

TEXAS PARKS AND WILDLIFE

INVITATION FOR BID – SERVICES

SEND INVOICE TO:
 Texas Parks and Wildlife Department
 ATTN: Accounts Payable
 4200 Smith School Road
 Austin, Texas 78744

RETURN BIDS TO
stateparks.purchasing@tpwd.texas.gov
Due to the uncertainty surrounding Coronavirus (COVID-19), E-MAIL is the preferred method to submit bids for this solicitation.

BIDDER MUST SIGN BELOW
BID OPENING 2:00 April 30, 2020
REQUISITION NO. 802-21-45227
 Page 1 of 30

BID F.O.B. AGENCY RECEIVING ROOM UNLESS OTHERWISE SPECIFIED BELOW
DESTINATION IF DIFFERENT THAN ABOVE
 Texas Parks and Wildlife Department
 Stephen F. Austin State Park
 Park Row 38
 San Felipe, Texas 77476

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

BIDDER AGREES TO COMPLY WITH ALL CONDITIONS OF THIS BID.

FAILURE TO MANUALLY SIGN WILL DISQUALIFY BID →

 AUTHORIZED SIGNATURE DATE

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

Bidder Must Fill in

TEXAS ID NUMBER _____
 Name of Firm _____
 Street Address _____
 City–State–Zip _____
 Telephone No. _____
 Email address _____

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

FAILURE TO MANUALLY SIGN THE BID ABOVE WILL DISQUALIFY BID.

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

Item	Description	Class/Item 910-27	Quantity	Unit of Measure	Unit Price	Extension
	<p>Texas Parks and Wildlife Department (TPWD) is soliciting bids to establish a blanket contract for refuse and trash collection, removal and disposal services for Stephen F. Austin State Park, Park Row, 38, San Felipe, TX 77476 in accordance with the attached specifications and terms and conditions dated April 2020. The Contractor shall provide all labor, equipment, materials and any other need necessary or incidental to perform service in accordance with the terms and conditions as set forth herein.</p> <p><u>Initial Contract Term:</u> September 1, 2020 through August 31, 2021.</p> <p>Option to renew for two (2) additional one (1) year terms.</p> <p>Respondent must quote Line Item. Respondents are highly encouraged to quote all Line Items. Quantities listed below are estimates for evaluation</p>					
ROUTINE SERVICE: Unit price shall include initial delivery, set-up, cleaning, disposal, pick-up, fees, environmental charges, fuel surcharges and other miscellaneous fees, as applicable.						
1.	Provide trash and refuse collection for September through August with <u>one (1) pickup per week</u> between Monday and Friday, 8:00 am – 5:00 pm: eight (8) containers at six (6) cubic yards each.		12	Month	\$ _____ Month	\$ _____

SERVICE ADJUSTMENTS: Pricing below is for contract adjustment purposes in the event TPWD requires additional services and/or increases or decreases the number of required units. Unit price shall include initial delivery, set-up, cleaning, disposal, pick-up, fees, environmental charges, fuel surcharges and other miscellaneous fees, as applicable.

2.	Unit price per trip to make <i>one (1) additional pick-up</i> for eight (8) containers at six (6) cubic yards each outside of regularly scheduled pick-up between Monday and Friday, 8:00 am – 5:00 pm: eight (8) containers at six (6) cubic yards each.	1	Trip	\$ _____ per Trip	\$
3.	Unit price for one (1) container at six (6) cubic yards with <i>one (1) pick-up per week</i> between Monday and Friday, 8:00 am - 5:00 pm: one (1) containers at six (6) cubic yards each	1	Month	\$ _____ per unit per Month	\$
4.	<p>Respondents are highly encouraged to submit a detailed Price List for additional related services, including but not limited to:</p> <p>a) Refuse and trash collection service for other container sizes, including 10, 12, 20, 30 and 40 cubic yard roll off/open top containers</p> <p>b) Recycling Services Such services may be added to the resulting contract upon agreement of both parties.</p>			ATTACH PRICE LIST	

Offered by a Historically Underutilized Business certified by CPA.

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

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

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

FOR FURTHER INFORMATION CONTACT PURCHASER:

Dominik Mendoza CTCD CTCM

Phone 512-389-4914 | Email: dominik.mendoza@tpwd.texas.gov

Solicitation 802-21-45227
Specifications for Refuse and Trash Collection at Stephen F. Austin State Park

1. **INTRODUCTION:** Texas Parks and Wildlife Department (TPWD) is soliciting bids to establish a blanket contract refuse and trash collection, removal and disposal services for Stephen F. Austin State Park in accordance with the attached specifications and item and conditions.
2. **TERM OF CONTRACT:** Contract shall commence September 1, 2020 and continue through August 31, 2021, unless sooner terminated under the terms of this contract.
 - 2.1. **Contract Renewals:** This contract may be renewed for up to two (2) additional one (1) year periods, provided both parties agree in writing to do so, based on funds availability and vendor performance. Any extension shall be at the same terms and conditions, plus any approved changes. If the contract is extended under this option, the contractor shall be given written notification of the period in which the services shall occur after being determined by the TPWD.
 - 2.2. **Contract Extensions:** In the event that the contract(s), if any, resulting from the award of this IFB shall terminate or be likely to terminate prior to the making of an award for a new contract for the identified products and/or services, TPWD may, with the written consent of the awarded supplier(s), extend the contract for a period of time as may be necessary to permit TPWD continued supply of the identified products and/or services (not to exceed twelve month extension period). Any extensions shall be at the same terms and conditions, plus any approved changes.
 - 2.3. **Amendments:** The contract may be amended in writing by mutual consent of both parties. Unless this solicitation states otherwise, the resulting contract award does not guarantee volume or a commitment of funds.
 - 2.4. The 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.
3. **PRICE ADJUSTMENT:**
 - 3.1. **Renewal Escalation:** Price increases will be allowed with an approved justification at renewal upon mutual agreement of both parties, not to exceed five percent (5%). TPWD reserves the right to accept the proposed price, to propose an alternate price, or to terminate the contract for convenience
 - 3.2. **Landfill Disposal Fees:** Price of the contract may be adjusted periodically because of increases in landfill disposal fees.
 - 3.2.1. Any request for price increase must contain sufficient documentation to:
 - 3.2.1.1. Justify the need for an increase
 - 3.2.1.2. Identify the amount of increase in disposal fees, and
 - 3.2.1.3. Show that the increase in fees is applicable to all users of the disposal site. Only one increase per 12-month period will be considered.
 - 3.2.2. Upon receipt of the request for price increase, TPWD reserves the right to:
 - 3.2.2.1. Approve the request or some percent thereof
 - 3.2.2.2. Disapprove the request for lack of supporting documentation
 - 3.2.2.3. Terminate the contract for convenience.
4. **PRE-BID SITE INSPECTION:** Bidders are highly encouraged to attend a pre-bid site visit, **by appointment only**, to become familiar with the job conditions and determine labor, equipment, materials and work needed to

