

Texas Bond Review Board Standard Terms and Conditions

ITEMS BELOW APPLY TO AND BECOME PART OF BID. ANY EXCEPTIONS THERETO MUST BE IN WRITING.

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 Bond Review Board (TBRB) 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 TBRB 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 on the face of this form. Enter in the space provided, if not shown. Additionally, firm name should appear on each continuation page of a bid, in the block provided in the upper right-hand corner.
- 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 No bid can be withdrawn after opening time without approval by the TXRC based on an acceptable written reason.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 TBRB and/or investigation for antitrust violations.
- 1.12. The telephone number for FAX submission of bids is 1-512-475-4802. 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 512-463-1741 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 TBRB and the ordering agency. Bidder must keep the TBRB 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 TBRB 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 TBRB.
- 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 TBRB 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 an open market purchase order. The contract shall be governed, construed, and interpreted under the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting Agency. The factors listed in §§2155.074, 2155.144, 2156.007, and 2157.003, Tx 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 State order number and agency requisition 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, Tx Gov't Code.

8. PATENTS, TRADEMARKS, OR COPYRIGHTS:

Bidder agrees to defend and indemnify the TBRB and State from claims involving infringement or violation of patents, trademarks, copyrights, trade secrets, or other proprietary rights, arising out of the TBRB'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 TBRB 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:

10.01. 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:

10.02. 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.

10.03. The undersigned affirms under penalty of perjury of the laws of the State of Texas that (1) in connection with this bid, neither I nor any representative of the bidder has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (2) in connection with this bid, neither I nor any representative of the bidder have violated any federal antitrust law; and (3) neither I nor any representative of the bidder have directly or indirectly communicated any of the contents of this bid to a competitor of the bidder or any other company, corporation, firm, partnership or individual engaged in the same line of business as the bidder.

10.04. 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.

10.05. 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 in the bid names and Social Security numbers of each person with at least 25% ownership of the business entity. This information must be provided prior to award. Enter the Name & Social Security Numbers for each person below:

Name:	Social Security No.:
Name:	Social Security No.:
Name:	Social Security No.:

10.06. 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.

10.07. 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 TBRB 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.

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

10.09. 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.

10.10. 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.sams.gov>.

10.11. Sections 2155.006 and 2261.053 of the Texas Government Code, prohibit state agencies from accepting a bid 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 Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, bidder 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.

10.11.1. Section 2155.0061 of the 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.

If a state agency determines that an individual or business entity holding a state contract was ineligible to have the bid accepted or contract awarded under this section, the state agency may immediately terminate the contract without further obligation to the vendor. This section does not create a cause of action to contest a bid or award of a state contract.

10.11.2 Section 2155.077 bars a vendor from participating in state contracts if the vendor has been convicted of any offense related to the direct support or promotion of human trafficking.

10.12. 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.

10.13. Bidder represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to TBRB 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.

- 10.14. This section applies to a contract with the Bond Review Board and a “company” with 10 or more full-time employees; and has a value of \$100,000 or more that is to be paid wholly or partly from public funds. “Company” has the meaning assigned by Section 808.001, except that the term does not include a sole proprietorship. 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.
- 10.15. Respondent certifies that for contracts for services, bidder shall utilize the U.S. Department of Homeland Security’s E-Verify system during the term of the contract to determine the eligibility of: 1. all persons employed by bidder to perform duties within Texas; and 2. all persons, including subcontractors, assigned by bidder to perform work pursuant the contract within the United States of America.
- 10.16. Bidder represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
- 10.17. By submitting the bid, bidder represents and warrants that the individual submitting this document and the documents made part of this bid is authorized to sign such documents on behalf of the bidder and to bind the bidder under any contract that may result from the submission of this bid.
- 10.18. 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 [<https://sam.gov/SAM/>].
- 10.19. Any terms and conditions attached to a bid will not be considered unless specifically referred to in the bid.

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 TBRB’s rules at 34 TAC Rule 20.384.

