings will be held via teleconference for the remainder of the 2020 calendar year, and likely through mid-2021.

## Qualifications

The following qualifications are desirable for the outside expert:

1. Technical knowledge and expertise in dealing with nutrient issues in water bodies, with an emphasis on estuaries.
2. Experience with assessment of nutrient impacts
3. Understanding of models used in NMS studies
4. Experience with nutrient permits and alternate regulatory approaches to traditional end-of-pipe regulation.

## Project Schedule

The term of this agreement shall not extend beyond July 30, 2021 but may be extended for additional one-year terms at BACWA's discretion.

<b>Major Milestone</b>	<b>Date</b>
Proposal due	November 11
Proposal review and videoconference interviews	November 16
Selection of Consultant(s)	November 19
Recommendation to BACWA Executive Board	November 20
Approval of contract and Notice to Proceed	December 18

## Organization and Content of the Proposal

The Proposal can be submitted in the form of a letter proposal with attachments. Please limit the overall number of pages, including appendices and attachments to 20 or less. If additional pages are needed, please contact the BACWA Executive Director with the rationale.

Suggested proposal outline.

<b>Section</b>	<b>Contents</b>
Cover Letter	Transmittal
1	Identification of Proposer
2	Project Team and Qualifications
3	Project Approach
4	Project Experience
5	Hourly rates and Expenses
6	Exceptions to Contract Terms and Conditions
7	Resumes of Key Staff

## Level of Effort

It is envisioned that an omnibus contract in the amount of \$50,000 for FY21 will be executed to supply as-needed services for review of documents and/or consultation on the NMS. The consultant will review specific NMS work products at the direction of the BACWA Executive Director, with a level of effort specified for review of that work product. The BACWA standard consulting agreement will be used for this work (see Attachment B)

## Proposal Evaluation Criteria

<b>Criteria</b>	<b>Points</b>
Project approach – How the Consultant intends to provide the needed services	15
Expertise of proposed individual or team in similar endeavors	50
Principal in Charge/Project Manager – Availability and responsiveness	20
Ability to provide additional resources if needed	5
Level of Effort – cost effectiveness of individual or team	10
<b>Total</b>	<b>100</b>

## ATTACHMENT A

### BACWA's Approach to the Nutrient Issue

## **Attachment A - BACWA's Approach to the Nutrient Issue**

**2015**

### **Introduction**

In the course of discussions on nutrients over the last few years many approaches on how to deal with the nutrient issue have been discussed but have not been adopted as the official BACWA Position. The BACWA coalition dealing with nutrients depends on the great majority of POTW members understanding the direction the organization is heading and what strategies are being followed to get to the desired outcomes.

The purpose of this paper is to confirm the BACWA goal on nutrients and then focus on strategies that will help achieve that goal. With a goal statement and strategies in place, specific tactics can be identified which will be pursued in support of the strategies recognizing that both strategies and tactics may need to adapt to changing circumstances as time passes. This paper will help to increase clarity on the nutrient issue for all BACWA members which should provide for a stronger coalition

### **BACWA Goal**

By definition a goal is a high level statement of something to be achieved. As a coalition of public agencies charged with protecting public health and the environment, BACWA takes its role as stewards of the Bay very seriously. BACWA is committed to working collaboratively with the Water Board to clearly understand the impacts on nutrient loadings on the Bay and stands ready to do whatever is necessary to ensure protection of the beneficial uses of the Bay. With these basic concepts supported by the membership, the BACWA Nutrient goal statement is as follows:

*Nutrient management strategies should be protective of the environment, ensuring that all beneficial uses of the Bay are achieved; be based on robust scientific investigations; and make effective use of the public's resources in achieving this goal.*

### **BACWA Strategies**

Several strategic concepts have been discussed within the BACWA coalition. From those discussions the following strategies have emerged:

1. **Sound Science:** Support the concept that regulation should be based on sound science and help fund the science.

2. **Beneficial Uses:** Demonstrate that beneficial uses are being protected.

3. **Highest Priorities:** Work to prioritize all environmental needs such that the highest priorities with the largest positive impact can be accomplished first.

4. **Multiple Benefits:** Emphasize that on-going and increasing efforts to recycle wastewater and enhance wetlands can have multiple benefits including providing new water supplies, protecting and increasing habitat, protection from sea level rise, and reduction in nutrient loadings; while recognizing that these efforts need time to be developed and converge on the optimal point of maximizing cost-benefits of expending public resources.

