

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
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 DUE DATE 2:00 PM August 1, 2024

REQUISITION NO. 802-25-49987

Page 1 Of 32

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

DESTINATION IF DIFFERENT THAN ABOVE
Texas Parks and Wildlife Department Analytical Services Laboratory 505 Staples Road, Building 2 San Marcos, Texas 78666

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 938-81	Quantity	Unit of Measure	Unit Price
<p>Texas Parks and Wildlife Department (TPWD) is soliciting bids to establish a blanket contract <u>with an authorized service provider</u> for annual preventive maintenance and repair service for an Applied Biosystems™ 3500 Genetic Analyzer. The equipment is located at TPWD Inland Fisheries Analytical Services Laboratory, 505 Staples Road, Building 2, San Marcos, Texas 78666. All services shall be completed per the attached specifications dated July 2024.</p> <p>Initial Contract Term: September 1, 2024 through August 31, 2026. Renewal Option: Option to renew for three (3) additional 1-year terms.</p>					

PROPRIETARY SPECIFICATIONS: These specifications and/or requirements are being advertised under Section 2155.067, Texas Government Code. If a competing vendor believes it can satisfy these specifications, it should respond with its product and explain how the specifications will be adequately met.

1.	<p>All labor, parts, supplies, travel fees and incidental services/fees required to provide annual preventative maintenance and repair service for Applied Biosystems™ 3500 Genetic Analyzer.</p> <p>Unit price shall be the total cost to provide one (1) preventive maintenance visit, repair services and replacement parts for the period of September 1, 2024 through August 31, 2025.</p> <p>Unit price shall include all labor, parts, supplies, travel fees and incidental services/fees.</p>	1	YEAR	\$	
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Offered by a Historically Underutilized Business certified by CPA.

PREFERENCES: See Appendix 21 of the *State of Texas Procurement and Contract Management Guide* 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:

JUDY AHRENS, CTCD CTCM- PHONE 512-718-3703

Email: purchasing.bidbox@tpwd.texas.gov

Solicitation 802-25-49987
Specifications for Preventive Maintenance and Repair Services

- 1) **INTRODUCTION:** Texas Parks and Wildlife Department (TPWD) is soliciting bids to establish a blanket contract with an authorized service provider for preventive maintenance and repair services for an Applied Biosystems™ 3500 Genetic Analyzer. The equipment is located at TPWD Inland Fisheries Analytical Services Laboratory (ASL), 505 Staples Road, Building 2, San Marcos, Texas 78666. All services shall be completed per the attached specifications.
- 2) **TERM OF CONTRACT:** Contract shall commence September 1, 2024 or upon date of award, whichever is later, and continue through August 31, 2026 unless sooner terminated under the terms of this contract.
 - a) Contract Renewals: This contract may be renewed for up to three (3) 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.
 - b) 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.
- 3) **ANNUAL ESCALATION:** A price escalation may be allowed each contract year with an approved justification upon mutual agreement of both parties. TPWD reserves the right to accept the proposed price, to propose an alternate price, or to terminate the contract for convenience.
- 4) **PRE-BID SITE INSPECTION:** Bidders are highly encouraged to attend a pre-bid site visit to inspect the work site to become familiar with the job conditions and determine equipment and materials needed to conduct the requested services. *Failure to give proper consideration in the response submission to site conditions will not constitute grounds for additional compensation.*
 - a) Bidders may schedule attendance by contacting: Michelle Michaelis, 512-353-0313, michelle.michaelis@tpwd.texas.gov.
 - b) Note: Attendees should be prepared to tour the site by foot with proper clothing and footwear.
- 5) **SPECIFICATIONS:**
 - a) Service Description: One (1) annual Preventive maintenance inspection per calendar year and repair services as needed upon TPWD request to ensure instrument functioning and calibration and provide necessary software updates for the operating system.
 - i) Contractor shall ensure that the results produced from the instrument are reliable and reproducible in accordance with applicable protocols and industry best practices.
 - ii) The preventive maintenance service agreement shall include labor, travel, and certified and/or optimized replacement parts for the 3500 Genetic Analyzer instrument(s) and computers specified for their operation.
 - iii) Contractor shall check and update software as needed.

- iv) Contractor shall make physical repairs as needed to ensure the continued performance of the laboratory equipment.
- b) Equipment: Applied Biosystems™ 3500 Genetic Analyzer by Life Technologies Corp., a subsidiary of Thermo Fischer Scientific.
 - i) Equipment purchased during 2015.
- c) Equipment Function: to resolve the products of sanger sequencing, single nucleotide polymorphisms (SNP), insertion-deletion mutation (indel) and microsatellite assays.
 - i) Capillary electrophoresis instrument
 - ii) Eight (8) capillary (3500 System)
 - iii) DNA sequencing and/or fragment analysis reagents and consumables for system qualification.
 - iv) Integrated software for instrument control, data collection, quality control, and auto-analysis of sample files for base calling and fragment sizing
 - v) System consumables: Primary consumables contain novel, integrated radio frequency identification (RFID)-tagged labels that enable viewing, tracking, and reporting of critical information:
 - (a) Capillary Array(s) – eight (8) or twenty-four (24) capillary models
 - (b) Performance Optimized Polymer(s)
 - (c) Cathode Buffer Container(s)
 - (d) Anode Buffer Container(s)
- d) Replacement Parts: Original equipment manufacturer (OEM) parts only. Third party vendor or refurbished parts will not be accepted.
 - i) Parts shall be installed by authorized personnel that are trained to repair/maintain the Genetic Analyzer.
- e) Preventive Maintenance Inspection and Service:
 - i) Annual Preventive Maintenance Service shall occur one (1) time per calendar year on a date and time to be mutually agreed upon by TPWD and Contractor.
 - ii) Contractor shall arrive promptly at the agreed upon time and date.
 - iii) TPWD shall communicate with Contractor to document any system concerns. Contractor shall make note if TPWD lab concerns require a separate service call.
 - iv) Visually inspect the 3500 Genetic Analyzer along with its surroundings to ensure optimal performance and that nothing is impeding the machine, such as obstructions to vents and/or a hot room. Tech shall alert TPWD lab tech of any issues.
 - v) Clean/vacuum/remove any-and-all dust on the computer and/or analyzer exterior.
 - vi) Check the status of any updates for electronic configuration (ECO) and/or any open ECOs
 - (1) Obtain TPWD approval for installing/completing updates with system validation issues.
 - (2) Install/resolve any updates after obtaining TPWD approval.
 - (3) Document any updates on the corresponding service order.

