TEXAS PARKS AND WILDLIFE

INVITATION FOR BID

SEND INVOICE TO:	RETURN BIDS TO	BIDDER MUST SIGN BELOW
Texas Parks and Wildlife Department ATTN: Accounts Payable 4200 Smith School Road Austin, Texas 78744	**FAX 512-389-8279**, or return to: TPWD – Wildlife Division 4200 Smith School Road Austin, Texas 78744	**BID OPENING 2:00 PM** **August 10, 2016 @ 2:00 pm** **REQUISITION NO.** **802-16-35969**

PAGE 1 OF 28

BID F.O.B. AGENCY RECEIVING ROOM UNLESS OTHERWISE SPECIFIED BELOW

DESTINATION IF DIFFERENT THAN ABOVE

See Specifications

FAXED BIDS WILL BE ACCEPTED AT: 512-389-8279

SHOW BID OPENING DATE AND REQUISITION NUMBER ON SEALED BID ENVELOPE AND SHOW RETURN ADDRESS OF FIRM

BIDDER AGREES TO COMPLY WITH ALL CONDITIONS OF THIS BID.

FAILURE TO MANUALLY SIGN WILL DISQUALIFY BID

AUTHORIZED SIGNATURE DATE

See instructions for Texas ID Number in General Terms & Conditions, Paragraph 1.10.

Bidder Must Fill in

TEXAS ID NUMBER _____

Name of Firm _____

Street Address _____

City–State-Zip _____

Telephone No. _____

Email address _____

By signing this bid, bidder certifies that if a Texas address is shown as the address of the bidder, bidder qualifies as a Texas bidder as defined in Title 34 TAC Rule 20.32(68).

FAILURE TO MANUALLY SIGN THE BID ABOVE WILL DISQUALIFY BID.

AWARD NOTICE: **The State reserves the right to make an award on the basis of low line item bid, low total of line items, or in any other combination that will serve the best interest of the State and to reject any and all bid items in the sole discretion of the State.**

Item	Description Fiberglass and Metal Deer Blinds Class/Item 805-59	Quantity	Unit of Measure	Unit Price	Extension
	TPWD reserves the right to award to multiple vendors. TPWD shall award contracts that are determined to provide the best value to the agency. It is TPWD's sole discretion to determine best value.				
1.	Texas Parks and Wildlife Department (TPWD) is seeking to purchase five (5) Fiberglass Hunting Blinds for the James Daughtrey WMA as per specifications. **PLEASE SPECIFY BRAND NAME/ MAKE/MODEL** _____	5	Each	$	$
2.	Texas Parks and Wildlife Department (TPWD) is seeking to purchase five (5) Metal Hunting Blinds for the Chaparral WMA as per specifications. **PLEASE SPECIFY BRAND NAME/ MAKE/MODEL** _____	5	Each	$	$

☐ **Offered by a Historically Underutilized Business certified by CPA.**

PREFERENCES

See Section 2.38 of the State of Texas Procurement Manual regarding preferences.

Check below to claim a preference under Title 34 TAC Rule 20.38

□ Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
□ Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
□ Agricultural products grown in Texas
□ Agricultural products offered by a Texas bidder
□ Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
□ Services offered by a Texas bidder that is not owned by a Texas resident service disabled veteran
□ Texas Vegetation Native to the Region
□ USA produced supplies, materials or equipment
□ Products of persons with mental or physical disabilities
□ Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
□ Energy Efficient Products
□ Rubberized asphalt paving material
□ Recycled motor oil and lubricants
□ Products produced at facilities located on formerly contaminated property
□ Products and services from economically depressed or blighted areas
□ Vendors that meet or exceed air quality standards
□ Recycled or Reused Computer Equipment of Other Manufacturers
□ Foods of Higher Nutritional Value

FOR FURTHER INFORMATION CONTACT PURCHASER:
Amy Jarmon, CTPM - PHONE 512-389-8500
Email: amy.jarmon@tpwd.texas.gov

Solicitation 802-16-35969
Specifications for Fiberglass Hunting Blinds

1. INTRODUCTION: Texas Parks and Wildlife Department (TPWD) is seeking to purchase five (5) Fiberglass hunting ground blinds for James E Daughtrey Wildlife Management Area, Tilden, Texas, 78072.

2. TERM OF CONTRACT: Contract shall commence upon the issuance of a contract by TPWD and automatically expire upon the delivery date agreed upon and final acceptance by TPWD.

3. SPECIFICATIONS SHALL MEET OR EXCEED THE FOLLOWING:

3.1. **Dimensions:**
- 3.1.1. Width shall be approximately five (5) feet
- 3.1.2. Length shall be approximately five (5) feet
- 3.1.3. Height of exterior shall not exceed seven (7) feet, interior shall be a minimum of six (6) feet
- 3.1.4. Must be able to accommodate two (2) adults or one (1) adult and two (2) children.

3.2. **Frame:**
- 3.2.1. If framing is required shall be constructed of all metal framing.
- 3.2.2. Framing must be welded
- 3.2.3. Framing must be of corrosion resistant metal or coating.

3.3. **Exterior:**
- 3.3.1. Walls and roof shall be constructed of foam filled, fiberglass encased
- 3.3.2. Construction must be weather and insect proof
- 3.3.3. Color shall be camo or single camo color relevant to South Texas
- 3.3.4. Maintenance free gel coat finish.
- 3.3.5. No Tower – will be placed Ground level

3.4. **Door:**
- 3.4.1. Door shall be a single walk through type with weather and insect proof gaskets
- 3.4.2. Each blind shall have one (1) door on one of the 5 foot sides.
- 3.4.3. Doors shall be constructed of same material as walls and roof
- 3.4.4. RV style keyed and/or keyless door entry or equivalent
- 3.4.5. Blinds shall incorporate a full height door with a minimum opening of (24) inches

3.5 Windows:
- 3.5.1 Horizontal windows – adequate size to allow normal shooting with rifle and viewing while scanning area
  - 3.5.1.1 – Side & Back Windows – approximate 36” x 14”
  - 3.5.1.2 – Door Window – approximate 18” x 10”
- 3.5.2 Metal frames
- 3.5.3 Tempered Glass
- 3.5.4 Weatherproof and insect proof gaskets
- 3.5.5 Quiet opening
- 3.5.6 Maybe either sliding or hinged with struts
- 3.5.7 Must either lock in place or remain open without locks
- 3.5.8 Bottoms of the windows shall be at a height of no more than thirty-six (36) inches from the floor of the blind.

3.6 Floors:
- 3.6.1 Rot resistant floor of at least 1” fiberglass
- 3.6.2 Marine grade carpeted floors

3.7 Assembly:
- 3.7.1 Must arrive fully assembled

3.8 Roof
- 3.8.1 Roof of blinds shall be pitched to allow run-off of water.
- 3.8.2 Roof shall be all fiberglass construction.