successfully complete the service. *Failure to give proper consideration in the response submission to site conditions will not constitute ground for additional compensation.*

- 4.1. Respondents shall schedule appointment by contacting Misty Singer at misty.singer@tpwd.texas.gov or Randy Fields at randy.fields@tpwd.texas.gov or 979.885-3613.

Note: Attendees should be prepared to tour the site by foot in proper clothing and footwear.

5. SERVICE REQUIREMENTS: Contractor shall:

- 5.1. Provide all labor, equipment, materials, tools, transportation, methods of communication necessary to meet requirements of the specified services through the term of the contract. All services shall be performed in accordance with the terms and conditions, as set forth herein.
- 5.2. Provide service in accordance with all federal, state, and local applicable laws, standards, regulations and ordinances necessary to perform the services, including, but not limited to:
 - 5.2.1 Texas Water Code – Title 1, Chapter 1, Section 361.091, Health and Safety Code
 - 5.2.2 Code of Federal Regulations (CFR 40) – Protection of Environment, Chapter I: Subchapters D, I, and N
 - 5.2.3 Code of Federal Regulations (CFR 49) – Transportation, Subtitle B, Other Regulations relating to Transportation
 - 5.2.4 42 U.S.C. 7401 – Clean Air Act
 - 5.2.5 33 U.S.C. 1251 – Summary of Clean Water Act
 - 5.2.6 42 U.S.C. 6901 – Solid Waste Disposal Act
- 5.3. Must possess and maintain all applicable permits, licenses, and other authorizations required for compliance with federal, state, and local laws, regulations, and ordinances, and comply with all requirements for vector and odor control.
- 5.4. Provide all required safety equipment and instruct personnel to observe all safety policies, rules and requirements at all times, including, but not limited to, wearing hard hats, safety shoes, goggles, and other safety items.
- 5.5. Be responsible for restoring any TPWD facilities, structures, or trees damaged as a result of Contractor's operation. Contractor shall also be responsible for any damage to private property and injury to any person as a result of his operation. Contractor will notify TPWD immediately of damage to Park or private property, and injury to any person. Contractor's vehicles will be driven on existing roads and parking areas only.
- 5.6. Both parties hereto, in the performance of this contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.
- 5.7. Begin service on the agreed upon date between TPWD and Contractor.
- 5.8. Must possess adequate inventory of trash containers necessary to fulfill the requirements of the solicitation on an as-needed basis. Trash containers shall meet the following requirements:
 - 5.8.1 Painted only brown, green, or color as agreed upon by TPWD
 - 5.8.2 Undamaged and in good condition
 - 5.8.3 Leak proof; drain plugs shall be securely in place to prevent discharges.

- 5.8.4 Clear of any graffiti or advertising, except the advertising logo of the Contractor
- 5.8.5 Insect and rodent resistant; must have hatches or lid covers to keep animals and rodents out and to prevent rainwater from entering the trash container.
- 5.8.6 Container construction, materials, and condition are subject to TPWD approval. If container(s) is determined unacceptable by TPWD, the container(s) must be replaced within fourteen (14) days of request.
- 5.9 Furnish, install, set in place, and maintain trash containers in the quantity, size, location, and pick-up frequency as specified by the designated TPWD representative. The anticipated quantity of containers and pick-up frequency will be based on park visitation as outlined in the table below. The Contractor shall adjust the number of containers during peak and non-peak seasons as specified by the designated TPWD representative. Such containers shall be installed and remain in place at locations or areas designated by TPWD.

MONTHS	CONTAINER SIZE	NUMBER OF CONTAINERS	FREQUENCY OF PICK-UPS
September through August	6 Cubic Yard	8	One pick-up per week

- 5.10 Provide service including, but not limited to, delivery, emptying containers and haul off of trash between the hours of 8:00 A.M. and 5:00 P.M. on designated collection days or as specified by the designated TPWD representative. Service shall occur on days that are mutually agreed upon by TPWD and the Contractor. In the event holidays fall on a scheduled pickup day, pickups shall occur on the following day.
- 5.11 Adjust the quantity of containers, size of containers, and frequency of pick-ups as requested by the designated TPWD representative. (Note: TPWD reserves the right to add or decrease the number of containers, change the size of the containers, and/or adjust the frequency of pickups, based upon actual needs/usage for the life of the contract.)
 - 5.11.1 Weekly pick-up totals may vary as each period requires, however off-season and peak pricing shall remain at a flat monthly fee.
 - 5.11.2 Extra pickup trips must be provided on an as needed basis as requested by TPWD. Additional pickups requested by TPWD will be charged in addition to the monthly rate at the quoted price on page 2 of the solicitation document.
- 5.12 Adjust the monthly charge and amount based on the applicable unit price bid, quantity and size of containers, and frequency of pick-ups.
- 5.13 Collect trash from all containers when and as requested by the designated TPWD representative. Each pickup shall include servicing all containers, whether filled or not. Contractor shall provide more or fewer pickups at the bid price per pickup as requested by the designated TPWD representative.
- 5.14 Ensure the container area is kept clean. Immediately clean up any spillage of solid waste materials in the collection operation.
- 5.15 Provide necessary maintenance and/or periodic change out and cleaning of containers to keep them in operating condition, including repairs to containers, cleaning and painting to maintain sanitary conditions. Provide replacement trash containers during any off-site maintenance.
- 5.16 Haul solid waste materials in suitable vehicles.
- 5.17 Be responsible for disposal of contents in trash containers into a government approved and regulated landfill.

