



1. **INTRODUCTION:** The Texas Parks and Wildlife Department (TPWD) is soliciting bids for the installation of level indicators on hydro tanks at water plants #1 and # 2, replace chlorine gas with liquid chlorine at water plants #1 and #2 at Tyler State Park located in Smith County, Texas per the specifications provided herein.
2. **TERM OF CONTRACT:** All Work shall be completed within one hundred eighty (180) calendar days commencing on the date specified in the Notice to Proceed.
  - 2.1. This contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, legislative budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruption of current appropriations, provisions of the Termination Article in Attachments A - General Terms and Conditions for Minor Repair shall apply.
  - 2.2. The Purchase Order (Contract) may be extended by TPWD because of changes ordered in the work or due to unforeseeable delays not within the control of or arising from the fault of either party. Claims or extensions of time must be made in writing and supported by sufficient written evidence to justify the claim. Claims for extensions of time shall be granted by written Change Order.
  - 2.3. The contract shall terminate upon full performance of all requirements contained in this contract, unless otherwise extended, as provided in accordance with the contract terms and conditions.
3. **MANDATORY SITE VISIT:** A site visit will be held on November 18, 2022, at 9:00 AM at Tyler State Park 789 Park Road 16, Tyler, Texas 75706 Attendance at the scheduled site visit is mandatory. Only those Bidders whose names and represented firm are on the site visit sign-in sheet shall be allowed to submit a response. TPWD's Point of Contact for this Site Visit is Brad Hood, 903-566-0535, [brad.hood@tpwd.texas.gov](mailto:brad.hood@tpwd.texas.gov).
4. **STATEMENT OF WORK:** Contractor shall provide all labor, materials, equipment, tools, bonding and insurance, and supervision necessary to perform the installation of level indicator on hydro tanks at water plants # 1 & #2, replace chlorine gas with liquid chlorine at water plants #1 and # 2 as specified in Attachment C – Drawings and Specifications. All work not specified and/or not shown on the drawings, but which is necessary for the completion and/or functioning and operation of the project, shall be understood and implied as part of the contract to be performed by the Contractor for the contract price. Such work shall be executed by the Contractor in the same manner and with the same character of material as other portions of the contract without extra compensation.
  - 4.1. **Service Requirement:** Services shall include, but are not limited to, the requirements contained in this IFB. Services set forth that contain the words “must” or “shall” are mandatory and must be provided as specified with no alteration, modification, or exception. Services set forth that contain the words “may” or “can” allow Bidders to offer alternatives to the manner in which the commodities/services are provided. Awarded bidder must meet IFB criteria listed under Section 5 Minimum Qualifications. The requested services and corresponding deliverables are as follows:
    - 4.1.1. Furnish all labor, tools, equipment, materials and incidentals to [insert requirements].
    - 4.1.2. Jobsite must be cleaned daily so as not to disrupt employees or normal operations of affected area(s).
    - 4.1.3. Upon completion of the work, area will be cleaned and all debris accumulated will be removed from the jobsite.
    - 4.1.4. Upon final acceptance of the work by TPWD, the Contractor shall furnish to TPWD the maximum available manufacturer's warranty on all installed products. Material and labor on installation shall be warranted by Contractor for a period of one-year.
    - 4.1.5. All work shall be performed outside of regular business hours. Regular business hours are 8:00 AM – 5:00 PM, Monday through Friday.
  - 4.2. Work Schedule: Contractor shall begin work as specified in the Notice to Proceed with all services to be completed within one hundred eighty (180) days from Notice to Proceed. A Contractor's ability to meet this project schedule may be a factor in determining award.
5. **MINIMUM QUALIFICATIONS:** Bidders shall complete and submit Attachment D – Contractor's Qualifications Form. Failure to provide Attachment D – Contractor's Qualifications Form will result in disqualification of any bid that results from this IFB. TPWD may make such investigations as necessary to determine the ability of the Contractor to perform the work and reserves the right to reject any bid if the evidence submitted and/or obtained through investigation fails to satisfy TPWD that the Contractor is properly qualified to carry out the obligations of the Agreement.

Contractor must demonstrate at least five (5) years' experience and a minimum of at least three (3) references for jobs completed within the last five (5) years performing services of similar size, scope and complexity to that described in this IFB in order to be considered for award. Include a project description, contact names, position, company name, telephone number and email address for each reference listed.

5.1. References must be verifiable by phone or email within ten (10) business days of bid evaluation.

**Note:** A start up business is defined as a new company that has no previous operational history or expertise in the relevant business and is not affiliated with a company that has that history of expertise.

## **6. CONTRACTOR REQUIREMENTS:**

- 6.1. Contractor agrees to conduct all services under the contract by and through appropriate communications as required by TPWD.
- 6.2. Contractor understands and agrees that work, installation or any other service performed without the prior written approval of TPWD is work outside the scope of this contract and shall be performed exclusively at Contractor's risk and own expense.
- 6.3. Contractor is responsible for all materials and equipment stored at the work site.
- 6.4. Contractor shall keep the premises clean on a continual basis and is responsible for the prompt removal of all debris, litter, waste materials, and rubbish regularly throughout the project.
- 6.5. Contractor shall be solely responsible for the safe operation of all equipment used and for the safety of all personnel employed by or under contract to the Contractor.
- 6.6. Contractor shall be solely responsible for any damage attributable to Contractor's operation. Contractor, at its own expense, shall repair any such damage immediately. The repair work is subject to acceptance by TPWD.
- 6.7. Contractor shall provide all labor, equipment, supervision and any other necessary incidentals and materials to complete the project.
- 6.8. Contractor shall be solely responsible for maintaining safety at all work sites. Contractor shall take all reasonable steps to ensure safety for both workers and the public, including traffic control.
- 6.9. Contractor may be permitted to leave heavy equipment onsite per TPWD staff's direction. TPWD will not be responsible for contractor equipment left onsite.
- 6.10. Unless otherwise specified herein, the Contractor shall furnish and pay for all labor, materials, equipment, tools, construction equipment, and machinery, water, heat, utilities (unless otherwise specified in the Specifications), transportation, and other facilities and services necessary for the proper execution and completion of this contract.

## **7. TPWD RESPONSIBILITIES:**

- 7.1. TPWD will designate a Project Manager for this contract who will serve as the point of contact between TPWD and Contractor. The instructions of the Project Manager and/or the Project Manager's designated representative (hereinafter collectively referred to as the "TPWD PM") are to be strictly and promptly followed by Contractor at all times. The TPWD PM is to have free access to Contractor's supplies, equipment, and work product at all times for inspection and audit.
- 7.2. The TPWD PM will decide any and all questions that may arise as to the quality and acceptability of work performed, and as to the manner of performance and rate of progress of the work. The TPWD PM will determine the amount of work performed and materials furnished which are to be paid under the contract.
- 7.3. Failure of the TPWD PM during the progress of the work to: (i) discover or reject unacceptable work; (ii) discover work not in accordance with the contract; or, (iii) failure to exercise any remedies in connection therewith, shall not be deemed an acceptance thereof, nor a waiver, of TPWD's right to full performance of the contract.
- 7.4. TPWD will furnish no material, labor, equipment, or facilities unless otherwise provided for in this contract.
- 7.5. TPWD will monitor vendor performance. Failure to provide services in accordance with requirements specified herein and the resulting contract(s) and adherence to the TPWD Attachment A – General Terms and Conditions for Minor Repair may be considered, by TPWD, as unsatisfactory performance by the contractor. An unsatisfactory performance may result in a negative vendor performance report, or cancellation of the contract or both.

