

TEXAS PARKS AND WILDLIFE

INVITATION FOR BID – LEASES

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

RETURN BIDS TO
Purchasing.BidBox@tpwd.texas.gov , FAX 512-389-4677, or return to: TPWD - Purchasing and Contracting 4200 Smith School Road Austin, Texas 78744

BIDDER MUST SIGN BELOW

BID OPENING 2:00 PM June 4, 2024

REQUISITION NO. 802-24-40884

Page 1 of 13

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

DESTINATION IF DIFFERENT THAN ABOVE

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** →

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

AUTHORIZED SIGNATURE _____
DATE

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 971-70	Qty	Unit	Monthly Price	Extension (Monthly Price x Quantity)
1.	Texas Parks and Wildlife Department (TPWD) is soliciting bids for three (3) fully enclosed boat storage units with a minimum combination of 1080 square feet total located near Gladewater, Texas, Upshur County, no more than seven miles from Lake Gladewater.		24	Month	\$	\$

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:
Amber Davis, CTCI/CTCM; Phone: (512) 389-4578, Email: purchasing.bidbox@tpwd.texas.gov

**BOAT STORAGE SPACE UPSHUR COUNTY, TEXAS
LEASE SPECIFICATIONS
SOLICITATION NO. 802-24-40884**

1. Texas Parks and Wildlife Department (TPWD) is soliciting bids for three (3) fully enclosed boat storage units with a minimum combination of 1080 square feet total located near Gladewater, Texas, in Upshur County, no more than seven miles from Lake Gladewater for quick emergency response in accordance with the following specifications.
 - 1.1. **Storage space shall meet or exceed the following:**
 - A. A minimum of three (3) fully enclosed garage style boat storage units, each unit with the following requirements.
 - 1) Minimum of 360 square feet.
 - 2) Minimum height of fourteen (14) feet.
 - 3) Minimum width of twelve (12) feet.
 - 4) Minimum depth of thirty (30) feet.
 - 5) Minimum of one (1) Garage-style roll-up aluminum door per unit, each with the following requirements.
 - a. Minimum height of twelve (12) feet.
 - b. Minimum width of ten (10) feet.
 - c. Latch locking system with cylinder locks provided, all keyed alike for easy access by multiple staff, with minimum of 4 keys.
 - 6) Dimensions are to ensure clearance of vessels when backed into facility.
 - 7) Minimum of one (1) 120-volt duplex outlet inside
 - 8) Flooring shall consist of concrete capable of supporting heavy vehicles, boats, trailers, and equipment.
 - 1.2. Driveway and apron shall consist of all-weather material capable of supporting heavy vehicles and trailers in wet weather conditions.
 - 1.3. **Facility shall include the following:**
 - A. Secure gated facility with accessibility twenty-four (24) hours/seven (7) days a week, even during power outage.
 - B. Facility shall provide 24-hour video security surveillance to ensure the security of equipment.
 - C. Adequate indoor lighting to promote a safe working environment.
 - D. Adequate dusk to dawn outdoor lighting to promote safe working environment.
 - E. Shall not be susceptible to flooding in severe weather conditions.
 - F. Lessor shall pay all monthly electric bills and include in rental cost.
 - G. Lessor shall be responsible for maintaining lockable, properly functioning doors that remain functional during power outages.
 - H. Lessor shall be required to respond on-site within two (2) hours of agency reporting an emergency issue, including but not limited to power outages.

- I. Lessor shall be required to respond on or before the next business day for non-emergency service calls.
2. **Liability Insurance:** As a state agency, TPWD is essentially self-insured. TPWD is protected by sovereign immunity from certain types of claims. Meritorious claims that are not barred by sovereign immunity are paid by TPWD from funds appropriated to TPWD by the Texas Legislature, or by special appropriation. Such claims may be subject to certain statutory limits.
3. **Lessor Insurance:** Lessor is required to maintain insurance coverage per Solicitation Terms and Conditions, Paragraph 16, of this document. Lessor shall furnish to TPWD, for this approval, a Certificate of Insurance as proof that the required insurance is in full force and effect within ten (10) days of contract award.
4. **Lease Term:** Lease shall be for a twenty-four (24) month period beginning July 1, 2024, or upon award, whichever is later, through June 30, 2026.
5. **Renewal Option:** By mutual agreement between Lessee and Lessor, this lease may be renewed for three (3) additional one (1) year periods, under the same Terms and Conditions, plus any approved changes allowed per the executed lease.
6. **Payment:** Lease payments are made in advance at beginning of each month. September payments will be made during the middle of the month due to Texas Comptroller processes.
7. **Award:** TPWD reserves the right to award a contract to the Bidder who best responds to and meets the above specifications and is considered Best Value to TPWD, facility specifications, location, price, and other factors considered. The following factors may be used to evaluate bids:
 - a. Lowest Price
 - b. Ability, Qualifications and Experience – Meeting or Exceeding the Requirement
 - c. Delivery/Service Schedule
 - d. Past Performance
 - e. Location in proximity to specified area

