

INVITATION FOR BID

SEND INVOICE TO:

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

RETURN SEALED BIDS TO

Texas Parks and Wildlife Department
Purchasing & Contracting Section, C-1
4200 Smith School Road
Austin, Texas 78744

BIDDER MUST SIGN BELOW

BID OPENING 2:00 P.M. **February 23, 2009**
REQUISITION NO. **802-9-40122**

PAGE 1 OF 11

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

DESTINATION IF DIFFERENT THAN ABOVE

Texas Parks and Wildlife Department
Headquarters, Communications Division
4200 Smith School Road
Austin, TX 78744

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

**FAXED BIDS WILL BE
ACCEPTED: 512-389-4677**

BIDDER AGREES TO
COMPLY WITH ALL
CONDITIONS OF THIS BID.

FAILURE TO
MANUALLY
SIGN WILL
DISQUALIFY BID.

AUTHORIZED SIGNATURE DATE

SEE INSTRUCTIONS 1.07 IN TERMS OF BID FOR TEXAS I.D. NUMBER

Bidder Must Fill in

TEXAS ID NUMBER _____

Name of Firm _____

Street Address _____

City-State-Zip _____

Telephone Number () _____

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 34 TAC Rule 20.32(68).

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 #	Class & Item No: Description	Quantity	Unit	Unit Price	Extension
1.	915-22 – The following shall be a Blanket Order for an hourly rate to provide contract services for a Marketing Production Services Assistant, and shall meet or exceed the attached Specification No. 915-22-40122, Four (4) pages, Dated February, 2009. Attached Terms and Conditions, Six (6) pages, dated November, 2008 apply to and become part of contract. Any exceptions thereto must be submitted with response, in writing.	1500	Hour	\$ _____	\$ _____
				TOTAL:	\$

(☐) Offered by a Historically Underutilized Business certified by CPA

PREFERENCES

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

Check below to claim a preference under 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: Lou Britt, PURCHASER - PHONE NO. (512) 389-8344

SCOPE OF WORK and SPECIFICATIONS

1. **INTRODUCTION:** Texas Parks and Wildlife Department (TPWD) requires an independent contractor to provide Marketing Production Services in the form of an Assistant in the Communications Division, Marketing and Web Service Branch. Services will be provided to Glenda Beasley (or her designee) of the Communications Division, Marketing and Web Services Branch at TPWD Headquarters, 4200 Smith School Road, Austin, Texas 78744. This is an invitation for bids for contracted services and award of a contract will not lead to employment by TPWD or to an extended association with TPWD beyond the term specified below.
2. **DEFINITIONS:**
 - 2.1 TPWD – Texas Parks and Wildlife Department
 - 2.2 Basecamp - A web-based tool that can manage and track projects (or simply ideas) to allow quick creation of client/project extranets.
 - 2.3 RFS – Request for Printing or Creative Services
 - 2.4 COM - Communications Division
 - 2.5 CPI-W – Consumer Price Index for Urban Wage Earners
3. **QUALIFIED RESPONDENTS:** A contract will be awarded ONLY to a contractor who is experienced in Marketing Production Services based on Paragraph No. 8 – Contractor Qualifications.
4. **CONTRACT PERIOD:** The initial contract shall commence upon date of award and continue for a twelve (12) month period, unless sooner terminated under the terms of this contract.
5. **RENEWAL OPTIONS:** Contract may be renewed for up to two (2) additional one (1) year periods, provided both parties agree in writing prior to contract expiration. Renewal shall be in accordance with the original terms and conditions plus any approved changes.
6. **RENEWAL ESCALATION:** A price escalation will be allowed upon renewal provided the vendor notifies TPWD Contracting Section, in writing, of the pending price escalation a minimum of sixty (60) days prior to renewal. The price escalation shall correlate with the CPI-W published by the United States Bureau of Labor Statistics at www.bls.gov. Baseline index shall be the index published the month of award. Prices may be adjusted for each renewal period in accordance with changes in index. Failure to comply with these instructions may be grounds for disallowance of a price escalation as allowed herein.
7. **QUANTITY INCREASE/DECREASE:** Quantities are estimates only. TPWD reserves the right to increase or decrease quantities as needed for the same unit price. TPWD will only pay for actual usage.
8. **SCOPE OF WORK** –The purpose of this contract is to provide marketing assistant support services for the Marketing and Web Services Branch of COM of TPWD. Marketing campaign development and production for TPWD is a complex issue. Tasks to be performed include (but are not limited to):
 - 8.1 Attend meetings to take notes
 - 8.2 Create timelines
 - 8.3 Enter into Basecamp and update as needed
 - 8.4 Complete internal request forms for printing and copying services (RFS)
 - 8.5 Take media calls