8. **SAFETY:** All Contractors and subcontractors conducting work for TPWD shall abide by all Occupational Safety and Health Administration (OSHA) rules and regulations provided by the Department of Labor, OSHA, Code of Federal Regulations, Chapter 29. Employees of Contractor and subcontractors shall be trained in accordance with Chapter 29, OSHA Regulations.

8.1. **Emergency:** In any emergency affecting the safety of persons or property, the Contractor shall act, at their discretion, to prevent threatening damage, injury or loss and notify TPWD within forty-eight (48) hours if Contractor believes that any significant changes in the work or variations from the contract have been caused by Contractor's emergency response. Any additional compensation or extension of time claimed by the Contractor resulting from emergency work shall be considered in accordance with Attachment A - General Terms and Conditions for Minor Repair, Para. 9.

9. **ADDITIONAL SERVICES:** Where found to be in the best interest of TPWD, this contract may be amended in writing to provide for additional services, provided that such additional services are within the original scope and intent of the contract. In such cases, the contractor shall provide a written quotation for performing the additional work. TPWD contracting section will execute a Change Order (amendment) for additional services, no additional services shall be performed without a fully executed amendment to the contract.

10. **QUANTITIES:** Quantities listed are projected order quantities. TPWD reserves the right to increase or decrease quantities prior to award depending on bid results and budget constraints. Unless this solicitation document states otherwise, the resulting contract award does not guarantee volume or commitment of funds. TPWD will only pay for actual goods received or services performed.

11. **INSURANCE:** Upon acceptance of the bid that is considered to provide the best value to the State of Texas, the following insurance requirements shall be met by providing a current Certificate of Insurance and corresponding policy endorsements.

11.1. Contractor shall procure and maintain during the entire period of their performance under this contract the following minimum insurance.

Type of Insurance	Each Occurrence/Aggregate
<b>Workers Compensation</b>	Statutory
<b>Employer's Liability</b> Bodily Injury by Accident Bodily Injury by Disease Bodily Injury by Disease	\$1,000,000 Ea. Accident \$1,000,000 Ea. Employee \$1,000,000 Policy Limit
<b>Commercial General Liability</b> General Aggregate Applies Per Project	\$1,000,000 Bodily Injury & Property Damage – Each Occurrence \$2,000,000 Aggregate Limit \$5,000 Medical Expense Each Person \$1,000,000 Personal Injury & Advertising Liability \$2,000,000 Products / Completed Operations Aggregate Limit
<b>Automobile Liability</b> All Owned, Hired and Non-Owned Vehicles	\$1,000,000 Combined Single Limit

**Note:** *Workers' Compensation is required by an "employer" which is defined as "a person who employs one or more employees." If Bidder has no employees, such insurance is not required. If Bidder claims they have no employees, TPWD will require a sworn statement to that fact.*

11.2. Policy must contain an additional insured endorsement: *The State of Texas, acting through Texas Parks and Wildlife Department and its officers and employees, is listed as an additional insured and loss payee.*

11.3. Prior to the commencement of the job and not later than ten (10) calendar days following award, the Contractor shall furnish to TPWD, for approval, a certificate of insurance as proof that the required insurance is in full force and effect.

**The certificate of insurance shall be sent to: Daniel Vasquez / Infrastructure Division, Texas Parks & Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; or may be emailed to [daniel.vasquez@tpwd.texas.gov](mailto:daniel.vasquez@tpwd.texas.gov).**

**12. SCHEDULE OF EVENTS:** TPWD reserves the right to change the dates shown below.

<u>EVENT</u>	<u>DATE</u>
IFB Issue Date	November 10, 2022
Mandatory Site Visit:	9:00 AM, November 18, 2022
Deadline for Submission of Questions	5:00 PM, November 28, 2022
Deadline for Submission of Bids	2:00 PM, December 13, 2022

**13. INQUIRIES:** All inquiries shall be submitted in writing by email to TPWD's point of contact.

- 13.1. **CONTACT:** All requests, questions, or other communications about this Solicitation shall be made in writing to TPWD's Infrastructure Division, addressed to the following person:  
 Daniel Vasquez, Contract Manager  
 Texas Parks & Wildlife Department  
 4200 Smith School Road, Austin, Texas 78744  
 Phone: 512-389-4347  
 Email: [daniel.vasquez@tpwd.texas.gov](mailto:daniel.vasquez@tpwd.texas.gov)
- 13.2. **CLARIFICATIONS:** TPWD will allow written requests for clarification of this Solicitation. Questions may be e-mailed to the point-of-contact listed above. Questions should be submitted in the following format: a) Reference the Solicitation number; b) Reference the Section number, Page number, Paragraph number, and Text of passage being questioned; and c) Question.
- 13.3. **PROHIBITED COMMUNICATIONS:** Upon issuance of this solicitation, TPWD, its representative(s), or partners will not answer questions or otherwise discuss the contents of this Solicitation with any potential Bidder or their representative(s), except for the written inquires described above. Attempts to ask questions by phone or in person will not be allowed or recognized as valid. **Failure to observe this restriction may disqualify Bidder.** Bidder shall rely only on written statements issued through or by TPWD's contracting staff. This restriction does not preclude discussions between affected parties for the purposes of conducting business unrelated to this solicitation.

**14. ADDENDA:** TPWD reserves the right to issue addenda at any time prior to the bid opening. Receipt of all addenda to this IFB shall be acknowledged by returning a signed copy of the signature page of each addendum with the response. Bidder's failure to acknowledge receipt of addenda may result in rejection of its bid.

- 14.1. Any amendment to this procurement solicitation will be posted as an addendum on the Electronic State Business Daily (ESBD). It is the responsibility of interested parties to periodically check the ESBD for updates to the solicitation prior to submitting proposals. Bidder's failure to periodically check the ESBD will in no way release the selected vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the IFB.

**15. BID BOND:** Bids exceeding \$25,000 shall be accompanied by a bid security in the form of an original bid bond, certified and/or cashier's check (on a solvent bank in the State of Texas) drawn to the order of the Texas Parks and Wildlife Department, in the sum of not less than five percent (5%) of the total amount of the bid. No other form of security will be accepted.

- 15.1. Should the Contractor fail, neglect or refuse to begin performance of the contract after receiving the award, said security will be forfeited to TPWD. Performance shall be considered begun upon acknowledgement of the contract award and the furnishing of all required security bonds and insurance coverage.
- 15.2. If bidder is submitting its bid by email, a copy of the bidder's bid security must be a part of the emailed bid. Bidder is required to submit the original bid security to TPWD within two (2) business days of submitted emailed bid.
- 15.3. If TPWD has not made an award within ninety (90) calendar days after responses are opened, Bidders may withdraw their responses without prejudice; however, Bidders have the option to extend the time in which their bids will be honored after this ninety (90) day period.

**16. PAYMENT AND PERFORMANCE BONDS:** If the total contract price exceeds \$25,000.00, a Payment Bond must be furnished by the successful Contractor. If the total contract price exceeds \$100,000.00 a Payment Bond and a Performance Bond must be furnished by the successful Contractor. All bonds submitted shall be the original form bearing original signatures and seal using Attachment F – Bond Forms.