- vii) Record the current firmware versions for the 3500 Genetic Analyzer on service order.
 - (1) Instrument Firmware
 - (2) Charge coupled device (CCD) Camera Firmware
- viii) Record computer specifications noted below for the computer used with the 3500 Genetic Analyzer on service order. Ensure that all specifications below are compatible with the "3500 Genetic Analyzers Software Compatibility and User Reference," a Publication by ThermoFischer #MAN0015980:
 - (1) Computer Model
 - (2) Service Tag Number
 - (3) Associated Thermo Fischer Part Number (if applicable)
 - (4) Operating System and Version
 - (5) Service Pack Version
 - (6) Data Collection Version
 - (7) Sequencing Analysis Software Version
 - (8) SeqScape™ Software Version
 - (9) GeneMapper™ Software Version
 - (10) GeneMapper™ ID-X Software Version
 - (11) Variant Reporter™ Software Version
 - (12) MicroSEQ™ ID Microbial Identification Software Version
- ix) Unplug the Genetic Analyzer, remove the covers, make a visual inspection of the equipment, and remove/clean any dust, debris, dried polymers, etc. from the equipment.
- x) Ensure that all cables are properly fastened, routed correctly, all electrical connections are fixed, and that no cables are pinched.
- xi) Inspect the air filter and replace as needed.
- xii) Remove any polymer block buildup using a Polymer Delivery Pump (PDP) Cleaning kit.
- xiii) Inspect and repair/replace Polymer Injection (PI) Sensors as needed.
- xiv) Use the ThermoFischer Scientific Publication # 4400708, "Applied Biosystems™ 3500 Series Genetic Analyzer Service Guide" to check the following and record on the service order. Contractor shall repair/replace as needed based on variable differences and instructions listed in the publication:
 - (1) Laser Hours
 - (2) Laser Output
 - (3) Beam Overlap
 - (4) Average Peak Intensity
 - (5) Signal Intensity Variation
 - (6) Grating Rotation Angle
 - (7) CCD Rotation Position
 - (8) Upper and Lower Capillary
 - (9) Wavelength correction

(10) Factory normalization setting

xv) Inspect and service the Genetic Analyzer pump

- (1) Flush the pump with Deionized Water
- (2) Check the Valve Fitting and replace as needed
- (3) Check the Waste Bottle and replace as needed
- (4) Check the buffer gap and stopper positions and adjust as needed.

xvi) Calibrate the X, Y and Z Axis for the autosampler and document on the service order for reference.

xvii) Test the instrument by running the radio frequency identification (RFID) read and write test along with the spatial calibration. Provide results to TPWD lab contact.

xviii) Clean and remove all debris from the area related to performance of service.

xix) Ensure that the TPWD contact information is current and discuss/review the PM Service Order with the TPWD contact. Discuss any issues and/or repairs made during the appointment, recommend any possible improvements, etc.

- (1) TPWD contact shall sign a copy of the service order if they approve of all the work
- (2) Provide a paper or electronic copy of the Service Order to TPWD contact prior to leaving the lab.

f) Service Calls:

- i) Contractor shall provide requested services within three (3) business days of TPWD request.
- ii) Contractor shall provide priority telephone and email access to instrument technical and application support.

g) Work Schedule: Services may be conducted Monday through Sunday, 8:00am to 5:00pm. Services shall be scheduled in advance with the TPWD Project Manager.

5) **EQUIPMENT:**

- a) All equipment, materials and parts not specifically mentioned which are necessary for the completion of work must be furnished by the Contractor.
- b) Describe all equipment and tools to be used for this project in [Exhibit B –Equipment and Tool List](#). Make sure to include dimensions/capacities of equipment, make, model, and intended use by bid item. For purposes of this bid evaluation TPWD assumes that the respondent's equipment list, includes ALL of the equipment that the respondent is dedicating to this project and has considered in this bid. All equipment, materials and parts not specifically mentioned which are necessary for the completion of work must be furnished by the vendor.
- c) All equipment shall be in safe working order and have appropriate safety equipment installed and intact per manufacturer recommendations.
- d) All other areas of the TPWD Property are closed and off limits to the contractor and their employees. Only those personnel critical to the completion of this project will be allowed on the premises. No pets will be allowed.

6) MINIMUM QUALIFICATIONS:

- a) **A contract shall be awarded ONLY to an authorized service provider for preventive maintenance and repair services for an Applied Biosystems™ 3500 Genetic Analyzer** and is experienced in providing the services contained herein. Awarded contractor shall meet the following minimum qualifications:
- b) Shall have been engaged in the business of providing the specified services for a minimum of three (3) years. Recent start-up businesses do not meet the requirements of this solicitation.
- c) Complete [Exhibit A – Company Profile, and Exhibit C - Past Projects with Corresponding References, and](#) return with bid.
- d) References must be verifiable by phone or email within ten (10) working days of bid evaluation.
 - i) 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.
- e) All Contractor service technicians shall be experienced in providing the services contained herein.