- 8.6 Maintain media files
- 8.7 Manage ad schedule production for magazines
- 8.8 Create purchase orders
- 8.9 Research project options
- 8.10 Insert online event calendar listings
- 8.11 Assist with advertising fulfillment and distribution of materials.

9. CONTRACTOR QUALIFICATIONS CONTRACTOR MUST:

- 9.1 Have the ability to identify scope of work
- 9.2 Work with project manager to assign roles, responsibilities and deadlines
- 9.3 Build timelines for projects
- 9.4 Demonstrate strength in taking ownership of coordination details and assisting project lead to carry the project to completion
- 9.5 Have strong Microsoft Power-point, Excel and Word skills
- 9.6 Have familiarity with Basecamp or other project management software
- 9.7 Have strong organizational skills
- 9.8 Have strong written and oral communication skills
- 9.9 Enjoy fast-paced environment
- 9.10 Be willing to assist with required paperwork, mailings, copying, administrative tasks as needed
- 9.11 Have the ability to listen and take detailed meeting notes
- 9.12 Be flexible and have the ability to work with minimal supervision
- 9.13 Have strong time management skills including ability to handle multiple projects
- 9.14 Must have Bachelor Degree or higher.

10. CONTRACTOR EXPERIENCE – MUST HAVE:

- 10.1 One (1) or more year's experience working in an ad agency or marketing environment
- 10.2 Two (2) or more year's experience coordinating senior level staff and/or project management
- 10.3 Experience working in government or large corporation, specifically prefer experience in a marketing department.
- 10.4 Contractor must provide TPWD with three (3) references prior to award.

11. ESTIMATED CONTRACT HOURS:

- 11.1 At this time, projects currently scheduled require the contractor to be available for an estimated thirty (30) hours per week
- 11.2 The contractor will not work on State Holidays, approximately twelve (12) per year as follows: Labor Day, Veteran's Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve Day, Christmas Day, Day after Christmas, New Year's Day, Martin Luther King, Jr. Day, Confederate Heroes' Day, Presidents' Day, Independence Day
- 11.3 The Contractor has the right to perform services for others during the term of the contract.

12. CONTRACTED SERVICES: This solicitation is for contracted services only. No other relationship is implied. No State provided benefits are attached to this contract offer. The Contractor is NOT an employee of the State of Texas or TPWD.

- 12.1 Contractor nor Contractor's employees or contract personnel are eligible to participate in any employee pensions, health, vacation pay, sick pay or other fringe benefit plan of TPWD.
- 12.2 TPWD shall not obtain workers' compensation insurance on behalf of Contractor or Contractor's employees. If Contractor hires employees to perform any work under this Contract, Contractor will comply with the law concerning workers' compensation insurance.
- 12.3 TPWD will make no state or federal unemployment compensation payment on behalf of Contractor's or Contractor's employees or contract personnel. Contractor will not be entitled to these benefits in connection with work performed under this Contract.
- 12.4 TPWD will not:
 - 12.4.1 Withhold FICA (Social Security and Medicare taxes) from Contractor's payments or make FICA payments on Contractor's behalf, or
 - 12.4.2 Make state or federal unemployment compensation contributions on Contractor's behalf, or
 - 12.4.3 Withhold state or federal income tax from Contractor's payments
- 12.5 Contractor shall pay:
 - 12.5.1 All taxes incurred while performing services under this Contract--including all applicable income taxes, and
 - 12.5.2 If Contractor is not a corporation, self-employment (Social Security) taxes, and
 - 12.5.3 Upon demand, Contractor shall provide TPWD with proof that such payments have been made.