## ATTACHMENT B

### **Standard Agreement**

BACWA's standard agreement for consulting services will be used for this contract

## **BAY AREA CLEAN WATER AGENCIES PROFESSIONAL SERVICES CONTRACT**

This PROFESSIONAL SERVICES CONTRACT, effective [Click here to enter a date.](#), is between Bay Area Clean Water Agencies (“BACWA”), a joint powers agency which exists as a public entity separate and apart from its Member Agencies, created January 4, 1984 by a Joint Powers Agreement between Central Contra Costa Sanitary District, East Bay Dischargers Association, East Bay Municipal Utility District, the City and County of San Francisco and the City of San Jose, with a mailing address of P.O. Box 24055, MS 702, Oakland, CA 94623, and [Click here to enter text.](#) (“Consultant”), a [Choose an item.](#) doing business at [Click here to enter text.](#) for professional services as described in any Exhibit A attached hereto.

In consideration of the mutual covenants, stipulations and agreements, the parties agree as follows:

### **Description and Standard of Services to be Performed**

1. Consultant will perform the Services as described by and in accordance with [Exhibit A](#) in a manner acceptable to BACWA.
2. Consultant shall not contract with or otherwise use any subconsultants, subcontractors or other non-employee persons or entities (“Subconsultants”) to perform the Services without the prior written approval of BACWA. If Consultant and BACWA agree that Subconsultants shall be used, Consultant shall ensure Subconsultants’ compliance with all the terms and conditions of this agreement.
3. Consultant will exercise that degree of care in performing the Services in accordance with that prevailing among firms of comparable standing in the State of California (“Professional Standard”). Consultant will promptly correct or re-perform those Services not meeting the Professional Standard without additional compensation.
4. Consultant warrants that it is fully licensed, registered and otherwise fully authorized to perform the Services in the State of California to the extent applicable law requires such licensure, registration or authorization.
5. BACWA’s review, approval, acceptance, use, or payment for all or any part of the Services hereunder will not alter the Consultant’s obligations or BACWA’s rights hereunder, and will not excuse or diminish Consultant’s responsibility for performing all Services consistent with this Contract.

### **Payment for Services**

6. BACWA will pay Consultant based on the rates in [Exhibit B](#), up to a maximum amount payable of [Click here to enter text.](#) Consultant will not exceed the maximum amount payable without obtaining prior written approval from BACWA.
7. Consultant shall submit invoices monthly. Invoices shall include the hours charged by each employee, a brief description of the work performed, and a description of costs for which Consultant seeks reimbursement and which are specified in [Exhibit B](#).
8. Payments under this Contract will be due thirty (30) days after BACWA’s receipt of invoices. BACWA may withhold from any progress or final payment any damages, backcharges or claims incurred or anticipated by BACWA to the extent caused by Consultant.

### **Document Ownership and Retention**

9. Consultant will maintain all financial records relating to this Contract in accordance with generally accepted accounting principles and for at least three years following termination of this Contract. Consultant will grant BACWA and its representatives access upon request to all such records and all

other books, documents, papers, drawings, and writings of Consultant that refer or relate to this Contract.

10. All drawings, specifications, reports, programs, manuals, and other work product of Consultant that result from this Contract (“Work Product”) will be considered the exclusive property of BACWA. Consultant agrees that it will not use, disclose, communicate, publish or otherwise make available to third parties any products, analyses, data, compilations, studies, proposals, technical or business information, and any other information related to the Services provided to BACWA without BACWA’s prior written approval.

### **Indemnification**

11. To the fullest extent allowed by law, Consultant will indemnify, hold harmless, reimburse and defend BACWA, its Member Agencies, and each of their officers, directors, employees and agents from, for and against any and all claims, demands, damages, losses, expenses, liabilities and penalties, including but not limited to reasonable attorneys’ and expert witnesses’ fees, arising out of or relating to the Services but only to the extent caused by the negligent or other wrongful acts or omissions of Consultant or any person or entity for whose acts or omissions any of them are responsible, or by the failure of any such party to perform as required by this Contract.

### **Insurance**

12. Consultant will purchase and maintain, at Consultant’s expense, the following types of insurance, covering Consultant, its employees and agents:
  - a. Workers’ Compensation Insurance as required by law, subject to a waiver of subrogation in favor of BACWA;
  - b. Employers Liability Insurance with a per accident value at \$1,000,000, Policy Limit of \$1,000,000 and Each Employee of \$1,000,000, subject to a waiver of subrogation in favor of BACWA.
  - c. Comprehensive General Liability Insurance covering personal injury and property damage with a combined single limit, or the equivalent, of not less than \$1,000,000.00 each occurrence, \$2,000,000.00 general aggregate, and naming BACWA as an additional insured.
  - d. Business Automobile Liability Insurance with combined single limit coverage of not less than \$1,000,000.00 aggregate for each claim, incident, or occurrence; and naming BACWA as an additional insured.

### **Assignment**

13. Consultant will not assign or transfer any of its interest in this Contract, in whole or in part, without the prior written consent of BACWA. BACWA may assign this Contract and any rights relating to this Contract (including but not limited to its right to assert claims and defenses against Consultant) at BACWA’s discretion.