When required, the payment and performance bonds will be due from the successful Contractor within ten (10) business days from Notice of Award.

**17. SUBCONTRACTORS:** Subcontractors providing services under the contract shall meet the same requirements and level of experience as required of the Bidder. No subcontract under the contract 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:

- 17.1. Subcontracting shall be at the Contractor’s expense.
- 17.2. TPWD retains the right to check subcontractor’s background and make determination to approve or reject the use of submitted subcontractors.
- 17.3. The Contractor shall be the only contact for TPWD and subcontractors. Contractor shall list a designated point of contact for all TPWD and subcontractor inquiries.

**18. GENERAL AND CRIMINAL BACKGROUND CHECKS:**

- 18.1. Contractor represents and warrants that Contractor and Contractor’s employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised TPWD as to the facts and circumstances surrounding the conviction.
- 18.2. Contractor’s employees and subcontractors that will complete any work on-site at a state-owned property may be subject to a criminal background check. If requested by TPWD, a complete criminal background check shall be completed before any employee performs services at the site and may be requested at any time thereafter.

**19. BID RESPONSE INSTRUCTIONS:**

**19.1. Bid Submission:**

- 19.1.1. Submission Deadline: All bids shall be received and time stamped at TPWD prior to 2:00 PM Central Time on the “Bid Opening” date specified on the IFB Cover Page (page 1). Late bids will not be considered under any circumstance and will be returned unreviewed.
- 19.1.2. General Format: Bidder shall submit bid response, signed dated and completed.
- 19.1.3. Bid Delivery: Bids may be submitted to TPWD via email to [Contracting@tpwd.texas.gov](mailto:Contracting@tpwd.texas.gov), or via mail or hand-delivery. **Bidders are advised that TPWD’s Headquarters Complex does not open until 8:00 A.M. Bidders should plan their delivery method accordingly.**

U. S. Postal Services	Overnight/Express Mail	Hand-Delivery
Texas Parks & Wildlife Dept. Infrastructure Division 4200 Smith School Road Austin, Texas 78744 Hours: 8:00 AM to 5:00 PM (CT)	Texas Parks & Wildlife Dept. Mail Room Infrastructure Division 4200 Smith School Road Austin, Texas 78744 Hours: 8:00 AM to 5:00 PM (CT)	Texas Parks & Wildlife Dept. Security Desk 4200 Smith School Road Austin, Texas 78744 Hours: 8:00 AM to 5:00 PM (CT)

- 19.1.4. Bids returned by mail or hand delivery should be placed in a sealed envelope, box, or container clearly marked on the outside as an "official bid" and shall include the following information:  
Project Number: MR10991 MR10662  
Project Description: Install level indicator on Hydro Tanks at Water Plants #1 and #2, Replace Chlorine gas with Liquid Chlorine at water plants #1 and #2  
Project Location: Tyler State Park  
Bid Opening Date and Time December 13, 2022 no later than 2:00 PM (CT)

- 19.1.5. Bidders are responsible for all costs of bid preparation.

**20. COMPENSATION AND FEES:** Bidders shall provide an Attachment E – Bid Schedule with their bid. Bidders may not add qualifications, conditions or exceptions to the provided specifications or otherwise modify the attachment in any way. Any such modifications will not be considered for evaluation and may be cause for rejection of the bid, at the full and sole discretion of TPWD.

**21. TPWD TERMS AND CONDITIONS (Attachment A):** Any bids not accepting the attached General Terms and Conditions for Minor Repair may be disqualified.

**22. EVALUATION AND AWARD:**

- 22.1. An award will be made on an all or none basis. Only responses submitted by the bid opening, with required submittal documents and meeting qualifications will be considered. Failure to submit the required information may be cause for rejection of the bid response. TPWD reserves the right to waive informalities and minor irregularities in bids received.
- 22.2. TPWD reserves the right to solicit any service that would normally be performed using this Contract if it deems that by doing so would be in the best interest of the State of Texas.
- 22.3. In evaluating bids to determine the best value for the State of Texas, TPWD may consider information related to past contract performance of a Bidder including, but not limited to the Comptroller of Public Accounts (CPA) Vendor Performance Tracking System (VPTS) available at <http://www.txsmartbuy.com/vpts>. Prior work performance with TPWD and other State agencies or governmental entities which are familiar with a Bidder's performance, depending on problems encountered, may be grounds for disqualification. In addition, Bidders involved in litigation with TPWD or another State agency may be disqualified.
- 22.4. TPWD reserves the right to award or not award the Contract if no responses are deemed acceptable and may re-solicit as determined necessary in the best interest of the State of Texas.
- 22.5. TPWD reserves the right to consider Bidder qualifications, equipment, facility, references; conduct studies and other investigations as necessary to evaluate any response; request additional relevant information; disqualify bid based on unsatisfactory reference checks, reports and records of service.
- 22.6. Award: Determination will be based on responsiveness and responsibility of the bidder and price or other factors. Other factors for consideration may include lowest price, ability, qualifications and experience, delivery/service schedule and past performance. Base bid and alternate bid items may be considered in any combination or none at all. TPWD does not obligate itself to accept an alternate or to accept alternates in any order listed unless otherwise stipulated elsewhere in the Invitation for Bids. TPWD will award a Contract to the Bidder whose bid is considered to provide the Best Value to the State of Texas as defined by Texas Government Code, Section 2155.074 and in accordance with Attachment A - General Terms and Conditions for Minor Repair, Para. 3.

**23. DELIVERY AND ACCEPTANCE:**

- 23.1. Project Completion Time, Liquidated Damages: Contractor must perform work within the timeframe agreed upon by TPWD and the Contractor prior to beginning work. If Contractor cannot perform the work within the timeframe stated, Contractor may be subject to liquidated damages of up to Five Hundred and No/100 Dollars (\$500.00) per week as a reasonable estimate of just compensation to TPWD for failure of the Contractor to complete the work within the required timeframe. Liquidated damages will be deducted from the money due or to become due to the Contractor.
- 23.2. Project Delays: If a delay is foreseen, Contractor shall give written notice to TPWD. Default in promised Completion without accepted reasons or failure to meet specifications authorizes TPWD to purchase

services of this contract elsewhere and charge any increased costs for the services, including the cost of re-soliciting, to the Contractor. 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.

- 23.3. Acceptance: All services performed will be subject to acceptance inspection upon completion. Acceptance inspection will not take more than five (5) working days, weather permitting. Contractor will be notified within this time frame of any work not delivered in full compliance with the contract.

#### 24. WAGE RATES:

- 24.1. Duty to Pay Prevailing Wage Rates. Pursuant to Tex. Gov't Code § 2258, Contractor shall not pay less than the wage scale of the various classes of labor as shown on the prevailing wage schedule provided by TPWD in Attachment B – Wage Rates. The specified wage rates are minimum rates only. TPWD is not bound to pay any claims for additional compensation made by any Contractor because the Contractor pays wages in excess of the applicable minimum rate contained in the Contract. The prevailing wage schedule is not a representation that qualified labor adequate to perform the Work is available locally at the prevailing wage rates.
- 24.2. Penalty for Violation: Contractor, and any Subcontractor, will pay to the State a penalty of Sixty and No/100 Dollars (\$60) for each worker employed for each day, or portion thereof, that the worker is paid less than the wage rates stipulated in the prevailing wage schedule

**25. UNSATISFACTORY PERFORMANCE:** If Contractor fails to maintain an acceptable level of service, or if in the judgement of TPWD, Contractor's methods are not adequate to ensure completion of all required services, the TPWD PM, may direct Contractor, at no additional cost to TPWD, to revise work schedules or manpower/man-hours to ensure completion of services. Failure to perform any of the obligations in the contract may be considered nonperformance of services and may result in informal corrective action, formal corrective action, withholding of payment and/or termination of the contract.