13. PAYMENT

- 13.1 Contractor shall submit invoices no more than once every thirty (30) days.
- 13.2 Completed services must be approved by Glenda Beasley, or her designee.
- 13.3 TPWD shall pay Contractor upon satisfactory completion of the work within 30 days of receipt of Contractor's detailed invoice.
- 13.4 Contractor shall be responsible for all expenses incurred while performing services under this Contract. This includes license fees, memberships and dues; automobile and other travel expenses.

- 13.5 Per Diem and overnight lodging for approved travel away from business location headquarters will be reimbursed at the official rate authorized by the State of Texas.
14. **COPYRIGHTS:** TPWD shall own and retain all proprietary rights associated with any work produced or composed in the performance of the Contract.
15. **SUBMISSION REQUIREMENTS:** Written responses shall be received at TPWD no later than the date and time shown on page one, and shall include the following:
- 15.1 A resume outlining the contractor's work experience and qualifications.
 - 15.2 An hourly rate required by the contractor.
 - 15.3 A list of three (3) references including organization name, contact names, title, and telephone number. The references shall illustrate recent experience in successfully completing work of a similar nature and scope as the work described in this IFB.
 - 15.4 Prior to award, samples of work similar in nature and scope to the services described in this IFB may be requested by TPWD. Quality of work may be a factor in award.
 - 15.5 Prior to award, TPWD will require a meeting from qualified respondent to further clarify qualifications and experience.
16. **BASIS OF AWARD:** The intent of TPWD is to award a contract to the vendor whose response is considered to be the best value to the state, price and other factors considered. The contract shall be awarded to the responsible bidder attaining the highest score on the bid evaluation (unless all bids are rejected). Bids will be evaluated on the following criteria:
- 16.1 Experience, qualifications, references and TPWD meeting results
 - 16.2 Hourly bid price
17. **COMPLIANCE:** Contractor shall comply with all laws, ordinances, statutes and regulations pertaining to the work herein described and shall obtain such permits, licenses or other authorizations as may be required.

PART I
GENERAL TERMS AND CONDITIONS

1. BIDDING REQUIREMENTS:

- 1.01. Bidders must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of this form.
- 1.02. Bids should be submitted on this form. Bidders must price per unit shown. Unit prices shall govern in the event of extension errors. If a price quotation is submitted as part of the bid, the quotation must be referenced on the bid document and signed by the bidder to establish formal linkage to the bid.
- 1.03. Bids must be time stamped at Texas Parks and Wildlife Department on or before the hour and date specified for the bid opening.
- 1.04. Late and/or unsigned bids will not be considered under any circumstances. Person signing bid must have the authority to bind the firm in a contract.
- 1.05. Quote FOB destination, freight prepaid and allowed unless otherwise stated within the specifications.
- 1.06. Bid prices are requested to be firm for TPWD acceptance for 30 days from bid opening date. "Discount from list" bids are not acceptable unless requested. Cash discounts are not considered in determining an award. Cash discounts offered will be taken if earned.
- 1.07. Bidder should enter Texas Identification Number System (TINS) number, full firm name and address of bidder in the space provided on the face of this form. Additionally, firm name should appear on each continuation page of a bid, if applicable. A TINS number is required to process payment for goods/services purchased against contract awards. The Federal Employers Identification number (EIN) will be used to establish a TINS number, and may be entered on the face of the bid, if a TINS has not been established.
- 1.08. Bid cannot be altered or amended after opening time. Alterations made before opening time should be initialed by bidder or his authorized agent. No bid can be withdrawn after opening time without approval by the TPWD based on an acceptable written reason.
- 1.09. Purchases made for State use are exempt from the State Sales tax and Federal Excise tax. Do not include tax in bid. Excise Tax Exemption Certificates are available upon request.
- 1.10. **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 at the sole discretion of the State. The State also reserves the right to accept or reject all or any part of any bid, waive minor technicalities and award the bid to best serve the interests of the State. Any contract may also be extended up to three months at the sole discretion of the State.
- 1.11. Consistent and continued tie bidding could cause rejection of bids by the TPWD and/or investigation for antitrust violations.
- 1.12. The telephone number for FAX submission of bids is 1-512-389-4677. This is the only number that will be used for the receipt of bids. The State shall not be responsible for failure of electronic equipment or operator error. Late, illegible, incomplete, or otherwise non-responsive bids will not be considered. Call 512-389-4839 for FAX confirmation.
- 1.13. Inquiries pertaining to this IFB must include the requisition number, class/item codes, and opening date.