4. REFERENCED BRAND EXAMPLE: Catalogs, brand names or manufacturer's references are descriptive only, and indicate type and quality desired. Proposals on brands of like nature and quality will be considered. If proposing other than the referenced brands/model number, Respondent must show manufacturer, brand or trade name, product number and provide complete descriptive information of product offered and include with response. Failure to take exception to specifications or reference data will require Respondent to furnish specified brand names, numbers, etc.

4.1. Example: Redneck Blinds - "The Trophy Tower"
4.2. Example: Redneck Blinds – "The Shooter"

5. REQUIREMENTS:

5.1. **Condition of Product:** New Equipment ONLY; NO re-manufactured or "gray market" items. All items must be covered by the manufacturer's warranty. The unit shall be made ready for continuous operation upon delivery. Responded is cautioned that any unit delivered to the FOB point that does not meet specifications in every aspect will not be accepted.

5.2. **All Parts:** All parts not specifically mentioned which are necessary for the unit to be complete and ready for operation or which are normally furnished as standard equipment shall be furnished by the vendor. All parts shall conform in strength, quality and workmanship to the accepted standards of the industry.

5.3. **Manuals:** Manuals containing illustrated parts list, operating and service instructions for the unit shall be delivered with unit. Manual shall outline all necessary service and operating instructions for the unit delivered and provide necessary warning and safety precautions.

5.4. **Warranty Requirements:** The units shall be warranted against defects in material and workmanship for a minimum five (5) years and shall cover 100 percent parts and labor for the units. Vendor shall furnish warranty and a list of warrantied repair companies to TPWD at time of delivery. The warranty begins on the date the unit is determined to meet specifications and accepted by TPWD.

6. QUANTITIES: Quantities listed are project order quantities. TPWD reserves the right to increase or decrease quantities prior to award dependent on bid results and budget constraints.

7. DELIVERY AND ACCEPTANCE:

7.1. **Freight Charges:** Shipping shall be F.O.B. destination; therefore, unit prices must include all shipping, handling, fuel surcharges and delivery fees.

7.2. **Delivery Schedule:** Delivery shall not exceed 45 calendar days from date of award. Vendor must contact TPWD point of contact to schedule delivery date and time. Vendor shall provide one (1) week notice prior to delivery.

7.3. **Delivery Address(es):**

7.3.1. Must call 24 - 48 hours in advance of delivery to make delivery arrangements and obtain directions. There is no physical address for this location. Must call (361) 274-3573 or (830) 879-5496.
7.3.2. Quantity of five (5) to be delivered to: TPWD James E Daughtrey WMA, Tilden, Tx. 78072

7.4. **Delivery Contact: Chris Mostyn, (830) 879-5496** or chris.mostyn@tpwd.texas.gov

7.5. **Delivery Delays:** If delay is foreseen, Contractor shall give written notice to TPWD and must keep TPWD advised at all times of status of order. Default in promised Delivery Days after Receipt of Order (ARO) without accepted reasons or failure to meet specifications authorizes TPWD to purchase goods and services of this contract elsewhere and charge any increased costs for the goods and services, including the cost of re-soliciting, to the Contractor.

7.6. **Compliant Products:** Delivery does not occur until the Contractor delivers products, materials or services in full compliance with the specifications to Customer's F.O.B. destination, unless delivery is specifically

accepted, in whole or in part, by the Customer. Providing products, materials or services which do not meet all specification requirements does not constitute delivery. Customer reserves the right to require new delivery or a refund in the event that materials or products not meeting specifications are discovered after payment has been made.

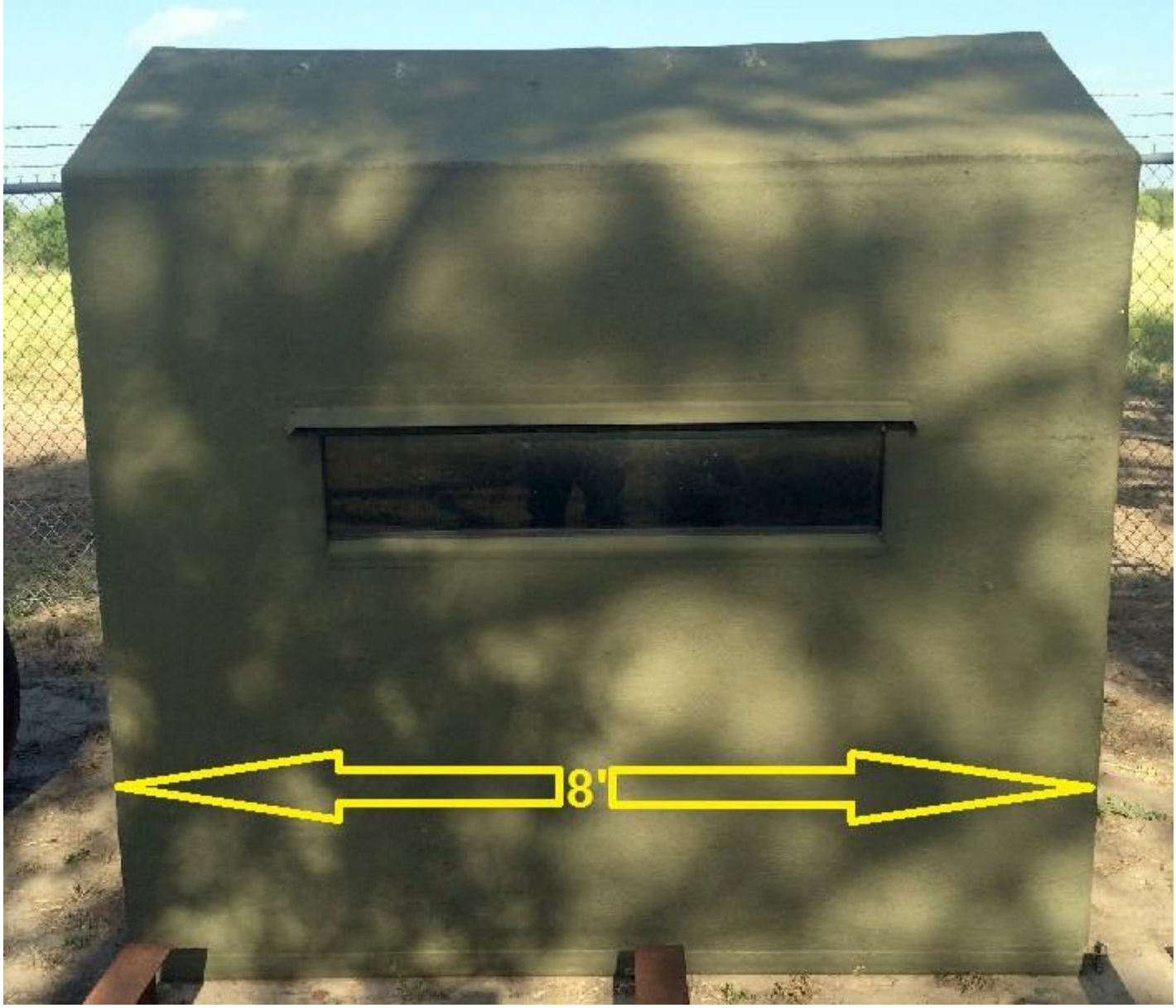
7.7. **Acceptance:** All equipment ordered will be subject to acceptance inspection and performance testing upon receipt. Acceptance inspection and performance testing will not take more than five (5) working days, weather permitting. Vendor will be notified within this time frame of any units not delivered in full compliance with the purchase order specifications.