SOLICITATION GENERAL TERMS AND CONDITIONS - LEASES

Revised April 2022

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

1. **DEFINITIONS:** As used throughout this solicitation, the following terms have the meaning set forth below:
 - 1.1. **TPWD:** Texas Parks and Wildlife Department acting on behalf of the State of Texas.
 - 1.2. **Lessor:** The individual, corporation, company, partnership, firm, or organization that is leasing the premises and/or equipment to TPWD.
 - 1.3. **Respondent:** The individual, corporation, company, partnership, firm, or organization that submits a response to TPWD's solicitation. The Respondent awarded the lease contract by TPWD will become the Lessor.
 - 1.4. **Services:** Lessor's act of leasing the premises and/or equipment to TPWD, and any actions by Lessor taken to accomplish that act.
 - 1.5. **Subcontractor:** Any supplier, distributor, contractor, person, or firm furnishing to the Lessor, materials or services necessary or incidental to the performance of the contract between TPWD and Lessor.
 - 1.6. **Texas Identification Number (TIN):** 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 Social Security Number (SSN). The 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, IFB or RFQ response.)
2. **SPECIFICATIONS:** Respondent agrees that it will provide the services described in and meet the requirements of the Lease Specifications. TPWD will determine the answers to all questions regarding interpretation of the Lease Specifications
3. **EVALUATION OF SUBMITTED RESPONSES AND AWARD OF LEASE CONTRACT:**
 - 3.1. This procurement will be conducted in accordance with the State Purchasing Act, Chapters 2151 through 2177 of the Texas Government Code (TGC) and TPWD rules.
 - 3.2. A Respondent's response to the solicitation is an offer to contract with TPWD based on the terms, conditions and specifications contained in the solicitation. If the response is accepted, TPWD will issue a lease contract. The lease contract will contain all of the rights and duties of the parties, including this solicitation (including its attachments, exhibits, supplements, and addenda); the successful Respondent's response; any TPWD request for a Best and Final Offer; and the successful Respondent's Best and Final Offer, if applicable.
 - 3.3. Best Value – TPWD will be the sole judge of best value. Contract awards will be based on Best Value criteria; such criteria may include, but are not limited to:
 - a. Best meets the goals and objectives of the solicitation as stated above.
 - b. Best meets the quality and reliability of the proposed services.
 - c. Effect of the proposed solution on agency productivity.
 - d. Provides the most customer focused solution that will best meet the needs of the public.
 - e. Experience in successfully providing services in this solicitation.
 - 3.4. As a part of the evaluation process for contract awards and in compliance with the provisions of TGC Section 2155.074, Section 2155.075, Section 2156.007, Section 2157.003 and Section

2157.125, and Texas Administrative Code, Title 34, Part I, Chapter 20, Section 20.108, information obtained from Comptroller of Public Account's (CPA's) Vendor Performance Tracking System may be used in the evaluation responses to solicitation for goods and services to determine the best value for the State. The Vendor Performance Tracking System can be located on the CPA website at: http://www.window.state.tx.us/procurement/prog/vendor_performance/

Past performance: A Respondent's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of TGC §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125. Respondents may fail this selection criterion for any of the following conditions:

- a. A score of less than 90% in the Vendor Performance System.
- b. Currently under a Corrective Action Plan through the CPA.
- c. Having repeated negative Vendor Performance Reports for the same reason.
- d. Having contracts that have been cancelled in the previous 12 months for non-performance (i.e., late delivery, etc.). Contractor performance information is located on the CPA web site at: http://www.window.state.tx.us/procurement/prog/vendor_performance/

3.5. Any exceptions to the solicitation submitted by a Respondent do not become part of the lease contract unless expressly agreed to in writing by TPWD. 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.