2. SPECIFICATION:

- 2.01. Catalogs, brand names or manufacturer's references are descriptive only, and indicate type and quality desired. Bids on brands of like nature and quality will be considered unless advertised under §2155.067, Texas Government Code (Gov't Code). If bidding on other than references, bid should show manufacturer, brand or trade name, and other description of product offered. If other than brand(s) specified is offered, illustrations and complete description of product offered are requested to be made part of the bid. Failure to take exception to specifications or reference data will require bidder to furnish specified brand names, numbers, etc.
- 2.02. Unless otherwise specified, items shall be new and unused and of current production.
- 2.03. All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.
- 2.04. Samples, when requested, must be furnished free of expense to the State. If not destroyed in examination, they will be returned to the bidder, on request, at bidder's expense. Each sample should be marked with bidder's name and address, and requisition number. Do not enclose in or attach bid to sample.
- 2.05. The State will not be bound by any oral statement or representation contrary to the written specifications of this Invitation for Bids (IFB).
- 2.06. Manufacturer's standard warranty shall apply unless otherwise stated in the IFB.

3. TIE BIDS:

Awards will be made in accordance with 34 TAC Rules 20.36(b)(3) and 20.38 (Preferences).

4. DELIVERY:

- 4.01. Show number of days required to place material in receiving agency's designated location under normal conditions. Delivery days mean calendar days, unless otherwise specified. Failure to state delivery time obligates bidder to deliver in 14 calendar days. Unrealistic delivery promises may cause bid to be disregarded.

- 4.02. If delay is foreseen, bidder shall give written notice to the TPWD and the ordering agency. Bidder must keep the TPWD and ordering agency advised at all times of status of order.
- 4.03. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the TPWD to purchase the goods or services of this IFB elsewhere and charge any increased costs for the goods or services, including the cost of rebidding, to the bidder.
- 4.04. No substitutions permitted without written approval of TPWD.
- 4.05. Delivery shall be made during normal working hours only, unless prior approval has been obtained from ordering agency.

5. INSPECTION AND TESTS:

All goods will be subject to inspection and test by the State. Authorized TPWD personnel shall have access to supplier's place of business for the purpose of inspecting merchandise. Tests shall be performed on samples submitted with the bid or on samples taken from regular shipment. All costs shall be borne by the bidder in the event products tested fail to meet or exceed all conditions and requirements of the specification. Goods delivered and rejected in whole or in part may, at the State's option, be returned to the bidder or held for disposition at bidder's expense. Latent defects may result in revocation of acceptance.

6. AWARD OF CONTRACT:

A response to this IFB is an offer to contract based upon the terms, conditions, and specifications contained herein. Bids do not become contracts until they are accepted through a purchase order. The contract shall be governed, construed, and interpreted under the laws of the State of Texas. The factors listed in §§2155.074, 2155.144, 2156.007, and 2157.003, Gov't Code, shall also be considered in making an award when specified. Any legal actions must be filed in Travis County, Texas.