8. SUBMISSION INFORMATION: In addition to pricing, Respondents are requested to submit the following information with their response:

8.1. **Brand Name/Model:** Respondents to specify Brand/Model of quoted product. Failure to take exception to specifications or referenced data will require Respondent to furnish specified brand name and model, etc. (Respondent may be required to submit product spec sheets and/ or other documentation prior to award.)

8.2. **Descriptive Literature:** Respondent should provide descriptive literature (product specification sheets) with response submission. Literature to address all salient characteristics, and clearly document that the offered product meets salient characteristics stated in the specifications. (Note: Respondent may be required to submit product specification sheets and/ or other documentation prior to award.)

Example of Fiberglass Blinds
(Please ignore measurements on photos)


8'

Solicitation 802-16-35969
Specifications for Metal Hunting Blinds

1. **INTRODUCTION:** Texas Parks and Wildlife Department (TPWD) is seeking to purchase five (5) Metal hunting ground blinds for Chaparral WMA, 64 Chaparral WMA Drive, Cotulla, Texas, 78014.

2. **TERM OF CONTRACT:** Contract shall commence upon the issuance of a contract by TPWD and automatically expire upon the delivery date agreed upon and final acceptance by TPWD.

3. **SPECIFICATIONS SHALL MEET OR EXCEED THE FOLLOWING:**

3.1. Dimensions:
3.1.1. Width shall be approximately five (5) feet
3.1.2. Length shall be approximately five (5) feet
3.1.3. Height of exterior shall not exceed seven (7) feet, interior shall be a minimum of six (6) feet
3.1.4. Must be able to accommodate two (2) adults or one (1) adult and two (2) children.

3.2. **Frame:**
3.2.1.Shall be constructed all metal framing.
3.2.2.Framing must be welded
3.2.3.Framing must be of Corrosion resistant metal or coating

3.3. **Exterior:**
3.3.1 All Metal exterior
3.3.2 Construction must be weather and insect proof
3.3.3 Color should be camo or single camo color relevant to South Texas
3.3.4 No Tower, will be placed Ground level.

3.4. **Door:**
3.4.1.Door will be a single walk through type with weather and insect proof gaskets or equivalent
3.4.2.RV style keyed or keyless door entry
3.4.3.Blinds shall incorporate a full height door with a minimum opening of twenty-four (24) inches wide.

3.5 Windows:
3.5.1 Horizontal windows - adequate size to allow normal shooting with rifle and viewing while scanning area
3.5.1.1 – Side & Back Windows – approximate 36” x 14”
3.5.1.2 – Door Window – approximate 18” x 10
3.5.2 Metal frames
3.5.3 Tempered Glass
3.5.4 Weatherproof and insect proof gaskets
3.5.5 Quiet opening
3.5.6 Maybe either sliding or hinged with struts
3.5.7 Must either lock in place or remain open without locks
3.5.8 Bottoms of the windows shall be at a height of no more than thirty-six (36) inches from the floor of the blind.

3.6 Walls:
3.6.1 Minimal of 2” insulation
3.6.2 Marine grade carpeted walls

3.7 Floors:
3.7.1 Rot resistant floor bottoms
3.7.2 Marine grade carpeted floors

3.8 Assembly:
3.8.1 Must arrive fully assembled

3.9 Roof

3.9.1 Roof of blinds shall be pitched to allow run-off of water.
3.9.2 Roof shall be all metal construction

4. REFERENCED BRAND EXAMPLE: Catalogs, brand names or manufacturer's references are descriptive only, and indicate type and quality desired. Proposals on brands of like nature and quality will be considered. If proposing other than the referenced brands/model number, Respondent must show manufacturer, brand or trade name, product number and provide complete descriptive information of product offered and include with response. Failure to take exception to specifications or reference data will require Respondent to furnish specified brand names, numbers, etc.

4.1. Example: Atascosa Wildlife Supply - Ground Hunting Blind
4.2. Example: Steel Outdoors – Steel Deer Hunting blinds

5. REQUIREMENTS:

5.1. **Condition of Product:** New Equipment ONLY; NO re-manufactured or "gray market" items. All items must be covered by the manufacturer's warranty. The unit shall be made ready for continuous operation upon delivery. Responded is cautioned that any unit delivered to the FOB point that does not meet specifications in every aspect will not be accepted.

5.2. **All Parts:** All parts not specifically mentioned which are necessary for the unit to be complete and ready for operation or which are normally furnished as standard equipment shall be furnished by the vendor. All parts shall conform in strength, quality and workmanship to the accepted standards of the industry.

5.3. **Manuals:** Manuals containing illustrated parts list, operating and service instructions for the unit shall be delivered with unit. Manual shall outline all necessary service and operating instructions for the unit delivered and provide necessary warning and safety precautions.

5.4. **Warranty Requirements:** The units shall be warranted against defects in material and workmanship for a minimum five (5) years and shall cover 100 percent parts and labor for the units. Vendor shall furnish warranty and a list of warrantied repair companies to TPWD at time of delivery. The warranty begins on the date the unit is determined to meet specifications and accepted by TPWD.

6. QUANTITIES: Quantities listed are project order quantities. TPWD reserves the right to increase or decrease quantities prior to award dependent on bid results and budget constraints.

7. DELIVERY AND ACCEPTANCE:

7.1. Freight Charges: Shipping shall be F.O.B. destination; therefore, unit prices must include all shipping, handling, fuel surcharges and delivery fees.

7.2. Delivery Schedule: Delivery shall not exceed 45 calendar days from date of award. Vendor must contact TPWD point of contact to schedule delivery date and time. Vendor shall provide one (1) week notice prior to delivery.

7.3. Delivery Address(es):

7.3.1. TPWD Chaparral WMA, 64 Chaparral WMA Drive, Cotulla Texas 78014
7.3.2. Must call 24 - 48 hours in advance of delivery to make delivery arrangements and obtain directions. There is no physical address for this location. Must call (361) 274-3573 or (830) 879-5496.

7.4. Delivery Contact: Sherrie Martin, (830) 676-3413 or sherrie.martin@tpwd.texas.gov

7.5. Delivery Delays: If delay is foreseen, Contractor shall give written notice to TPWD and must keep TPWD advised at all times of status of order. Default in promised Delivery Days after Receipt of Order (ARO) without accepted reasons or failure to meet specifications authorizes TPWD to purchase goods and services of this contract elsewhere and charge any increased costs for the goods and services, including the cost of re-soliciting, to the Contractor.