6. MINIMUM QUALIFICATIONS: A contract shall be awarded ONLY to a contractor who is experienced in trash and refuse collection. Awarded contractor shall meet the following minimum qualifications:

- 6.1. Shall have been engaged in the business of providing the specified services for a minimum of three (3) years within the last five (5) years. Recent start-up businesses do not meet the requirements of this solicitation.
- 6.2. 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.
- 6.3. Shall have available the necessary qualified personnel, skills, and equipment to fulfill all requirements under this solicitation and any resulting contract.
- 6.4. Complete [Exhibit A - Company Profile](#) and [Exhibit B - Past Projects with Corresponding References](#) and return with bid.
- 6.5. References must be verifiable by phone or e-mail within ten (10) working days of bid evaluation.
- 6.6. Authorization and Consent for Disclosure of Criminal History Information: To enhance the safety and security of TPWD employees and visitors, TPWD is required to check the criminal history for anyone providing services to TPWD. Contractor will have each personnel member (including sub-contractors, if any) who will be involved in this contract complete [Exhibit C - Authorization and Consent for Disclosure of Criminal History Information](#).

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.

7. CONTRACTOR RESPONSIBILITIES:

- 7.1. Contractor is responsible for all materials and equipment stored at the work site.
- 7.2. 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.
- 7.3. Contractor shall be solely responsible for any damage attributable to Contractor's operation. Contractor, at their own expense, shall repair any such damage immediately. The repair work is subject to acceptance by TPWD.
- 7.4. Contractor shall provide all labor, equipment, supervision, and any other necessary and incidental materials to complete the project.
- 7.5. Contractor is responsible for any and all clean up caused by the operation. All waste materials shall be hauled in suitable vehicles.
- 7.6. Contractor agrees to adjust the billing cycle charge based on the applicable unit price bid in this solicitation, the number of units added or deleted, and frequency of cleaning and servicing requested.
- 7.7. Contractor shall comply with all laws, ordinances, statutes, and regulations pertaining to the cleaning and servicing of the units added or deleted, and frequency of cleaning and servicing as requested.
- 7.8. Contractor shall be responsible for restoring any park facilities, structures, or trees damaged as a result of Contractor's operation. Contractor shall also be responsible for any damage to private property and injury to any person as a result of his/her operation. Contractor will notify TPWD immediately of damage to Park or private property, and injury to any person. Contractor's vehicle will be driven on existing roads and parking areas only.
- 7.9. 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.

8. COMPLIANCE: Contractor shall comply with all laws, ordinances, statutes and regulations pertaining to the collection, transportation, and disposal of waste and shall obtain such permits, licenses, or other authorizations as may be required. Must comply with all requirements for vector and odor control.

9. TPWD RESPONSIBILITIES:

9.1. TPWD will designate a Contract/Project Manager upon contract award.

9.2. TPWD will furnish no material, labor, equipment, or facilities unless otherwise provided for in this contract.

9.3. 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 Terms and Conditions may be considered, by TPWD, as unsatisfactory performance by the Contractor. An unsatisfactory performance may result in a negative vendor performance report, cancellation of the contract, or both. An unsatisfactory performance determination includes, but is not limited to:

9.3.1. One service “call back” to correct the same problem within thirty (30) calendar days.

9.3.2. Contractor fails to provide removal and disposal of trash based upon the frequency of requirements as mutually agreed.

9.3.2.1. If Contractor does not provide the removal and disposal of trash based on the frequency of requirements as mutually agreed upon, TPWD may deduct a prorated amount based on the daily rate for type of container that was not removed or replaced.

10. SAFETY: ALL EQUIPMENT USED ON GOVERNMENT PROPERTY WILL BE IN ACCORDANCE WITH O.S.H.A. REGULATIONS. ALL SAFETY EQUIPMENT WILL BE USED AT ALL TIMES WHEN OPERATING EQUIPMENT ON GOVERNMENT PROPERTY.

11. 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. For example, additional dumpsters are needed during the term of contract. In such cases, the contractor shall provide a written quotation for performing the additional work. TPWD contracting section will execute an amendment for additional services, no additional services shall be performed without a fully executed amendment to the contract.

12. INSURANCE:

12.1. 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
Workers Compensation	Statutory
Employer's Liability Bodily Injury by Accident Bodily Injury by Disease Bodily Injury by Disease	\$500,000 Ea. Accident \$500,000 Ea. Employee \$500,000 Policy Limit
Commercial General Liability General Aggregate Applies Per Project	\$500,000 Bodily Injury & Property Damage - Each Occurrence \$1,000,000 Aggregate Limit \$5,000 Medical Expense Each Person \$500,000 Personal Injury & Advertising Liability \$1,000,000 Products / Completed Operations Aggregate Limit
Automobile Liability All Owned, Hired and Non-Owned Vehicles	\$500,000 Combined Single Limit

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

- 12.2. 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.*
- 12.3. Prior to the commencement of the job and not later than ten (10) 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.
- 12.4. **The certificate of insurance shall be sent to the Purchaser point of contact via e-mail, see paragraph below:**

13. INQUIRIES:

- 13.2. Contact: All requests, questions, or other communications about this Solicitation shall be made in writing to TPWD's Purchasing Department, addressed to the following person:

Dominik Mendoza, Purchaser
Texas Parks & Wildlife Department
State Parks Division
Smith School Road
Austin, Texas 78744

Phone 512-389-4722
Fax 512-389-4677
E-Mail: dominik.mendoza@tpwd.texas.gov

- 13.3. Clarifications: TPWD will allow written requests for clarification of this Solicitation. Questions may be faxed or 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.
- 13.4. 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 Respondent or their representative(s), except for the written inquires described in [Section 11.2](#) 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 respondent.** Respondent shall rely only on written statements issued through or by TPWD's purchasing staff. This restriction does not preclude discussions between affected parties for the purposes of conducting business unrelated to this solicitation.