- 25.1. TPWD may consider the following levels of performance by Contractor as unsatisfactory. An unsatisfactory performance determination may include, but is not limited to the following:
- (i) Leaving site in a messy or unsafe condition;
  - (ii) Improper installation of materials.
- 25.2. Work rejected by TPWD shall be corrected at the expense of the Contractor.

**26. INVOICING AND PAYMENT:** The following procedures apply to invoicing and payment in addition to those listed in the *Attachment A - General Terms and Conditions for Minor Repair, Para. 9:*

- 26.1. Contractor to submit invoice(s) to:  
Texas Parks & Wildlife, Accounts Payable,  
4200 Smith School Road, Austin, Texas 78744

With a Copy to:  
Daniel Vasquez  
Texas Parks & Wildlife, Infrastructure Division,  
4200 Smith School Road, Austin, Texas 78744  
[daniel.vasquez@tpwd.texas.gov](mailto:daniel.vasquez@tpwd.texas.gov)

- 26.2. Invoices must show:
- 26.2.1. Name of Contractor exactly as shown on the contract, Texas Payee Identification Number (PIN), and correct "Remit to" address
  - 26.2.2. Name of receiving entity
  - 26.2.3. Contract/purchase order number
  - 26.2.4. Description, quantity, unit of measure, unit price, extended price of each item
  - 26.2.5. Total price
  - 26.2.6. Discount, if applicable, extended and deducted to arrive at a NET TOTAL for invoice
  - 26.2.7. Attach supporting documentation, if required
- 26.3. Payment:
- 26.3.1. Contractor will be paid for the services performed as invoiced. If another payment mechanism

is agreed to by the parties, then contractor will be paid in accordance with the agreement approved by the parties.

- 26.3.2. Payment normally will be made to the Contractor within 30 calendar days after receipt of a properly prepared invoice or the receipt of and the acceptance of services ordered, whichever is later. State agencies are required by state law to pay properly submitted invoices within 30 calendar days or the Contractor may charge a late payment fee established by law.
- 26.3.3. Payments for services purchased with state appropriated funds will be made through state warrants issued by CPA. Payments by qualified ordering entities will be made through the entities local payment system.

Electronic payment may be available through some ordering entities. Contact Accounts Payable at 512-389-4833 or by email at [accounts.payable@tpwd.texas.gov](mailto:accounts.payable@tpwd.texas.gov) for additional information.

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**Attachment A-General Terms and Conditions for Minor Repair**

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**GENERAL TERMS AND CONDITIONS FOR MINOR REPAIR**  
**JANUARY 2022**  
 (ITEMS BELOW APPLY TO AND BECOME A PART OF THE CONTRACT)

Any Contract (Purchase Order) awarded as a result of this solicitation will contain the general terms and conditions listed below in this Section. Subcontractors, if utilized, 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.
  - 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.
  - ESBD: The Electronic State Business Daily, which is available online at <http://www.txsmartbuy.com/esbd>.
  - Gov't Code: The Texas Government Code.
  - Owner: The Texas Parks and Wildlife Department (TPWD), an agency of the State of Texas.
  - Party/Parties: Either the TPWD and Respondent separately or collectively.
  - Respondent: Any person or vendor who submits a Bid/Proposal/Offer in response to this solicitation.
  - 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.
  - 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.
  - TAC: The Texas Administrative Code, which is the publication for administrative rules.
  - 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.)
  - 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 Texas Gov't Code §2155.067. If the Respondent is offering brands other than the references, response should show manufacturer, brand or trade name, and other description of product offered. If Respondent is offering brand(s) other than brand(s) specified, 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 Respondent 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:
      - The vendor has a score less than C or Legacy Unsatisfactory 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: [www.txsmartbuy.com/vpts](http://www.txsmartbuy.com/vpts). TPWD 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 §20.115), TPWD 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 TPWD, and any negative findings, as determined by TPWD, 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 TPWD'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 prior written approval of TPWD.
    - 6.5. Delivery shall be made during normal working hours only, unless prior approval has been obtained from TPWD. 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 services provided 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 free access to the Contractor's supplies, equipment, and work product at all times for inspection and audit. Contractor shall provide TPWD with all necessary assistance during inspections and/or audits. The TPWD Project Manager or designee, will decide any and all questions that may arise as to the quality and acceptability of work performed, and as to the manner of performance and rate of progress of the work. The TPWD Project Manager or designee, will determine the amount of work performed and materials furnished which are to be paid under the contract. Failure of the TPWD Project Manager or designee, during the progress of the contract to discover or reject unacceptable work; discover work not in accordance with the contract; or failure to exercise any remedies in connection therewith, shall not be deemed an acceptance thereof, nor a waiver, of TPWD's rights to full performance of the contract.
- 7.2. To the extent practical, TPWD inspections will not disrupt the Contractor's daily operations. Contractor shall notify TPWD when work is ready for inspection or testing. It shall be the Contractor's responsibility to give such notifications sufficiently in advance of other work to prevent delays. A minimum of five (5) working days advance notice is required. Failure to provide advanced notice shall cause any certifications of testing to be void and require the Contractor to re-test at TPWD's request. All expenses for re-testing shall be borne by the Contractor.
- 7.3. Tests cannot be conducted, and work cannot be covered up until TPWD observes and authorizes continuation of the work. The Contractor shall bear all costs for re-tests and for removal and replacement of construction resulting from unauthorized continuation. Should TPWD fail to make the necessary inspections within the agreed timeframe, the Contractor may proceed with cover-up work after making every reasonable effort to contact TPWD and after documenting the work but is not relieved of responsibility for work to comply with requirements of the contract.
- 7.4. If applicable, all permanent utilities shall be connected before final tests are conducted for equipment and systems. Final operational tests shall be conducted prior to project acceptance by TPWD. The Contractor shall provide the materials, energy, equipment and personnel to conduct the tests required in the contract. If TPWD rejects materials that have been incorporated into the project, any testing performed to prove compliance will be at the expense of the Contractor.