7) CRIMINAL BACKGROUND CHECKS:

- a) Contractor represents and warrants that Contractor and Contractor's employees performing services outlined in this solicitation and subsequent contract, have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised TPWD as to the facts and circumstances surrounding the conviction.
- b) Contractor's employees and subcontractors that will complete any services described herein will be subject to a criminal background check. A complete criminal background check shall be completed by TPWD before any employee performs services and may be requested at any time thereafter.
- c) TPWD reserves the right to waive any findings that do not impact the successful completion of the project and/or safety of TPWD staff or that of the public. It is TPWD's sole discretion to determine potential impact or risk.

8) CONTRACTOR REQUIREMENTS:

- a) Contractor technicians shall be authorized personnel that are trained to repair/maintain the Genetic Analyzer.
- b) Contractor is responsible for all materials and equipment stored at the work site.
- c) Contractor is responsible for the prompt removal of all debris, litter, and rubbish regularly throughout the project.
- d) 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.
- e) 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.
- f) Contractor shall provide all labor, equipment, supervision, and any other necessary and incidental materials to complete the project.
- g) Contractor is responsible for any and all clean-up caused by the operation.

- h) The Contractor shall immediately clean up any spillage of waste materials.
- i) 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.

9) **PERFORMANCE MEASURES:**

- a) Contractor will be responsible for the performance of any contractual obligations that may result from an award based on this IFB and shall not be relieved due to non-performance of any or all subcontractor(s). By submitting a proposal, the Respondent commits to providing the goods and services required in the IFB. The successful Respondent(s) will be required to abide by TPWD policies, procedures, standards, and guidelines relevant to the execution of this contract.
- b) TPWD will measure and evaluate the Contractor's and/or subcontractor's performance under the contract. If the Contractor or subcontractor does not meet any standards for deliverables and/or performance incentives (if applicable), TPWD may impose remedies if the Contractor or subcontractor(s) fails to meet their responsibilities as outlined in the IFB and the terms and conditions of the contract. All services and deliverables under the contract shall be provided at an acceptable quality level and in a manner consistent with acceptable industry standards, customs, and practices. In the event TPWD deems that the Contractor's performance does not meet an acceptable quality level of service and deliverables, TPWD may seek or negotiate remedies with the Contractor.
- c) 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, or cancellation of the contract or both.

10) **TPWD RESPONSIBILITIES:**

- a) TPWD will designate a Contract/Project Manager upon contract award.
- b) TPWD will furnish no material, labor, equipment, or facilities unless otherwise provided for in this contract.

11) **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**

12) **ADDITIONAL SERVICES:** Where found to be in the best interest of TPWD, this contract may be amended in writing to provide additional services, provided that such additional services are within the original scope and intent of the contract. For example, additional clearing services 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.

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

14) **INSURANCE:**

- a) 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.*

- b) 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.*
- c) 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.
- d) **The certificate of insurance shall be sent to: Judy Ahrens / Purchasing & Contracting, Texas Parks & Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; or may be faxed to 512-389-4677.**

15) INQUIRIES:

- a) **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:

Judy Ahrens, Purchaser	Phone 512-718-3703
Texas Parks & Wildlife Department	Fax 512-389-4677
Smith School Road, Austin, Texas 78744	Purchasing.BidBox@tpwd.texas.gov

- b) **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.
- c) **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 \(b\)](#) 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.

16) DELIVERY AND ACCEPTANCE:

- a) **Project Completion Delays:** If delay is foreseen, Contractor shall give written notice to TPWD. Default in promised Completion without accepted reasons or failure to meet specifications authorizes TPWD to purchase services of this contract elsewhere and charge any increased costs for the services, including the cost of re-soliciting, to the Contractor.
- b) **Acceptance:** All services performed will be subject to acceptance inspection upon completion. Acceptance inspection will not take more than five (5) working days, weather permitting. Vendor will be notified within this time frame of any units not delivered in full compliance with the purchase order specifications.

17) **BID RESPONSE INSTRUCTIONS:**

- a) **Bid Submission:**
 - i) **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.
 - ii) **General Format:** Respondent shall submit bid response, signed dated and completed.
 - iii) **Bid Delivery:** Bids may be returned via email to Purchasing.BidBox@tpwd.texas.gov, mail, hand-delivery or fax to 512-389-4677.
 - iv) 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.
 - v) Respondents are responsible for all costs of bid preparation.
- b) **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.
 - i) **Bid Form:** Respondent must submit the IFB form, signed, dated and completed. ***Failure to submit this information will result in disqualification of bid.***
 - ii) **Exhibit A:** Company Profile
 - iii) **Exhibit B:** Equipment and Tool List
 - iv) **Exhibit C:** Past Projects with Corresponding References
- c) **Response Period:** Responses shall be binding for a period of sixty (60) business days from bid due date. No other costs, rates, or fees shall be payable to the Successful Respondent unless expressly agreed upon in writing by TPWD.

18) **EVALUATION AND AWARD:**

- a) 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.
- b) 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.

- c) 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:
- i) Lowest Price
 - ii) Ability, Qualifications and Experience - Meeting or Exceeding the Requirement
 - iii) Delivery / Service Schedule
 - iv) Past Performance

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

- a) Contractor to submit invoice(s) to: Texas Parks & Wildlife, Accounts Payable, 4200 Smith School Road, Austin, Texas 78744.
- b) Invoices must show:
- i) Name of Contractor exactly as shown on the contract, Texas Payee Identification Number (PIN), and correct "Remit to" address
 - ii) Name of receiving entity
 - iii) Contract/purchase order number
 - iv) Description, quantity, unit of measure, unit price, extended price of each item
 - v) Total price
 - vi) Discount, if applicable, extended and deducted to arrive at a NET TOTAL for invoice
 - vii) Attach supporting documentation, if required
- c) Payment:
- i) 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.
 - ii) 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.
 - iii) 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.
- d) Electronic payment may be available through some ordering entities. Contact Accounts Payable at 512-389-4833 for additional information.