14. DELIVERY AND ACCEPTANCE:

- 14.2. Delays: If delay is foreseen, Contractor shall give written notice to TPWD. Default in promised pickups 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.
- 14.3. Acceptance: All services performed will be subject to inspection. Acceptance inspection will not take more than five (5) working days, weather permitting. Vendor will be notified within this time frame of any units not in full compliance with the purchase order specifications.

15. BID RESPONSE INSTRUCTIONS:

- 15.2. Bid Submission:

15.2.1. 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.

- 15.2.2. General Format: Respondent shall submit bid response, signed dated and completed.
- 15.2.3. Bid Delivery: Bids may be returned via email to stateparks.purchasing@tpwd.texas.gov. Due to the uncertainty surrounding Coronavirus (COVID-19), E-MAIL submittals are preferred and highly encouraged for this solicitation. However, if a Respondent feels they are unable to meet this requirement, please notify Elizabeth Castro to make arrangements for a hard copy delivery.
- 15.2.4. Bids returned by mail or hand delivery should be placed in a sealed envelope and correctly identified with IFB number, submittal deadline/opening date and time. Bids returned by fax should include a fax cover sheet correctly identified with IFB number, submittal deadline/opening date and time. It is the Bidder's responsibility to appropriately mark and deliver the bids to TPWD by the specified date.
- 15.2.5. Respondents are responsible for all costs of bid preparation.
- 15.3. Bid Content: Below is a summary of required and requested information. Bids submitted without this information will be evaluated accordingly. TPWD reserves the right, in its sole judgment and discretion, to waive minor technicalities and errors in the best interest of the state.
- 15.3.1. Bid Form: Respondent must submit the IFB form, signed, dated and completed. **Failure to submit this information will result in disqualification of bid.**

16. EVALUATION AND AWARD:

- 16.2. 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.
- 16.3. TPWD reserves the right to consider respondent 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.
- 16.4. Award: TPWD will award a Contract to the respondent whose quote is considered to be the Best Value to TPWD, price and other factors considered. The following factors may be used to evaluate bids:
- 16.4.1. Lowest Price
 - 16.4.2. Ability, Qualifications and Experience - Meeting or Exceeding the Requirement
 - 16.4.3. Delivery / Service Schedule
 - 16.4.4. Past Performance

17. INVOICING AND PAYMENT:

The following procedures apply to invoicing and payment in addition to those listed in the *General Terms and Conditions, Para. 9*:

- 17.1. Contractor to submit invoice(s) to: Texas Parks & Wildlife, Accounts Payable, 4200 Smith School Road, Austin, Texas 78744.
- 17.2. Invoices must show:
- 17.2.1. Name of Contractor exactly as shown on the contract, Texas Payee Identification Number (PIN), and correct "Remit to" address
 - 17.2.2. Name of receiving entity
 - 17.2.3. Contract/purchase order number

- 17.2.4. Description, quantity, unit of measure, unit price, extended price of each item
- 17.2.5. Total price
- 17.2.6. Discount, if applicable, extended and deducted to arrive at a NET TOTAL for invoice
- 17.2.7. Attach supporting documentation, if required

17.3. Payment:

- 17.3.1. 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.
- 17.3.2. Payment normally will be made to the Contractor within 30 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 days or the Contractor may charge a late payment fee established by law.
- 17.3.3. Payments for services purchased with state appropriated funds will be made through state warrants issued by the Comptroller of Public Accounts. Payments by qualified ordering entities will be made through the entities local payment system.
- 17.3.4. Electronic payment may be available through some ordering entities. Contact Accounts Payable at 512-389-4833 for additional information.

18. BIDDER AFFIRMATION:

Bidder 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 connection with the submitted bid.

Pursuant to Texas Government code, Title 10, Subtitle D, Section 2155.004(a), the bidder has not received compensation for participation.

**EXHIBIT A
COMPANY PROFILE**

Respondent shall use this exhibit (or a reasonable facsimile) 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 exhibit (or a reasonable facsimile) may result in the proposal being considered non-responsive.***

Company Name:			
Number Years in Business:		Number of Employees:	
Principal place of business (Corporate Headquarters):			
Address:			
City, State, Zip:			
Facility responsible for servicing the contract:			
Address:			
City, State, Zip:			
Contact Person regarding company's proposal submission to the solicitation:			
Name / Title:			
Phone Number:			
Email Address:			
Personnel who will be responsible for the management and day-to-day operations of the services solicited in this RFP.			
Name/Title:			
Indicate if your company or any of its subsidiaries filed or met criteria for bankruptcy within last five years.			
<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, explain.			
Description of firm's background, history, and qualifications (you may add pages for this section)			

**EXHIBIT B
PAST PROJECTS WITH CORRESPONDING REFERENCES**

Respondent Name: _____

Respondents shall use this exhibit (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 Exhibit B.* This form may be modified as needed to comply with the requirement to document company information. **Failure to return this exhibit (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	

EXHIBIT C
AUTHORIZATION AND CONSENT FOR DISCLOSURE OF CRIMINAL HISTORY



Life's better outside.®

**Authorization and Consent for
Disclosure of Criminal History Information**

In connection with the evaluation of my suitability for employment, volunteer status or contracted services to TPWD (either as an independent contractor or as an employee of an organization or business who has entered into a contract with TPWD), I give my consent for TPWD to obtain criminal history information related to my application for employment, volunteer status or contracted services to TPWD. I understand that criminal history information includes any criminal conviction records for deferred adjudication, misdemeanor or felony offenses at age 17 or older. Any such information will be used solely for employment, volunteer status or contracted services related considerations and not for any other purpose. ||

