

**TEXAS PARKS AND WILDLIFE**

**INVITATION FOR BID**

<b>SEND INVOICE TO:</b>	<b>RETURN BIDS TO:</b>	<b>BIDDER MUST SIGN BELOW:</b>
Texas Parks and Wildlife Department ATTN: Accounts Payable 4200 Smith School Road Austin, Texas 78744	<a href="mailto:Renee.Campbell@tpwd.texas.gov">Renee.Campbell@tpwd.texas.gov</a> Or TPWD – Inland Fisheries 1601 E. Crest Waco, TX 76705	<b>Bid Due Deadline:</b> <b>2:00 pm CST; May 22, 2025</b>
<b>DESTINATION IF DIFFERENT THAN ABOVE:</b>	<b>QUESTIONS – SEND EMAIL TO:</b>	<b>AUTHORIZED SIGNATURE</b> <b>FAILURE TO SIGN WILL DISQUALIFY BID</b>
Texas Parks & Wildlife – Inland Fisheries 947 Ranger Road Pottsboro, Texas 75076	<a href="mailto:Renee.Campbell@tpwd.texas.gov">Renee.Campbell@tpwd.texas.gov</a>	Requisition No. 802-25-60296
Page: 1 of 43		

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 SIGN THE BID ABOVE WILL DISQUALIFY BID.** Bidder agrees to comply with all conditions of this bid. Show bid due date and Requisition number on sealed bid envelop and show return address of firm.

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

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). Bidder agrees to comply with all conditions of this bid. Show bid due date and Requisition number on sealed bid envelop and show return address of firm. Pursuant to Executive Order GA-48 of the Governor of Texas: Respondent certifies that neither it, nor its holding companies or subsidiaries is: (a) Listed in Section 889 of the 2019 National Defense Authorization Act; (b) Listed in Section 1260H of the 2021 National Defense Authorization Act; or (c) Owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. Section 791.4; or (d) Controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. Section 791.4.

**Bidder must fill in:** (See instructions for Texas ID Number in General Terms & Conditions, Paragraph 1.10)

TEXAS ID NUMBER \_\_\_\_\_  
Name of Firm \_\_\_\_\_  
Street Address \_\_\_\_\_  
City-State-Zip \_\_\_\_\_  
Telephone No. \_\_\_\_\_  
Email address \_\_\_\_\_

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

Item	Description	Class/Item 910-36	Quantity	Unit of Measure	Unit Price	Extension
Texas Parks and Wildlife Department (TPWD) is soliciting bids for HVAC Replacement at 947 Ranger Rd., Pottsboro, TX 75076 per the attached specifications of work dated February 2025. See Attachment A for Maps of service area.						
1.	Contractor shall replace existing failing HVAC System in accordance with approved Quote		1	JOB	\$	\$

Project Completion Schedule, in calendar days, after receipt of order. \_\_\_\_\_ Calendar Days (ARO)

☐ 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:**

**Renee' L. Campbell, CTCD - PHONE 254-867-7973**

**Email: [Renee.Campbell@tpwd.texas.gov](mailto:Renee.Campbell@tpwd.texas.gov)**

**Solicitation 802-25-60296**  
**Specifications for HVAC Replacement**

- 1) **INTRODUCTION:** Texas Parks and Wildlife Department (TPWD) is soliciting bids for a qualified contractor to replace the existing HVAC system for Inland Fisheries, Pottsboro/Denison District Office, in accordance with the specifications, terms and conditions as set forth in the Bidding & Contract Documents.
- 2) **TERM OF CONTRACT:** Contract shall commence upon date of award and expire upon completion of services and final acceptance by TPWD, unless sooner terminated under the terms of this contract.
- 3) **SITE VISIT:** Bidders are strongly encouraged to visit the project site and be thoroughly familiar with job conditions such as the location, accessibility, and general character of the site and any associated buildings and equipment prior to submitting a bid. Failure to give proper consideration in the bid to site and equipment conditions will not constitute grounds for additional compensation.

Site visits shall be scheduled in advance and prior to BID Closing date with:

Corey Clouse via email at [Corey.Clouse@tpwd.texas.gov](mailto:Corey.Clouse@tpwd.texas.gov), or

Dan Bennett via phone at (903) 786-2389.

- 4) **SPECIFICATIONS:** Contractor shall provide all labor, materials, equipment, tools, and supervision necessary to install a new system with outdoor heat pump condenser. New system shall include a ground level outdoor heat pump condenser and indoor air handler with heat kit and electrical connections. Existing system components include, but are not limited to:

- **Condenser:** HEIL, Model No. PGAA336EE1K, Serial No. 462 111001 00, Year 01/2000

Contractor shall:

**4.1** Provide and install:

One (1) 15 SEER 3-ton, 230-volt, 10kw heat kit split system with R410A refrigerant to meet all current codes and regulations,

Installed systems combinations must meet the minimum SEER rating, shall perform equivalent to the existing unit and system capacity. The components of the new system shall be performance matched and shall be products of the same manufacturer. Acceptable manufacturers are York, Lennox, Carrier, Trane, RHEEM, Ruud, Ducane, Luxaire or approved equal of equivalent quality and performance.

**4.2** Provide and install a new 24/7 programmable digital thermostat, compatible with the new systems, in the same locations as the existing thermostats. Ensure that unit's function properly as intended.

**4.3** Install new ductwork (8 runs), supply and return plenums, emergency pan with ss1 and ss3 safety float switches, run drain outside in pea gravel pit, run new electric for air handler, add on electric to condenser through outer wall, copper lineset with lineset cover and all new low voltage, new t6 thermostat, surge protector.

**4.4** Ensure new condenser units are installed correctly and include proper installation of new concrete mechanical pad. Concrete pad should extend 6 inches or more beyond each side of the condenser.

**4.5** Ensure air handler unit is installed correctly and includes auxiliary heat. Contractor shall determine required kilowatt heat capacity allowed based on electrical disconnect and circuit breakers.

**4.6** Connect air handler unit into new ductwork/plenum including transitions or flexible connections, to prevent conditioned air from leaking at plenum(s).

**4.7** Furnish and install properly sized disconnects near the fan coil unit and heat pump unit as per current National Electric Code (NEC) requirements.

**4.7.1** Contractor is responsible to determine if the proper surge and lightning protection is in place. If not, contractor shall install accordingly.

- 4.7.2 Installation must be completed by a properly licensed person as required by the Texas Department of Licensing and Regulation.
- 4.8 Ensure that all required safety features are functioning and that the electrical wiring and breakers are properly sized and within code.
- 4.9 Furnish and install a filter rack based on system requirements.
  - 4.9.1 Install new air filter for unit.
  - 4.9.2 Provide one (1) box with a minimum quantity of six (6) properly sized filters.
  - 4.9.3 Filter must be properly sized to rack. Shall not use 2 one-inch filters in a two-inch rack.
- 4.10 Ensure that existing copper refrigerant lines are of adequate size for the unit.
- 4.11 Solder all refrigerant lines under nitrogen purge to prevent oxidation.
- 4.12 Insulate refrigerant lines with weatherproof closed cell foam type insulation and ultraviolet (UV) protection. Contractor may utilize weatherproof jacket insulation that is UV rated or UV paint.
  - 4.12.1 For insulation jackets, proper adhesive must be utilized to connect the seams and jackets shall be installed so that seams are located on the bottom of the line, facing downward.
  - 4.12.2 For UV paint, coating must be applied in accordance with manufacture's written recommendation and instructions.
- 4.13 Produce required vacuum of system and check for leaks prior to fill of new refrigerant.
- 4.14 Ensure that new unit is topped off with manufacturer's required type and quantity of refrigerant, as recommended by the manufacturer.
- 4.15 Patch and/or seal any holes or damages made during removal of old units and/or installation of new units. Repairs shall return damaged areas to pre-repair conditions or better, and per acceptance by TPWD's designated representative. Contractor should photo-document any existing damages prior to beginning any work.
- 4.16 Connect new Schedule 40 PVC condensate piping with closed cell foam type insulation from fan coil unit and route to exterior or other approved indirect waste. Contractor shall try to utilize existing penetrations and/or existing condensate pipe, so as not to create any new penetrations through exterior walls. If the Contractor must absolutely create a new penetration, Contractor shall adequately seal all related penetrations. For exterior applications, Contractor may utilize weatherproof UV resistant insulation, jacket insulation that is UV rated or UV paint.
  - 4.16.1 For insulation jackets, proper adhesive must be utilized to connect the seams and jackets shall be installed so that seams are located on the bottom of the line, facing downward.
  - 4.16.2 For UV paint, coating must be applied in accordance with manufacture's written recommendation and instructions.
- 4.17 **Provide a minimum five (5) year warranty on compressor, five (5) year parts warranty, and two (2) year labor warranty.** TPWD is a commercial entity.
  - 4.17.1 Contractor is responsible for registering new installed system based on installed application of use to achieve full benefits and not void warranty.
  - 4.17.2 Complete all required warranty documentation. Leave a hardcopy with district office and submit a copy via email to the contract specialist, Renee' L. Campbell, at [Renee.Campbell@tpwd.texas.gov](mailto:Renee.Campbell@tpwd.texas.gov).
- 4.18 Complete project as soon as possible from date of issuance of Notice to Proceed.
- 4.19 Comply with all terms and conditions as listed in Bidding & Contract documents.