4. PAYMENT: Lease payments will be made in accordance with the Texas Prompt Payment law, TGC Chapter 2251.

5. DISPUTE RESOLUTION: The dispute resolution process provided for in TGC Chapter 2260 shall be used by TPWD and the Lessor to resolve all disputes arising under the lease contract.

6. LESSOR'S RESPONSIBILITIES:

- 6.1.** Lessor agrees to comply with all terms and conditions contained in the lease contract.
- 6.2.** Lessor agrees to obtain any necessary licenses and permits to accomplish its responsibilities under the lease contract.
- 6.3.** Lessor agrees to take commercially reasonable precautions to protect persons or property against injury or damage and be responsible for such injury or damage if caused by Lessor's negligence or willful misconduct.
- 6.4.** Lessor shall provide all labor, equipment, and materials (unless otherwise stated herein) necessary to perform any services under the lease contract. All of Lessor's employees shall be a minimum of 17 years of age and experienced in the type of work to be performed.
- 6.5.** Lessor shall promptly make any repairs to the premises and/or equipment if not caused by TPWD's negligence or willful misconduct.

7. NAME CHANGES AND SALES: If the Lessor changes its name or is sold to another entity, it must provide written notification to TPWD. The Lessor, 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 comply with the lease contract. TPWD may request other information about the change and its impact on the lease contract, and the Lessor shall supply the requested information within five (5) working days of receipt of the request.

TPWD may terminate the lease contract due to a sale of or change to the Lessor that materially alters the Lessor's ability to comply with the lease contract. TPWD has the sole discretion to determine if termination is appropriate under this section.

- 8. INDEPENDENT CONTRACTOR:** The lease contract shall not render the Lessor an employee, officer, or agent of TPWD for any purpose. The Lessor is and shall remain an independent contractor in relationship to TPWD. The Lessor is responsible for paying all necessary unemployment and workers compensation insurance for its employees.
- 9. RIGHT TO AUDIT:** Lessor understands that acceptance of funds under the lease 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. Lessor further agrees to cooperate fully with the above parties or other authorized agents of the State of Texas in the conduct of the audit or investigation, including providing all records requested. Lessor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under the lease contract 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. Lessor shall maintain all such documents and other records relating to the lease contract and any State property for a period of four (4) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Lessor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the work of the lease contract. Lessor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Lessor and the requirement to cooperate is included in any subcontract it awards
- 10. FORCE MAJEURE:** TPWD may grant relief from performance of the lease contract if the Lessor is prevented from performance caused by force majeure. Force majeure is defined as acts of God, fire, explosions, hurricanes, floods, epidemics, or pandemics, national or regional emergency, failures of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. The burden of proof for the need of such relief shall rest upon the Lessor. To obtain release based on force majeure, the Lessor shall file a written request with TPWD.
- 11. TERMINATION:** The lease contract shall terminate at the end of the lease term unless otherwise extended or renewed as provided in accordance with the contract terms and conditions.
 - 11.1. Termination for Convenience:** TPWD and Lessor reserve the right to terminate the lease contract at any time for convenience, in whole or in part, by providing sixty (60) calendar days advance written notice of intent to terminate. TPWD will be liable for payments limited only to the date of termination; if the date of termination occurs during the middle of a payment term, TPWD will be liable only for the prorated portion of that term. Termination under this paragraph shall not relieve the Lessor of any obligation or liability that has occurred prior to cancellation.
 - 11.2. Termination for Default:** TPWD may, by written notice of default to the Lessor, terminate the lease contract, in whole or in part, for cause if the Lessor fails to perform in full compliance with the contract requirements, through no fault of TPWD. TPWD will provide a thirty (30) day written notice of termination to the Lessor of intent to terminate, and TPWD will provide the Lessor with an opportunity for consultation with TPWD prior to termination.
 - a. If TPWD terminates the lease contract under this section, the defaulting Lessor will not be considered in any re-solicitation of the lease contract and may not be considered in future lease solicitations, unless the specifications or scope of work is significantly changed.
 - 11.3.** The rights and remedies of TPWD provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under the lease contract.