I authorize, consent, and grant permission to any person or entity to release to TPWD or its agent(s) any and all information regarding my criminal history. I waive any and all claims I may have with respect to providing such information. I understand that TPWD and its agent(s) are not responsible for the accuracy or completeness of the information contained in such reports. I release TPWD and its agent(s) from any and all liability, claims, and lawsuits with respect to the information obtained from any or all the sources used by TPWD and its agent(s). ||

I understand that this authorization is not an offer of employment, volunteer status or contracted services by TPWD and that any false or misleading information I have provided to TPWD may result in a refusal to hire, promote, reassign, or continue employment, volunteer status or contracted services. I also understand that this authorization is a continuing authorization and will remain valid until such time as I inform TPWD in writing that I revoke this authorization. ||

Please Legibly Print or Type:

Posting Number: _____ If Volunteer, Type of Volunteer: _____

Position Title: _____

State Park/or Facility Location: _____

Print Name: _____
(Last) (First) (Middle)

Address: _____
(Street) (City) (State) (Zip)

Date of Birth: _____ Male Female
(MM / DD / YYYY)

Driver's License Number: _____ Phone: _____
(State) (Number) Alt. Phone: _____

Texas Parks and Wildlife Department • 4200 Smith School Road, Austin, Texas 78744 • 1-800-792-1112, press 8 •
www.tpwd.state.tx.us/jobs

NOTICE: Texas Parks and Wildlife Department maintains the information collected through this form. With few exceptions, you are entitled to be informed about the information we collect. Under Sections 552.021 and 552.023 of the Texas Government Code, you are also entitled to receive and review the information. Under Section 559.004, you are also entitled to have this information corrected. ||

TPWD Office Use Only:	
Program/Site:	_____
Contact:	_____
TPWD Human Resources: Approved by:	_____
Date:	_____

GENERAL TERMS AND CONDITIONS

JUNE 2019

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

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

1. **DEFINITIONS:** As used throughout this solicitation, the following terms have the meaning set forth below. All other terms have the meaning set forth in Webster's II New College Dictionary.
 - 1.1. **Contractor:** The individual, corporation, company, partnership, firm, or organization that has to furnish the materials and has to perform the work as stated in the solicitation.
 - 1.2. **ESBD:** The Electronic State Business Daily, which is available online at <http://www.txsmartbuy.com/sp>.
 - 1.3. **Gov't Code:** The Texas Government Code.
 - 1.4. **Owner:** Texas Parks and Wildlife Department, an agency of the State of Texas.
 - 1.5. **Party/Parties:** Either the TPWD and Respondent separately or collectively.
 - 1.6. **Respondent:** Any person or vendor who submits a Bid/Proposal/Offer in response to this solicitation.
 - 1.7. **Services:** Includes the use of labor, materials, facilities, equipment, and any other need that is necessary or incidental to the successful completion of the contract.
 - 1.8. **Subcontractor:** Any supplier, distributor, Contractor, person, or firm furnishing to the Contractor, materials or services necessary or incidental to the performance of the contract between TPWD and Contractor.
 - 1.9. **TAC:** The Texas Administrative Code, which is the publication for administrative rules.
 - 1.10. **Texas Identification Number:** A unique 11-digit number assigned by the Texas Comptroller of Public Accounts. When a payee first contracts with a state agency, that payee must provide either a federal Employer Identification Number (EIN) or a Social Security number (SSN). The Texas Identification Number (TIN) is based on this number. (Note: If respondent does not have a TIN, or does not know their TIN, they may list their EIN or SSN on the "Texas Identification Number" line of the Vendor Information Block of their RFP, RFO, IFB or RFQ response.)
 - 1.11. **TPWD:** Texas Parks and Wildlife Department acting on behalf of the State of Texas.
2. **SPECIFICATIONS:**
 - 2.1. The goods/services provided shall be in accordance with the purchase specifications herein. TPWD will decide the answers to all questions that may arise as to the interpretation of the specifications and the quality, or acceptability of goods/services provided. TPWD will decide the rate of progress of the work and the acceptable fulfillment of the goods/service on the part of the Contractor.
 - 2.2. Catalogs, brand names or manufacturer's references are descriptive only, and indicate type and quality desired. Bids/Proposals on brands of like nature and quality will be considered unless advertised under Texas Gov't Code §2155.067. If offering other than references, response should show manufacturer, brand or trade name, and other description of product offered. If other than brand(s) specified is offered, illustrations and complete description of product offered are requested to be made part of the bid. Failure to take exception to specifications or reference data will require bidder to furnish specified brand names, numbers, etc.
 - 2.3. Unless otherwise specified, items shall be new and unused and of current production.
 - 2.4. Samples, when requested, must be furnished free of expense to the State. If not destroyed in examination, they will be returned to the respondent, on request, at respondent's expense. Each sample should be marked with respondent's name and address, and requisition number. Do not enclose in or attach response submission to sample.
 - 2.5. The State will not be bound by any oral statement or representation contrary to the written specifications of this Solicitation.
 - 2.6. Manufacturer's standard warranty shall apply unless otherwise stated in the solicitation.

