



## **General Terms and Conditions for Contracting With TXRC**

### **1. GENERAL REQUIREMENTS:**

1.1 Vendors/contractors must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of this form.

1.2 Vendors/contractors must price per unit shown. Unit prices shall govern in the event of extension errors.

1.3 Solicitation responses must be returned to allow them to be time stamped at the Texas Racing Commission on or before the hour and date specified for the solicitation opening.

1.4 Late or unsigned solicitation responses will not be considered under any circumstances. The person signing solicitations must have the authority to bind the firm in contract.

1.5 Quote F.O.B. destination, freight prepaid and allowed, unless otherwise stated in the solicitation.

1.6 Solicitation prices are requested to be firm for 30 days for goods and 90 days for services from solicitation 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.

1.7 Solicitations cannot be altered or amended after opening time unless allowed by law. Alterations made before opening time should be in writing by the vendor or his authorized agent. No solicitation can be withdrawn after opening time without approval by the TXRC based on an acceptable written reason.

1.8 Purchases made for state use are exempt from the State Sales Tax and Federal Excise taxes. Do not include any taxes in bid responses.

1.9 The State reserves the right to accept or reject all or any part of a solicitation, waive minor technicalities and award the solicitation to best serve the interests of the state.

1.11 Consistent and continued tie bids could cause TXRC to reject the bid.

1.12 The telephone number for FAX submission of bids is (512) 833-6907. This is the only fax number that will be used for the receipt of bids/offers. The State shall not be responsible for the failure of electronic equipment or operator error. Late, illegible, incomplete, or otherwise non-responsive bids will not be considered.

1.13 Any contract resulting from this solicitation is contingent upon the continued availability of appropriations by the Texas Legislature.

## 2. SPECIFICATIONS:

2.1 Catalogs, brand names or manufacturer's references are descriptive only, and indicate type and quality desired. Solicitation responses on brands of like nature and quality will be considered unless advertised under Government Code, Title 10, Subtitle D, §.2155.067 (proprietary). If bidding or offering other than referenced items, vendor/contractor should show manufacturer, brand or trade name, and other description of product offered. If other than brand(s) specified is offered, illustrations and a complete description of the product offered are requested to be made part of the bid/offer. By not taking exception to specifications or reference data will require vendor/contractor to furnish specified brand names, numbers, etc.

2.2 Unless otherwise specified, items bid or offered shall be new, unused and of current production.

2.3 All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.

2.4 Samples, when requested, must be furnished free of expense to the State. If not destroyed during examination, they will be returned to the vendor at the vendor's expense. Each sample should be marked with vendors name and address and PO number. Do not enclose in or attach bid/offer to sample.

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

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

2.7 TXRC may need to collect selected information from potential vendors such as name, e-mail addresses, taxpayer identification numbers, references, insurance coverage, and capacity to

deliver. The purpose is to facilitate procurement, transport, and payment for commodities and services. TXRC will not sell such information to private entities.

3. TIE BIDS: Awards will be made in accordance with 34 TAC §20.36(b) (3) and 20.38 (Preferences).

#### 4. DELIVERY:

4.1 Show the number of days required to deliver material to the receiving agency's designated location under normal conditions. By not stating a delivery time, vendor/contractor is obligated to deliver in 14 calendar days. Unrealistic delivery promised may cause bid/offer to be disregarded.

4.2 If delay is foreseen, the vendor/contractor shall give written notice to TXRC and keep TXRC advised of the status of the order. Default in promised delivery, without accepted reasons, or failure to meet specifications, authorizes TXRC to purchase goods or services elsewhere and charge full increase, if any, in cost and handling to the defaulting vendor.

4.3 No substitutions are permitted without written approval of TXRC or the Texas Comptroller of Public Accounts.

4.4 Delivery shall be made during normal working hours only, unless prior approval has been obtained from TXRC.

5. INSPECTION AND TESTS: All goods will be subject to inspection and test by the State. Tests may be performed on samples submitted with the solicitation or on samples taken from regular shipments. Awards may be denied if 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 vendor or held for disposition at vendor's expense. Latent defects may result in revocation of acceptance.

6. AWARD OF CONTRACT: A response to the solicitation is an offer to contract based upon the terms, conditions and specifications contained herein. Bids/offers 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 Texas Government Code, Title 10, Subtitle D, § 2155.074 & 2156.007 ("best value") shall also be considered in making an award.

7. PAYMENT: Vendor shall submit two copies of an itemized invoice showing 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.

8. PATENTS OR COPYRIGHTS: The vendor agrees to protect the State from claims involving infringement of patents or copyrights.

9. ASSIGNMENTS: Vendor/contractor hereby assigns to TXRC 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 Ann. §15.01. et seq.

## 10. AFFIRMATIONS

10.1 Signing the solicitation with a false statement is a material breach of contract and shall void the submitted bid/offer or any resulting contracts, and the vendor shall be removed from all bid lists. By signature here on affixed. The vendor hereby certifies that:

10.2 The vendor has not given, offered to give, nor intends to give at anytime 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 or offer.

10.3 Neither the vendor nor the firm, corporation, partnership, or institution represented by the vendor/contractor, or anyone acting for such firm, corporation or institution has violated the antitrust laws of this State Federal Antitrust Laws, (see Section 9, above) nor communicated directly or indirectly the bid or offer made to any competitor or any other person engaged in such line of business.

10.4 Pursuant to Texas Government Code, Title 10, Subtitle D, § 2155.004(a), the vendor/contractor has not received compensation for participation in the preparation of the specifications for this solicitation.

10.5 Pursuant to Texas Family Code, Title 5, Subtitle D, § 231.006(d), regarding child support, the vendor/contractor certifies that the individual or business entity named in this bid or offer 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.