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 Contractor 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 Contractor 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 Contractor, the Contractor is entitled to receive interest on the unpaid balance of the invoice, beginning on the date the invoice became overdue, pursuant to Gov't Code §2251.021. If a dispute is resolved in favor of the TPWD, the Contractor shall submit a corrected invoice that must be paid in accordance with Section 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 TPWD receives the goods under the Contract; (2) the date the performance of the service under the contract is completed; or (3) the date TPWD 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 represents and warrants that TPWD's payments to Respondent and Respondent's receipt of appropriated funds or other funds under the contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code. Furthermore, 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 undersigned affirms under penalty of perjury of the laws of the State of Texas that (1) in connection with this Response, neither I nor any representative of the Respondent have violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm Code Chapter 15; (2) in connection with this Response, neither I nor any representative of the Respondent have violated any federal antitrust law; and (3) neither I nor any representative of the Respondent have directly or indirectly communicated any of the contents of this Response to a competitor of the Respondent or any other company, firm, partnership or individual engaged in the same line of business as the Respondent. 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 Gov't Code §2252.903, the Respondent agrees that any payments due under the Contract shall be directly applied towards eliminating any debt or delinquency is has to the State of Texas 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. If the Contractor's claim for breach of Contract cannot be resolved informally with TPWD, 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. Any informal resolution efforts shall in no way modify the requirement or toll the timing of the formal written notice of a claim for breach of contract required under § 2260.051 of Texas Gov't Code. 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.
- 14.5. 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 Gov't Code §2251.051, 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: <https://comptroller.texas.gov/about/policies/ethics.php>, 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 Gov't Code §669.003, 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 Response, 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:** Under Section 2262.154 of the Texas Gov't Code, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under any contract or indirectly through a subcontract under the contract. The acceptance of funds by the Contractor or other entity or person directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the State Auditor's Office, TPWD or any successor agency, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Contractor or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. 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 these 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:** Neither Contractor nor TPWD shall be liable to the other for any delay in, or failure of performance, of any requirement included in the contract caused by force majeure. The existence of such

causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, epidemics or pandemics, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. TPWD may grant relief from performance of contract if the Contractor is prevented from performance by such an act. 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 the TPWD reasonably promptly from the time the force majeure event occurs.

**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, documentation, and other material in connection with this Response or any resulting contract may be subject to public disclosure under the Texas Public Information Act, Chapter 552 of the Texas Gov't Code.
- 22.3. Contractor is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise excepted 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.

**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.

29. **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.

30. **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.

31. **BUY TEXAS:** In accordance with §2155.4441, Gov't Code, the Contractor agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside Texas.

32. **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.

33. **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 an 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.

- 34. 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.
- 35. SYSTEM FOR AWARD MANAGEMENT (SAM):** Respondent certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration. Prior to awarding state funds for goods and/or services rendered, the State of Texas will conduct a required search of your firm using 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.
- 36. FEDERAL DISASTER RELIEF FRAUD:** Sections 2155.006 and 2261.053 of the Gov't Code, prohibit state agencies from accepting a response or awarding a contract that includes proposed financial participation by a person who, in the past five years has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Gov't Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Gov't Code, Respondent certifies that the individual or business entity named in this response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- 37. APPLICABLE LAWS AND VENUE:** The Contract shall be governed by and construed in accordance with the laws of the State of Texas, with regards to the conflicts of law provisions. The venue of any suit arising under this Contract is fixed in any court of competent jurisdiction in Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to TPWD.
- 38. 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.
- 39. 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) Texas Penal Code §36.02, which prohibits bribery; (ii) Texas Penal Code §36.09, which prohibits the offering or conferring of benefits to public servants; (iii) Gov't Code §2155.003, 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.

40. **NO WAIVER:** Nothing in this Contract shall be construed as a waiver of the state's or TPWD'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. 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 estoppel. TPWD does not waive any privileges, rights, defenses, or immunities available to TPWD by entering into this Contract or by the conduct of any representative of TPWD, prior to or subsequent to entering into this Contract.
41. **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.
42. **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 of Deceptive Trade Practice 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.
43. **FALSE STATEMENTS; BREACH OF REPRESENTATIONS:** 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.
44. **ACTUAL AND PERCEIVED CONFLICTS:** By submitting a Bid/Proposal, the Respondent represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an 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.
45. **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 Gov't Code §573.023) or within the second degree by affinity (as defined by Gov't Code §573.025), 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., 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.
46. **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.
47. **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.
48. **HISTORICALLY UNDERUTILIZED BUSINESSES (HUB):** Respondent represents and warrants that it shall comply with the Historically Underutilized Business requirements pursuant to Gov't Code, Chapter 2161.
49. **AMENDMENTS:** Except as provided in the solicitation, 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. 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 or change order.
50. **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.
51. **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.**
52. **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. CONTRACTOR SHALL 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.**

53. **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.

- 54. 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.
- 55. 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. The Respondent also represents and warrants that it shall comply with the requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA).
- 56. 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), 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.
- 57. 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.
- 58. 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.
- 59. NON-DISCRIMINATION/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. The prime contractor shall ensure that this clause is included in all subcontracts.

- 60. CONFLICT OF INTEREST:** Under Gov't Code §2155.003, Respondent represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the contract. 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. 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.
- 61. HB1295 CERTIFICATE OF INTERESTED PARTIES:** In accordance with 2252.908 of the Government Code, a business entity must use the [Form 1295 filing application](#) to enter the required information on Form 1295 and print a copy of the completed form. Once entered into the filing application, the completed form will include a unique certification number, called a "certification of filing." An authorized agent of the business entity must sign the printed copy of the form affirming under the penalty of perjury that the completed form is true and correct. The completed, printed, and signed Form 1295 bearing the unique certification of filing number must be filed with TPWD at the time of execution. Additional information can be found at: <https://www.ethics.state.tx.us/filinginfo/1295/>.
- 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 Workplace Act of 1988.
- 64. NOTICES:** Any written notices required under this Contract will be by either hand delivery to Contractor's office address specified in Attachment E – Bid Schedule of this Contract or by U.S. Mail, certified, return receipt requested, to TPWD, Attn: Infrastructure, 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 event of any conflicts or inconsistencies between the contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents 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. CHILD SUPPORT OBLIGATION:** Under Section 231.006 of the Family Code, the Contractor certifies that the individual or business entity named in this contract or 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 in addition to other remedies set out in 231.006(f).
- 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. Any attempted assignment in violation of this provision is void and without effect.
- 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.
- 71.** Pursuant to Texas Government Code, Title 10, Subchapter F, §§ 2270.001-2270.002, TPWD may not enter into a contract that has a value of \$100,000 or more with a company and that employs 10 or more full-time employees (as defined by Texas Government Code, Title 8, Subchapter A, § 808.001, (except that the term does not include a sole proprietorship) that boycotts Israel. By signing this bid, Bidder verifies that in accordance with Texas Government Code, Title 10, Subchapter F, §§ 2270.001-2270.002, Bidder:
- 71.1. Does not boycott Israel; and
- 71.2. Will not boycott Israel during the term of the contract.
- 72.** Pursuant to *Texas Government Code*, Title 10, Subchapter F, §§ 2252.151-2252.154, TPWD may not enter into a contract with a company (as defined by *Texas Government Code*, Title 8, Subchapter A, § 806.051) that is identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under *Texas Government Code*, §§ 806.001, 807.051 or 2252.153. By signing this bid, Bidder certifies that it is not a company identified on a list as prepared and maintained by the Texas Comptroller of Public Accounts pursuant to *Texas Government Code*, §§ 806.001, 807.051 or 2252.153.
- 73.** By signature hereon, the bidder acknowledges that *Texas Government Code*, Title 10, Subchapter F, §§ 2252.201-2252.205 requires that all iron or steel products produced through a manufacturing process used in this project must be produced in the United States. By signing this bid, Bidder certifies that its bid price represents full compensation for compliance with the requirements of *Texas Government Code*, Title 10, Subchapter F, §§ 2252.201-2252.205.
- 74. TEXAS BIDDER AFFIRMATION:** Respondent certifies that if a Texas address is shown as the address of the Respondent on this response, Respondent qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.
- 75. CONTRACTING INFORMATION RESPONSIBILITIES:** In accordance with Section 552.372 of the Texas Government Code, Contractor agrees to (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to TPWD for the duration of the contract, (2) promptly provide TPWD any contracting information related to the contract that is in the custody or possession of the Contractor on request of TPWD, and (3) on termination or expiration of the contract, either provide at no cost to TPWD all contracting information related to the contract that is in the custody or possession of the Contractor or preserve the contracting information related to the contract as provided by the records retention

requirements applicable to TPWD. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code may apply to the contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