- 11.4.** Upon termination, TPWD and the State of Texas shall not be liable to Lessor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Lessor may be entitled to seek the remedies provided in TGC Chapter 2260.
- 12. 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.
- 13. PUBLIC DISLCOSURE:** No public disclosures or news releases pertaining to this solicitation, or the lease contract shall be made without prior written approval of TPWD.
- 14. APPLICABLE LAWS AND STANDARDS:** The lease contract shall be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit arising under the lease contract is fixed in any court of competent jurisdiction of Travis County, Texas. The Lessor 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 the lease contract. TPWD reserves the right, in its sole discretion, to unilaterally amend the lease contract throughout its term to incorporate any modifications necessary for TPWD or Lessor's compliance with all applicable State and federal laws and regulations.
- 15. NO WAIVER:** Nothing in the lease contract shall be construed as a waiver of the state's sovereign immunity. The lease 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 the lease 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 a lease contract or by its conduct prior to or subsequent to entering into the lease contract.
- 16. INSURANCE:** Lessor is required to maintain the following insurance coverage and provide TPWD current certificates upon request:
- 16.1.** Standard Workers Compensation Insurance covering all employees who will provide services under the lease contract; and
- 16.2.** Commercial General Liability Insurance and personal injury of reasonable and commercially prudent limits.
- 16.3.** All of the above coverage must be with companies licensed in the state of Texas with an "A" rating from A.M. Best and Company and authorized to provide the corresponding coverage. All policies must contain endorsements prohibiting cancellation except upon at least thirty (30) days prior written notice to TPWD. Lessor shall provide TPWD with executed copies of the policies above immediately upon request.
- 16.4. LESSOR AGREES TO RELEASE AND INDEMNIFY TPWD FROM AND AGAINST ANY AND ALL LIABILITY RELATED TO INJURIES TO EMPLOYEES OF LESSOR OR A SUBCONTRACTOR RELATED TO PERFORMANCE UNDER THE LEASE CONTRACT IF NOT DUE TO TPWD'S NEGLIGENCE OR WILLFUL MISCONDUCT.**
- 17. SEVERABILITY:** In the event that any provision of the lease contract is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.
- 18. BUY TEXAS:** For service contracts, TGC §2155.4441 requires contractors, in performing the services, to purchase products and materials produced in this state when they are available at a price and time comparable to products and materials produced outside this state.

- 19. AMENDMENTS:** Except as provided in Section 14, Applicable Laws and Standards, the lease contract may be amended only upon written agreement between TPWD and Lessor unless otherwise agreed in writing or as described herein; however, any amendment of the lease contract that conflicts with the laws of the State of Texas shall be void.
- 20. INDEMNIFICATION:** LESSOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES, AND TPWD, ITS OFFICERS, AND EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF LESSOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF LESSOR IN THE EXECUTION OR PERFORMANCE OF THE LEASE CONTRACT. LESSOR SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY TPWD.
- THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE LESSOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TPWD FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF TPWD OR ITS EMPLOYEES.
- 21. 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.
- 22. 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 for records involving the Respondent 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 Respondent whose name appears on this list from a contract award.
- 23. IMMIGRATION:** Lessor 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.
- 24. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM:** By entering into the lease contract, the Lessor certifies and ensures that it utilizes and will continue to utilize, for the term of the lease contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:
- 24.1.** All persons employed to perform duties within Texas, during the term of the lease contract; and all persons (including subcontractors) assigned by the Lessor to perform work pursuant to the lease contract, within the United States of America.
- 24.2.** The Lessor 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 Lessor and Lessor's subcontractors, as proof that this provision is being followed. If this certification is falsely made, the lease contract may be immediately terminated, at the discretion of the State and at no fault to the State, with no prior notification. The Lessor shall also be responsible for the costs of any re-solicitation that the State must undertake to replace the terminated lease contract.