13. DISPUTE RESOLUTION:

The dispute resolution process provided for in Chapter 2260, TX Gov’t Code must be used by the TBRB 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 TBRB, either in whole or in part, subject to the availability of state funds. TBRB is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If TBRB becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render TBRB’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, TBRB will not be liable to bidder for any damages, which are caused or associated with such termination, or cancellation and TBRB 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 TBRB 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.

In accordance with Section 2252.907 of the Texas Government Code, Respondent is required to make any information created or exchanged with the State pursuant to the 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.

16. CONFLICT OF INTEREST:

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.

17. FORCE MAJEURE:

Neither bidder nor TBRB 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.

18. INDEPENDENT CONTRACTOR:

Bidder acknowledges and agrees that it is furnishing products and services in the capacity of an independent contractor and that Bidder and its personnel are not employees of TBRB or the State of Texas.

19. INDEMNIFICATION:

Bidder shall defend, indemnify and hold harmless the State of Texas and TBRB, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from any and all liability, actions, claims, demands, or suits, and all related costs, attorney fees, and expenses arising out of, or resulting from any acts or omissions of bidder or its agents, employees, subcontractors, order fulfillers, or suppliers of subcontractors in the execution or performance of the contract and any purchase orders issued under the contract. The defense shall be coordinated by the bidder with the Office of the Texas Attorney General when Texas state agencies are named defendants in any lawsuit and bidder may not agree to any settlement without first obtaining the concurrence from the office of the Texas Attorney General. Bidder and TBRB agree to furnish the timely written notice to each other of any such claim.

20. RIGHT TO AUDIT:

The Bidder will make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by the bidder pertaining to the contract for purposes of inspecting, monitoring, auditing, or evaluating by TBRB and the State of Texas.

21. ACCESSIBILITY STANDARDS

Vendors of Electronic and Information Resources (EIR) are required to supply detailed information on how their proposed products, services, and solutions address the requirements of Section 508 of the Rehabilitation Act of 1973 (revised).

For each EIR product or service included in solicitation responses that are subject to Texas Administrative Codes 1 TAC 206 and 1 TAC 213 (which include the US Section 508 technical specifications), the vendor shall provide documentation of how each requirement or specification is met. It is the Vendor's responsibility to maintain the integrity of any accessibility documentation provided to TBRB. Any documentation shall be considered a self-attestation unless expressly affirmed otherwise. If the Vendor plans to provide commercial off the shelf (COTS) software as part or all of a solicitation response, the Vendor shall provide a completed Voluntary Product Accessibility Templates (VPAT) for each COTS product offered. For

third party COTS products, the Vendor must obtain and submit VPATS or links to them from the third party as part of the solicitation response.

22. ASSIGNMENT

Bidder shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from the Agency. Any attempted assignment in violation of this Section is void and without effect.

23. DAMAGE TO GOVERNMENT PROPERTY

Bidder shall be liable for all damage to government-owned, leased, or occupied property and equipment caused by the bidder and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the contract. Bidder shall notify TBRB in writing of any such damage within one (1) calendar day. Bidder is responsible for the removal of all debris resulting from work performed under the contract.

24. PROMPT PAYMENT

Payment shall be made in accordance with Chapter 2251 of the TX Govt Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the TX Govt Code shall govern remittance of payment and remedies for late payment and non-payment.

25. CYBERSECURITY TRAINING REQUIREMENT

A contractor with access to a state computer system or database shall be required to complete a cybersecurity training program certified under Section 2054.519 as selected by TBRB. The cybersecurity training program must be completed by a contractor during the term of the contract and during any renewal period. A contractor required to complete a cybersecurity training program under this section shall verify completion of the program to the contracting state agency.

26. LIABILITY PROVISIONS

TBRB shall include in the contract file for each of its contracts for goods or services subject to this chapter a written explanation of the agency's decision to include or not include in the contract a provision for liquidated damages or another form of liability for breach of the contract by the contractor. The contract file must also include, if applicable, a written justification for any provision in the contract that limits the liability of a contractor for breach of the contract. If an extension TBRB's contract modifies a provision for liquidated damages or another provision relating to a contractor's liability for breach of the contract, the agency must amend the written explanation or justification required by this section to include a justification for the modification in accordance with Section 2261.204 TX Govt Code.