

TxRC STANDARD TERMS & CONDITIONS

(This Document Will Become a Part of All Resulting Purchase Orders Issued by The Texas Racing Commission)

Revised 11/30/2009

A. RESPONSE REQUIREMENTS

Respondents (bidders or offerors) must comply with all rules, regulations and statutes relating to procurement in the State of Texas in addition to the requirements of this form.

- **Responses** (bids or offers) should be submitted on the Texas Racing Commission's (TxRC) Solicitation Sheet if requested. The Respondent must price per unit shown. Unit prices shall govern in the event of extension error(s). If a price quote is submitted as a part of a Solicitation Sheet response, the quotation is to be referenced on the signed Solicitation Sheet to establish linkage. Responses shall be time stamped on or before the hour & date specified for the bid opening/offer closing.
- **Late** and/or unsigned responses will not be accepted under any circumstances. Persons signing response must have the authority to bind vendor or firm in a contract.
- **Quote** Free On Board (FOB) destination, freight prepaid and allowed unless otherwise stated within the specifications.
- **Response** prices are requested to be firm for TxRC acceptance for 30 days from response due date. "Discount from list" responses are not acceptable unless requested. Cash discounts are not considered in determining an award but will be taken if earned.
- **Response** to include an Employer Identification Number (EIN), full firm name, and address of company.
- **Responses** cannot be altered after due date and time, however they may be withdrawn with TxRC approval based on an acceptable written reason. Alterations made before this due date & time must be initiated by respondent or his authorized agent.
- **Procurements** made for State use are exempt from State Sales tax and Federal Excise tax. Do not include tax in response. Tax Exemption Certificates are available upon request.

B. AWARDS

- **State** reserves the right to make an award on the basis of low line item response, 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 response items at the sole discretion of the State. The State also reserves the right to accept or reject all or any part of a response & waive minor technicalities. Contracts may be extended up to 120 days at TxRC's sole discretion.
- **Consistent** and continued re: responses could cause rejection of responses by TxRC and/or investigation for antitrust violation.
- **Signed E-mail or FAX** submission is acceptable unless otherwise stated. The State shall not be responsible for failure of electronic equipment or operator error. Late, illegible, incomplete, or otherwise non-compliant responses will not be considered.
- **Inquiries** pertaining to a response must include the solicitation number and IFB-opening/RFO-closing date.

C. SPECIFICATIONS

- **Catalogs**, brand names or manufacturer's references are only descriptive, and indicate type and quality desired. Responses on brands of like nature and quality will be considered unless advertised under §2155.067, Texas Government Code (TGC). If responding on other than reference specifications, response should show manufacturer, brand or trade name, and other description of product submitted and are requested to be made part of the response. Failure to take exception to the specification or reference data will require specific brands, names & numbers to be furnished.
- **All** items shall be new, unused and of current production.
- **All** electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing, i.e. UL, NEMA...
- **Samples**, when submitted, must be furnished free of expense to the TxRC. 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 response number located on the face of the TxRC Solicitation Sheet. Do not attach response to sample.
- **The State** will not be bound by any oral statement or representation contrary to the written specifications of the response.
- **Manufacturer's** standard United States (US) warranty shall apply unless otherwise stated in the response.

D. TIE RESPONSES

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

E. DELIVERY

- **Show** number of delivery (calendar) days required to place material in TxRC's designated location under normal conditions. Failure to state delivery time obligates respondent to deliver in 14 calendar days. Unrealistic delivery promises may cause response to be disregarded.
- **If** delay is foreseen, vendor (contracting firm) shall give written notice to the TxRC. Vendor must keep the TxRC advised at all times of status of order. Default in promised delivery (without accepted reason) or failure to meet specifications authorizes the TxRC to procure goods or services elsewhere and charge full increase, if any, in cost and handling to defaulting vendor.
- **No** substitutions permitted without written approval from TxRC.
- **Delivery** shall be made during normal working hours only, 8-4, M-F, unless prior approval has been obtained from TxRC.