20) **BIDDER AFFIRMATION**

- a) 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.
- b) 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 (<i>Corporate Headquarters</i>):			
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:		Fax Number:	
Email Address:			
Personnel who will be responsible for the management and day-to-day operations of the services solicited in this IFB.			
Name/Title:			
Indicate if your company or any of its subsidiaries filed or met criteria for bankruptcy within last five years.			
__Yes __No If yes, explain.			
Indicate if your company or any of its subsidiaries has been involved in litigation within last five years. If yes, explain.			
__Yes __No If yes, explain.			
Description of firm's background, history, and qualifications: (You may attach additional page for this section.)			

EXHIBIT C – 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 E.* 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	

GENERAL TERMS AND CONDITIONS

MARCH 2022

(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. Bidder: An individual or entity that submits a bid. The term includes anyone acting on behalf of the individual or entity that submits a bid, such as an agent, employee and representative. See Respondent.
 - 1.2. 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.
 - 1.3. ESBD: The Electronic State Business Daily, which is available online at <http://www.txsmartbuy.com/esbd>.
 - 1.4. Gov't Code: The Texas Government Code.
 - 1.5. Owner: Texas Parks and Wildlife Department, an agency of the State of Texas.
 - 1.6. Party/Parties: Either the TPWD and Respondent separately or collectively.
 - 1.7. Respondent: Any person or Vendor who submits a Bid/Proposal/Offer in response to this solicitation.
 - 1.8. 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.
 - 1.9. 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.
 - 1.10. TAC: The Texas Administrative Code, which is the publication for administrative rules.
 - 1.11. 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.)
 - 1.12. TPWD: Texas Parks and Wildlife Department acting on behalf of the State of Texas.
2. **SPECIFICATIONS:**
 - 2.1. The goods/services provided shall be in accordance with the purchase specifications herein. TPWD will decide the answers to all questions that may arise as to the interpretation of the specifications and the quality, or acceptability of goods/services provided. TPWD will decide the rate of progress of the work and the acceptable fulfillment of the goods/service on the part of the Contractor.
 - 2.2. Catalogs, brand names or manufacturer's references are descriptive only, and indicate type and quality desired. Bids/Proposals on brands of like nature and quality will be considered unless advertised under Texas Gov't Code §2155.067. If the Respondent is offering brands other than the references, response should show manufacturer, brand or trade name, and other description of product offered. If Respondent is offering brand(s) other than brand(s) specified, illustrations and complete description of product offered are requested to be made part of the bid. Failure to take exception to specifications or reference data will require Respondent to furnish specified brand names, numbers, etc.
 - 2.3. Unless otherwise specified, items shall be new and unused and of current production.
 - 2.4. Samples, when requested, must be furnished free of expense to the State. If not destroyed in examination, they will be returned to the Respondent, on request, at Respondent's expense. Each

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

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

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

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

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

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

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

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

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

3.3.3. Effect of the proposed solution on agency productivity.

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

3.3.5. Experience in successfully providing services in this solicitation.

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

a) The Vendor has a score less than C or Legacy Unsatisfactory in the Vendor Performance System,

b) Currently under a Corrective Action Plan through the Texas Comptroller of Public Accounts (CPA),

c) Having repeated negative Vendor Performance Reports for the same reason,

d) 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 Contractor must submit an original invoice to TPWD, which will be designated in the Purchase Order as the "Bill To" address. To be a proper invoice that may be accepted and paid, the invoice must include the following information and/or attachments: (1) Name and address of the Contractor. (2) The Contractor's Texas Identification Number (TIN). (3) The Contractor's invoice remittance address. (4) The Purchase Order number authorizing the delivery of products or services. (5) A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price

of the products and services. If the invoice is for a lease, the Contractor must also include the payment number (e.g., 1 of 36).

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

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

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

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

12. **ANTI-TRUST AND ASSIGNMENT OF CLAIMS:** The undersigned affirms under penalty of perjury of the laws of the State of Texas that (1) in connection with this Response, neither I nor any representative of the Respondent have violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm Code Chapter 15; (2) in connection with this Response, neither I nor any representative of the Respondent have violated any federal antitrust law; and (3) neither I nor any representative of the Respondent have directly or indirectly communicated any of the contents of this Response to a competitor of the Respondent or any other company, firm, partnership or individual engaged in the same line of business as the Respondent. The successful Contractor hereby assigns to TPWD, any and all claims for overcharges associated with any contract resulting from this solicitation which arise under the antitrust laws of the United States 15 U.S.C.A., Section 1, et seq. (1973), and which arise under the antitrust laws of the State of Texas, Texas Business and Commercial Code Ann. Sec. 15.01, et seq. (1967).

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

14. **DISPUTE RESOLUTION:**

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

14.2. If the Contractor's claim for breach of Contract cannot be resolved informally with TPWD, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Contractor shall submit written notice, as required by Chapter 2260. The notice shall also be given to the

individual identified in the Contract for receipt of notices. Any informal resolution efforts shall in no way modify the requirement or toll the timing of the formal written notice of a claim for breach of Contract required under § 2260.051 of Texas Gov't Code. Compliance by the Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

- 14.3. The contested case process provided in Chapter 2260 is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of Contract by TPWD if the Parties are unable to resolve their disputes as described above.
- 14.4. Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the Contract by TPWD nor any other conduct of any representative of TPWD relating to the Contract shall be considered a waiver of sovereign immunity to suit.
- 14.5. Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by TPWD, the Contractor shall continue performance and shall not be excused from performance during the period any breach of Contract claim or dispute is pending under either of the above processes; however, the Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of Gov't Code §2251.051, and such suspension of performance is expressly applicable and authorized under that law.