76. **CYBERSECURITY TRAINING**: If Respondent has access to any state computer system or database, Respondent shall complete cybersecurity training and verify completion of the training program to TPWD pursuant to and in accordance with Gov't Code § 2054.5192.
77. **FINANCIAL PARTICIPATION PROHIBITED AFFIRMATION**: Pursuant to Section 2155.004(a) of the *Texas Government Code*, Respondent certifies that neither Respondent nor any person or entity represented by Respondent has received compensation from TPWD to participate in the preparation of the specifications or solicitation on which this Response or contract is based. Under Section 2155.004(b) of the *Texas Government Code*, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.
78. **ABORTION PROVIDER AND AFFILIATE TRANSACTIONS PROHIBITED**: Respondent represents and warrants that the contract is not a taxpayer resource transaction prohibited by Section 2272.003 of the *Texas Government Code* and that payments made by TPWD to Contractor and Contractor's receipt of appropriated funds under the contract are not prohibited by Article IX, Section 6.25 of the General Appropriations Act.
79. **FOREIGN TERRORIST ORGANIZATIONS**: Section 2252.152 of the *Texas Government Code* prohibits TPWD from awarding a contract to any person who does business with Iran, Sudan, or a foreign terrorist organization as defined in Section 2252.151 of the *Texas Government Code*. Respondent certifies that it is not ineligible to receive the contract.
80. **HUMAN TRAFFICKING PROHIBITION**: Under Section 2155.0061 of the *Texas Government Code*, the Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
81. **COMPANIES THAT BOYCOTT CERTAIN ENERGY COMPANIES**: Under Section 2274.002 of the Texas Government Code, by submitting the Response, Respondent certifies and warrants that it does not boycott energy companies; and will not boycott energy companies during the term of the Contract.
82. **DISCRIMINATION AGAINST FIREARM OR AMMUNITION INDUSTRIES**: Under Section 2274.002 of the Texas Government Code, by submitting the Response, Respondent certifies and warrants that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the Contract against said industries.
83. **AGREEMENTS RELATED TO CRITICAL INFRASTRUCTURE**: Pursuant to Texas Government Code Section 2274.0102, TPWD may not enter into a Contract with a company (as defined by Texas Government Code Section 2274.0101(1)) that meets the criteria provided under Texas Government Code Sections 2274.0102 and 2274.0103. By signing this bid, Bidder certifies that it is not a company that meets the criteria provided under Texas Government Code Sections 2274.0102 and 2274.0103.
84. **COVID-19 VACCINE PASSPORT PROHIBITION**: Under Section 161.0085 of the Texas Health and Safety Code, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract.
85. **SIGNATURE AUTHORITY**: By submitting the Response, Respondent represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract that may result from the submission of this Response.

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**Attachment B Wage Rates**

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**PREVAILING WAGE RATE DETERMINATION INFORMATION**

Chapter 2258, Texas Government Code, Title 10 requires that state agencies, (including universities), cities, counties, independent school districts, and all other political subdivisions that engage in public works construction projects produce and include prevailing wage rate determinations in the project bidding and contract documents.

Chapter 2258 requires that the contractor who is awarded a contract by a public body and a contractor's subcontractor shall pay not less than the rates determined by such state agencies to workers employed for the execution of such work. Pursuant to Chapter 2258, Texas Parks and Wildlife has ascertained the following wages to be paid for the various classifications of workers, in the locality of this project. In determining these wages, TPWD has utilized the Prevailing Wage Rates as determined by the U.S. DOL in accordance with the Davis-Bacon Act.

"General Decision Number: TX20220113 02/25/2022

Superseded General Decision Number: TX20210113

State: Texas

Construction Type: Heavy

Counties: Bowie, Gregg and Smith Counties in Texas.

HEAVY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

<p>If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:</p>	<p>. Executive Order 14026 generally applies to the contract.</p> <p>The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage</p>
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	determination, if it is higher) for all hours spent performing on the contract in 2022.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Modification Number	Publication Date
0	01/07/2022
1	02/25/2022

\* SUTX2004-003 11/09/2004

	Rates	Fringes
Asphalt Distributor Operator.....	\$ 11.74 **	0.00
Asphalt paving machine operator.....	\$ 10.49 **	0.00
Asphalt Raker.....	\$ 8.58 **	0.00

Asphalt Shoveler.....	\$ 8.00 **	0.00
Broom or Sweeper Operator.....	\$ 8.47 **	0.00
Bulldozer operator.....	\$ 11.97 **	0.00
CARPENTER.....	\$ 12.59 **	0.00
Concrete Finisher, Paving.....	\$ 12.46 **	0.00
Concrete Finisher, Structures....	\$ 10.40 **	0.00
Concrete Paving Saw Operator.....	\$ 12.13 **	0.00
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel Operator.....	\$ 12.14 **	0.00
ELECTRICIAN.....	\$ 15.00	0.00
Flagger.....	\$ 7.61 **	0.00
Form Builder/Setter, Structures.....	\$ 9.57 **	0.00
Front End Loader Operator.....	\$ 10.78 **	0.00
Laborer, common.....	\$ 8.86 **	0.00
Laborer, Utility.....	\$ 11.39 **	0.00
MECHANIC (Undefined).....	\$ 13.53 **	0.00
Motor Grader Operator Fine Grade.....	\$ 13.35 **	0.00
Motor Grader Operator Rough.....	\$ 13.34 **	0.00
Pavement Marking Machine Operator.....	\$ 10.56 **	0.00
Reinforcing Steel Setter.....	\$ 12.52 **	0.00
Roller Operator, Pneumatic, Self-Propelled.....	\$ 8.39 **	0.00

Roller Operator, Steel Wheel, Flat Wheel/Tamping.....	\$ 9.23 **	0.00
Roller Operator, Steel Wheel, Plant Mix Pavement.....	\$ 9.75 **	0.00
Scraper Operator.....	\$ 9.50 **	0.00
Servicer.....	\$ 10.00 **	0.00
Spreader Box operator.....	\$ 13.12 **	0.00
Tractor operator, Pneumatic.....	\$ 11.00 **	0.00
Traveling Mixer Operator.....	\$ 10.05 **	0.00
Truck driver, lowboy-Float.....	\$ 10.50 **	0.00
Truck driver, Single Axle, Heavy.....	\$ 13.13 **	0.00
Truck driver, Single Axle, Light.....	\$ 9.62 **	0.00
Truck Driver, Tandem Axle, Semi-Trailer.....	\$ 10.51 **	0.00
Work Zone Barricade Servicer.....	\$ 7.85 **	0.00

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$15.00) or 13658 (\$11.25). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this

contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing

the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
 Wage and Hour Division  
 U.S. Department of Labor  
 200 Constitution Avenue, N.W.  
 Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
 U.S. Department of Labor  
 200 Constitution Avenue, N.W.  
 Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material,

etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

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**Attachment C - Drawings & Specifications**

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## SPECIFICATIONS

1. **INTRODUCTION:** The State Parks Division of the Texas Parks and Wildlife Department (TPWD) is seeking a qualified contract to install level indicator on hydro tanks at water plants # 1 & # 2. Replace chlorine gas with liquid chlorine at water plants # 1 & # 2., at Tyler State Park in accordance with the specifications, terms and conditions as set forth in the Invitation for Bid (IFB). Contractor shall field verify all measurements, quantities, types and specifications of this and equipment for accuracy before installation.
2. **SITE VISIT:** Bidders must visit the project site and be thoroughly familiar with job conditions such as the location, accessibility and general character of the site and any associated buildings and equipment prior to submitting a bid. Attendance at the scheduled site visit is mandatory. Only those Bidders whose names and represented firm are on the site visit sign-in sheet shall be allowed to submit a response.