F. INSPECTION AND TESTS

All goods and services are subject to inspections and test by authorized TxRC and/or the Comptroller of Public Accounts (CPA), Texas Procurement and Support Services (TPASS) Division personnel. They shall have access to vendor's place of business for the purposes of inspecting merchandise. Tests shall be performed on samples submitted with the response or on samples taken from regular shipments. All costs shall be borne by the vendor in the event products tested fail to meet or exceed all conditions and requirements of the specification. Goods delivered & rejected in whole or in part may, at the TxRC's option, will be returned to the vendor or held for disposition at vendor's expense. Latent defects may result in revocation of acceptance.

G. AWARD OF CONTRACT – A response to a solicitation request is a bid or offer to contract based upon the terms, conditions, and specifications of the solicitation. Responses do not become contracts until they are accepted through an open market purchase order. This contract shall be governed, construed, and interpreted under the laws of the State of Texas. The factors listed in §2155.074, 2156.007 and 2157.003, TGC, shall also be considered in making an award when specified. Any legal action must be filed in Travis county.

H. PAYMENT - Vendor will submit a copy of an itemized invoice showing purchase order number (requestion # if available) and EIN. 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 (See TGC §2251 payment).

I. PATENT, TRADEMARKS, OR COPYRIGHTS – The vendor agrees to defend and indemnify the State from claims involving infringement or violations of patents, trademarks, copyrights, trade secrets or other proprietary rights, arising out of the State's use of any good or service provided by the vendor.

J. VENDOR ASSIGNMENTS – Vendor hereby assigns TxRC any and all claims for overcharges associated with this contract arising under the antitrust laws of the United States 15 USCA §1, et seq. (1973), and the antitrust laws of the State of Texas, TEX. Bus. & Comm. Code Ann. Sec. 15.01, et seq. (1967)

K. RESPONDENT AFFIRMATIONS - Submitting a response with a false statement is a material breach of contract and shall void the submitted response or any resulting contract(s), and the respondent shall be removed from all bid lists. By submitting a response, the respondent hereby certifies the following:

- **The respondent** 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 this response.
- **Neither** the respondent nor the firm, corporation, partnership, or institution represented by the respondent, or anyone acting for such firm, corporation or institution has violated the antitrust laws of the State or Federal Antitrust Laws, nor communicated directly or indirectly the response made to any other competitor or any other person engaged in such line of business.
- **Pursuant** to §2155.004 TGC, neither the vendor nor any person or entity which will participate financially has in any contract resulting from this response has received compensation for participation of the specification for this response.
- **Pursuant** to §2155.004 TGC, pertaining to receiving compensation for participating in specifications and §231.006 (d), TX Family Code, re: child support, the respondent certifies that the individual business entity named in this response is not ineligible to receive the specific payment and acknowledges that a resulting contract may be terminated and payment may be withheld if the certification is inaccurate. Furthermore, any respondent subject to §231.006 TGC, must include *Names & Social Security Numbers* of each person with at least 25% ownership of the business entity submitting the response. **If applicable, attach and return this information for each person prior to award.**
- **As required** by §2252.903, TGC, respondent agrees that any payments due under a contract resulting from this response shall be directly applied toward eliminating any debt or delinquency including, but not limited to delinquent, taxes, student loan payments, and child support payments, until the debt is paid in full. Respondent shall comply with rules adopted by CPA under §'s 403.055, 403.0551 & 2252.903 TGC.
- **Respondent** certifies compliance with §669.003, TCG, relating to contracting with executive head of a State agency. If §669.003 applies, respondent will complete the following:

Name of Former Executive: _____

Name of State Agency: _____

Date of Agency Separation: _____

Position with Vendor: _____

Date of Employment: _____

• **In accordance** with §2155.4441, TGC, respondent 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 the State.

• **Respondent** certifies that the responding entity and its principles are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by federal, state or local governmental entity and that respondent is in compliance with the State of Texas statutes and rules relating to procurement and that the respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Ineligible entities are listed at <http://www.elps.gov>.

• **Section** 2155.006 and 2261.053, TGC, prohibit a state agency from awarding a contract, 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 hurricanes Rita, Katrina or any other disaster, as defined by §418.004, TGC, occurring after September 24th, 2005. Under §2155.006, TGC, respondent certifies that the aforementioned is not applicable.