3. **AWARD OF A PURCHASE ORDER:** Standard Purchase Order Terms and Conditions apply. If a conflict exists between the standard purchase order terms and conditions and specific language in this solicitation, the language in the solicitation shall prevail.
- 3.1. A response to a solicitation is an offer to contract with TPWD based on the terms, conditions and specifications contained in the solicitation. Responses do not become contracts unless and until they are accepted through an authorized TPWD designee by issuance of a purchase order.
- 3.2. This procurement will be conducted in accordance with the State Purchasing Act, Title 10, Subtitle D, Chapters 2151 through 2177, of the Texas Gov't Code (TGC) and TPWD rules. Any contract resulting from this procurement shall consist of one (1) document. This document will contain all of the rights and duties of the parties extracted from the relevant terms and conditions of: this solicitation (including its attachments, exhibits, supplements, and addenda); the successful Contractor's response; any TPWD request for a Best and Final Offer; and any successful Contractor's Best and Final Offer, if applicable.
- 3.3. Best Value – TPWD will be the sole judge of best value. Award will be based on Best Value criteria and may include, but is not limited to:
- 3.3.1. Best meets the goals and objectives of the solicitation as stated above.
- 3.3.2. Best meets the quality and reliability of the proposed services.
- 3.3.3. Effect of the proposed solution on agency productivity.
- 3.3.4. Provides the most customer focused solution that will best meet the needs of the public.
- 3.3.5. Experience in successfully providing services in this solicitation.
- 3.3.6. Past Performance: A Respondent's past performance will be measured based upon pass/fail criteria in compliance with applicable provisions of Gov't Code §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125. Respondents may fail this selection criterion for any of the following conditions:
- 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. CPA may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by 34 Texas Administrative Code §20.115), CPA may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of CPA, and any negative findings, as determined by CPA, may result in non-award to the Respondent.
4. **UNIT PRICES:** Respondents must price per unit shown. Unit prices shall govern in the event of extension errors.
5. **FREIGHT:** Quote FOB destination, freight prepaid and allowed unless otherwise stated within the specifications.
6. **DELIVERY:**
- 6.1. Show number of days required to place material in receiving agency's designated location under normal conditions. Delivery days mean calendar days, unless otherwise specified. Failure to state delivery time obligates respondent to deliver in 14 calendar days. Unrealistic delivery promises may cause solicitation to be disregarded.
- 6.2. If delay is foreseen, Contractor shall give written notice to the TPWD. Contractor must keep the TPWD advised at all times of status of order.
- 6.3. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the TPWD to purchase supplies elsewhere and charge full increase, if any, in cost and handling to defaulting Contractor.

- 6.4. Substitutions: No substitutions permitted without written approval of TPWD.
- 6.5. Delivery shall be made during normal working hours only, unless prior approval has been obtained from ordering agency. Normal working hours are 8:00 AM until 5:00 PM Monday through Friday except State and National holidays.

7. **TESTING AND INSPECTION:**

- 7.1. TPWD may test and inspect goods and services purchased under the Contract to ensure compliance with the specifications of this solicitation and the Contract. TPWD may also test and inspect goods and services before they are purchased under the Contract. Authorized TPWD personnel shall have access to the Respondent's place of business for the purpose of inspecting the goods. To the extent practical, TPWD inspections will not disrupt the Respondent's daily operations. Tests shall be performed on samples submitted with the Bid/Proposal or on samples taken from regular shipments. All costs of testing and inspection shall be borne by the Respondent. In the event the goods tested fail to meet or exceed all conditions and requirements of the solicitation and Contract, the goods will be rejected in whole or in part, at the State's option, and returned to the Respondent or held for disposition at the Respondent's expense. Latent defects may result in cancellation of the Contract at no expense to the state.
- 7.2. If material fails to meet specifications, the Respondent will be notified by fax / mail or e-mail. The Respondent will have ten (10) working days after receipt of the notification to remove the rejected material from state property. Material will be removed at the Respondent's expense. Material not removed in the allotted time period will be disposed by TPWD. The Respondent will be charged for all disposable expenses conducted by TPWD.

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

9. **INVOICING AND PAYMENT:**

- 9.1. Invoices: In order to receive payment under the Contract, the Respondent must submit an original invoice to TPWD, which will be designated in the purchase order as the "Bill To" address. To be a proper invoice that may be accepted and paid, the invoice must include the following information and/or attachments: (1) Name and address of the Contractor. (2) The Contractor's Texas Identification Number (TIN). (3) The Contractor's invoice remittance address. (4) The purchase order number authorizing the delivery of products or services. (5) A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Contractor must also include the payment number (e.g., 1 of 36).
- 9.2. Disputed Invoices: As stated above, the Respondent will receive notice of an error in an invoice submitted for payment by not later than the 21st day after the date the invoice was received by the TPWD. If an invoice dispute is resolved in favor of the Respondent, the Respondent is entitled to receive interest on the unpaid balance of the invoice, beginning on the date the invoice became overdue, pursuant to Gov't Code §2251.021,. If a dispute is resolved in favor of the TPWD, the Respondent 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 the Customer receives the goods under the Contract; (2) the date the performance of the service under the contract is completed; or (3) the date the Customer receives the invoice for the goods or service.

10. **PATENTS, TRADEMARKS, OR COPYRIGHTS:** Respondent agrees to defend and indemnify the TPWD and State from claims involving infringement or violation of patents, trademarks, copyrights, trade secrets, or other proprietary rights, arising out of the TPWD's or the State's use of any good or service provided by the respondent as a result of this solicitation.
11. **PROHIBITION ON LOBBYING:** The Respondent shall comply with the provisions of a federal law known generally as the Lobbying Disclosure Act, 2 U.S.C. §1601 et seq. By submitting a Bid/Proposal, the Respondent certifies that it shall not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence any officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. §1352. It also certifies that the Respondent shall disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award by completing and submitting Standard Form LLL.
12. **ANTI-TRUST AND ASSIGNMENT OF CLAIMS:** The successful Contractor hereby assigns to TPWD, any and all claims for overcharges associated with any contract resulting from this solicitation which arise under the antitrust laws of the United States 15 U.S.C.A., Section 1, et seq. (1973), and which arise under the antitrust laws of the State of Texas, Texas Business and Commercial Code Ann. Sec. 15.01, et seq. (1967).
13. **DEBTS AND DELINQUENCIES:** As required by 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 including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.
14. **DISPUTE RESOLUTION:**
 - 14.1. The dispute resolution process provided for in Chapter 2260 of Texas Gov't Code and TPWD regulations shall be used by TPWD and the Respondent to resolve all disputes arising under this contract. The Contractor shall comply with such rules, as revised from time to time.
 - 14.2. The dispute resolution process provided for in Chapter 2260 and TPWD regulations shall be used, as further described herein, to attempt to resolve any claim for breach of contract asserted by the Contractor under the Contract. If the Contractor's claim for breach of Contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Contractor shall submit written notice, as required by Chapter 2260. The notice shall also be given to the individual identified in the Contract for receipt of notices. Compliance by the Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.
 - 14.3. The contested case process provided in Chapter 2260 is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of Contract by TPWD if the Parties are unable to resolve their disputes as described above.
 - 14.4. Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the Contract by TPWD nor any other conduct of any representative of TPWD relating to the Contract shall be considered a waiver of sovereign immunity to suit.
 - 14.5. 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:

<http://comptroller.texas.gov/ssv/ethics.html>, as such Policy currently reads and as it is amended throughout the term of the Contract.