10.5.1 Under Section 2155.006, Texas Government Code, the vendor certifies that the individual or business entity named in this bid 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.

10.6 The vendor/contractor shall defend, indemnify, and hold harmless the State of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands,

proceedings costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of the vendor/contractor or any agent, employee, subcontractor, or supplier of vendor/contractor in the execution or performance of the purchase order or contract.

10.7 Vendor/contractor agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support owed to the State of Texas.

10.8 Vendor/contractor certifies that they are in compliance with Texas Government Code, Title 6, Subtitle 8, § 669.003 of the Government Code, relating to contracting with executive head of a State agency. If Section 669.003 applies, vendor will complete the following information in order for the bid or offer to be evaluated:

10.9 Name of Former Executive:

10.9.1 Name of State Agency:

10.9.2 Date of Separation from State Agency:

10.9.3 Position with Vendor/Contractor:

10.9.4 Date of Employment with Vendor/Contractor:

10.10 Vendor/contractor agrees to comply with Texas Government Code, Title 10, Subtitle D, § 2155.4441 relating to use of service contracts for products produced in the State of Texas.

10.11 By signing this bid/ offer vendor/ contractor certifies that if a Texas address is shown as the address of the vendor/contractor, vendor/contractor qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 1, Part 5, Chapter 111, Subchapter A, §111.2(1 0).

10.12 Pursuant to Section 2262.003 of the Texas Government Code, the State Auditor's Office may conduct an audit or investigation of the vendor/contractor or any other entity or person receiving funds from the state directly under this contract or indirectly through a subcontract under this contract. The vendor/contractor understands that acceptance of state funds under this contract acts as acceptance of the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds. The vendor/contractor further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. Vendor/contractor will ensure that this clause concerning the State Auditor's Office's authority to audit state funds and the requirement to cooperate fully with the State Auditor's Office is included in any subcontract it awards. Additionally, the State

Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, audit documentation, and records of the vendor/contractor relating to this Contract.

11. Pursuant to Section 231.006 (c) Family Code, a solicitation response must include names and Social Security Numbers of each person with at least 25% ownership of the business entity submitting the response.

12. NOTE TO BIDDER/ VENDOR: The State of Texas Purchase Order, and its General Terms and Conditions, shall constitute a contract between TXRC and the selected/ awarded vendor. Any terms and conditions attached to a solicitation response will not be considered unless specifically referred to in the response. TXRC may elect to execute the referenced terms and conditions provided by the vendor (vendor contract) which shall supplement the purchase order. However, TXRC will not execute a vendor contract with unacceptable, vague, or conflicting terms and may result in disqualifying the bid or offer. In the event of a conflict between the PO and any executed vendor contract, the TXRC purchase order shall prevail.

13. DISPUTE: Pursuant to Chapter 2260 of the Texas Government Code, any dispute arising under a contract for goods and services, for which this chapter applies, must be resolved under the provisions of this chapter.

14. TEXAS PUBLIC INFORMATION ACT AND CONFIDENTIAL INFORMATION: Information, documents and other material connected with this solicitation or any resulting contract may be subject to public disclosure under the Texas Public Information Act unless vendor/contractor can show the response or specific parts of it are exempt from public disclosure. TXRC will not assert legal arguments on behalf of vendors/contractors. If the vendor/contractor believes that parts of a response to this solicitation are confidential, he must state in conspicuous letters the term "CONFIDENTIAL" on that part it believes to be confidential. 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.

15. CANCELLATION: Unless otherwise specified in the solicitation, TXRC may cancel the purchase order without penalty, either in whole or in part for any reason.

16. STATE LAWS: The resulting contract/PO shall be governed by and in accordance with the laws of the State of Texas. Venue for any action arising hereunder shall be in Travis County, Texas.

17. CONSTRUCTION: The invalidity or unenforceability of any provision of the contract shall not affect the validity or enforceability of any other provision. Neither party may assign the contract without the prior written consent of the other party. Any amendment or modification will be effective only if in writing and signed by TXRC.

18. DISCRETIONARY EXTENSION: Contracts for services, whose original period were for one year or longer, may be extended for up to ninety (90) days beyond the normal expiration date of the contract, under substantially the same terms and conditions, provided the vendor/ contractor and the TXRC mutually agree to extension and pricing during the extension period.

19. FORCE MAJEURE: TXRC may grant relief if performance on the contract is prevented or hampered by events beyond the control of the vendor/ contractor because of fire, flood, weather, strikes, civil disturbances, and others of like nature.

20. INDEPENDENT CONTRACTOR: Contractor or Contractor's employees, representatives or agents shall serve as an independent contractor in providing any services under this Contract. Contractor and Contractor's employees, representatives, an agents shall not be employees of TXRC or the State of Texas.

21. IMMIGRATION: Contractor agrees to comply with the Immigration Reform and Control Act of 1986, and Immigration Act of 1990 regarding employment verification and retention of verification forms of any individuals who will perform any labor or services under this contract.

22. In compliance with the provisions of Texas Government Code Section 2155.074, Section 2155.075, Section 2156.007, Section 2157.003 and Section 2157.125, 34 TAC §20.36, information obtained from the CPA's Vendor Performance Tracking System (<http://www2.cpa.state.tx.us/stpurch/ventoc.html>) may be used in evaluating responses to solicitations for goods and services to determine the best value for the state.

23. TXRC reserves the right NOT to consider a response from a bidder whose same, or similar, goods or services to TXRC have been documented as unsatisfactory in providing the same goods or service.

24. 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 and will require all subcontractors, if applicable, to do the same to the extent required by federal law. TXRC is entitled to and may demand written proof of compliance.