7.6. **Compliant Products:** Delivery does not occur until the Contractor delivers products, materials or services in full compliance with the specifications to Customer's F.O.B. destination, unless delivery is specifically accepted, in whole or in part, by the Customer. Providing products, materials or services which do not meet all specification requirements does not constitute delivery. Customer reserves the right to require new delivery or a refund in the event that materials or products not meeting specifications are discovered after payment has been made.

7.7. **Acceptance:** All equipment ordered will be subject to acceptance inspection and performance testing upon receipt. Acceptance inspection and performance testing will not take more than five (5) working days, weather permitting. Vendor will be notified within this time frame of any units not delivered in full compliance with the purchase order specifications.

8. **SUBMISSION INFORMATION:** In addition to pricing, Respondents are requested to submit the following information with their response:

8.1. **Brand Name/Model:** Respondents to specify Brand/Model of quoted product. Failure to take exception to specifications or referenced data will require Respondent to furnish specified brand name and model, etc. (Respondent may be required to submit product spec sheets and/ or other documentation prior to award.)

8.2. **Descriptive Literature:** Respondent should provide descriptive literature (product specification sheets) with response submission. Literature to address all salient characteristics, and clearly document that the offered product meets salient characteristics stated in the specifications. (Note: Respondent may be required to submit product specification sheets and/ or other documentation prior to award.)

Example of Metal Blind

GENERAL TERMS AND CONDITIONS

Revised May 2016

(ITEMS BELOW APPLY TO AND BECOME A PART OF THE CONTRACT)

Any Contract awarded as a result of this solicitation will contain the general terms and conditions listed below in this Section. Subcontractors are also obliged to comply with these provisions.

1. DEFINITIONS: As used throughout this solicitation, the following terms have the meaning set forth below. All other terms have the meaning set forth in Webster's II New College Dictionary.

1.1. Contractor: The individual, corporation, company, partnership, firm, or organization that has to furnish the materials and has to perform the work as stated in the solicitation.
1.2. ESBD: The Electronic State Business Daily, which is available online at http://esbd.cpa.state.tx.us.
1.3. Gov't Code: The Texas Government Code.
1.4. Owner: Texas Parks and Wildlife Department, an agency of the State of Texas.
1.5. Party/Parties: Either the TPWD and Respondent separately or collectively.
1.6. Respondent: Any person or vendor who submits a Bid/Proposal/Offer in response to this solicitation.
1.7. Services: Includes the use of labor, materials, facilities, equipment, and any other need that is necessary or incidental to the successful completion of the contract.
1.8. Subcontractor: Any supplier, distributor, Contractor, person, or firm furnishing to the Contractor, materials or services necessary or incidental to the performance of the contract between TPWD and Contractor.
1.9. TAC: The Texas Administrative Code, which is the publication for administrative rules.
1.10. Texas Identification Number: A unique 11-digit number assigned by the Texas Comptroller of Public Accounts. When a payee first contracts with a state agency, that payee must provide either a federal Employer Identification Number (EIN) or a Social Security number (SSN). The Texas Identification Number (TIN) is based on this number. (Note: If respondent does not have a TIN, or does not know their TIN, they may list their EIN or SSN on the "Texas Identification Number" line of the Vendor Information Block of their RFP, RFO, IFB or RFQ response.)
1.11. TPWD: Texas Parks and Wildlife Department acting on behalf of the State of Texas.

2. SPECIFICATIONS:

2.1. The goods/services provided shall be in accordance with the purchase specifications herein. TPWD will decide the answers to all questions that may arise as to the interpretation of the specifications and the quality, or acceptability of goods/services provided. TPWD will decide the rate of progress of the work and the acceptable fulfillment of the goods/service on the part of the Contractor.
2.2. Catalogs, brand names or manufacturer's references are descriptive only, and indicate type and quality desired. Bids/Proposals on brands of like nature and quality will be considered unless advertised under §2155.067, Texas Gov't Code. If offering other than references, response should show manufacturer, brand or trade name, and other description of product offered. If other than brand(s) specified is offered, illustrations and complete description of product offered are requested to be made part of the bid. Failure to take exception to specifications or reference data will require bidder to furnish specified brand names, numbers, etc.
2.3. Unless otherwise specified, items shall be new and unused and of current production.
2.4. Samples, when requested, must be furnished free of expense to the State. If not destroyed in examination, they will be returned to the respondent, on request, at respondent's expense. Each

sample should be marked with respondent's name and address, and requisition number. Do not enclose in or attach response submission to sample.

2.5. The State will not be bound by any oral statement or representation contrary to the written specifications of this Solicitation.

2.6. Manufacturer's standard warranty shall apply unless otherwise stated in the solicitation.

3. AWARD OF A PURCHASE ORDER: Standard Purchase Order Terms and Conditions apply. If a conflict exists between the standard purchase order terms and conditions and specific language in this solicitation, the language in the solicitation shall prevail.

3.1. A response to a solicitation is an offer to contract with TPWD based on the terms, conditions and specifications contained in the solicitation. Responses do not become contracts unless and until they are accepted through an authorized TPWD designee by issuance of a purchase order.

3.2. This procurement will be conducted in accordance with the State Purchasing Act, Title 10, Subtitle D, Chapters 2151 through 2177, of the Texas Gov't Code (TGC) and TPWD rules. Any contract resulting from this procurement shall consist of one (1) document. This document will contain all of the rights and duties of the parties extracted from the relevant terms and conditions of: this solicitation (including its attachments, exhibits, supplements, and addenda); the successful Contractor's response; any TPWD request for a Best and Final Offer; and any successful Contractor's Best and Final Offer, if applicable.

3.3. Best Value – TPWD will be the sole judge of best value. Award will be based on Best Value criteria and may include, but is not limited to:

3.3.1. Best meets the goals and objectives of the solicitation as stated above.

3.3.2. Best meets the quality and reliability of the proposed services.

3.3.3. Effect of the proposed solution on agency productivity.

3.3.4. Provides the most customer focused solution that will best meet the needs of the public.

3.3.5. Experience in successfully providing services in this solicitation.

3.3.6. Past Performance: A Respondent's past performance will be measured based upon pass/fail criteria in compliance with applicable provisions of Gov't Code §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125. Respondents may fail this selection criterion for any of the following conditions:

- A score of less than 90% in the Vendor Performance System,
- Currently under a Corrective Action Plan through the Texas Comptroller of Public Accounts (CPA),
- Having repeated negative Vendor Performance Reports for the same reason,
- Having purchase orders that have been cancelled in the previous 12 months for non-performance (i.e. late delivery, etc.).

3.3.7. Contractor performance information is located on the CPA web site at: http://www.window.state.tx.us/procurement/prog/vendor_performance/.
CPA may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by 34 Texas Administrative Code §20.108), CPA may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of CPA, and any negative findings, as determined by CPA, may result in non-award to the Respondent.

4. UNIT PRICES: Respondents must price per unit shown. Unit prices shall govern in the event of extension errors.

5. FREIGHT: Quote FOB destination, freight prepaid and allowed unless otherwise stated within the specifications.

6. DELIVERY:

6.1. Show number of days required to place material in receiving agency's designated location under normal conditions. Delivery days mean calendar days, unless otherwise specified. Failure to state delivery time obligates respondent to deliver in 14 calendar days. Unrealistic delivery promises may cause solicitation to be disregarded.