• **Respondent** represents and warrants that payment to the respondent and the respondent's receipt of appropriated or other funds under any contract is not prohibited by Sections 556.006 or 556.008, TGC, relating to the prohibition of using State funds for lobbying activities.

• **Respondent** represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to TxRC under this response and any resulting contract, if any, and that respondent's provision of the requested items under the response and any resulting contract, if any, would not reasonably create an appearance of impropriety.

L. NOTE TO RESPONDENT - Any terms and conditions attached to a response will not be considered unless specifically referred to on the face of the TxRC Response Sheet and may result in response disqualification.

M. PROTEST PROCEDURES - Any actual or prospective *respondent* who is aggrieved in connection with this response, evaluation, or award of any contract resulting from this response may formally protest as provided for in TxRC rules at 16 TAC Rule 303.17.

N. DISPUTE RESOLUTION - This process is provided for in Chapter 2260 of the TGC and must be used by the TxRC and the *vendor* to attempt to resolve all disputes arising under any contract resulting from this response.

O. NON-APPROPRIATION OF FUNDS - Any contract resulting from this response is subject to termination or cancellation, without penalty or liability to TxRC, either in whole or in part, subject to the availability of state funds. TxRC is a state agency whose authority and appropriations are subject to the actions of the Texas Legislature. If TxRC becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render TxRC's or respondent's delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. TxRC will not be required to give prior notice.

P. TEXAS PUBLIC INFORMATION ACT - Information, documentation, and other materials in connection with this response or any resulting contract may be subject to Chapter 552 of the TGC (the "Public Information Act"). Any part of the response that is confidential must be clearly identified.

Q. CONFLICT OF INTEREST - Under Section 2155.003, TGC, a TxRC employee may not have an interest in, or in any manner be connected with a contract or response for a purchase of goods & 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 person who interacts with public purchasers in any capacity is required to adhere to guidelines established in Section 1.2 of the CPA Procurement Manual which outlines the ethical standards required of public purchasers, employees, and vendors who interact with public purchasers in the conduct of state business. Entities who are interested in seeking business opportunities with the State must be mindful of these restrictions when interacting with TxRC procurement.

R. FORCE MAJEURE -Neither the respondent nor TxRC shall be liable to the other for any delay in, or failure of performance, of any requirement included in any contract resulting from this response 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 providing the non-performing party exercises all reasonable due diligence to Perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, or other causes that are beyond the reasonable control of either party and that by 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 such force majeure, or otherwise waive the right as a defense.

S. INDEPENDENT CONTRACTOR – Respondent is and shall remain an independent contractor in relationship to TxRC. TxRC shall not be responsible for withholding taxes from payments made under any contract resulting from this response. Respondent shall have no claim against the TxRC for vacation pay, sick leave, or employee benefits of any kind, such as, retirement, social security, health or disability, worker's compensation, unemployment insurance etc....

T. INDEMNIFICATION – Respondent shall defend, indemnify, and hold harmless the State of Texas, including TxRC, its officers, and employees, and contractors, from and against all claims, actions, suits, demands, arising out of, connected with, or resulting from any acts or omissions of respondent or any agent, employee, subcontractor, or supplier of respondent in the execution or performance of any contract with respondent resulting from this response. Respondent shall coordinate its defense with the Texas Attorney General as requested by TxRC or CPA. This section is not intended to and shall not be construed to require respondent to indemnify or hold harmless the state or TxRC for any claims or liabilities resulting from the negligent acts or omissions of TxRC or its employees.

U. Pursuant to Section 2262.003, TGC, the state auditor may conduct an audit or investigation of the vendor 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 vendor acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit / investigation in connection with those funds. Under the direction of the legislative audit committee, any information the state auditor considers relevant to the investigation or audit. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the vendor and the requirement to cooperate is included in any subcontract it awards.

V. SUPPLEMENTAL TxRC TERMS AND CONDITIONS

• TxRC reserves the right to negotiate price and terms with any and all RFO respondents; to accept or reject all or any part of a response and to request best and final offers (BAFO) from any and all respondents. At closings for negotiated responses only names of respondents will be disclosed.

- **Required** like items or services with a basis or identified pricing methodology within the scope of the contract may be added, as required, by purchase order change notice (POCN).
- **All** TxRC invoices are payable by credit card.