2.1 TYLER STATE PARK: 789 PARK ROAD 16, TYLER, TX, 75706

3. **SCOPE OF PROJECT:** This project is to have a qualified contractor furnish all labor, tools, equipment, materials and incidentals to install level indicator on hydro tanks at water plants # 1 & # 2. Replace chlorine gas with liquid chlorine at water plants # 1 & # 2, at Tyler State Park. It is the intention of TPWD to call for finished work that is tested, and ready for operation. Any apparatus, material or work described in the IFB and related documents, and any incidental accessories necessary to make the work complete in all respects and ready for operation (even though not particularly specified) shall be furnished, delivered, and installed by the Contractor without additional expense to TPWD. Contractor shall take care not to damage any aspect of the building or its contents.
4. **SPECIFICATIONS:** Below are general guidelines for what the Contractor shall perform as part of this project. Contractor shall review the attached drawings and specifications for additional requirements. Contractor is solely responsible for advising of any necessary steps not specifically addressed below in order to provide a complete and safely functioning tanks.

Contractor shall:

- 4.1. Prior to commencing, in order to facilitate its responsibilities for completion of the work, the Contractor shall examine and compare the solicitation documents, information furnished by TPWD, relevant field measurements made by the Contractor and any visible or reasonably anticipated conditions at the site affecting the project. This duty extends throughout the construction phase prior to commencing each particular work activity and/or system installation.
- 4.2. Comply with all applicable provisions of State law related to license requirements for skilled tradesmen, contractors, suppliers and or laborers, as necessary to accomplish the Work. In the event Contractor, or one of its Subcontractors, loses its license during the term of performance of the Contract, Contractor shall promptly hire or contract with a licensed provider of the service at no additional cost to TPWD.
- 4.3. Provide a minimum manufacturer warranty on all parts installed and one (1) year labor warranty. TPWD is a commercial entity.
  - 4.3.1. Complete all required warranty documentation. Provide a hardcopy to Brad Hood and submit a copy via email to the Contract Manager, Daniel Vasquez, at [daniel.vasquez@tpwd.texas.gov](mailto:daniel.vasquez@tpwd.texas.gov)
- 4.4. Project will be completed by one hundred eighty (180) days from the Notice to Proceed. This period includes material procurement and deliveries.
- 4.5. Contractor's work hours shall be from Monday through Friday, 8:00 AM to 5:00 PM unless scheduled otherwise with Brad Hood.
- 4.6. Comply with all terms and conditions as listed in the IFB.
- 4.7. Review and comply with the attached specifications and drawings.

**5. REQUIREMENTS:**

- 5.1. Power or Water Outages: Contractor shall perform all pre-outage work necessary in advance to shorten the power or water outage duration. Contractor shall schedule any outages with TPWD and/or the service provider. Contractor is responsible for any fees associated with outages to complete this project.
- 5.2. Cutting and Patching: Cutting and patching of any surface of this building shall be kept to a minimum based on actual services necessary for project completion. The Contractor shall coordinate all cutting and patching with TPWD's designated representative. The Contractor shall take care to minimize the impact and damage to any of the interior and exterior finishes on the building, knowing that impacts and damages shall be repaired by the Contractor.
- 5.3. Condition of Product: Contractor shall provide and install new Equipment ONLY; NO recycled, remanufactured or "gray market" items will be accepted. All items must be covered by the manufacturer's warranty. The unit shall be made ready for continuous operation upon delivery. Contractor is cautioned that any unit delivered to the FOB point that does not meet specifications in every aspect will not be accepted.
- 5.4. 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.

**6. DELIVERY AND ACCEPTANCE:**

- 6.1. Freight Charges: Shipping shall be F.O.B. destination; therefore, unit prices must include all shipping, handling, fuel surcharges and delivery fees.
- 6.2. Delivery Schedule: This project will be completed in an agreed amount of days to be determined at the time of award based on weather, park accessibility and other factors, if any, not to exceed a completion deadline of one hundred eighty days (180). Procurement and delivery of materials shall occur within project duration and shall not delay installation and completion.
- 6.3. Delivery and Storage of Materials: An area near the work site will be designated by TPWD's park superintendent for Contractor's use for the storage of materials, supplies, equipment etc. Contractor shall be fully and wholly responsible for the proper care, security, and protection of all materials, supplies, incidentals, equipment etc. stored at the job site. Store all material according to manufacturer recommendations.
- 6.4. Delivery Delays: If delay is foreseen, Contractor shall give written notice to TPWD's designated representative and the Park Superintendent and must keep TPWD advised always 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.
- 6.5. 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 (TPWD's designated representative). 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 if materials or products not meeting specifications are discovered after payment has been made.

**7. SUBMITTALS:** Contractor shall include the information below for bid consideration and acceptance.

- 7.1. All bidders must visit project site before submitting bid.
- 7.2. Bidders must sign in with the Park headquarters staff before reviewing the project site. If bidder does not sign in, its bid will not be accepted by TPWD
- 7.3. Contact TPWD's representative in accordance with OFB for any additional concerns about this project.
- 7.4. All work must be inspected and approved by Owner's Inspector before project is deemed complete and ready for payment.

**8. CONDITIONS:**

- 8.1. All work shall be performed and furnished by the Contractor in accordance with accepted construction industry practices.

- 8.2. All work must be in accordance with the most current applicable local, state and federal standards and codes to include but not limited to the International Building Code 2015 and International Plumbing Code 2015.
- 8.3. Contractor shall be responsible to provide a fully functioning, in kind replacement, for awarded amount, per Contractor's bid. It is the responsibility of the Contractor to know all items to purchase for this like-for-like replacement, prior to bid. Contractor shall contact TPWD Contract Manager, Daniel Vasquez, prior to bidding if there is any discrepancy in the existing conditions. Contractor shall contact TPWD's designated representative during construction if there are unexpected developments encountered before moving forward with any phase of the project. If Contractor proceeds with work without notifying TPWD's designated representative, the Contractor does so, at Contractor's own risk.
- 8.4. All equipment and material shall be installed in accordance with recommendations of the manufacturer to include such tests as manufacturer recommends. Both materials and workmanship shall be subject to inspection by TPWD or its representative, who will require the Contractor to correct defective workmanship or material without cost to the TPWD. All work must be inspected and approved by TPWD's Inspector before project is deemed complete and ready for payment.