6.2. If delay is foreseen, Contractor shall give written notice to the TPWD. Contractor must keep the TPWD advised at all times of status of order.

6.3. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the TPWD to purchase supplies elsewhere and charge full increase, if any, in cost and handling to defaulting Contractor.

6.4. Substitutions: No substitutions permitted without written approval of TPWD.

6.5. Delivery shall be made during normal working hours only, unless prior approval has been obtained from ordering agency. Normal working hours are 8:00 AM until 5:00 PM Monday through Friday except State and National holidays.

7. TESTING AND INSPECTION:

7.1. TPWD may test and inspect goods and services purchased under the Contract to ensure compliance with the specifications of this solicitation and the Contract. TPWD may also test and inspect goods and services before they are purchased under the Contract. Authorized TPWD personnel shall have access to the Respondent's place of business for the purpose of inspecting the goods. To the extent practical, TPWD inspections will not disrupt the Respondent's daily operations. Tests shall be performed on samples submitted with the Bid/Proposal or on samples taken from regular shipments. All costs of testing and inspection shall be borne by the Respondent. In the event the goods tested fail to meet or exceed all conditions and requirements of the solicitation and Contract, the goods will be rejected in whole or in part, at the State's option, and returned to the Respondent or held for disposition at the Respondent's expense. Latent defects may result in cancellation of the Contract at no expense to the state.

7.2. If material fails to meet specifications, the Respondent will be notified by fax / mail or e-mail. The Respondent will have ten (10) working days after receipt of the notification to remove the rejected material from state property. Material will be removed at the Respondent’s expense. Material not removed in the allotted time period will be disposed by TPWD. The Respondent will be charged for all disposable expenses conducted by TPWD.

8. CHANGES: TPWD may at any time, by a written order, make changes within the general scope of this contract, in the definition of services to be performed, and the time (i.e., hours of the day, days of the week, etc.) and place of performance thereof. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the services under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or time of performance or both and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change, provided, however, that TPWD, if it decides that the facts justify such action, may receive and act upon such claims asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Dispute Resolution."

9. INVOICING AND PAYMENT:

9.1. Invoices: In order to receive payment under the Contract, the Respondent must submit an original invoice to TPWD, which will be designated in the purchase order as the "Bill To" address. To be a proper invoice that may be accepted and paid, the invoice must include the following information and/or attachments: (1) Name and address of the Contractor. (2) The Contractor's Texas

Identification Number (TIN). (3) The Contractor's invoice remittance address. (4) The purchase order number authorizing the delivery of products or services. (5) A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Contractor must also include the payment number (e.g., 1 of 36).

9.2. Disputed Invoices: As stated above, the Respondent will receive notice of an error in an invoice submitted for payment by not later than the 21st day after the date the invoice was received by the TPWD. If an invoice dispute is resolved in favor of the Respondent, the Respondent is entitled to receive interest on the unpaid balance of the invoice, beginning on the date the invoice became overdue, pursuant to §2251.021, Gov't Code. If a dispute is resolved in favor of the TPWD, the Respondent shall submit a corrected invoice that must be paid in accordance with §2251.021. The unpaid balance accrues interest if the corrected invoice is not paid by the appropriate date.

9.3. Time and Manner of Payment: Pursuant to Texas Gov't Code Chapter 2251, payment by TPWD is overdue on the 31st day after the later of: (1) the date the TPWD receives the goods under the Contract; (2) the date the performance of the service under the contract is completed; or (3) the date the TPWD receives the invoice for the goods or service. Payment by a political subdivision Customer whose governing body meets only once a month or less frequently is overdue on the 46th day after the later event of: (1) the date the Customer receives the goods under the Contract; (2) the date the performance of the service under the contract is completed; or (3) the date the Customer receives the invoice for the goods or service.

10. PATENTS, TRADEMARKS, OR COPYRIGHTS: Respondent agrees to defend and indemnify the TPWD and State from claims involving infringement or violation of patents, trademarks, copyrights, trade secrets, or other proprietary rights, arising out of the TPWD's or the State's use of any good or service provided by the respondent as a result of this solicitation.

11. PROHIBITION ON LOBBYING: The Respondent shall comply with the provisions of a federal law known generally as the Lobbying Disclosure Act, 2 U.S.C. §1601 et seq. By submitting a Bid/Proposal, the Respondent certifies that it shall not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence any officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. §1352. It also certifies that the Respondent shall disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award by completing and submitting Standard Form LLL.

12. ANTI-TRUST AND ASSIGNMENT OF CLAIMS: The successful Contractor hereby assigns to TPWD, any and all claims for overcharges associated with any contract resulting from this solicitation which arise under the antitrust laws of the United States 15 U.S.C.A., Section 1, et seq. (1973), and which arise under the antitrust laws of the State of Texas, Texas Business and Commercial Code Ann. Sec. 15.01, et seq. (1967).

13. DEBTS AND DELINQUENCIES: As required by §2252.903, Gov't Code, the Respondent agrees that any payments due under the Contract shall be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.

14. DISPUTE RESOLUTION:

14.1. The dispute resolution process provided for in Chapter 2260 of Texas Gov't Code and TPWD regulations shall be used by TPWD and the Respondent to resolve all disputes arising under this contract. The Contractor shall comply with such rules, as revised from time to time.

14.2. The dispute resolution process provided for in Chapter 2260 and TPWD regulations shall be used, as further described herein, to attempt to resolve any claim for breach of contract asserted by the Contractor under the Contract. If the Contractor's claim for breach of Contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Contractor shall submit written notice, as required by Chapter 2260. The notice shall also be given to the individual identified in the Contract

for receipt of notices. Compliance by the Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

14.3. The contested case process provided in Chapter 2260 is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of Contract by TPWD if the Parties are unable to resolve their disputes as described above.

14.4. Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the Contract by TPWD nor any other conduct of any representative of TPWD relating to the Contract shall be considered a waiver of sovereign immunity to suit.

14.6. Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by TPWD, the Contractor shall continue performance and shall not be excused from performance during the period any breach of contract claim or dispute is pending under either of the above processes; however, the Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of §2251.051, Gov't Code, and such suspension of performance is expressly applicable and authorized under that law.

15. FRAUD, WASTE, AND ABUSE: By submitting a Response to this Solicitation, the Respondent represents and warrants that it has read and understood and shall comply with CPA's Anti-Fraud Policy, found at: http://comptroller.texas.gov/ssv/ethics.html, as such Policy currently reads and as it is amended throughout the term of the Contract.

16. NAME CHANGES AND SALES:

16.1. 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.

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

17. CONTRACTOR RESPONSIBILITIES:

17.1. Contractor agrees to comply with all terms and conditions contained in this solicitation and resulting Contract.

17.2. Contractor guarantees services offered will meet or exceed the written specifications identified in this solicitation.