## 5) REQUIREMENTS:

- 5.1 **Power Outages:** Perform all pre-outage work necessary in advance to shorten the power outage duration. Contractor shall schedule any outages with TPWD and the electric provider. Contractor is responsible for any fees associated with outages to complete this project.
- 5.2 **Cutting and Patching:** Cutting and patching of any surface of this building shall be avoided or kept to a minimum. The Contractor shall coordinate all cutting and patching with TPWD. The Contractor shall take care to minimize the impact and damage to any of the interior and exterior finishes on the building.
- 5.3 **Testing:** Contractor shall test newly installed split systems after installation is complete and verify the project is completed to TPWD satisfaction. Testing shall be witnessed by the District Supervisor, Dan Bennett, or his representative.
- 5.4 **Condition of Product:** New Equipment ONLY; NO re-manufactured or “gray market” items. All items must be covered by the manufacturer’s warranty. The unit shall be made ready for continuous operation upon delivery. Responded is cautioned that any unit delivered to the FOB point that does not meet specifications in every aspect will not be accepted.
- 5.5 **All Parts:** All parts not specifically mentioned which are necessary for the unit to be complete and ready for operation or which are normally furnished as standard equipment shall be furnished by the vendor. All parts shall conform in strength, quality, and workmanship to the accepted standards of the industry.

**6) DELIVERY AND ACCEPTANCE:**

- 6.1 **Freight Charges:** Shipping shall be F.O.B. destination; therefore, unit prices must include all shipping, handling, fuel surcharges and delivery fees.
- 6.2 **Delivery Schedule:** Delivery shall not exceed TWENTY-ONE (21) calendar days from date of award. Vendor must contact TPWD point of contact to schedule delivery date and time. Procurement and delivery of materials shall occur within project duration and shall not delay installation and completion.
- 6.3 **Delivery and Storage of Materials:** An area near the work site shall be designated by TPWD for Contractor’s use for the storage of materials, supplies, equipment etc. Contractor shall be responsible for the proper care and protection of all materials, supplies, incidentals, equipment etc. stored at the job site. Store all material according to manufacturer recommendations.
- 6.4 **Delivery Delays:** If delay is foreseen, Contractor shall give written notice to TPWD’s designated representative and the district supervisor and must keep TPWD advised always of status of order. Default in promised Delivery Days after Receipt of Order (ARO) without accepted reasons or failure to meet specifications authorizes TPWD to purchase goods and services of this contract elsewhere and charge any increased costs for the goods and services, including the cost of re-soliciting, to the Contractor.
- 6.5 **Compliant Products:** Delivery does not occur until the Contractor delivers products, materials, or services in full compliance with the specifications to Customer’s F.O.B. destination, unless delivery is specifically accepted, in whole or in part, by the Customer (TPWD’s designated representative). Providing products, materials or services which do not meet all specification requirements does not constitute delivery. Customer reserves the right to require new delivery or a refund if materials or products not meeting specifications are discovered after payment has been made.

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

- 7.1 Quote Form
- 7.2 Proof of Insurance as required per Terms and Conditions Section 25.
- 7.3 TDLR License(s) for any Contractor or Technician and any subcontractors to work on this project.
- 7.4 Valid Texas Driver License
- 7.5 AHRI Certificate of new system to be installed.
- 7.6 Data sheet(s) of new system to be installed.

**8) CONDITIONS:**

- 8.1 Contractor shall provide a copy of the AHRI Certificate to reflect the SEER rating and system information for TPWD review to TPWD’s designated representative, for acceptance and approval before award of project.

- 8.2** All work must be in accordance with the most current applicable standards and codes to include but not limited to the 2021 International Mechanical Code (IMC), 2020 National Electrical Code (NEC) and most current ASHRAE standards.
- i)** All work shall be performed by or under the direct, on-site supervision of an A/C Contractor. All A/C Contractors and Technicians shall be licensed in the State of Texas by the Texas Department of Licensing and Registration (TDLR).
  - ii)** All electrical work shall be performed under a master or journeyman electrician. All Electricians and Technicians shall be licensed in the State of Texas by TDLR.
- 8.3** Contractor shall be responsible to provide a fully functioning, in kind replacement, for awarded amount, per Contractor's bid. It is the responsibility of the Contractor to know all items to purchase for this like-for-like replacement, prior to bid. Contractor shall contact TPWD contract specialist, Kelly Hamby, prior to bidding if there is any discrepancy in the existing conditions. Contractor shall contact TPWD's designated representative during construction if there are unexpected developments encountered before moving forward with any phase of the project. If Contractor proceeds with work without notifying TPWD's designated representative, the Contractor does so, at Contractor's own risk.
- 8.4** All work must be inspected and approved by TPWD's Inspector before project is deemed complete and ready for payment.
- 8.5** **Work Schedule:** Contractor shall begin work upon Notice of Award with all services for the project to be completed by June 30, 2025. A contractor's ability to meet this project schedule may be a factor in determining award. Work can be conducted Monday through Friday, 8:00 am to 5:00 pm CST. Contractor's work hours shall be scheduled in advance with the TPWD Project Manager.

**9) EQUIPMENT:**

- 9.1** All equipment, materials, and parts not specifically mentioned which are necessary and required for the completion of work must be furnished by the Contractor.
- 9.2** Describe all equipment and vehicles to be used for this project in Exhibit B – Equipment List. Make sure to include dimensions/capacities of equipment, make, model, horsepower, 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 Contractor.
- 9.3** Cleaning of Equipment: Contractor shall be required to wash and clean equipment in accordance with TPWD's onsite manager or designee before accessing the property and before transportation from the property to prevent introduction and spread of unwanted exotic species. Washing and cleaning is required of all equipment that will arrive from offsite to be transported from site during project. Equipment that is left onsite during the project is not subject to these conditions.
- 9.4** All equipment shall be in safe working order and have appropriate safety equipment installed and intact per manufacturer's recommendations.
- 9.5** Contractor will be permitted to leave heavy equipment on site per TPWD project manager's directions.
- 9.6** All other areas of TPWD property are closed and off limits to the Contractor and their employees. Only those personnel critical to the performance and completion of this project will be allowed on the WMA. No pets are allowed.

**10) MINIMUM QUALIFICATIONS:** A contract shall be awarded ONLY to a contractor who is experienced in providing the services contained herein. Awarded contractor shall meet the following minimum qualifications:

- 10.1** 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. 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 history of expertise.



- 10.2 Complete *Exhibit A – Company Profile*, and *Exhibit C – Past Projects with Corresponding References* and return with bid.
- 10.3 All references must be verifiable by phone or email within ten (10) working days of bid evaluation.