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**Attachment D- Contractors Qualification Form**

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**CONTRACTOR'S QUALIFICATION FORM - COMPANY PROFILE**

**Bidder shall use this attachment to clearly demonstrate how they meet the requirements set forth in this IFB. This form may be modified as needed to comply with the requirement to document company information. Failure to return this attachment may result in the proposal being considered non-responsive.**

<b>Company Name:</b>			
<b>Number Years in Business:</b>		<b>Number of Employees:</b>	
<b>If your firm a Texas Certified Historically Underutilized Business (HUB)?</b>			<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>If a HUB, please indicate gender and ethnicity:</b>			
<b>Gender:</b>	<input type="checkbox"/> Female <input type="checkbox"/> Male	<b>Ethnicity:</b>	<input type="checkbox"/> Asian Pacific Islander <input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Woman-owned <input type="checkbox"/> Native American <input type="checkbox"/> Service-Disabled Veteran
<b>Principal place of business (Corporate Headquarters):</b>			
<b>Address:</b>			
<b>City, State, Zip:</b>			
<b>Facility responsible for servicing the contract:</b>			
<b>Address:</b>			
<b>City, State, Zip:</b>			
<b>Contact Person regarding company's proposal submission to the solicitation:</b>			
<b>Name / Title:</b>			
<b>Phone Number:</b>		<b>Fax Number:</b>	
<b>Email Address:</b>			
<b>Personnel who will be responsible for the management and day-to-day operations of the services solicited in this solicitation.</b>			
<b>Name/Title:</b>			
<b>Indicate if your company or any of its subsidiaries filed or met criteria for bankruptcy within last five years.</b>			
<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, explain.			
<b>Indicate if your company or any of its subsidiaries has been involved in litigation within last five years. If yes, explain.</b>			
<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, explain.			
<b>Description of firm's background, history, and qualifications: (You may attach additional page for this section.)</b>			

CONTRACTOR’S QUALIFICATION FORM – past projects with corresponding references

**Bidder Name:** \_\_\_\_\_

**Bidders shall use this attachment (or reasonable facsimile) to provide a minimum of three (3) references** for jobs completed within the last five (5) years. The references shall illustrate recent experience successfully completing work of a similar nature and scope as the work described in this IFB. *Attention: Do NOT use TPWD staff or past work performed for TPWD as a “reference” in this attachment.* This form may be modified as needed to comply with the requirement to document company information. **Failure to return this attachment (or a reasonable facsimile) may result in the proposal being considered non-responsive.** TPWD reserves the right to check references prior to award. Any negative responses received may be grounds for disqualification of the proposal.

REFERENCE 1:

Company Name:	
Company Address:	
Contact Name/Title/Phone:	
Service Period:	
Brief Description of Project	

REFERENCE 2:

Company Name:	
Company Address:	
Contact Name/Title/Phone:	
Service Period:	
Brief Description of Project	

REFERENCE 3:

Company Name:	
Company Address:	
Contact Name/Title/Phone:	
Service Period:	
Brief Description of Project	

REFERENCE 4:

Company Name:	
Company Address:	
Contact Name/Title/Phone:	
Service Period:	
Brief Description of Project	

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**Attachment E – Bid Schedule**

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**BID SCHEDULE**

Having carefully examined the Invitation for Projects MR10991 / MR 10662; Bids (IFB) for installation of level indicator on hydro tanks at water plants #1 and # 2 and replace chlorine gas with liquid chlorine at water plants #1 and # 2. for the Texas Parks and Wildlife Department and all other contract documents, the undersigned proposes to provide the requested services for the sum of:

<b>BASE BID ITEMS</b>	<b>LUMP SUM PRICE</b>
Furnish all labor, equipment, materials, and incidentals necessary to install level indicators on hydro tanks at water plants #1 and # 2.	
Furnish all labor, equipment, materials, and incidentals necessary to replace chlorine gas with liquid chlorine at water plants #1 and # 2.	
<b>Total</b>	<b>\$</b>
<b>(Total Base Bid Price written in words)</b>	

BASE BID will be evaluated, and determination of the low bidder will be based on responsiveness and responsibility of the bidder and on the BASE BID HOWEVER, TPWD RESERVES THE RIGHT TO AWARD TO THE LOW BIDDER ANY COMBINATION OF BID ITEMS OR TO REJECT ALL BIDS.

The undersigned agrees that, if awarded the Contract, the work will be completed within one hundred eighty days (180) calendar days commencing on the date specified in the Notice to Proceed.

The undersigned agrees that when written notice of bid acceptance is furnished by TPWD within sixty (60) calendar days after the bid opening date, the undersigned will, within the stipulated time, execute and deliver the contract and all required bonds and certificates of insurance, to TPWD. Failure to timely provide the insurance certificate and bonds shall be grounds for disqualification of bid and forfeiture of bid security. In such circumstances, TPWD shall be authorized to proceed with award to the next lowest, responsive and responsible bidder.

The undersigned agrees that this bid will not be withdrawn for a period of sixty (60) calendar days from the date set for the bid opening, and the undersigned further agrees that the bid security will be forfeited in the event this bid is withdrawn before expiration of said sixty (60) calendar days.

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**NOTE: THIS FORM MUST BE SIGNED AND RETURNED WITH THE BID.**

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**Attachment F – Bond Forms**

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**TEXAS PARKS AND WILDLIFE**

**PAYMENT BOND**

**STATE OF TEXAS**

**COUNTY OF** \_\_\_\_\_

Project Number MR10991, MR10662  
Contract Number \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS:**

That we, \_\_\_\_\_, as **PRINCIPAL**,  
and \_\_\_\_\_, as  
**SURETY(IES)**,

Surety Address: \_\_\_\_\_  
Surety Phone: \_\_\_\_\_ Surety Fax: \_\_\_\_\_

are hereby held and firmly bound unto the State of Texas in the penal sum of: \_\_\_\_\_ Dollars  
(\$ \_\_\_\_\_)

for the payment, whereof, the said PRINCIPAL and SURETY(IES) bind themselves, their heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents.

The conditions of this obligation are such that whereas the PRINCIPAL entered into a certain contract dated \_\_\_\_\_, 20\_\_, hereto attached, and made a part hereof, with the State of Texas, acting by and through the Texas Parks and Wildlife Department, to commence and complete certain public works described as:

**MR10991, MR10662, install of level indicator on hydro tanks at water plants #1 and # 2, replace chlorine gas with liquid chlorine at water plants #1 and #2 Tyler, Smith County, Texas**

**NOW THEREFORE**, the conditions of this obligation are such that, if the PRINCIPAL shall promptly make payment to all claimants as defined in TITLE 10, *TEXAS GOVERNMENT CODE*, CHAPTER 2253, as amended, supplying labor and materials in the prosecution of the work provided for in said contract and any and all duly authorized changes to said contract that may hereafter be made, notice of such changes to the SURETY(IES) being hereby waived, then, this obligation shall be null and void, otherwise it shall remain in full force and effect.

This bond is made and entered into solely for the protection of all claimants supplying labor and materials in the prosecution of the work provided for in said contract, and all such claimants shall have a direct right to action under the bond as provided in TITLE 10, *TEXAS GOVERNMENT CODE*, CHAPTER 2253, as amended.

**IN WITNESS WHEREOF**, the above bound parties have executed this instrument under their several seals this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the name and corporation seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

**PRINCIPAL**

BY \_\_\_\_\_

**SURETY**

BY \_\_\_\_\_