17.3. Permits: Contractor shall be responsible, at the Contractor's expense, for obtaining any and all permits or licenses required by city, county, state, or federal rules, regulations, law, or codes that pertain to the Contract.

17.4. Electrical Items: All electrical items provided by the Contractor to TPWD under the Contract must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC, or NEMA.

17.5. Executive Head: Pursuant to §669.003, Gov't Code, the TPWD may not enter into a contract with a person who employs a current or former Executive Head of a state agency until four years have passed since that person was the executive head of the state agency. By submitting a Proposal, the Respondent certifies that it does not employ any person who was the Executive Head of a state agency in the past four years. If Section 669.003 applies, Respondent shall complete the following information in order for the response submission to be evaluated:

Name of former executive: _____
Name of state agency: _____
Date of separation from state agency: _____
Position with Respondent: _____
Date of employment with Respondent: _____

17.6. Contractor agrees to take precautions necessary to protect person or property against injury or damage, and be responsible for such injury or damage.

17.7. Contractor agrees to comply with Federal law or State Worker's Compensation laws which are applicable to the work required or performed under this contract and to pay or cause to be paid all compensation, medical or hospital bills which may become due or payable thereunder, and to protect and indemnify TPWD from and against any and all liability by reason of injury to employees of Contractor or subcontractor.

17.8. Contractor shall provide all labor, equipment and materials (unless otherwise stated herein) necessary to furnish the goods or perform the service. All employees of the Contractor shall be a minimum of 17 years of age and experienced in the type of work to be performed. Only the Contractor and its employees will be allowed on state property during working hours.

18. TERMINATED CONTRACTS: By submitting a Response, the Respondent certifies that it has not had a contract terminated or been denied the renewal of any contract for non-compliance with policies or regulations of any state or federally funded program within the past five (5) years nor is it currently prohibited from contracting with a governmental agency. If the Respondent does have such a terminated contract, the Respondent shall identify each and provide an explanation for the termination.

19. INDEPENDENT CONTRACTOR: The Contract shall not render the Contractor an employee, officer, or agent of the TPWD for any purpose. The Contractor is and shall remain an independent contractor in relationship to the TPWD. The TPWD shall not be responsible for withholding taxes from payments made under the Contract. The Contractor shall have no claim against the TPWD 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.

20. 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. 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.

21. FORCE MAJEURE: TPWD may grant relief from performance of the contract if the Contractor is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the Contractor. 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 TPWD.

22. PROPRIETARY OR CONFIDENTIAL INFORMATION; TEXAS PUBLIC INFORMATION ACT:

22.1. Any proprietary, trade secret or otherwise confidential information Respondent includes in its Proposal must be clearly labeled as proprietary or confidential information, and Respondent must identify the specific exception to disclosure in the Public Information Act (PIA). Merely making a blanket claim the entire Proposal is protected from disclosure because it contains some proprietary information is not acceptable and shall make the entire Proposal subject to release under the PIA. In order for TPWD to initiate the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the Proposal that are considered by the Respondent 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.

22.2. Information the respondent provides to TPWD in response to this solicitation will be considered public and subject to disclosure under the Texas Public Information Act.

22.3. Contractor is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise accepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state**.** Contractor will make such information not excepted from disclosure available in an electronic format that is accessible to the public unless Contractor receives written approval from TPWD to provide information in a different format, and such approval becomes part of this Contract.

23. RIGHT TO DATA, DOCUMENTS AND COMPUTER SOFTWARE (STATE OWNERSHIP): Any software, research, reports studies, data, photographs, negatives or other documents, drawings or materials prepared by Contractor in the performance of its obligations under this contract shall be the exclusive property of the State of Texas and all such materials shall be delivered to the State by the Contractor upon completion, termination, or cancellation of this contract. Contractor may, at its own expense, keep copies of all its writings for its personal files. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of Contractor's obligations under this contract without the prior written consent of the State; provided, however, that Contractor shall be allowed to use non-confidential materials for writing samples in pursuit of the work. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

24. PUBLIC DISCLOSURE / NEWS RELEASES: No public disclosures or news releases pertaining to this solicitation shall be made without prior written approval of TPWD.

25. CONFIDENTIALITY AND SECURITY: The Contractor should not receive any sensitive or confidential information under the Contract. Any information the Contractor compiles or creates as a result of the Contract must be maintained and protected in accordance with any federal, state, or local laws and regulations that apply. The Contractor shall establish a method to secure the confidentiality of records and other information relating to clients in accordance with applicable federal and state laws, rules, and regulations. The obligations of the Contractor under this Confidentiality and Security Article shall survive this Contract and shall be included in all subcontracts.

26. TERMINATION: This contract shall terminate upon full performance of all requirements contained in this contract, unless otherwise extended or renewed as provided in accordance with the contract terms and conditions.

26.1. Termination for Convenience: TPWD reserves the right to terminate the contract at any time, in whole or in part, without cost or penalty, by providing 30 calendar days' advance written notice if TPWD determines that such termination is in the best interest of the state. In the event of such a termination, the Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TPWD will be liable for payments limited only to the portion of work authorized by TPWD in writing and completed prior to the effective date of cancellation, provided that TPWD shall not be liable for any work performed that is not acceptable to TPWD and/or does not meet contract requirements. All work products produced by the Contractor and paid for by TPWD shall become the property of TPWD and shall be tendered upon request. Termination under this paragraph shall not relieve the vendor of any obligation or liability that has occurred prior to cancellation.

26.2. Termination for Cause/Default: If the Contractor fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any of the terms or conditions of the Contract, the TPWD may, upon written notice of default to the Contractor, terminate all or any part of the Contract after providing an opportunity to cure the default.

26.2.1. Contractor will be responsible for paying damages to TPWD including but not limited to re-procurement costs, and any consequential damages to the State of Texas or TPWD resulting from Contractor's non-performance. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work is significantly changed.

26.3. The rights and remedies of TPWD provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

26.4. TPWD may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless TPWD notifies the Contractor in writing prior to the exercise of such remedy. The Contractor shall remain liable for all covenants and indemnities under the Contract. The Contractor shall be liable for all costs and expenses, including court costs, incurred by TPWD with respect to the enforcement of any of the remedies listed herein.

27. SURVIVAL OF TERMS: Termination of the Contract for any reason shall not release the Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.

28. RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT: In the event that the Contract is terminated for any reason, or upon its expiration, TPWD shall retain ownership of all associated work products and documentation obtained from the Contractor under the Contract, unless otherwise specified.

30. CHANGE IN FEDERAL OR STATE REQUIREMENTS: If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either TPWD or the Contractor cannot reasonably fulfill the Contract and if the Parties cannot agree to an amendment that would enable substantial continuation of the Contract, the Parties shall be discharged from any further obligations under the Contract.

31. **TAXES:** Purchases made for state uses are exempt from Texas State Sales Tax and Federal Excise Tax. An Excise Tax Exemption Certificate will be furnished upon written request to TPWD.