- 25. SUBCONTRACTORS:** Subcontractors providing services under the lease contract shall be subject to the same requirements as the Lessor. No subcontract under the contract shall relieve the Lessor of its contractual responsibilities. If the Lessor uses a subcontractor for any or all of the services, the following conditions shall apply under the listed circumstances.
- 25.1.** Respondents planning to subcontract all or a portion of the work at the time of response submission shall identify the proposed subcontractors.
- 25.2.** Subcontracting shall be at the Lessor's expense; and
- 25.3.** The Lessor shall be the only contact for TPWD and subcontractors. Lessor shall list a designated point of contact for all TPWD and subcontractor inquiries.
- 26. 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 Texas Administrative Code, Title 31, Part 2, Chapter 51, Rule 51.350 located online at:
[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_loc=&pg=1&p_tac=&ti=31&pt=2&ch=51&rl=350](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_loc=&pg=1&p_tac=&ti=31&pt=2&ch=51&rl=350).
- 27. NON-APPROPRIATION OF FUNDS:** Any lease 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 Lessor's delivery or performance under the contract impossible or unnecessary, the lease 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 Lessor for any damages that are caused or associated with such termination or cancellation, and TPWD will not be required to give prior notice.
- 28. TEXAS PUBLIC INFORMATION ACT:** Information the lessor provides to TPWD under this solicitation will be presumed public and subject to disclosure under the Texas Public Information Act (PIA). However, certain information may be confidential and fall under an exception to disclosure under the PIA, such as proprietary information, trade secrets, and certain commercial and financial information where disclosure might cause "*substantial competitive harm to your business.*" If the lessor believes that its response to this solicitation contains confidential information in those or other categories, the lessor must specifically document this at the top or bottom of each page that contains the information the lessor considers confidential. The lessor's documentation must include a statement that confidential information is contained on that page, refer to its exact location on the page, and describe the specific nature of the exception to the PIA that the lessor believes applies to this information, i.e. copyrighted, trade secret, proprietary, financial etc. A general disclaimer that the lessor's response contains confidential information will not be sufficient to meet this requirement. **If such documentation is not provided, TPWD will assume that all information provided in the response to this solicitation is releasable under the PIA.**
- 28.1. The Lessor is required to make any information created or exchanged with the State pursuant to the lease contract, that is not otherwise excepted from disclosure under the PIA, available in a format that is accessible by the public at no additional charge to the state.** The Lessor will make such non-excepted information available in an electronic format that is accessible to the public unless the Lessor receives written approval from TPWD to provide information in a different format, and such approval becomes part of the lease contract.
- 29. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964:** The Lessor is subject to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and offers all persons the opportunity to participate in programs or activities regardless of race, color, national origin, age, sex, or disability. Further, it is agreed that no individual will be turned away or otherwise

denied access to or benefit from any program or activity that is directly associated with a program on the basis of race, color national origin, age, and sex (in educational activities) or disability.

- 30. CONFLICT OF INTEREST:** Under TGC §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.
- 31. LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS:** Lessor shall have no authority to act for or on behalf of TPWD or the State of Texas except as expressly provided for in the lease contract; no other authority, power or use is granted or implied. The Lessor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or TPWD.
- 32. NOTICES:** Any written notices required under the lease contract will be by either hand delivery or by U.S. Mail, certified, return receipt requested, to Respondent's office address as specified in the Execution of Response, Exhibit A, of this document, or 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.
- 33. COMPLIANCE WITH OTHER LAW:** The Lessor shall comply with all applicable federal, state, and local laws, including laws governing labor, equal opportunity, safety, and environmental protection, in its performance under the lease contract. The Lessor 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 the lease contract.
- 34. ENVIRONMENTAL PROTECTION:** The Lessor 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.).
- 35. SURVIVAL OF TERMS:** Termination of the lease for any reason shall not release the Lessor from any liability or obligation set forth in the lease 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 indemnification, records, audit, property rights, and dispute resolution.
- 36. CERTIFICATIONS AND DISCLOSURES:**
- 36.1. CHILD SUPPORT OBLIGATION AFFIRMATION:** Under Section 231.006 of the Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated, and payment may be withheld if this certification is inaccurate.
- 36.2. 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 response to the solicitation, 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. Respondent also certifies that

it 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.

- 36.3. FORMER EXECUTIVE HEAD:** Pursuant to TGC §669.003, TPWD may not enter into a contract with a person who employs a current or former executive head of a state agency until four years have passed since that person was the executive head of the state agency. By submitting a response to the solicitation, 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: _____

- 36.4. 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.