7. PAYMENT:

Bidder shall submit 2 copies of an itemized invoice showing purchase order number on all copies. The State will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods or services and an uncontested invoice. Payment shall be made in accordance with Chapter 2251, Gov't Code.

8. PATENTS, TRADEMARKS, OR COPYRIGHTS:

Bidder 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 bidder as a result of this IFB.

9. BIDDER ASSIGNMENTS:

Bidder hereby assigns to the TPWD any and all claims for overcharges associated with this contract arising under the antitrust laws of the United States 15 U.S.C.A. §1, *et seq.*, and the antitrust laws of the State of Texas, Tex. Bus. & Comm. Code §15.01, *et seq.*

10. BIDDER AFFIRMATIONS:

Signing this bid with a false statement is a material breach of contract and shall void the submitted bid and any resulting contracts, and the bidder shall be removed from all bid lists. By signature hereon affixed, the bidder hereby certifies that:

- 10.01. The bidder has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted bid.
- 10.02. Pursuant to 15 U.S.C. §1, *et seq.* and Tex. Bus. & Comm. Code §15.01, *et seq.* neither the bidder nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
- 10.03. Pursuant to §2155.004, Gov't Code, neither the bidder nor any person or entity which will participate financially in any contract resulting from this IFB has received compensation for participation in the preparation of the specifications for this IFB.
- 10.04. Pursuant to §231.006(d), Texas Family Code, regarding child support, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any bidder subject to §231.006, Gov't Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award. Enter the Name & Social Security Numbers for each person below:

Name:	Social Security Number:
Name:	Social Security Number:
Name:	Social Security Number:

- 10.05. Under §2155.004, Gov't Code, the bidder certifies that the individual or business entity named in this bid or any contract resulting from this IFB is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate. §2155.004 prohibits a person or entity from receiving a state contract if they received compensation for participating in preparing the solicitation or specifications for the contract.
- 10.06. As required by §2252.903, Gov't Code, bidder agrees that any payments due under a contract resulting from this IFB shall be directly applied towards eliminating any debt or delinquency including, but not limited

to, delinquent taxes, delinquent student loan payments, and delinquent child support, until the debt is paid in full. Bidder shall comply with rules adopted by TPWD under §§403.055, 403.0551, 2252.903, Gov't Code and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

- 10.07. Pursuant to §669.003, Gov't Code, TPWD may not enter into a contract with a person who employs a current or former executive head of the TPWD until four years has passed since that person was the executive head of the TPWD. By submitting a bid, the bidder certifies that it does not employ any person who was the executive head of the TPWD in the past four years. If bidder does employ a person who was the executive head of the TPWD, provide the following information:

Name of Former Executive: _____

Name of State Agency: _____

Date of Separation from State Agency: _____

Position with Bidder: _____

Date of Employment with Bidder: _____

- 10.08. In accordance with §2155.4441, Gov't Code, bidder 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 this state.

- 10.09. Bidder certifies that the bidding 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 that bidder is in compliance with the State of Texas statutes and rules relating to procurement and that bidder is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>

- 10.10. Sections 2155.006 and 2261.053, Gov't Code, prohibit state agencies from awarding contracts to any 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 §418.004, Gov't Code, occurring after September 24, 2005. Under §2155.006, Gov't Code, bidder certifies that the individual or business entity named in its bid is not ineligible to receive a contract and acknowledges that any contract resulting from this IFB may be terminated and payment withheld if this certification is inaccurate.

- 10.11. Bidder represents and warrants that payment to the bidder and the bidder's receipt of appropriated or other funds under any contract resulting from this IFB are not prohibited by §556.005 or §556.008, Gov't Code, relating to the prohibition of using state funds for lobbying activities.

- 10.12. Bidder represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to TPWD under the IFB and any resulting contract, if any, and that bidder's provision of the requested items under the IFB and any resulting contract, if any, would not reasonably create an appearance of impropriety.