**11) CRIMINAL BACKGROUND CHECKS:**

- 11.1 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.
- 11.2 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 prior to any employee performance of services and may be requested at any time thereafter throughout the duration of the contract.
- 11.3 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.

**12) CONTRACTOR REQUIREMENTS:**

- 12.1 Contractor agrees to conduct all its services under the awarded contract by and through appropriate communications with TPWD. No work, or other services shall be undertaken by Contractor except with the prior written authorization by TPWD. Contractor understands and agrees that work or other service performed without prior written authorization from TPWD is work outside the scope of the contract and shall be performed exclusively at Contractor's own risk.
- 12.2 Contractor is responsible for all materials and equipment stored at the work site.
- 12.3 Contractor is responsible for the prompt removal of all debris, litter, and rubbish regularly throughout the project.
- 12.4 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.
- 12.5 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 inspection and acceptance by TPWD.
- 12.6 Contractor shall provide all labor, equipment, supervision, and any other necessary and incidental materials to complete this project.
- 12.7 Contractor is responsible for any and all clean up caused by the operation.
- 12.8 Equipment must be inspected daily for signs of fuel or oil leaks. Such leaks shall be promptly repaired, and measures will be taken to prevent soil contamination. When servicing equipment onsite, waste oil and other fluids shall be drained into containers and properly disposed of in accordance with appropriate waste disposal practices. The Contractor shall immediately clean up any spillage of waste materials.
- 12.9 Contractor shall be solely responsible for maintaining safety at all work sites and shall take all reasonable steps to ensure safety for both workers and the public, including traffic control.
- 12.10 Contractor may be permitted to leave heavy equipment on site per TPWD staff direction. TPWD will not be responsible for contractor equipment left on site.

**13) PERFORMANCE MEASURES:**

- 13.1 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 bid, the Respondent commits to providing the goods and services required herein. The successful Respondent(s) will be required to abide by TPWD policies, procedures, standards, and guidelines relevant to the execution of the awarded contract.
- 13.2 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 Contractor or Subcontractor 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 services and deliverables, TPWD may seek or impose remedies with the contractor. Remedies shall include negative vendor performance report(s), corrective action plans, and withholding of payments due to poor performance and contract non-compliance.

- 13.3** TPWD will monitor vendor performance. Failure to provide services in accordance with the requirements specified herein, and the resulting contract(s) and adherence to the Terms and Conditions may be considered by TPWD as unsatisfactory performance by the contractor. An unsatisfactory performance may result in a negative vendor performance report, cancellation of the contract, or both.

**14) TPWD RESPONSIBILITIES:**

- 14.1** TPWD will designate a Contract/Project Manager upon award. The TPWD Project Manager is to have free access to Contractor's supplies, equipment, and work product at all times for inspection and audit.
- 14.2** TPWD will furnish no labor, materials, equipment, or facilities unless otherwise provided for in the contract.
- 14.3** The TPWD PM will decide any and all questions that may arise as to the quality and acceptability of work performed, and as to the manner of performance and rate of progress of the work. The TPWD PM will determine the amount of work performed and materials furnished which are to be paid under the contract.
- 14.4** Failure of the TPWD PM during the progress of the work to: (i) discover or reject unacceptable work; (ii) discover work not in accordance with the contract; or, (iii) failure to exercise any remedies in connection therewith, shall not be deemed an acceptance thereof, nor a waiver, of TPWD's right to full performance of the contract.

**15) 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.**

- 15.1** **Emergency:** In any emergency affecting the safety of persons or property, the Contractor shall act, at their discretion, to prevent threatening damage, injury or loss and notify TPWD within forty-eight (48) hours if Contractor believes that any significant changes in the work or variations from the Contract have been caused by Contractor's emergency response.

**16) 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 the contract; in such a case, 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 Contract in place.

**17) QUANTITIES:** Quantities listed herein 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.

**18) INSURANCE:**

- 18.1** Contractor shall procure and maintain, during the entire period of their performance under this contract, the following minimum insurance:

Type of Insurance	Each Occurrence/Aggregate
Workers Compensation	Statutory
Employer's Liability	

Bodily Injury by Accident	\$500,000 Ea. Accident
Bodily Injury by Disease	\$500,000 Ea. Employee
Bodily Injury by Disease	\$500,000 Policy Limit
<b>Commercial General Liability</b> 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
<b>Automobile Liability</b> 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 not employees, TPWD will require a statement to that fact.

- 18.2** Policy must contain an additional insured endorsement: The State of Texas, acting through Texas Parks and Wildlife Department and its officers and employees, is listed as an additional insured and loss payee.
- 18.3** Prior to the commencement of the work, 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.
- 18.4** The Certificate of Insurance shall be sent to: Renee' L. Campbell, 1601 E. Crest, Waco, TX 76705, [Renee.Campbell@tpwd.texas.gov](mailto:Renee.Campbell@tpwd.texas.gov).

#### 19) INQUIRES:

- 19.1** 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:

Renee' L. Campbell, CTCD  
Texas Parks and Wildlife Department  
1601 E. Crest  
Waco, TX 76705

Phone Number: 254-867-7973

Email: [Renee.Campbell@tpwd.texas.gov](mailto:Renee.Campbell@tpwd.texas.gov)

- 19.2** CLARIFICATIONS: TPWD will allow written requests for clarification of this Solicitation. Questions may be emailed to the point of contact listed in Section a) 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 passage being questioned; and c) Question.
- 19.3** PROHIBITED COMMUNICATIONS: Upon issuance of this solicitation, TPWD, its representatives, or partners, will not answer questions or otherwise discuss the content of this Solicitation with any potential Respondent or their representative(s), except for written inquiries 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.

#### 20) DELIVERY AND ACCEPTANCE:

- 20.1** 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 resoliciting, to the Contractor.
- 20.2** Acceptance: All services performed will be subject to acceptance inspection upon completion. Acceptance inspection will not take more than five (5) working days, weather permitting. Contractor will be notified within this time frame of any units not delivered or work not performed in full compliance with the purchase order specifications.



**21) WAGE RATES:**

- 21.1** Duty to Pay Prevailing Wage Rates: Pursuant to Tex. Gov't Code § 2258, Contractor shall not pay less than the wage scale of the various classes of labor as shown on the prevailing wage schedule provided by TPWD in *Attachment B – Wage Determination*. The specified wage rates are minimum rates only. TPWD is not bound to pay any claims for additional compensation made by any Contractor because the Contractor pays wages in excess of the applicable minimum rate contained in the Contract. The prevailing wage schedule is not a representation that qualified labor adequate to perform the Work is available locally at the prevailing wage rates.
- 21.2** Penalty for Violation: Contractor, and any Subcontractor, will pay to the State a penalty of sixty dollars (\$60) for each worker employed for each day, or portion thereof, that the worker is paid less than the wage rates stipulated in the prevailing wage schedule.

**22) BID RESPONSE INSTRUCTIONS:****22.1 Bid Submission:**

- (1) Submission Deadline: All bids shall be received and time stamped at TPWD prior to 2:00 PM Central Standard Time on the Bid Due Deadline date specified on the IFB Cover Page (Page 1). Late bids will not be considered under any circumstances and will be returned.
- (2) General Format: Respondent shall submit bid response, signed, dated, and completed.
- (3) Bid Delivery: Bids may be returned via email to [Renee.Campbell@tpwd.texas.gov](mailto:Renee.Campbell@tpwd.texas.gov), mail, hand-delivery.
- (4) Bids submitted by mail or hand-delivery should be placed in a sealed envelope and correctly identified with IFB number and Bid Due Deadline date and time. Bids submitted by fax should include a fax cover sheet correctly identified with IFB number and Bid Due Deadline date and time. It is the Bidder's responsibility to appropriately mark and deliver the bids to TPWD by the specified date and time.
- (5) Respondents are responsible for all costs of bid preparation.

**22.2 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 judgement and discretion, to waive minor technicalities and errors in the best interest of the state.