### **Independent Contractor**

14. Consultant will perform the Services as an independent contractor. Although Consultant will perform its Services for the benefit of BACWA, and although BACWA reserves the right to determine the schedule for the Services and to evaluate the quality of the completed performance, BACWA does not control the means or methods of Consultant's performance. Consultant is solely responsible for determining the appropriate means and methods of performing the Services, and Consultant's liability will not be diminished by any review, approval, acceptance, use or payment for the same by BACWA or any other party.

### **Termination of Contract; Suspension of Services**

15. This contract shall automatically terminate on [Click here to enter a date.](#) Either party may also terminate this Contract in whole or in part at any time for its convenience. For a termination for convenience, the termination will be effective thirty (30) days following receipt of a written notice of termination by one party from the other. BACWA may terminate this Contract in whole or in part for cause, in which event the termination will be effective ten (10) days after Consultant's receipt of BACWA's written notice and Consultant's failure during that period to cure the default.

### **Dispute Resolution**

16. Consultant will give prompt written notice to BACWA of any claim, dispute or other matter in question, but in no event will Consultant give such notice later than ten (10) days after Consultant's becoming aware of the event or circumstance giving rise to the claim, dispute or matter in question.
17. All claims, disputes and other matters in question between BACWA and Consultant arising out of or relating to this Contract will be subject to alternative dispute resolution. If both parties agree to arbitration it will be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. Notice of the demand for arbitration will be filed in writing with the other party to this Contract and with the American Arbitration Association. Any arbitration arising out of or relating to this Contract will include, by consolidation, joinder or joint filing, any other person or entity not a party to this Contract that is substantially involved in a common issue of law or fact and whose involvement in the consolidated arbitration is necessary to achieve a final resolution of a matter in controversy therein. This agreement to arbitrate will be specifically enforceable by any court with jurisdiction thereof.
18. A demand for dispute resolution by either party will be made within a reasonable time after the claim, dispute, or other matter in question has arisen, and in no event will it be made after the date when institution of court litigation based on such claim, dispute or other matter in question would be barred by the applicable period of limitations. For all claims by BACWA against Consultant, the applicable period of limitations will not commence to run, and any alleged cause of action will not be deemed to have accrued (whether such action is based on negligence, strict liability, indemnity, intentional tort or other tort, breach of contract, breach of implied or express warranty, or any other legal or equitable theory), unless and until BACWA is fully aware of all three of the following: (1) the identity of the party(ies) responsible, (2) the magnitude of the damage or injury and (3) the cause(s) of the damage or injury. The contractual limitations period and discovery rule provided herein applies in lieu of any otherwise applicable statute or related case law.
19. The failure of either party to enforce any provision of this Contract will not constitute a waiver by that party of that or any other provision of this Contract.

### **Severability**

20. BACWA and Consultant agree that if any term or provision of this Contract is determined to be illegal, in conflict with any law, void or otherwise unenforceable, and if the essential terms and provisions of this Contract remain unaffected, then the validity of the remaining terms and provisions

will not be affected and the offending provision will be given the fullest meaning and effect allowed by law.

**Survival**

21. All rights and obligations set out in this Contract and arising hereunder will survive the termination of this Contract (i) as to the parties' rights and obligations that arose prior to such termination and (ii) as is necessary to give effect to rights and obligations that arise after such termination but derive from a breach or performance failure that occurred prior to the termination.

This Contract constitutes the entire, legally binding contract between the parties regarding its subject matter. No waiver, consent, modification or change of terms of this Contract is binding unless in writing and signed by both parties.

The following documents are incorporated into and made a part of this Contract. Any conflicts between these documents and this Contract will be resolved in favor of this Contract.

- Exhibit A – Scope of Work
- Exhibit B – Hourly Rates/Reimbursable Expenses

**CONSULTANT:** \_\_\_\_\_ [Click here to enter text.](#)

\_\_\_\_\_ [Click here to enter text.](#)  
*Street Address*

\_\_\_\_\_ [Click here to enter text.](#)  
*City, State, Zip Code*

\_\_\_\_\_ [Click here to enter text.](#)  
*Tax Identification No.*

\_\_\_\_\_ [Click here to enter a date.](#)  
*Consultant Signature* *Date*

\_\_\_\_\_ [Click here to enter text.](#)  
*Name, Title*

\_\_\_\_\_ [Click here to enter a date.](#)  
*BACWA Signature* *Date*

\_\_\_\_\_ [Click here to enter text.](#)  
*Name, Title*

**EXHIBIT A**

**SCOPE OF WORK**

Professional Services by [Click here to enter text.](#)  
Fiscal Year [Click here to enter text.](#)

[Click here to enter text.](#) will provide professional services to Bay Area Clean Water Agencies (BACWA) for the following activities, the costs of which are **not to exceed** [Click here to enter text.](#):

**EXHIBIT B**

**HOURLY RATES/REIMBURSABLE EXPENSES**

**Consultant**

Click here to enter text.

Click here to enter text.

**Hourly Rate**

Click here to enter text.

Click here to enter text.