11. NOTE TO BIDDER:

If bidder takes any exceptions to any provisions of the IFB, these exceptions must be specifically and clearly identified by section in bidder's bid in response to the IFB and bidder's proposed alternative must also be provided in the bid. Bidders cannot take a 'blanket exception' to the entire IFB. If any bidder takes a 'blanket exception' to the entire IFB or does not provide proposed alternative language, the bidder's bid may be disqualified from further consideration.

12. PROTEST PROCEDURES:

Any actual or prospective bidder who is aggrieved in connection with this IFB, evaluation, or award of any contract resulting from this IFB may formally protest as provided in TPWD's rules at 31 TAC-Part 2, Rule 51.350.

13. DISPUTE RESOLUTION:

The dispute resolution process provided for in Chapter 2260, Gov't Code must be used by the TPWD and the bidder to attempt to resolve any dispute arising under any contract resulting from this IFB.

14. NON-APPROPRIATION OF FUNDS:

Any contract resulting from this IFB 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 bidder'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 bidder for any damages, which are caused or associated with such termination, or cancellation and TPWD will not be required to give prior notice.

15. TEXAS PUBLIC INFORMATION ACT:

Notwithstanding any provisions of this IFB to the contrary, bidder understands that TPWD will comply with the Texas Public Information Act (Chapter 552, Gov't Code) as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection

with this solicitation or any resulting contract may be subject to public disclosure pursuant to the Texas Public Information Act. Within three (3) days of receipt, bidder will refer to TPWD any third party requests, received directly by bidder, for information to which bidder has access as a result of or in the course of performance under any contract resulting from this IFB. Any part of the solicitation response that is of a confidential or proprietary nature must be clearly and prominently marked as such by the bidder.

16. CONFLICT OF INTEREST:

Under §2155.003, Gov't Code, a TPWD employee may not have 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 in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Section 1.2 of the State of Texas Procurement Manual, which outlines the ethical standards required of public purchasers, employees, and bidders 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.

17. FORCE MAJEURE:

Neither bidder nor TPWD shall be liable to the other for any delay in, or failure of performance, of any requirement included in any contract resulting from this IFB 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, 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. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

18. INDEPENDENT CONTRACTOR:

Bidder 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 any contract resulting from this IFB. Bidder 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.

19. INDEMNIFICATION:

BIDDER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES, AND TPWD, ITS OFFICERS, AND EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF BIDDER OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF BIDDER IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT WITH BIDDER RESULTING FROM THIS IFB. BIDDER SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY TPWD. THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE BIDDER TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TPWD FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF TPWD OR ITS EMPLOYEES.

20. RIGHT TO AUDIT:

In addition to and without limitation on the other audit provisions of this IFB, pursuant to §2262.003, Texas Government Code, the state auditor may conduct an audit or investigation of the bidder or any other entity or person receiving funds from the state directly under this contract or indirectly through a subcontract under this contract. The acceptance of funds by the bidder or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, 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 bidder 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. This IFB or any contract resulting from this IFB may be amended unilaterally by TPWD to comply with any rules and procedures of the state auditor in the implementation and enforcement of §2262.003, Texas Government Code. Bidder will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the bidder and the requirement to cooperate is included in any subcontract it awards.