- (1) Bid Form: Respondent must submit the IFB form, signed, dated, and completed. Failure to submit this required document and information will result in disqualification of bid.
- (2) Exhibit B: Equipment List
- (3) Exhibit C: Past Projects with Corresponding References
- (4) Exhibit D: Key Personnel

**22.3 Response Period**: Responses shall be binding for a period of sixty (60) business days from bid due date.

**23) EVALUATION AND AWARD:**

- 23.1** An award will be made on an all or none basis. Only responses submitted by the bid due deadline, with required submittal documents and meeting qualifications will be considered. Failure to submit the required information may be cause for the rejection of the bid response. TPWD reserves the right to waive informalities and minor irregularities in bids received.
- 23.2** TPWD reserves the right to consider Respondent qualifications, equipment, facilities, 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.

- 23.3 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:

- (1) Lowest Price
- (2) Ability, Qualifications and Experience – Meeting or Exceeding the Requirement
- (3) Delivery / Service Schedule
- (4) Past Performance

- 24) INVOICING AND PAYMENT:** The following procedures apply to invoicing and payment in addition to shoes listed in the *General Terms and Conditions, Paragraph 9.*

- 24.1** Contractor to submit invoice(s) to:  
Texas Parks and Wildlife - Accounts Payable  
4200 Smith School Road  
Austin, TX 78744

- 24.2** 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

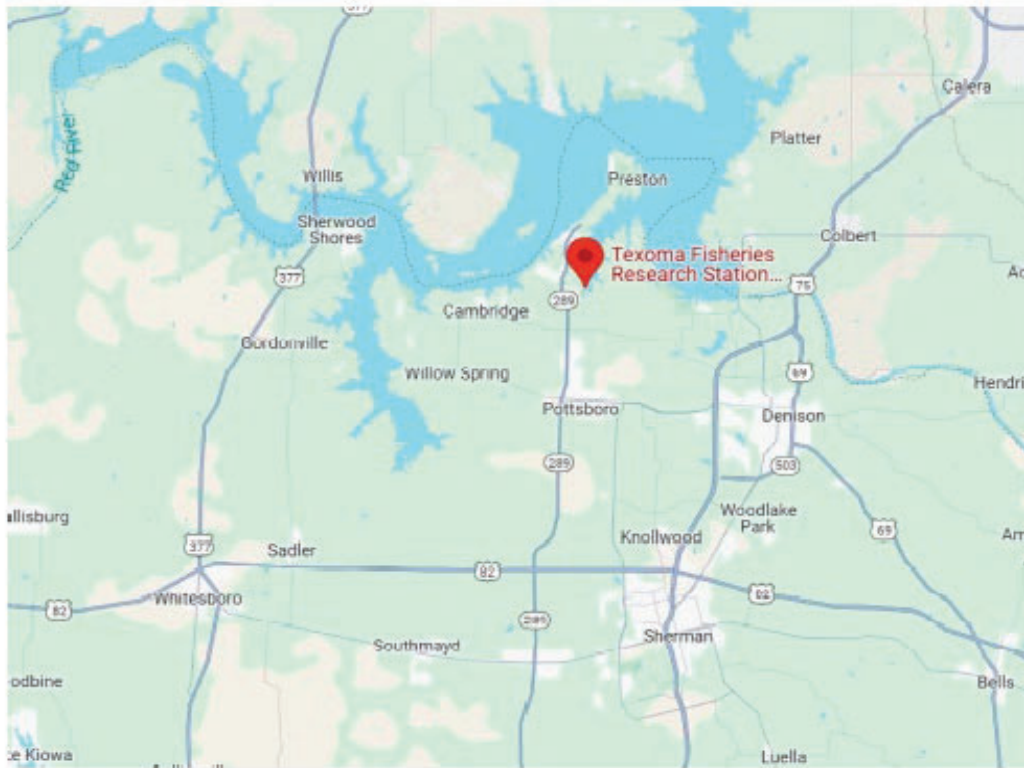
- 24.3** Payment:

- 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 thirty (30) days after receipt of a properly prepared invoice, or the receipt of and 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 (CPA). Payments by qualified ordering entities will be made through the entities' local payment system.
- iv) Electronic payment may be available through some ordering entities. Contact Accounts Payable at 512-389-4833 or [Accounts.Payable@tpwd.texas.gov](mailto:Accounts.Payable@tpwd.texas.gov) for additional information.

**25) BIDDER AFFIRMATION:**

- 25.1** Bidder has not given, offered to give, nor intends to give any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant connected with the submitted bid.
- 25.2** Pursuant to Texas Government Code, Title 10, Subtitle D, Section 2155.004(a), the bidder has not received compensation for participation.

## ATTACHMENT A - MAP



## ATTACHMENT B -WAGE DETERMINATION

"General Decision Number: TX20250249 03/14/2025

Superseded General Decision Number: TX20240249

State: Texas

Construction Type: Building

County: Grayson County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed

	on this wage determination,
	if it is higher) for all
	hours spent performing on
	that contract in 2025.

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

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/03/2025
1	03/14/2025

ASBE0021-011 06/01/2023

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR (Duct, Pipe and Mechanical System Insulation)....	\$ 31.32	7.52

\* BOIL0074-003 01/01/2025

	Rates	Fringes
BOILERMAKER.....	\$ 33.17	24.92

ENGI0178-005 06/01/2020

	Rates	Fringes
POWER EQUIPMENT OPERATOR (1) Tower Crane.....	\$ 32.85	13.10
(2) Cranes with Pile Driving or Caisson		



Attachment and Hydraulic Crane 60 tons and above.....\$ 28.75	10.60
(3) Hydraulic cranes 59 Tons and under.....\$ 32.35	13.10

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IRON0263-004 06/01/2024

	Rates	Fringes
IRONWORKER, ORNAMENTAL.....\$ 28.64		7.93

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PLUM0100-009 11/01/2024

	Rates	Fringes
PIPEFITTER (Excludes HVAC Pipe Installation).....\$ 39.76		14.04
PLUMBER (HVAC Pipe Installation Only).....\$ 39.76		14.04

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\* SUTX2014-025 07/21/2014

	Rates	Fringes
BRICKLAYER.....\$ 19.95		0.00
CARPENTER.....\$ 15.81 **		0.00
CEMENT MASON/CONCRETE FINISHER...\$ 13.27 **		0.00
ELECTRICIAN.....\$ 20.59		3.36
IRONWORKER, REINFORCING.....\$ 12.33 **		0.00
IRONWORKER, STRUCTURAL.....\$ 16.83 **		4.58
LABORER: Common or General.....\$ 10.00 **		0.00
LABORER: Mason Tender - Brick...\$ 10.95 **		0.00
LABORER: Mason Tender - Cement/Concrete.....\$ 10.76 **		0.00
LABORER: Pipelayer.....\$ 13.00 **		0.35

LABORER: Roof Tearoff.....	\$ 11.28 **	0.00
OPERATOR:		
Backhoe/Excavator/Trackhoe.....	\$ 12.89 **	0.00
OPERATOR: Bobcat/Skid		
Steer/Skid Loader.....	\$ 13.93 **	0.00
OPERATOR: Bulldozer.....	\$ 18.29	1.31
OPERATOR: Drill.....	\$ 17.60 **	0.50
OPERATOR: Forklift.....	\$ 13.63 **	0.00
OPERATOR: Grader/Blade.....	\$ 12.95 **	0.00
OPERATOR: Loader.....	\$ 13.39 **	0.90
OPERATOR: Mechanic.....	\$ 17.52 **	3.33
OPERATOR: Paver (Asphalt,		
Aggregate, and Concrete).....	\$ 18.44	0.00
OPERATOR: Roller.....	\$ 15.04 **	0.00
PAINTER (Brush, Roller, and		
Spray).....	\$ 13.46 **	2.49
PLUMBER, Excludes HVAC Pipe		
Installation.....	\$ 22.27	4.81
ROOFER.....	\$ 16.53 **	0.00
SHEET METAL WORKER (HVAC Duct		
Installation Only).....	\$ 21.04	5.28
SHEET METAL WORKER, Excludes		
HVAC Duct Installation.....	\$ 21.31	4.66
TILE FINISHER.....	\$ 11.22 **	0.00
TILE SETTER.....	\$ 14.25 **	0.00