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

16. NAME CHANGES AND SALES:

- 16.1. If the Contractor changes its name or is sold to another entity, it must provide written notification to TPWD. The Contractor, in its notice, shall describe the circumstances of the name change or sale, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform the Contract. If the change entails personnel changes for personnel performing the responsibilities of the Contract for the Contractor, the Contractor shall identify the new personnel and provide resumes to TPWD, if resumes were originally required by the Solicitation. TPWD may request other information about the change and its impact on the Contract and the Contractor shall supply the requested information within five (5) working days of receipt of the request.
- 16.2. TPWD may terminate the Contract due to a sale of or change to the Contractor that materially alters the Contractor's ability to perform under the Contract. The TPWD has the sole discretion to determine if termination is appropriate.

17. CONTRACTOR RESPONSIBILITIES:

- 17.1. Contractor agrees to comply with all terms and conditions contained in this solicitation and resulting Contract.
- 17.2. Contractor guarantees services offered will meet or exceed the written specifications identified in this solicitation.
- 17.3. Permits: Contractor shall be responsible, at the Contractor's expense, for obtaining any and all permits or licenses required by city, county, state, or federal rules, regulations, law, or codes that pertain to the Contract.
- 17.4. Electrical Items: All electrical items provided by the Contractor to TPWD under the Contract must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC, or NEMA.
- 17.5. Executive Head: Pursuant to Gov't Code §669.003, the TPWD may not enter into a contract with a person who employs a current or former Executive Head of a state agency until four years have passed since that person was the executive head of the state agency. By submitting a 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: Under Section 2262.154 of the Texas Gov't Code, the State Auditor may conduct an audit or investigation of any entity receiving funds from the state directly under any Contract or indirectly through a subcontract under the Contract. The acceptance of funds by the Contractor or other entity or person directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office, TPWD or any successor agency, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Contractor or other entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. Contractor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under these Contract funds were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and the State's property for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the work of this Contract. Contractor and the subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Contractor must retain all work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by TPWD and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor. Contractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's

work as requested. Contractor's failure to comply with this Section shall constitute a material breach of this Contract and shall authorize TPWD and the State of Texas to immediately assess appropriate damages for such failure.

21. **FORCE MAJEURE:** Neither Respondent nor TPWD shall be liable to the other party for any delaying, or failure of performance, of any requirement in the Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, 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 Contractor. To obtain release based on force majeure, the Contractor shall file a written request with TPWD reasonably promptly from the time the force majeure event occurs.
22. **PROPRIETARY OR CONFIDENTIAL INFORMATION; TEXAS PUBLIC INFORMATION ACT:**
- 22.1. Any proprietary, trade secret or otherwise confidential information Respondent includes in its Proposal must be clearly labeled as proprietary or confidential information, and Respondent must identify the specific exception to disclosure in the Public Information Act (PIA). Merely making a blanket claim the entire Proposal is protected from disclosure because it contains some proprietary information is not acceptable and shall make the entire Proposal subject to release under the PIA. In order for TPWD to initiate the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the Proposal that are considered by the Respondent to be proprietary or confidential must be clearly labeled as described herein. Any information which is not clearly identified as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA.
- 22.2. Information, documentation, and other material in connection with this Response or any resulting Contract may be subject to public disclosure under the Texas Public Information Act, Chapter 552 of the Texas Gov't Code.
- 22.3. Contractor is required to make any information created or exchanged with the state pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state.
23. **RIGHT TO DATA, DOCUMENTS AND COMPUTER SOFTWARE (STATE OWNERSHIP):** Any software, research, reports studies, data, photographs, negatives or other documents, drawings or materials prepared by Contractor in the performance of its obligations under this Contract shall be the exclusive property of the State of Texas and all such materials shall be delivered to the State by the Contractor upon completion, termination, or cancellation of this Contract. Contractor may, at its own expense, keep copies of all its writings for its personal files. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of Contractor's obligations under this Contract without the prior written consent of the State; provided, however, that Contractor shall be allowed to use non-confidential materials for writing samples in pursuit of the work. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.
24. **PUBLIC DISCLOSURE / NEWS RELEASES:** No public disclosures or news releases pertaining to this solicitation shall be made without prior written approval of TPWD.
25. **CONFIDENTIALITY AND SECURITY:** The Contractor should not receive any sensitive or confidential information under the Contract. Any information the Contractor compiles or creates as a result of the Contract must be maintained and protected in accordance with any federal, state, or local laws and regulations that apply. The Contractor shall establish a method to secure the confidentiality of records and other information relating to clients in accordance with applicable federal and state laws, rules, and regulations. The obligations of the Contractor under this Confidentiality and Security Article shall survive this Contract and shall be included in all subcontracts.