16. NAME CHANGES AND SALES:

16.1.

If the Contractor changes its name or is sold to another entity, it must provide written notification to TPWD. The Contractor, in its notice, shall describe the circumstances of the name change or sale, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform the Contract. If the change entails personnel changes for personnel performing the responsibilities of the Contract for the Contractor, the Contractor shall identify the new personnel and provide resumes to TPWD, if resumes were originally required by the Solicitation. TPWD may request other information about the change and its impact on the Contract and the Contractor shall supply the requested information within five (5) working days of receipt of the request.

16.2.

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

17. CONTRACTOR RESPONSIBILITIES:

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

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

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

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

17.5. Executive Head: Pursuant to 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 Proposal, the Respondent certifies that it does not employ any person who was the Executive Head of a state agency in the past four years. If Section 669.003 applies, Respondent shall complete the following information in order for the response submission to be evaluated:

Name of former executive: _____

Name of state agency: _____

Date of separation from state agency: _____

Position with Respondent: _____

Date of employment with Respondent: _____

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

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

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

18. TERMINATED CONTRACTS: By submitting a Response, the Respondent certifies that it has not had a contract terminated or been denied the renewal of any contract for non-compliance with policies or

regulations of any state or federally funded program within the past five (5) years nor is it currently prohibited from contracting with a governmental agency. If the Respondent does have such a terminated contract, the Respondent shall identify each and provide an explanation for the termination.

- 19. **INDEPENDENT CONTRACTOR:** The Contract shall not render the Contractor an employee, officer, or agent of the TPWD for any purpose. The Contractor is and shall remain an independent contractor in relationship to the TPWD. The TPWD shall not be responsible for withholding taxes from payments made under the Contract. The Contractor shall have no claim against the TPWD for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

- 20. **RIGHT TO AUDIT / RECORDS RETENTION:** Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, TPWD or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including providing all records requested. Contractor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract funds were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and the State's property for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the work of this Contract. Contractor and the subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Contractor must retain all work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by TPWD and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor. Contractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. Contractor's failure to comply with this Section shall constitute a material breach of this Contract and shall authorize TPWD and the State of Texas to immediately assess appropriate damages for such failure.

- 21. **FORCE MAJEURE:** TPWD may grant relief from performance of the contract if the Contractor is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the Contractor. The burden of proof for the need of such relief shall rest upon the Contractor. To obtain release based on force majeure, the Contractor shall file a written request with TPWD.

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

- 22.1. A
 ny 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. I
 nformation the respondent provides to TPWD in response to this solicitation will be considered public and subject to disclosure under the Texas Public Information Act.

- 22.3. C
 ontractor 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. Contractor will make such information not excepted from disclosure available in an electronic format that is accessible to the public unless Contractor receives written approval from TPWD to provide information in a different format, and such approval becomes part of this Contract.

- 23. RIGHT TO DATA, DOCUMENTS AND COMPUTER SOFTWARE (STATE OWNERSHIP):** Any software, research, reports studies, data, photographs, negatives or other documents, drawings or materials prepared by Contractor in the performance of its obligations under this contract shall be the exclusive property of the State of Texas and all such materials shall be delivered to the State by the Contractor upon completion, termination, or cancellation of this contract. Contractor may, at its own expense, keep copies of all its writings for its personal files. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of Contractor's obligations under this contract without the prior written consent of the State; provided, however, that Contractor shall be allowed to use non-confidential materials for writing samples in pursuit of the work. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.
- 24. PUBLIC DISCLOSURE / NEWS RELEASES:** No public disclosures or news releases pertaining to this solicitation shall be made without prior written approval of TPWD.
- 25. CONFIDENTIALITY AND SECURITY:** The Contractor should not receive any sensitive or confidential information under the Contract. Any information the Contractor compiles or creates as a result of the Contract must be maintained and protected in accordance with any federal, state, or local laws and regulations that apply. The Contractor shall establish a method to secure the confidentiality of records and other information relating to clients in accordance with applicable federal and state laws, rules, and regulations. The obligations of the Contractor under this Confidentiality and Security Article shall survive this Contract and shall be included in all subcontracts.
- 26. TERMINATION:** This contract shall terminate upon full performance of all requirements contained in this contract, unless otherwise extended or renewed as provided in accordance with the contract terms and conditions.
- 26.1. Termination for Convenience: TPWD reserves the right to terminate the contract at any time, in whole or in part, without cost or penalty, by providing 30 calendar days' advance written notice if TPWD determines that such termination is in the best interest of the state. In the event of such a termination, the Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TPWD will be liable for payments limited only to the portion of work authorized by TPWD in writing and completed prior to the effective date of cancellation, provided that TPWD shall not be liable for any work performed that is not acceptable to TPWD and/or does not meet contract requirements. All work products produced by the Contractor and paid for by TPWD shall become the property of TPWD and shall be tendered upon request. Termination under this paragraph shall not relieve the vendor of any obligation or liability that has occurred prior to cancellation.
- 26.2. Termination for Cause/Default: If the Contractor fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any of the terms or conditions of the Contract, the TPWD may, upon written notice of default to the Contractor, terminate all or any part of the Contract after providing an opportunity to cure the default.
- 26.2.1. Contractor will be responsible for paying damages to TPWD including but not limited to re-procurement costs, and any consequential damages to the State of Texas or TPWD resulting from Contractor's non-performance. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work is significantly changed.
- 26.3. The rights and remedies of TPWD provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.
- 26.4. TPWD may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless TPWD notifies the Contractor in writing prior to the exercise of

such remedy. The Contractor shall remain liable for all covenants and indemnities under the Contract. The Contractor shall be liable for all costs and expenses, including court costs, incurred by TPWD with respect to the enforcement of any of the remedies listed herein.