TRUCK DRIVER: Dump Truck.....	\$ 12.39 **	1.18
TRUCK DRIVER: Flatbed Truck.....	\$ 19.65	8.57
TRUCK DRIVER: Semi-Trailer Truck.....	\$ 12.50 **	0.00
TRUCK DRIVER: Water Truck.....	\$ 12.00 **	4.11

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

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\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.75) or 13658 (\$13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within

the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

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

#### Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

#### Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number

used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

### Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

### State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.



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## WAGE DETERMINATION APPEALS PROCESS

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

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to [davisbaconinfo@dol.gov](mailto:davisbaconinfo@dol.gov) or by mail to:

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

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to [BCWD-Office@dol.gov](mailto:BCWD-Office@dol.gov) or by mail to:

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

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to [dba.reconsideration@dol.gov](mailto:dba.reconsideration@dol.gov) or by mail to:

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

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

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

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

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END OF GENERAL DECISION"

## 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.***

<b>Company Name:</b>			
<b>Number Years in Business:</b>		<b>Number of Employees:</b>	
<b>Principal place of business (<i>Corporate Headquarters</i>):</b>			
<b>Address:</b>			
<b>City, State, Zip:</b>			
<b>Facility responsible for servicing the contract:</b>			
<b>Address:</b>			
<b>City, State, Zip:</b>			
<b>Contact Person regarding company's proposal submission to the solicitation:</b>			
<b>Name / Title:</b>			
<b>Phone Number:</b>		<b>Fax Number:</b>	
<b>Email Address:</b>			
<b>Personnel who will be responsible for the management and day-to-day operations of the services solicited in this IFB.</b>			
<b>Name/Title:</b>			
<b>Indicate if your company or any of its subsidiaries filed or met criteria for bankruptcy within last five years.</b>			
<b>__Yes __No If yes, explain.</b>			
<b>Indicate if your company or any of its subsidiaries has been involved in litigation within last five years. If yes, explain.</b>			
<b>__Yes __No If yes, explain.</b>			
<b>Description of firm's background, history, and qualifications: (You may attach additional page for this section.)</b>			

## EXHIBIT B – EQUIPMENT LIST

**Respondent Name:** \_\_\_\_\_

Describe all equipment and vehicles to be specifically used **for this project** in the space provided below. Make sure to include dimensions/capacities of equipment, make, model, horsepower and intended use by bid item. For purposes of this bid evaluation TPWD assumes that the respondent's equipment list, (submitted below) includes ALL of the equipment that the respondent is dedicating to this project and has considered in his bid. All equipment used off pavement must be low pressure rubber-tired equipment.

[illegible]

**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 FOR MINOR CONSTRUCTION

JANUARY 2025

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

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

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

- 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: The Texas Parks and Wildlife Department (TPWD), 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, and Chapter 2269 of the Texas Gov't Code (TGC) and TPWD rules, as applicable. Any contract resulting from this procurement shall consist of one (1) document. This document will contain all of the rights and duties of the parties extracted from the relevant terms and conditions of this solicitation (including its attachments, exhibits, supplements, and addenda); the successful Contractor's response; any TPWD request for a Best and Final Offer; and any successful Contractor's Best and Final Offer, if applicable.
  - 3.3. Best Value – TPWD will be the sole judge of best value. Award will be based on Best Value criteria and may include, but is not limited to:
    - 3.3.1. Best meets the goals and objectives of the solicitation as stated above.
    - 3.3.2. Best meets the quality and reliability of the proposed services.
    - 3.3.3. Effect of the proposed solution on agency productivity.
    - 3.3.4. Provides the most customer focused solution that will best meet the needs of the public.
    - 3.3.5. Experience in successfully providing services in this solicitation.
    - 3.3.6. Past Performance: A Respondent's past performance will be measured based upon pass/fail criteria in compliance with applicable provisions of Gov't Code §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125. Respondents may fail this selection criterion for any of the following conditions:
      - The vendor has a score less than C or Legacy Unsatisfactory in the Vendor Performance System,
      - Currently under a Corrective Action Plan through the Texas Comptroller of Public Accounts (CPA),
      - Having repeated negative Vendor Performance Reports for the same reason,
      - Having purchase orders that have been cancelled in the previous 12 months for non-performance (i.e. late delivery, etc.).
    - 3.3.7. Contractor performance information is located on the CPA web site at: [www.txsmartbuy.com/vpts](http://www.txsmartbuy.com/vpts). TPWD may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by 34 Texas Administrative Code §20.115), TPWD may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of TPWD, and any negative findings, as determined by TPWD, may result in non-award to the Respondent.
4. **UNIT PRICES:** Respondents must price per unit shown. Unit prices shall govern in the event of extension errors.
5. **FREIGHT:** Quote FOB destination, freight prepaid and allowed unless otherwise stated within the specifications.
6. **CONTRACT TIME: TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT.** The Contract Time is the time between the dates indicated in the Notice to Proceed or Authorization to Proceed with Construction Activities for commencement of the Work and for achieving completion. The Contract Time can be modified only by Change Order. Failure to achieve completion within the Contract Time as otherwise agreed to in writing will cause damage to TPWD and may subject Contractor to liquidated damages as provided in the Contract Documents.
- 6.1 Contractor is accountable for completing the Work within the Contract Time stated in the Contract, or as otherwise amended by Change Order.
  - 6.2 TPWD may collect liquidated damages due from Contractor directly or indirectly by reducing the Contract Sum in the amount of liquidated damages stated in the Contract Documents.

**7. DELIVERY:**

- 7.1 Contractor shall state in writing the number of days required to place material in TPWD's designated location under normal conditions. Delivery days mean calendar days, unless otherwise specified. Failure to state delivery time obligates respondent to deliver in 14 calendar days. Unrealistic delivery promises may cause solicitation to be disregarded.
- 7.2 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.
- 7.3 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.
- 7.4 Substitutions: No substitutions permitted without prior written approval of TPWD.
- 7.5 Delivery shall be made during normal working hours only, unless prior approval has been obtained from TPWD. Normal working hours are 8:00 AM until 5:00 PM Monday through Friday except State and National holidays.

**8. TESTING AND INSPECTION:**

- 8.1 All construction shall be subject to tests and inspections at all reasonable times and at all places prior to acceptance. TPWD may test and inspect services provided under the Contract to ensure compliance with the specifications of this solicitation and the Contract. TPWD may also test and inspect goods and services before they are purchased under the Contract. Authorized TPWD personnel shall have free access to the Contractor's supplies, equipment, and work product at all times for inspection and audit. Contractor shall provide TPWD with all necessary assistance during inspections and/or audits.
- 8.2 To the extent practical, TPWD inspections will not disrupt the Contractor's daily operations. Contractor shall notify TPWD when work is ready for inspection or testing. It shall be the Contractor's responsibility to give such notifications sufficiently in advance of other work to prevent delays. A minimum of five (5) working days advance notice is required. Failure to provide advanced notice shall cause any certifications of testing to be void and require the Contractor to re-test at TPWD's request. All expenses for re-testing shall be borne by the Contractor.
- 8.3 Tests cannot be conducted, and work cannot be covered up until TPWD observes and authorizes continuation of the work. The Contractor shall bear all costs for re-tests and for removal and replacement of construction resulting from unauthorized continuation. Should TPWD fail to make the necessary inspections within the agreed timeframe, the Contractor may proceed with cover-up work after making every reasonable effort to contact TPWD and after documenting the work but is not relieved of responsibility for work to comply with requirements of the contract.
- 8.4 If applicable, all permanent utilities shall be connected before final tests are conducted for equipment and systems. Final operational tests shall be conducted prior to project acceptance by TPWD. The Contractor shall provide the materials, energy, equipment and personnel to conduct the tests required in the contract. If TPWD rejects materials that have been incorporated into the Project, any testing performed to prove compliance will be at the expense of the Contractor.

- 9. **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."