- 26. TERMINATION:** This Contract shall terminate upon full performance of all requirements contained in this Contract, unless otherwise extended or renewed as provided in accordance with the Contract Terms and Conditions.
- 26.1. Termination for Convenience: TPWD reserves the right to terminate the Contract at any time, in whole or in part, without cost or penalty, by providing 30 calendar days' advance written notice if TPWD determines that such termination is in the best interest of the state. In the event of such a termination, the Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TPWD will be liable for payments limited only to the portion of work authorized by TPWD in writing and completed prior to the effective date of cancellation, provided that TPWD shall not be liable for any work performed that is not acceptable to TPWD and/or does not meet Contract requirements. All work products produced by the Contractor and paid for by TPWD shall become the property of TPWD and shall be tendered upon request. Termination under this paragraph shall not relieve the Vendor of any obligation or liability that has occurred prior to cancellation.
- 26.2. Termination for Cause/Default: If the Contractor fails to provide the goods or services contracted for according to the provisions of the Contract or fails to comply with any of the terms or conditions of the Contract, the TPWD may, upon written notice of default to the Contractor, terminate all or any part of the Contract after providing an opportunity to cure the default.
- a) Contractor will be responsible for paying damages to TPWD including but not limited to re-procurement costs, and any consequential damages to the State of Texas or TPWD resulting from Contractor's non-performance. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work unless the specification or scope of work is significantly changed.
- 26.3. The rights and remedies of TPWD provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- 26.4. TPWD may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless TPWD notifies the Contractor in writing prior to the exercise of such remedy. The Contractor shall remain liable for all covenants and indemnities under the Contract. The Contractor shall be liable for all costs and expenses, including court costs, incurred by TPWD with respect to the enforcement of any of the remedies listed herein.
- 27. SURVIVAL OF TERMS:** Termination of the Contract for any reason shall not release the Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.
- 28. RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT:** In the event that the Contract is terminated for any reason, or upon its expiration, TPWD shall retain ownership of all associated work products and documentation obtained from the Contractor under the Contract, unless otherwise specified.
- 29. CHANGE IN FEDERAL OR STATE REQUIREMENTS:** If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either TPWD or the Contractor cannot reasonably fulfill the Contract and if the Parties cannot agree to an amendment that would enable substantial continuation of the Contract, the Parties shall be discharged from any further obligations under the Contract.
- 30. TAXES:** Purchases made for state uses are exempt from Texas State Sales Tax and Federal Excise Tax. An Excise Tax Exemption Certificate will be furnished upon written request to TPWD.
- 31. BUY TEXAS:** In accordance with §2155.4441, Gov't Code, the Contractor agrees that during the performance of a Contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside Texas.

32. **NOTE TO RESPONDENT:** Any terms and conditions attached to a solicitation will not be considered unless specifically referred to on this solicitation form and may result in disqualification of the response submission. If any Respondent takes a 'blanket exception' to the entire solicitation or does not provide proposed alternative language, the Respondent's response may be disqualified from further consideration.
33. **ACCESSIBILITY STANDARDS:** Under Texas Government Code, Chapter 2054, Subchapter M, TPWD must procure products that comply with the Accessibility Standards defined in the Texas Administrative Code, 1 TAC 206 and 1 TAC 213, when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. Accordingly, Contractor must provide electronic and information resources and associated product documentation and technical support that comply with these Accessibility Standards (in the form of a Voluntary Product Accessibility Template, or "VPAT") in its response to this solicitation. Vendors who do not already have accessibility documentation should complete the form located here: <http://www.itic.org/policy/accessibility/>. Contractors that claim their products are exempt from accessibility requirements must present that position to TPWD as a question during the question-and-answer period of the solicitation.
34. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:** Respondent certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and the Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
35. **SYSTEM FOR AWARD MANAGEMENT (SAM):** Respondent certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration. Prior to awarding state funds for goods and/or services rendered, the State of Texas will conduct a required search of your firm using SAM. This is a Federal government-maintained database that records and tracks organizations, either known to or suspected of contributing to terrorist organizations. No state funds may be paid to an individual or firm whose name appears on this list. TPWD reserves the right, in its sole discretion, to deny and/or exclude any individual or firm from an award whose name appears on this list.
36. **FEDERAL DISASTER RELIEF FRAUD:** Sections and 2261.053 of the Gov't Code, prohibit state agencies from accepting a response or awarding a Contract that includes proposed financial participation by a person who, in the past five years has been convicted of violating a federal law or assessed a penalty in connection with a Contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Gov't Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Gov't Code, Respondent certifies that the individual or business entity named in this response or Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
37. **APPLICABLE LAWS AND VENUE:** The Contract shall be governed by and construed in accordance with the laws of the State of Texas, with regards to the conflicts of law provisions. The venue of any suit arising under this Contract is fixed in any court of competent jurisdiction in Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to TPWD.
38. **APPLICABLE LAWS AND CONFORMING AMENDMENTS:** Contractor must comply with all laws, regulations, requirements and guidelines applicable to a Contractor providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. TPWD reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for TPWD or Contractor's compliance with all applicable State and federal laws, and regulations.
39. **COMPLIANCE WITH LAWS; DEALING WITH PUBLIC SERVANTS:**
- 39.1. The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) Texas Penal Code §36.02, which prohibits bribery; (ii) Texas Penal Code §36.09, which

prohibits the offering or conferring of benefits to public servants; (iii) Gov't Code §2155.003, which prohibits the chief clerk or any other employee of the TPWD from having an interest in, or in any manner be connected with, a Contract or bid for a purchase of goods or services by an agency of the state or accept from any person to whom a Contract has been awarded anything of value or a promise, obligation, or Contract for future reward or compensation.