27. **SURVIVAL OF TERMS:** Termination of the Contract for any reason shall not release the Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.
28. **RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT:** In the event that the Contract is terminated for any reason, or upon its expiration, TPWD shall retain ownership of all associated work products and documentation obtained from the Contractor under the Contract, unless otherwise specified.
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 shall, in performing any services under the Contract, purchase products and materials produced in Texas when they are available at a comparable price and in a comparable period of time to products and materials produced outside Texas.
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 this RFO. Vendors who do not already have accessibility documentation should complete the form located here: <http://www.itic.org/policy/accessibility/>. Contractors that claim their products are exempt from accessibility requirements must present that position to TPWD as a question during the question and answer period of the solicitation.
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):** Prior to awarding state funds for goods and/or services rendered, the State of Texas will conduct a required search of your firm using the Federal System for Award Management (SAM). This is a Federal government maintained database that records and tracks organizations, either known to or suspected of contributing to terrorist organizations. No state funds may be paid to an individual or firm whose name appears on this list. TPWD reserves the right, in its sole discretion, to deny and/or exclude any individual or firm from an award whose name appears on this list.
36. **FEDERAL DISASTER RELIEF FRAUD:** Under Section 2155.006(b) of the Texas Gov't Code, a state agency may not accept a response or award a contract, including a contract for which purchasing authority

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

37. **APPLICABLE LAWS AND VENUE:** The Respondent agrees that the Contract in all respects shall be governed by and construed in accordance with the laws of the State of Texas, except for its provisions regarding conflicts of laws. The Respondent also agrees that the exclusive venue and jurisdiction of any legal action or suit concerning TPWD under this Contract is, and that any such legal action or suit shall be brought, in a court of competent jurisdiction in Travis County, Texas.
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 sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppels. TPWD does not waive any privileges, rights, defenses, or immunities available to TPWD by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.
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 allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers have not been found to be liable for such practices in such proceedings.

- 43. FALSE STATEMENTS; BREACH OF REPRESENTATIONS:** By signature to its Bid/Proposal, Respondent makes all the representations, warranties, guarantees, certifications and affirmations included in the RFP. If Respondent signed its Bid/Proposal with a false statement or signs the Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in the Contract, Contractor shall be in default under this Contract and TPWD may terminate or void the Contract for cause and pursue other remedies available to TPWD under this Contract and applicable law.
- 44. ACTUAL AND PERCEIVED CONFLICTS:** By submitting a Bid/Proposal, the Respondent represents and warrants that neither it nor its employees and subcontractors have an actual or potential conflict of interest in entering a Contract with TPWD. The Respondent also represents and warrants that entering a Contract with TPWD will not create the appearance of impropriety. In its Bid/Proposal, the Respondent shall disclose any existing or potential conflict of interest that it might have in contracting with TPWD. The TPWD will decide, in its sole discretion, whether an actual or perceived conflict should result in Bid/Proposal disqualification or Contract termination.
- 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., Texas Gov't Code Chapters 572 and 573). Such "revolving door" provisions generally restrict former agency heads from communicating with or appearing before the agency on certain matters for two years after leaving the agency. The revolving door provisions also restrict some former employees from representing clients on matters that the employee participated in during state service or matters that were in the employees' official responsibility or from working for certain entities after their state employment. Respondent, by signing this solicitation, certifies that it has complied with all applicable laws and regulations regarding former state employees.
- 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 2261.

49. **AMENDMENTS:** Except as provided in *Section III, Paragraph 8* of this Contract, this Contract may be amended only upon written agreement between TPWD and Contractor; however, any amendment of this Contract that conflicts with the laws of the State of Texas shall be void ab initio. The Contractor shall not be entitled to payment for any additional services, work, or products that are not authorized by a properly executed Contract amendment.
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 and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA) enacted on September 30, 1996.
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), the TPWD is in no manner liable to any subcontractor(s) of the Contractor. In no event shall this provision relieve the Contractor of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all terms of this solicitation and Contract. The Contractor shall manage all quality and performance, project management, and schedules for subcontractors. The Contractor shall be held solely responsible and accountable for the completion of all work for which the Contractor has subcontracted.
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, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor." The prime contractor shall ensure that this clause is included in all subcontracts.
60. **CONFLICT OF INTEREST:** Under Gov't Code §2155.003, a TPWD employee may not have an interest in, or in any manner be connected with a contract or response for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Section 1.2 of the State of Texas Procurement Manual, which outlines the ethical standards required of public purchasers, employees, and respondents who interact with public purchasers in the conduct of state business, and with any opinions of or rules adopted by the Texas Ethics Commission. Entities who are interested in seeking business opportunities with the State must be mindful of these restrictions when interacting with public purchasers of TPWD or purchasers of other state agencies.
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/whatsnew/elf_info_form1295.htm.

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

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

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

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

- 65.1. Signed Contract/Purchase Order (or Notice of Award)
- 65.2. Attachments to the Contract/Purchase Order (or Notice of Award)
- 65.3. The Solicitation (e.g., RFP, IFB)
- 65.4. Contractor's Response to the Solicitation and Contractor's Best and Final Offer, if applicable

66. **BUSINESS OWNERSHIP:**

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

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

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

NAME _____ SSN _____ % _____

NAME _____ SSN _____ % _____

FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Disclosure of your Social Security Number (SSN) is required under Section 231.006(c) and Section 231.302 (c)(2) of the Texas Family Code. The SSN will be used to identify persons that may owe child support. The SSN will be kept confidential to the fullest extent allowed under Section 231.302(e), Texas Family Code.

67. **NO ASSIGNMENT BY CONTRACTOR:** The awarded Contractor shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the TPWD.

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

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

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

70.1. By entering into this Contract, the Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security’s E-Verify system to determine the eligibility of:

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

70.2. The Contractor shall provide, upon request of TPWD, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor’s subcontractors, as proof that this provision is being followed.

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

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:

1. does not boycott Israel; and D
2. will not boycott Israel during the term of the contract W

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.