**10. INVOICING AND PAYMENT:**

- 10.1 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).
- 10.1.1 If required by TPWD, the Contractor shall submit other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of claims arising out of the contract, to the extent and in such form as may be designated by TPWD.
- 10.1.2 TPWD may reduce any invoice prior to payment to the extent necessary to protect TPWD from loss on account of actions of the Contractor, including, but not limited to: (1) defective work not remedied; (2) damage to work of a separate contractor; (3) failure to maintain scheduled progress; (4) failure to comply with the requirements of Texas Gov't Code Chapter 2258; (5) for Contracts with a value of less than \$25,000 for which no payment bond is posted, receipt of written notice by TPWD of unpaid bills, filed in conformance with § 53.232, Texas Property Code. Any funds so withheld shall be released to the Contractor if they furnish a bond or release of lien as provided in § 53.236, Texas Property Code; (6) failure to maintain a current record set of "As-Built" documents on site; and/or (7) failure to maintain or to allow TPWD's inspection of payroll records.
- 10.2 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.
- 10.3 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.

**11. 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.**

**12. PROHIBITION ON LOBBYING: The Respondent represents and warrants that TPWD's payments to Respondent and Respondent's receipt of appropriated funds or other funds under the contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code. Furthermore, the Respondent shall comply with the provisions of a federal law known generally as the Lobbying Disclosure Act, 2 U.S.C. §1601 et seq. By submitting a Bid/Proposal, the Respondent certifies that it shall not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence any officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. §1352. It also certifies that the Respondent shall disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award by completing and submitting Standard Form LLL.**



13. **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).
14. **DEBTS AND DELINQUENCIES:** As required by Gov't Code §2252.903, the Respondent agrees that any payments due under the Contract shall be directly applied towards eliminating any debt or delinquency is has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.
15. **DISPUTE RESOLUTION:**
- 15.1 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.
  - 15.2 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, stating with particularity the nature of the alleged breach, the amount the Contractor seeks as damages, and the legal theory of recovery. 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. If negotiation results in the resolution of some disputed issues by agreement or settlement, the Parties shall reduce the agreement or settlement to writing and each party shall sign the agreement or settlement. Partial settlement does not waive a Party's right to under this contract as to the claims that are not resolved. Compliance by the Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.
  - 15.3 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.
  - 15.4 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.
  - 15.5 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.
  - 15.6 Nothing in the 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 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 its conduct, or by the conduct of any representative of TPWD, prior to or subsequent to entering into this contract.

16. **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.

17. **NAME CHANGES AND SALES:**

- 17.1 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.
- 17.2 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.

18. **CONTRACTOR RESPONSIBILITIES:**

- 18.1 Contractor agrees to comply with all terms and conditions contained in this solicitation and resulting Contract.
- 18.2 Contractor is solely responsible for implementing the Work in full compliance with all applicable laws and the Contract Documents and shall supervise and direct the Work using the best skill and attention to assure that each element of the Work conforms to the Contract requirements. Contractor is solely responsible for all construction means, methods, techniques, safety, sequences, coordination, procedures and protection of the installed work as part of the contract until completion of the project.
- 18.3 **Services, Materials, and Equipment:** Unless otherwise specified, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities, incidentals, and services necessary for the construction, performance, testing, start-up, inspection and completion of the Work.
- 18.4 **Non-Compliant Work:** Should TPWD and/or its Architect/Engineer (A/E) identify Work as non-compliant with the Contract Documents, A/E and/or TPWD shall communicate the finding to Contractor, and Contractor shall correct such Work at no additional cost to TPWD. The approval of Work by either A/E or TPWD does not relieve Contractor from the obligation to comply with all requirements of the Contract Documents.
- 18.5 **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.
- 18.6 **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.
- 18.7 **Executive Head:** Pursuant to Gov't Code §669.003, the TPWD may not enter into a contract with a person who employs a current or former Executive Head of a state agency until four years have passed since that person was the executive head of the state agency. By submitting a Response, the Respondent certifies that it does not employ any person who was the Executive Head of a state agency in the past four years. If Section 669.003 applies, Respondent shall complete the following information in order for the response submission to be evaluated:

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



- 18.8 Contractor agrees to take precautions necessary to protect person or property against injury or damage and be responsible for such injury or damage.
- 18.9 Contractor agrees to comply with Federal law or State Worker's Compensation laws which are applicable to the work required or performed under the 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.
- 18.10 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.
19. **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.
20. **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.
21. **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.
22. **FORCE MAJEURE:** Neither Contractor nor TPWD shall be liable to the other for any delay in, or failure of performance, of any requirement included in the contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation,

epidemics or pandemics, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. TPWD may grant relief from performance of contract if the Contractor is prevented from performance by such an act. The burden of proof for the need of such relief shall rest upon the Contractor. To obtain release based on force majeure, the Contractor shall file a written request with the TPWD reasonably promptly from the time the force majeure event occurs.

**23. PROPRIETARY OR CONFIDENTIAL INFORMATION; TEXAS PUBLIC INFORMATION ACT:**

- 23.1 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.
- 23.2 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.
- 23.3 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.

**24. 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.

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

**26. 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.

**27. 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.

- 27.1 Termination for Convenience: TPWD reserves the right, without breach, to terminate the Contract prior to, or during the performance of the Work, in whole or in part, without cost or penalty, for any reason if TPWD determines that such termination is in the best interest of the state. Upon such an occurrence, TPWD will immediately notify the Contractor in writing, specifying the reason for and the

- effective date of the termination. Such notice may also contain instructions necessary for the protection, storage or decommissioning of incomplete work or systems and for safety.
- 27.1.1 Upon receipt of the notice of termination, the Contractor immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:
    - 27.1.1.1 Stop all work.
    - 27.1.1.2 Place no further subcontracts or orders for materials or services.
    - 27.1.1.3 Terminate all subcontracts for convenience.
    - 27.1.1.4 Cancel all materials and equipment orders as applicable.
    - 27.1.1.5 Take any action that is necessary to protect and preserve all property related to the Contract which is in the possession of Contractor.
  - 27.1.2 When the Contract is terminated for convenience, Contractor may recover from TPWD payment for all Work executed provided that TPWD shall not be liable for any work performed that is not acceptable to TPWD and/or does not meet contract requirements. Contractor may not claim lost profits on other work or lost business opportunities.
  - 27.1.3 Termination under this paragraph shall not relieve the vendor of any obligation or liability that has occurred prior to cancellation.
  - 27.2 Termination for Cause/Default: Upon written notice to Contractor and, if applicable, its surety, TPWD may, without prejudice to any right or remedy, terminate the Contract and take possession of the Site and of all materials, equipment, tools, construction equipment, and machinery thereon owned by Contractor 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.
    - 27.2.1 Failure by TPWD to exercise the right to terminate in any instance is not a waiver of the right to do so in any other instance.
    - 27.2.2 Should TPWD decide to terminate the Contract under the provisions of Section 27.2, it will provide to Contractor and its surety thirty (30) days prior written notice.
    - 27.2.3 Should Contractor or its surety, after having received notice of termination, demonstrate to the satisfaction of TPWD that Contractor or its surety are proceeding to correct such default with diligence and promptness, upon which the notice of termination was based, the notice of termination may be rescinded by TPWD. If so rescinded, the Work may continue without an extension of time.
    - 27.2.4 If Contractor or its surety fails, after written notice from TPWD to commence and continue correction of such default with diligence and promptness to the satisfaction of Owner within thirty (30) days following receipt of notice, TPWD may arrange for completion of the Work and deduct the cost of completion from the unpaid Contract Sum.
      - 27.2.4.1 Contractor will be responsible for paying damages to TPWD including but not limited to re-procurement costs, and any consequential damages to the State of Texas or TPWD resulting from Contractor's non-performance. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work is significantly changed.
      - 27.2.4.2 TPWD will make no further payment to Contractor or its surety unless the costs to complete the Work are less than the Contract balance, then the difference shall be paid to Contractor or its surety. If such costs exceed the unpaid balance, Contractor or its surety will pay the difference to TPWD.
      - 27.2.4.3 This obligation for payment survives the termination of the Contract.
      - 27.2.4.4 TPWD reserves the right in termination for cause to take assignment of all the Contracts between Contractor and its Subcontractors, vendors, and suppliers. TPWD will promptly notify Contractor of the contracts TPWD intends to assume. Upon receipt of such notice, Contractor shall promptly take all steps necessary to effect such assignment.
  - 27.3 Termination for Lack of Funds: The Contract is subject to termination or cancellation, without penalty to TPWD, either in whole or in part, subject to the availability of state funds.
  - 27.4 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.
  - 27.5 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.