- 36.5. FEDERAL SUSPENSION AND DEBARMENT:** Under Title 2, Part 180 of the Code of Federal Regulations, participants in covered transactions may not do business with a person, including a principal of that person, who is excluded or disqualified from participation by the federal government. Respondent certifies that neither it nor any of its principals are excluded or disqualified from participating in a covered transaction with TPWD. Respondent agrees that it will comply with all applicable requirements of 2 C.F.R. Part 180, including Subpart C regarding the verification and disclosure of information about individuals, entities, and principals who are excluded or disqualified from participating in covered transactions. Respondent will also ensure that this compliance requirement will be included in all subcontracts it enters into pursuant to a covered transaction.

- 36.6. FEDERAL DISASTER RELIEF FRAUD:** Under TGC §2155.006(b), 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 TGC §2155.006, the Respondent certifies that the individual or business entity named in this response is not ineligible to be awarded a lease contract and acknowledges that any contract resulting from this solicitation may be terminated and payment withheld if this certification is inaccurate.

- 36.7. DECEPTIVE TRADE 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.

Respondent 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.

- 36.8. ANTI-TRUST:** Respondent represents and warrants that neither Respondent nor any firm, corporation, partnership, or institution represented by Respondent, or anyone acting for such firm, corporation or institution, has (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the response to any competitor or any other person engaged in such line of business during the procurement process for this solicitation.
- 36.9. DRUG-FREE WORKPLACE REQUIREMENTS:** The Respondent certifies that it will comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the Respondent will comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.
- 36.10. CURRENT AND FORMER TPWD EMPLOYEES:** The Respondent shall 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 TGC §573.023) or within the second degree by affinity (as defined by TGC §573.025), to any current or former officers or employees of the TPWD. Respondents must comply with all applicable Texas and federal laws and regulations relating to the hiring of former state employees (see e.g., TGC 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. Respondent, by signing this solicitation, certifies that it has complied with all applicable laws and regulations regarding former state employees.
- 36.11. FINANCIAL PARTICIPATION PROHIBITED AFFIRMATION:** Pursuant to Section 2155.004(a) of the Texas Government Code, Respondent certifies that neither Respondent nor any person or entity represented by Respondent has received compensation from TPWD to participate in the preparation of the specifications or solicitation on which this Response or contract is based. Under Section 2155.004(b) of the Texas Government Code, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated, and payment withheld if this certification is inaccurate.
- 36.12. ABORTION PROVIDER AND AFFILIATE TRANSACTIONS PROHIBITED:** Respondent represents and warrants that the contract is not a taxpayer resource transaction prohibited by Section 2272.003 of the Texas Government Code and that payments made by TPWD to Respondent and Respondent’s receipt of appropriated funds under the contract are not prohibited by Article IX, Section 6.25 of the General Appropriations Act.
- 36.13. FOREIGN TERRORIST ORGANIZATIONS:** Section 2252.152 of the Texas Government Code prohibits TPWD from awarding a contract to any person who does business with Iran, Sudan, or a foreign terrorist organization as defined in Section 2252.151 of the Texas Government Code. Respondent certifies that it is not ineligible to receive the contract.

- 36.14. HUMAN TRAFFICKING PROHIBITION:** Under Section 2155.0061 of the Texas Government Code, the Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated, and payment withheld if this certification is inaccurate.
- 36.15. COMPANIES THAT BOYCOTT CERTAIN ENERGY COMPANIES;** Under Section 2274.002 of the Texas Government Code, by submitting the Response, Respondent certifies and warrants that it does not boycott energy companies; and will not boycott energy companies during the term of the contract.
- 36.16. DISCRIMINATION AGAINST FIREARM OR AMMUNITION INDUSTRIES:** Under Section 2274.002 of the Texas Government Code, by submitting the Response, Respondent certifies and warrants that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against said industries.
- 36.17. AGREEMENTS RELATED TO CRITICAL INFRASTRUCTURE:** Pursuant to Texas Government Code Section 2274.0102, TPWD may not enter into a contract with a company (as defined by Texas Government Code Section 2274.0101(1)) that meets the criteria provided under Texas Government Code Sections 2274.0102 and 2274.0103. By signing this bid, Bidder certifies that it is not a company that meets the criteria provided under Texas Government Code Sections 2274.0102 and 2274.0103.
- 36.18. COVID-19 VACCINE PASSPORT PROHIBITION:** Under Section 161.0085 of the Texas Health and Safety Code, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract.
- 36.19. SIGNATURE AUTHORITY:** By submitting the Response, Respondent represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract that may result from the submission of this Response.