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

40. **NO WAIVER:** Nothing in this Contract shall be construed as a waiver of the state's or TPWD's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TPWD does not waive any privileges, rights, defenses, or immunities available to TPWD by entering into this Contract or by the conduct of any representative of TPWD, prior to or subsequent to entering into this Contract.
41. **NO LIABILITY UPON TERMINATION:** If this Contract is terminated for any reason, TPWD and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Contractor may be entitled to the remedies provided in Gov't Code, Chapter 2260.
42. **DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES:** Respondent represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com. Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that Respondent has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of Deceptive Trade Practice violations or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers have not been found to be liable for such practices in such proceedings.
43. **FALSE STATEMENTS; BREACH OF REPRESENTATIONS:** If Respondent signed its Bid/Proposal with a false statement or signs the Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in the Contract, Contractor shall be in default under this Contract and TPWD may terminate or void the Contract for cause and pursue other remedies available to TPWD under this Contract and applicable law.
44. **ACTUAL AND PERCEIVED CONFLICTS:** By submitting a Bid/Proposal, the Respondent represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety. In its Bid/Proposal, the Respondent shall disclose any existing or potential conflict of interest that it might have in contracting with TPWD. The TPWD will decide, in its sole discretion, whether an actual or perceived conflict should result in Bid/Proposal disqualification or Contract termination.
45. **CURRENT AND FORMER TPWD EMPLOYEES:**
- 45.1. In addition to the disclosures required above, the Respondent shall also disclose any of its personnel who are current or former officers or employees of the TPWD or who are related, within the third degree by consanguinity (as defined by Gov't Code §573.023) or within the second degree by affinity (as defined by Gov't Code §573.025), to any current or former officers or employees of the TPWD.
- 45.2. Respondents must comply with all applicable Texas and federal laws and regulations relating to the hiring of former state employees (see e.g., Gov't Code Chapters 572 and 573). Such "revolving door"

provisions generally restrict former agency heads from communicating with or appearing before the agency on certain matters for two years after leaving the agency. The revolving door provisions also restrict some former employees from representing clients on matters that the employee participated in during state service or matters that were in the employees' official responsibility or from working for certain entities after their state employment. Respondent, by signing this solicitation, certifies that it has complied with all applicable laws and regulations regarding former state employees.

46. INSURANCE AND OTHER SECURITY:

- 46.1. Respondent represents and warrants that it will, within ten (10) business days of executing this agreement, provide TPWD with current certificates of insurance or other proof acceptable to TPWD of the required insurance coverage.
- 46.2. The Respondent represents and warrants that it will obtain and maintain for the term of the Contract all insurance coverage required under this solicitation. Contractor's failure to obtain or maintain the specified coverage during the term of the agreement will be considered a breach of the Contract.
- 46.3. The Respondent represents and warrants that all of the above coverage will be obtained from companies that are licensed in the state of Texas, have an "A" rating from Best, and are authorized to provide the coverage. The Respondent shall furnish proof of insurance upon request of TPWD.

47. SEVERABILITY: If any provision of the Contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the Contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.

48. HISTORICALLY UNDERUTILIZED BUSINESSES (HUB): Respondent represents and warrants that it shall comply with the Historically Underutilized Business requirements pursuant to Gov't Code, Chapter 2161.

49. AMENDMENTS: Except as provided in [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. 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. The Respondent also represents and warrants that it shall comply with the requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA).
- 56. SUBCONTRACTORS:** Subcontractors providing service under the Contract shall meet the same requirements and level of experience as required of the Contractor. No subcontract under the Purchase Order shall relieve the primary Contractor of responsibility for the service. If the Contractor uses a subcontractor for any or all of the work required, the following conditions shall apply under the listed circumstances:
- 56.1. Respondents planning to subcontract all, or a portion of the work shall identify the proposed subcontractors.
 - 56.2. Subcontracting shall be at the Contractor's expense.
 - 56.3. TPWD retains the right to check subcontractor's background and make determination to approve or reject the use of submitted subcontractors.
 - 56.4. The Contractor shall be the only Contact for TPWD and subcontractors. Respondent shall list a designated point of contact for all TPWD and subcontractor inquiries.
 - 56.5. The Contractor, in subcontracting for any performances specified herein, expressly understands and acknowledges that in entering into such subcontract(s), TPWD is in no manner liable to any subcontractor(s) of the Contractor. In no event shall this provision relieve the Contractor of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all terms of this solicitation and Contract. The Contractor shall manage all quality and performance, project management, and schedules for subcontractors. The Contractor shall be held solely responsible and accountable for the completion of all work for which the Contractor has subcontracted.
- 57. PROTEST PROCEDURES:** Any actual or prospective Respondent who is aggrieved in connection with this solicitation, evaluation, or award of any Contract resulting from this solicitation may formally protest as provided in TPWD's rules at TAC, Title 31, Part 2, Chapter 51, Subchapter L, Rule 51.350.
- 58. NON-APPROPRIATION OF FUNDS:** Any Contract resulting from this solicitation is subject to termination or cancellation, without penalty to TPWD, either in whole or in part, subject to the availability of state funds. TPWD is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If TPWD becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render TPWD's or Contractor's delivery or performance under the Contract impossible or unnecessary, the Contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, TPWD will not be liable to Contractor for any damages, which are caused or associated with such termination, or cancellation and TPWD will not be required to give prior notice.