32. **BUY TEXAS:** In accordance with §2155.4441, Gov't Code, the Contractor shall, in performing any services under the Contract, purchase products and materials produced in Texas when they are available at a comparable price and in a comparable period of time to products and materials produced outside Texas.

33. **NOTE TO RESPONDENT:** Any terms and conditions attached to a solicitation will not be considered unless specifically referred to on this solicitation form and may result in disqualification of the response submission. If any respondent takes a 'blanket exception' to the entire solicitation or does not provide proposed alternative language, the respondent's response may be disqualified from further consideration.

34. **ACCESSIBILITY STANDARDS:** Under Texas Government Code, Chapter 2054, Subchapter M, TPWD must procure products that comply with the Accessibility Standards defined in the Texas Administrative Code, 1 TAC 206 and 1 TAC 213, when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. Accordingly, Contractor must provide electronic and information resources and associated product documentation and technical support that comply with these Accessibility Standards (in the form of a Voluntary Product Accessibility Template, or "VPAT") in its response to this RFO. Vendors who do not already have accessibility documentation should complete the form located here: http://www.itic.org/policy/accessibility/. Contractors that claim their products are exempt from accessibility requirements must present that position to TPWD as a question during the question and answer period of the solicitation.

35. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:** Respondent certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and the Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

36. **SYSTEM FOR AWARD MANAGEMENT (SAM):** Prior to awarding state funds for goods and/or services rendered, the State of Texas will conduct a required search of your firm using the Federal System for Award Management (SAM). This is a Federal government maintained database that records and tracks organizations, either known to or suspected of contributing to terrorist organizations. No state funds may be paid to an individual or firm whose name appears on this list. TPWD reserves the right, in its sole discretion, to deny and/or exclude any individual or firm from an award whose name appears on this list.

37. **FEDERAL DISASTER RELIEF FRAUD:** Under Section 2155.006(b) of the Texas Gov't Code, a state agency may not accept a response or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the response or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005.Under Section 2155.006 of the Texas Gov't Code, the respondent certifies that the individual or business entity named in this response is not ineligible to receive the specified contract and acknowledges that any contract resulting from this solicitation may be terminated and payment withheld if this certification is inaccurate.

38. **APPLICABLE LAWS AND VENUE:** The Respondent agrees that the Contract in all respects shall be governed by and construed in accordance with the laws of the State of Texas, except for its provisions regarding conflicts of laws. The Respondent also agrees that the exclusive venue and jurisdiction of any legal action or suit concerning TPWD under this Contract is, and that any such legal action or suit shall be brought, in a court of competent jurisdiction in Travis County, Texas.

39. **APPLICABLE LAWS AND CONFORMING AMENDMENTS:** Contractor must comply with all laws, regulations, requirements and guidelines applicable to a Contractor providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. TPWD reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for TPWD or Contractor's compliance with all applicable State and federal laws, and regulations.

40. **COMPLIANCE WITH LAWS; DEALING WITH PUBLIC SERVANTS:**

39.1. The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants; (iii) §2155.003, Gov't Code, which prohibits the chief clerk or any other employee of the TPWD from having an interest in, or in any manner be connected with, a contract or bid for a purchase of goods or services by an agency of the state or accept from any person to whom a contract has been awarded anything of value or a promise, obligation, or contract for future reward or compensation.

39.2. The Respondent shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract. Except where otherwise expressly required by applicable laws and regulations, TPWD shall not be responsible for monitoring Respondent's compliance with any laws or regulations. If Respondent performs any work knowing or having reason to know that it is contrary to laws or regulations, Respondent shall bear all claims, costs, losses and damages caused by, arising out of or resulting therefrom.

41. **NO WAIVER:** Nothing in this Contract shall be construed as a waiver of 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 State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to 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 estoppels. TPWD does not waive any privileges, rights, defenses, or immunities available to TPWD by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

42. **NO LIABILITY UPON TERMINATION:** If this Contract is terminated for any reason, TPWD and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Contractor may be entitled to the remedies provided in Gov't Code, Chapter 2260.

43. **DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES:** Respondent 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 Respondent 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.

44. FALSE STATEMENTS; BREACH OF REPRESENTATIONS: By signature to its Bid/Proposal, Respondent makes all the representations, warranties, guarantees, certifications and affirmations included in the RFP. If Respondent signed its Bid/Proposal with a false statement or signs the Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in the Contract, Contractor shall be in default under this Contract and TPWD may terminate or void the Contract for cause and pursue other remedies available to TPWD under this Contract and applicable law.

45. ACTUAL AND PERCEIVED CONFLICTS: By submitting a Bid/Proposal, the Respondent represents and warrants that neither it nor its employees and subcontractors have an actual or potential conflict of interest in entering a Contract with TPWD. The Respondent also represents and warrants that entering a Contract with TPWD will not create the appearance of impropriety. In its Bid/Proposal, the Respondent shall disclose any existing or potential conflict of interest that it might have in contracting with TPWD. The TPWD will decide, in its sole discretion, whether an actual or perceived conflict should result in Bid/Proposal disqualification or Contract termination.

46. CURRENT AND FORMER TPWD EMPLOYEES:

45.1. In addition to the disclosures required above, the Respondent shall also disclose any of its personnel who are current or former officers or employees of the TPWD or who are related, within the third degree by consanguinity (as defined by §573.023, Gov't Code) or within the second degree by affinity (as defined by §573.025, Gov't Code), to any current or former officers or employees of the TPWD.

45.2. Respondents must comply with all applicable Texas and federal laws and regulations relating to the hiring of former state employees (see e.g., Texas Gov't Code Chapters 572 and 573). Such "revolving door" provisions generally restrict former agency heads from communicating with or appearing before the agency on certain matters for two years after leaving the agency. The revolving door provisions also restrict some former employees from representing clients on matters that the employee participated in during state service or matters that were in the employees' official responsibility or from working for certain entities after their state employment. Respondent, by signing this solicitation, certifies that it has complied with all applicable laws and regulations regarding former state employees.

47. INSURANCE AND OTHER SECURITY:

46.1. Respondent represents and warrants that it will, within ten (10) business days of executing this agreement, provide TPWD with current certificates of insurance or other proof acceptable to TPWD of the required insurance coverage.

46.2. The Respondent represents and warrants that it will obtain and maintain for the term of the Contract all insurance coverage required under this solicitation. Contractor's failure to obtain or maintain the specified coverage during the term of the agreement will be considered a breach of the Contract.

46.3. The Respondent represents and warrants that all of the above coverage will be obtained from companies that are licensed in the state of Texas, have an "A" rating from Best, and are authorized to provide the coverage. The Respondent shall furnish proof of insurance upon request of TPWD.

48. SEVERABILITY: If any provision of the 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 continue in full force and effect.

49. **HISTORICALLY UNDERUTILIZED BUSINESSES (HUB):** Respondent represents and warrants that it shall comply with the Historically Underutilized Business requirements pursuant to Gov't Code, Chapter 2261.