**PART II
PURCHASE OF SERVICE TERMS AND CONDITIONS**

1. DEFINITIONS: As used throughout this solicitation, the following terms have the meaning set forth below:

1.1. TPWD: Texas Parks and Wildlife Department acting on behalf of the State of Texas.

- 1.2. 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. 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.
- 1.4. Subcontractor: Any supplier, distributor, vendor, person, or firm furnishing to the Contractor, materials or services necessary or incidental to the performance of the contract between TPWD and Contractor.
2. The services performed 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 work performed. TPWD will decide the rate of progress of the work and the acceptable fulfillment of the service on the part of the Contractor.
3. **SITE VISIT:** Where the site for performing the work or services is located on TPWD property, Respondents are urged and expected to visit the site and take such other steps as may be reasonably necessary to ascertain the nature and location of the work and the general and local conditions which can affect the work or cost thereof. Failure to do so will not relieve Respondents from the responsibility for estimating properly the difficulty or cost of successfully completing the contract or constitute grounds for a claim after award. TPWD will assume no responsibility for any understanding or representation concerning conditions made by any of its employees, agents, or consultants prior to the execution of the contract unless included in the contract documents.
4. TPWD will furnish no material labor, equipment, or facilities unless otherwise provided for in this solicitation.
5. **INSPECTION OF SERVICES:** If any services performed hereunder are not in conformity with the requirements of this contract, TPWD shall have the right to require the Contractor to perform the services again in conformity with the requirements of the contract, at no additional increase in the total contract amount. When the services to be performed are of such a nature that the defect cannot be corrected by re-performance of the services, TPWD shall have the right to (i) require the Contractor to immediately take all necessary steps to insure future performance of the services in conformity with the requirements of the contract; and (ii) reduce the contract price to reflect the reduced value of the services performed. In the event the Contractor fails promptly to perform the services again or to take necessary steps to insure future performance of the services in conformity with the requirements of the contract, TPWD shall have the right to either (i) by contract or otherwise have the services performed in conformity with the contract requirements and charge to the Contractor any cost occasioned to TPWD that is directly related to the performance of such services; or (ii) terminate this contract for default.
6. **CHANGES:** TPWD may at any time, by a written order, make changes within the general scope of the Contract.
7. **DEFAULT:** TPWD reserves the right to cancel the contract without notice and either re-solicit or re-award to the next lowest responsive Respondent if the Contractor is found in default in accordance with the provisions listed below. The Contractor will not be considered in the re-solicitation.
 - 7.1. If Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms and does not cure such failure within a period of ten (10) days (or such longer period as TPWD may authorize in writing) after receipt of notice from TPWD specifying such failure. In the event this contract is terminated TPWD may procure upon such terms and in such manner as TPWD may deem appropriate, services similar to those so terminated and the Contractor shall be liable to TPWD for any excess cost for such similar services.
 - 7.2. Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor and without the fault or negligence of either of them the Contractor shall not be liable for any excess cost for failure to perform unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.
 - 7.3. The rights and remedies of TPWD provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.
8. **CONTRACTOR RESPONSIBILITIES:**
 - 8.1. Contractor agrees to comply with all terms and conditions contained in this solicitation and resulting Contract.
 - 8.2. Contractor guarantees services offered will meet or exceed the written specifications identified in this solicitation.
 - 8.3. Contractor agrees to obtain any necessary licenses and permits.
 - 8.4. Contractor agrees to take precautions necessary to protect person or property against injury or damage, and be responsible for such injury or damage.
 - 8.5. Contractor agrees to comply with Federal law or State Worker's Compensation laws which are applicable to the work required or performed under this contract and to pay or cause to be paid all compensation, medical or hospital bills which

may become due or payable thereunder, and to protect and indemnify TPWD from and against any and all liability by reason of injury to employees of Contractor or subcontractor.

- 8.6. Contractor is subject to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and offers all persons the opportunity to participate in programs or activities regardless of race, color, national origin, age, sex, or disability. Further, it is agreed that no individual will be turned away or otherwise denied access to or benefit from any program or activity that is directly associated with a program on the basis of race, color national origin, age, and sex (in educational activities) or disability. The prime Contractor shall ensure that this clause is included in all subcontracts.
- 8.7. 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 vendor shall be a minimum of 17 years of age and experienced in the type of work to be performed. Only the Contractor and it's employees will be allowed on state property during working hours.
9. **AVAILABILITY OF FUNDS:** The contract is subject to cancellation, without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature, or otherwise made available, to TPWD.

TERMINATION FOR CONVENIENCE: The contract may be cancelled, without penalty, by either party by providing 30 days written notice to the other party. TPWD will pay the Contractor the purchase order price prorated for acceptable service performed up to the date specified in the notice of cancellation. Termination under this paragraph shall not relieve the vendor of any obligation or liability that has occurred prior to cancellation