- 59. NON-DISCRIMINATION/CIVIL RIGHTS:** The Respondent agrees that no person shall, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. The Respondent shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60. The prime Contractor shall ensure that this clause is included in all subcontracts.
- 60. CONFLICT OF INTEREST:** Under Gov't Code §2155.003, Respondent represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract. A TPWD employee may not have an interest in, or in any manner be connected with a Contract or response for a purchase of goods or services by an agency of the state. Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Section 1.2 of the State of Texas Procurement Manual, which outlines the ethical standards required of public purchasers, employees, and Respondents who interact with public purchasers in the conduct of state business, and with any opinions of or rules adopted by the Texas Ethics Commission. Entities who are interested in seeking business opportunities with the State must be mindful of these restrictions when interacting with public purchasers of TPWD or purchasers of other state agencies.
- 61. HB1295 CERTIFICATE OF INTERESTED PARTIES:** If value of Contract will exceed one million dollars, in accordance with 2252.908 of the Government Code, A business entity must use the [Form 1295 filing application](#) to enter the required information on Form 1295 and print a copy of the completed form. Once entered into the filing application, the completed form will include a unique certification number, called a "certification of filing." An authorized agent of the business entity must sign the printed copy of the form affirming under the penalty of perjury that the completed form is true and correct. The completed, printed, and signed Form 1295 bearing the unique certification of filing number must be filed with TPWD at the time of execution. Additional information can be found at: <https://www.ethics.state.tx.us/filinginfo/1295/> .
- 62. LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS:** Contractor shall have no authority to act for or on behalf of TPWD or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or TPWD.
- 63. DRUG-FREE WORKPLACE:** The Contractor shall comply with the applicable provisions of the Drug-Free Workplace Act of 1988.
- 64. NOTICES:** Any written notices required under this Contract will be by either hand delivery to Contractor's office address specified in 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. 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.

67. **NO ASSIGNMENT BY CONTRACTOR:** The awarded Contractor shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the TPWD. Any attempted assignment in violation of this provision is void and without effect.
68. **COMPLIANCE WITH OTHER LAW:** In the execution of this Contract, Contractor shall comply with all applicable federal, state, and local laws, including laws governing labor, equal opportunity, safety, and environmental protection. Contractor shall make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations which in any manner affect performance under this Contract.
69. **ENVIRONMENTAL PROTECTION:** The Respondent shall be in compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 et seq.) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251 et seq.).
70. **U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM:**
- 70.1. By entering into this Contract, the Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:
- a) All persons employed to perform duties within Texas, during the term of the Contract; and
 - b) All persons (including subcontractors) assigned by the Respondent to perform work pursuant to the Contract, within the United States of America
- 70.2. The Contractor shall provide, upon request of TPWD, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.
- 70.3. If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the state must undertake to replace the terminated Contract.
71. Pursuant to Texas Government Code, Title 10, Subchapter F, §§ 2270.001-2270.002, TPWD may not enter into a Contract that has a value of \$100,000 or more with a company and that employs 10 or more full-time employees (as defined by Texas Government Code, Title 8, Subchapter A, § 808.001, (except that the term does not include a sole proprietorship) that boycotts Israel. By signing this bid, Bidder verifies that in accordance with Texas Government Code, Title 10, Subchapter F, §§ 2270.001-2270.002, Bidder:
- 71.1. Does not boycott Israel; and
 - 71.2. Will not boycott Israel during the term of the Contract.
72. Pursuant to *Texas Government Code*, Title 10, Subchapter F, §§ 2252.151-2252.154, TPWD may not enter into a Contract with a company (as defined by *Texas Government Code*, Title 8, Subchapter A, § 806.051) that is identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under *Texas Government Code*, §§ 806.001, 807.051 or 2252.153. By signing this bid, Bidder certifies that it is not a company identified on a list as prepared and maintained by the Texas Comptroller of Public Accounts pursuant to *Texas Government Code*, §§ 806.001, 807.051 or 2252.153.
73. By signature hereon, the bidder acknowledges that *Texas Government Code*, Title 10, Subchapter F, §§ 2252.201-2252.205 requires that all iron or steel products produced through a manufacturing process used in this project must be produced in the United States. By signing this bid, Bidder certifies that its bid price represents full compensation for compliance with the requirements of *Texas Government Code*, Title 10, Subchapter F, §§ 2252.201-2252.205.
74. **TEXAS BIDDER AFFIRMATION:** Respondent certifies that if a Texas address is shown as the address of the Respondent on this response, Respondent qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.

- 75. CONTRACTING INFORMATION RESPONSIBILITIES:** In accordance with Section 552.372 of the Texas Government Code, Contractor agrees to (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to TPWD for the duration of the Contract, (2) promptly provide TPWD any contracting information related to the Contract that is in the custody or possession of the Contractor on request of TPWD, and (3) on termination or expiration of the Contract, either provide at no cost to TPWD all contracting information related to the Contract that is in the custody or possession of the Contractor or preserve the contracting information related to the Contract as provided by the records retention requirements applicable to TPWD. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code may apply to the Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
- 76. CYBERSECURITY TRAINING:** If Respondent has access to any state computer system or database, Respondent shall complete cybersecurity training and verify completion of the training program to TPWD pursuant to and in accordance with Gov't Code § 2054.5192.
- 77. CLOUD COMPUTING STATE RISK AND AUTHORIZATION MANAGEMENT PROGRAM:** Pursuant to Section 2054.0593(d)-(f) of the Texas Government Code, relating to cloud computing state risk and authorization management program, Respondent represents and warrants that it complies with the requirements of the state risk and authorization management program and Respondent agrees that throughout the term of the contract it shall maintain its certifications and comply with the program requirements in the performance of the contract.
- 78. 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.
- 79. ABORTION PROVIDER AND AFFILIATE TRANSACTIONS PROHIBITED:** Respondent represents and warrants that the Contract is not a taxpayer resource transaction prohibited by Section 2272.003 of the Texas Government Code and that payments made by TPWD to Contractor and Contractor's receipt of appropriated funds under the Contract are not prohibited by Article IX, Section 6.25 of the General Appropriations Act.
- 80. 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.
- 81. 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.
- 82. 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.
- 83. 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.
- 84. 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.

- 85. 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.
- 86. DATA MANAGEMENT AND SECURITY CONTROLS:** In accordance with Section 2054.138 of the Texas Government Code, Respondent certifies that it will comply with the security controls required under this contract and will maintain records and make them available to Agency as evidence of Respondent's compliance with the required controls.
- 87. 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.