28. **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.
29. **RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT:** In the event that the Contract is terminated for any reason, or upon its expiration, TPWD shall retain ownership of all associated work products and documentation obtained from the Contractor under the Contract, unless otherwise specified.
30. **CHANGE IN FEDERAL OR STATE REQUIREMENTS:** If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either TPWD or the Contractor cannot reasonably fulfill the Contract and if the Parties cannot agree to an amendment that would enable substantial continuation of the Contract, the Parties shall be discharged from any further obligations under the Contract.
31. **TAXES:** Purchases made for state uses are exempt from Texas State Sales Tax and Federal Excise Tax. An Excise Tax Exemption Certificate will be furnished upon written request to TPWD.
32. **BUY TEXAS:** In accordance with §2155.4441, Gov't Code, the Contractor 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.
33. **NOTE TO RESPONDENT:** Any terms and conditions attached to a solicitation will not be considered unless specifically referred to on this solicitation form and may result in disqualification of the response submission. If any respondent takes a 'blanket exception' to the entire solicitation or does not provide proposed alternative language, the respondent's response may be disqualified from further consideration.
34. **ACCESSIBILITY STANDARDS:** Under Texas Government Code, Chapter 2054, Subchapter M, TPWD must procure products that comply with the Accessibility Standards defined in the Texas Administrative Code, 1 TAC 206 and 1 TAC 213, when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. Accordingly, Contractor must provide electronic and information resources and associated product documentation and technical support that comply with these Accessibility Standards (in the form of a Voluntary Product Accessibility Template, or "VPAT") in its response to an RFO. Vendors who do not already have accessibility documentation should complete the form located here: <http://www.itic.org/policy/accessibility/>. Contractors that claim their products are exempt from accessibility requirements must present that position to TPWD as a question during the question and answer period of the solicitation.
35. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:** Respondent certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and the Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
36. **SYSTEM FOR AWARD MANAGEMENT (SAM):** 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.

37. **FEDERAL DISASTER RELIEF FRAUD:** Sections 2155.006 and 2261.053 of the Gov't Code, prohibit state agencies from accepting a response or awarding a contract that includes proposed financial participation by a person who, in the past five years has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Gov't Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Gov't Code, Respondent certifies that the individual or business entity named in this response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
38. **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.
39. **APPLICABLE LAWS AND CONFORMING AMENDMENTS:** Contractor must comply with all laws, regulations, requirements and guidelines applicable to a Contractor providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. TPWD reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for TPWD or Contractor's compliance with all applicable State and federal laws, and regulations.
40. **COMPLIANCE WITH LAWS; DEALING WITH PUBLIC SERVANTS:**
- 40.1 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.
- 40.2 The Respondent shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract. Except where otherwise expressly required by applicable laws and regulations, TPWD shall not be responsible for monitoring Respondent's compliance with any laws or regulations. If Respondent performs any work knowing or having reason to know that it is contrary to laws or regulations, Respondent shall bear all claims, costs, losses and damages caused by, arising out of or resulting therefrom.
41. **NO WAIVER:** Nothing in this Contract shall be construed as a waiver of the state's 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.
42. **NO LIABILITY UPON TERMINATION:** If this Contract is terminated for any reason, TPWD and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Contractor may be entitled to the remedies provided in Gov't Code, Chapter 2260.

- 43. DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES:** Respondent represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com. Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that Respondent has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject 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.
- 44. 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.
- 45. 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.
- 46. CURRENT AND FORMER TPWD EMPLOYEES:**
- 46.1 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.
  - 46.2 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.
- 47. INSURANCE AND OTHER SECURITY:**
- 47.1 Insurance Requirements. 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. Failure of TPWD to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of TPWD to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
    - 47.1.1 The Respondent represents and warrants that it will obtain and maintain for the term of the Contract including the warranty period 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.
    - 47.1.2 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.
  - 47.2 Construction Bonds. Contractor is required to tender to TPWD, prior to commencing work, performance and payment bonds, as required by Tex. Gov't Code, Ch. 2253.
    - 47.2.1 A Performance Bond is required if the Contract Sum is in excess of \$100,000.00. The performance bond is solely for the protection of TPWD. The performance bond is to be for the Contract Sum to guarantee the faithful performance of the Work in accordance with the

Contract Documents. The form of the bond shall be approved by the Office of the Attorney General of Texas. The performance bond shall be effective through Contractor's warranty period.

- 47.2.2 A Payment bond is required if the Contract price is in excess of \$25,000. The payment bond is to be for the Contract Sum and is payable to Owner solely for the protection and use of payment bond beneficiaries. The form of the bond shall be approved by the Office of the Attorney General of Texas.
  - 47.2.3 Payment and performance bonds are due within ten (10) days of Contractor's receipt of a fully executed Contract on competitively bid project.
  - 47.2.4 Each bond shall be accompanied by a valid power of attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney-in-fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.
  - 47.2.5 The process of requiring and accepting bonds and making claims there under shall be conducted in compliance with Tex. Gov't Code, Ch. 2253. IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD TPWD HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.
  - 47.2.6 TPWD shall furnish certified copies of the payment bond and the related Contract to any qualified person seeking copies who complies with Tex. Gov't Code § 2253.026.
48. **SEVERABILITY:** If any provision of the Contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.
49. **HISTORICALLY UNDERUTILIZED BUSINESSES (HUB):** Respondent represents and warrants that it shall comply with the Historically Underutilized Business requirements pursuant to Gov't Code, Chapter 2161.
50. **AMENDMENTS:** Except as provided in the solicitation, this Contract may be amended only upon written agreement between TPWD and Contractor; however, any amendment of this Contract that conflicts with the laws of the State of Texas shall be void. The Contractor shall not be entitled to payment for any additional services, work, or products that are not authorized by a properly executed Contract amendment or change order.
51. **CHANGE MANAGEMENT:** The Respondent agrees that the key personnel assigned to the Contract shall remain available for the entirety of the project throughout the term of the Contract as long as that individual is employed by the Respondent or unless TPWD agrees to a change in the key personnel.
52. **FEDERAL, STATE AND LOCAL REQUIREMENTS:** Respondent shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Respondent is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation insurance coverage. Respondent shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Respondent or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. **Contractor shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from its omission or breach of this Section.**
53. **INDEMNIFICATION AND LIABILITY:**
- 53.1. **Acts or Omissions:** CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TPWD, AND/OR ITS OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED DAMAGES, COSTS, ATTORNEY FEES, AND EXPENSES TO THE EXTENT CAUSED BY, ARISING OUT OF, OR RESULTING FROM ANY ACTS OF NEGLIGENCE, INTENTIONAL TORTS, WILLFUL



MISCONDUCT, PERSONAL INJURY OR DAMAGE TO PROPERTY, AND/OR OTHERWISE RELATED TO CONTRACTOR'S PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER BY THE CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, CONSULTANTS UNDER CONTRACT TO CONTRACTOR, OR ANY OTHER ENTITY OVER WHICH THE CONTRACTOR EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS 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 TEXAS ATTORNEY GENERAL. CONTRACTOR AND TPWD AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

53.2. **Infringements:**

53.2.1. 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.

53.2.2. 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.

53.2.3. 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.

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

53.3.1. 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.