50. **AMENDMENTS:** Except as provided in *Section III, Paragraph 8* of this Contract, this Contract may be amended only upon written agreement between TPWD and Contractor; however, any amendment of this Contract that conflicts with the laws of the State of Texas shall be void ab initio. The Contractor shall not be entitled to payment for any additional services, work, or products that are not authorized by a properly executed Contract amendment.

51. **CHANGE MANAGEMENT:** The Respondent agrees that the key personnel assigned to the Contract shall remain available for the entirety of the project throughout the term of the Contract as long as that individual is employed by the Respondent or unless TPWD agrees to a change in the key personnel.

52. **FEDERAL, STATE AND LOCAL REQUIREMENTS:** Respondent 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. Respondent is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation insurance coverage. Respondent shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Respondent or its employees for any Unemployment or Workers' 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 its omission or breach of this Section.**

53. **INDEMNIFICATION AND LIABILITY:**

52.1. **Acts or Omissions: CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, TPWD, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TPWD AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

52.2. **Infringements:**

52.2.1. CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, TPWD, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND TPWD AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

52.2.2. Contractor shall have no liability under this Section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Contractor's written approval, (iii) any modifications made to the product by the Contractor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

52.2.3. If Contractor becomes aware of an actual or potential claim, or Customer provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against Customer, shall), at Contractor's sole option and expense; (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

52.3. **Compensation/Unemployment Insurance – Including Indemnity:**

52.3.1. CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TPWD AND/OR THE STATE SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/ OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

52.3.2. CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS TPWD, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTORSHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TPWD AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

54. CONTRACTOR LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY: The Contractor shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Contractor shall notify the TPWD Contract Manager in writing of any such damage within one (1) calendar day.

55. FELONY CRIMINAL CONVICTIONS: Respondent represents and warrants that Contractor has not and Respondent's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Respondent has fully advised TPWD as to the facts and circumstances surrounding the conviction.

56. IMMIGRATION: The Respondent 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.

57. SUBCONTRACTORS: Subcontractors providing service under the contract shall meet the same requirements and level of experience as required of the Contractor. No subcontract under the purchase order shall relieve the primary Contractor of responsibility for the service. If the Contractor uses a subcontractor for any or all of the work required, the following conditions shall apply under the listed circumstances:

56.1. Respondents planning to subcontract all or a portion of the work shall identify the proposed subcontractors.
56.2. Subcontracting shall be at the Contractor's expense.
56.3. TPWD retains the right to check subcontractor's background and make determination to approve or reject the use of submitted subcontractors.
56.4. The Contractor shall be the only contact for TPWD and subcontractors. Respondent shall list a designated point of contact for all TPWD and subcontractor inquiries.
56.5. The Contractor, in subcontracting for any performances specified herein, expressly understands and acknowledges that in entering into such subcontract(s), the TPWD is in no manner liable to any subcontractor(s) of the Contractor. In no event shall this provision relieve the Contractor of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all terms of this solicitation and Contract. The Contractor shall manage all quality and performance, project management, and schedules for subcontractors. The Contractor shall be held solely responsible and accountable for the completion of all work for which the Contractor has subcontracted.

58. PROTEST PROCEDURES: Any actual or prospective Respondent who is aggrieved in connection with this solicitation, evaluation, or award of any contract resulting from this solicitation may formally protest as provided in TPWD's rules at TAC, Title 31, Part 2, Chapter 51, Subchapter L, Rule 51.350.

59. NON-APPROPRIATION OF FUNDS: Any contract resulting from this solicitation 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.

60. CIVIL RIGHTS: The Respondent 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 Respondent 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."

61. CONFLICT OF INTEREST: Under §2155.003, Gov't Code, a TPWD employee may not have an interest in, or in any manner be connected with a contract or response for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for

future reward or compensation. Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Section 1.2 of the State of Texas Procurement Manual, which outlines the ethical standards required of public purchasers, employees, and respondents who interact with public purchasers in the conduct of state business, and with any opinions of or rules adopted by the Texas Ethics Commission. Entities who are interested in seeking business opportunities with the State must be mindful of these restrictions when interacting with public purchasers of TPWD or purchasers of other state agencies.

62. LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS: Contractor shall have no authority to act for or on behalf of TPWD or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or TPWD.

63. DRUG-FREE WORKPLACE: The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988.

64. NOTICES: Any written notices required under this Contract will be by either hand delivery to Contractor's office address or by U.S. Mail, certified, return receipt requested, to TPWD, Attn: Purchasing, 4200 Smith School Road, Austin, TX 78744. Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this Section by written notification to the other party.

65. ORDER OF PRECEDENCE: In the case of conflicts between the contract documents, the following shall control in this order of priority:

64.1. Signed Contract/Purchase Order (or Notice of Award)
64.2. Attachments to the Contract/Purchase Order (or Notice of Award)
64.3. The Solicitation (e.g., RFP, IFB)
64.4. Contractor's Response to the Solicitation and Contractor's Best and Final Offer, if applicable

66. BUSINESS OWNERSHIP:

65.1. Pursuant to Texas Family Code, title 5, Subtitle D, Section 231.006(d), regarding child support, the Respondent certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any bidder subject to Section 231.006 must include names and Social security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award.

65.2. RESPONDENT MUST PROVIDE, IN THE SPACE BELOW, THE NAME AND SOCIAL SECURITY NUMBER OF AN INDIVIDUAL OWNER, A SOLE PROPRIETOR AND ALL PARTNERS, SHAREHOLDERS, OR OWNERS WITH AN OWNERSHIP INTEREST OF AT LEAST TWENTY-FIVE (25) PERCENT OF THE BUSINESS ENTITY ENTERING INTO THIS CONTRACT. BIDDERS THAT HAVE PRE-REGISTERED THIS INFORMATION ON THE CPA/TPASS CENTRALIZED MASTER BIDDERS LIST HAVE SATISFIED THIS REQUIREMENT. IF NOT PRE-REGISTERED, COMPLETE THE FOLLOWING:

DO NOT ENTER "CORPORATION", "PUBLIC CORPORATION", "PUBLICLY TRADED COMPANY" OR OTHER NON-RESPONSIVE ANSWERS. IF NO ONE PERSON CONTROLS 25% OR MORE OF THE ORGANIZATION, ENTER "NONE".

NAME _____ SSN _____ % _____

NAME _____ SSN _____ % _____

NAME _____ SSN _____ % _____

NAME _____ SSN _____ % _____

67. **NO ASSIGNMENT BY CONTRACTOR:** The awarded 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 TPWD.

68. **COMPLIANCE WITH OTHER LAW:** In the execution of this Contract, Contractor shall comply with all applicable federal, state, and local laws, including laws governing labor, equal opportunity, safety, and environmental protection. Contractor shall make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations which in any manner affect performance under this Contract.

69. **ENVIRONMENTAL PROTECTION:** The Respondent shall be in compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 et seq.) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251 et seq.).

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

70.1. By entering into this Contract, the Contractor certifies and ensures 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:

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

70.2. The Contractor shall provide, upon request of TPWD, 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.

70.3. If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the state must undertake to replace the terminated Contract.