53.3.2. 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.**

- 54. CONTRACTOR LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY:** The Contractor shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Contractor shall notify the TPWD Contract Manager in writing of any such damage within one (1) calendar day.
- 55. FELONY CRIMINAL CONVICTIONS:** Respondent represents and warrants that Contractor has not and Respondent's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Respondent has fully advised TPWD as to the facts and circumstances surrounding the conviction.
- 56. IMMIGRATION:** The Respondent represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract. 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).
- 57. SUBCONTRACTORS:** Subcontractors providing service under the contract shall meet the same requirements and level of experience as required of the Contractor. No subcontract under the purchase order shall relieve the primary Contractor of responsibility for the service. If the Contractor uses a subcontractor for any or all of the work required, the following conditions shall apply under the listed circumstances:
- 57.1 Respondents planning to subcontract all or a portion of the work shall identify the proposed subcontractors.
  - 57.2 Contractor shall furnish to TPWD a copy, at TPWD's request, of each first-tier subcontract promptly after its execution.
  - 57.3 Contractor agrees that TPWD has no obligation to review or approve the content of such contracts and that providing TPWD such copies in no way relieves Contractor of any of the terms and conditions of the Contract, including, without limitation, any provisions of the Contract which require the Subcontractor to be bound to Contractor in the same manner in which Contractor is bound to TPWD.
  - 57.4 Subcontracting shall be at the Contractor's expense.
  - 57.5 TPWD retains the right to check subcontractor's background and make determination to approve or reject the use of submitted subcontractors.
  - 57.6 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.
  - 57.7 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.

58. **PROTEST PROCEDURES:** Any actual or prospective Respondent who is aggrieved in connection with this solicitation, evaluation, or award of any contract resulting from this solicitation may formally protest as provided in TPWD's rules at TAC, Title 31, Part 2, Chapter 51, Subchapter L, Rule 51.350.
59. **NON-APPROPRIATION OF FUNDS:** Any contract resulting from this solicitation is subject to termination or cancellation, without penalty to TPWD, either in whole or in part, subject to the availability of state funds. TPWD is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If TPWD becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render TPWD's or Contractor's delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, TPWD will not be liable to Contractor for any damages, which are caused or associated with such termination, or cancellation and TPWD will not be required to give prior notice.
60. **NON-DISCRIMINATION:** Respondent acknowledges it is subject to Title VI of the Civil Rights Act of 1964, Section 504 or Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and offers all persons the opportunity to participate in programs or activities regardless of race, color, national origin, age, sex, or disability. Further, it is agreed that no individual will be turned away or otherwise denied access to or benefit from any program or activity that is directly associated with a program on the basis of race, color, national origin, age, and sex (in educational activities) or disability. Respondent shall ensure that this clause is included in all subcontracts.
61. **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.
62. **LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS:** Contractor shall have no authority to act for or on behalf of TPWD or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or TPWD.
63. **DRUG-FREE WORKPLACE:** The Contractor shall comply with the applicable provisions of the Drug-Free Workplace Act of 1988.
64. **NOTICES:** Any written notices required under this Contract will be by either hand delivery to Contractor's office address specified in Attachment D of this Contract or by U.S. Mail, certified, return receipt requested, to TPWD, Attn: Infrastructure, 4200 Smith School Road, Austin, TX 78744. Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this Section by written notification to the other party.
65. **ORDER OF PRECEDENCE:** In the event of any conflicts or inconsistencies between the contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in this order of priority:
- 65.1 Signed Contract/Purchase Order (or Notice of Award, Notice to Proceed or Authorization to Proceed with Construction Activities)
  - 65.2 Attachments to the Contract/Purchase Order (or Notice of Award)
  - 65.3 The Solicitation (e.g., RFP, IFB)
  - 65.4 Contractor's Response to the Solicitation and Contractor's Best and Final Offer, if applicable

**66. BUSINESS OWNERSHIP:**

66.1 Pursuant to Texas Family Code, title 5, Subtitle D, Section 231.006(d), regarding child support, the Respondent certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

**67. NO ASSIGNMENT BY CONTRACTOR:** The awarded Contractor shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the TPWD. Any attempted assignment in violation of this provision is void and without effect.

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

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

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

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

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

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

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

**71. ENTITIES THAT BOYCOTT ISRAEL:** Pursuant to Section 2271.002 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criteria under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. Respondent shall state any facts that make it exempt from the boycott certification in its Response.

**72. EXCLUDED PARTIES:** Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.

**73. IRON AND STEEL PRODUCTS:** By signature hereon, the bidder acknowledges that *Texas Government Code*, Title 10, Subchapter F, §§ 2252.201-2252.205 requires that all iron or steel products produced through a manufacturing process used in this project must be produced in the United States. By signing this bid, Bidder certifies that its bid price represents full compensation for compliance with the requirements of *Texas Government Code*, Title 10, Subchapter F, §§ 2252.201-2252.205.

74. **TEXAS BIDDER AFFIRMATION:** Respondent certifies that if a Texas address is shown as the address of the Respondent on this response, Respondent qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.
75. **CONTRACTING INFORMATION RESPONSIBILITIES:** In accordance with Section 552.372 of the Texas Government Code, Contractor agrees to (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to TPWD for the duration of the contract, (2) promptly provide TPWD any contracting information related to the contract that is in the custody or possession of the Contractor on request of TPWD, and (3) on termination or expiration of the contract, either provide at no cost to TPWD all contracting information related to the contract that is in the custody or possession of the Contractor or preserve the contracting information related to the contract as provided by the records retention requirements applicable to TPWD. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code may apply to the contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
76. **CYBERSECURITY TRAINING:** If Respondent has access to any state computer system or database, Respondent shall complete cybersecurity training and verify completion of the training program to TPWD pursuant to and in accordance with Gov't Code § 2054.5192.
77. **FINANCIAL PARTICIPATION PROHIBITED AFFIRMATION:** Pursuant to Section 2155.004(a) of the Texas Government Code, Respondent certifies that neither Respondent nor any person or entity represented by Respondent has received compensation from TPWD to participate in the preparation of the specifications or solicitation on which this Response or contract is based. Under Section 2155.004(b) of the Texas Government Code, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.
78. **ABORTION PROVIDER AND AFFILIATE TRANSACTIONS PROHIBITED:** Respondent represents and warrants that the contract is not a taxpayer resource transaction prohibited by Section 2272.003 of the Texas Government Code and that payments made by TPWD to Contractor and Contractor's receipt of appropriated funds under the contract are not prohibited by Article IX, Section 6.25 of the General Appropriations Act.
79. **FOREIGN TERRORIST ORGANIZATIONS:** Section 2252.152 of the Texas Government Code prohibits TPWD from awarding a contract to any person who does business with Iran, Sudan, or a foreign terrorist organization as defined in Section 2252.151 of the Texas Government Code. Respondent certifies that it is not ineligible to receive the contract.
80. **HUMAN TRAFFICKING PROHIBITION:** Under Section 2155.0061 of the Texas Government Code, the Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
81. **ENERGY COMPANY BOYCOTTS:** Respondent represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Respondent shall promptly notify TPWD.
82. **FIREARM ENTITIES AND TRADE ASSOCIATIONS DISCRIMINATION:** Respondent verifies that: (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Respondent shall promptly notify TPWD.
83. **CRITICAL INFRASTRUCTURE AFFIRMATION:** Pursuant to Government Code Section 2274.0102, Respondent certifies that neither it nor its parent company, nor any affiliate of Respondent or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea,



Russia, or any other country designated by the Governor under Government Code Section 2274.0103, or (2) headquartered in any of those countries.

84. **COVID-19 VACCINE PASSPORT PROHIBITION:** Under Section 161.0085 of the Texas Health and Safety Code, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract.
85. **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.
86. **TEXAS GOVERNOR EXECUTIVE ORDER GA-48:** Pursuant to Executive Order GA-48 of the Governor of Texas, Respondent certifies that it and, if applicable, any of its holding companies or subsidiaries, is not:
- a. Listed in Section 889 of the 2019 National Defense Authorization Act (NDAA); or
  - b. Listed in Section 1260H of the 2021 NDAA; or
  - c. Owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4; or
  - d. Controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4.
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.