

**REQUEST FOR PROPOSAL (RFP)**

**Q442004023118000**

**FINANCIAL ADVISORY SERVICES**

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\*\*Payment shall be made in accordance with  
Part II, Paragraphs 5 and 5.3

\*\*Delete Insurance requirements stated in Part II, Paragraph 6

## **INSTRUCTIONS TO RESPONDENT**

The entire solicitation, specifications and other referenced documents associated with this solicitation are available electronically under the solicitation number Q442004023118000 on TxDOT's World Wide Web at:

<http://www.dot.state.tx.us/GSD/purchasing/bidsrfos.htm>

Also, available on the Electronic State Business Daily at:

<http://esbd.tbpc.state.tx.us/1380/sagency.cfm>

## **SUBMISSION INFORMATION**

**PROPOSAL DUE DATE: January 30, 2004 at 3: 00 p.m.**

**Mail Proposal to:**

Texas Department of Transportation  
Attn: Records Support Group  
General Services Division –Purchasing  
125 E. 11<sup>th</sup> Street  
Austin, TX 78701-2483

**Courier Service to:**

Texas Department of Transportation  
Attn: Records Support Group  
General Services Division –Purchasing  
200 E. Riverside Dr  
Austin, TX 78704

**Hand deliver to:**

Texas Department of Transportation  
Attn: Records Support Group  
General Services Division –Purchasing  
3800 Jackson Ave., Bldg. 5  
Austin, TX 78731

**INCLUDE RFP NUMBER Q442004023118000 AND DUE DATE ON ALL SUBMITTAL PACKAGES**

THE RFP OPENING WILL BE HELD AT THE TEXAS DEPARTMENT OF TRANSPORTATION, GENERAL SERVICES DIVISION, PURCHASING SECTION, 3800 JACKSON AVENUE, BLDG. 5, AUSTIN, TEXAS 78731.

Pursuant to the Provisions of Chapter 2156, Subtitle D, Title 10, Texas Government Code and Rules adopted by the Texas Building and Procurement Commission, proposals will be received at this office **until 3:00 p.m., January 30, 2004**. When opened, only the names of the vendors who presented proposals for the goods or services described in the attached specifications will be made public. **Prices will not be divulged at time of opening.** Prices and other proposal details will only be divulged after the purchase order award, if one is made.

## **QUESTIONS CONCERNING RFP**

**CONTACT THE PURCHASER REGARDING ALL INQUIRIES FOR THIS RFP. ALL INQUIRIES CONCERNING THIS RFP SHALL BE SUBMITTED IN WRITING TO:**

**VICKIE GRAFF, CPPB, CTPM, CTP  
E-mail: [vgraff@dot.state.tx.us](mailto:vgraff@dot.state.tx.us)**

**DEADLINE FOR QUESTIONS CONCERNING THIS RFP: JANUARY 21, 2004 AT NOON**

**NO QUESTIONS ACCEPTED AFTER THIS DATE** – Questions may be submitted anytime via e-mail through this date.

**Response to Questions will be posted on Internet under the solicitation number on January 23, 2004. Questions and their answers will be posted on TxDOT's web site:**

<http://www.dot.state.tx.us/GSD/purchasing/bidsrfos.htm>

Any proposal may be withdrawn in writing prior to the date and time set for receipt of proposals. Any proposal not so withdrawn shall constitute an irrevocable offer, **for a period of 90 days**, to provide the service set forth in the attached specifications, or until a selection has been made by the agency.

In the event of a conflict between standard proposal requirements and conditions and the attached detailed specification, the detailed specification shall govern.

All proposals shall become the property of the Texas Department of Transportation.

All proposals shall be completed as required by the instructions in paragraph 8 of this RFP. **One original and four copies of the RFP response shall be returned.**

## **TxDOT HUB SUBCONTRACTING PLAN**

THE TEXAS DEPARTMENT OF TRANSPORTATION HAS DETERMINED THAT SUBCONTRACTING OPPORTUNITIES UNDER 1 TAC 111.14 ARE NOT AVAILABLE FOR THIS SOLICITATION.

**EXECUTION OF PROPOSAL**

**DATE:** \_\_\_\_\_

In compliance with this RFP and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all commodities or services at the prices quoted.

By signature hereon, the proposer hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code.

By executing this offer, proposer affirms that he/she 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 offer. Failure to sign the offer, or signing it with a false statement, shall void the submitted offer or any resulting contracts, and the proposer shall be removed from all bid lists.

By the signature hereon affixed, the proposer hereby certifies that neither the proposer or the firm, corporation, partnership, or institution represented by the proposer or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this State, codified in Section 15.01, et seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the offer made to any competitor or any other person engaged in such line of business. By signing this proposal, proposer certifies that if a Texas address is shown as the address of the proposer, proposer qualifies as a Texas Resident Bidder as defined in Rule 1 TAC 111.2.

**PAYEE IDENTIFICATION NUMBER (PIN):** \_\_\_\_\_

**PROPOSER (COMPANY):** \_\_\_\_\_

**SIGNATURE (INK):** \_\_\_\_\_

**NAME (TYPED/PRINTED)** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**STREET:** \_\_\_\_\_

**CITY/STATE/ZIP:** \_\_\_\_\_

**TELEPHONE NO.:** \_\_\_\_\_

**Check below if preference claimed under Rule 1 T.A.C. 113.8**

- 1. Supplies, materials or equipment produced in Texas or offered by a Texas bidder.
- 2. Agricultural products grown in Texas
- 3. Agricultural products offered by Texas bidder
- 4. U.S.A. produced supplies, materials or equipment
- 5. Products of persons with mental or physical disabilities
- 6. Products made of recycled materials
- 7. Energy efficient products
- 8. Rubberized asphalt paving material
- 9. Recycled motor oil and lubricants

TEXAS DEPARTMENT OF TRANSPORTATION  
GENERAL SERVICES DIVISION

PREPARED BY: KAREN L. LEWIS, CPPO, C.P.M, CTPM  
FAX NO.: (512) 374-5440  
E-MAIL: [klewis@dot.state.tx.us](mailto:klewis@dot.state.tx.us)

SPECIFICATION NO.  
TxDOT 946-48  
DATED: JANUARY 2004

FINANCIAL ADVISOR

1. **SCOPE:** This specification is for the services of a Financial Advisory firm to advise TxDOT on financial matters. The firm shall be responsible for providing advisory services on various aspects of TxDOT's financial program, including, but not limited to:
  - 1.1. Investment of available assets in legally permissible interest yielding accounts and paper
  - 1.2. Issuance and servicing of tax-exempt debt
  - 1.3. Analysis of the financial feasibility of potential highway projects
  - 1.4. Continuing financial review and analysis of tax-exempt bond financing
  - 1.5. Sale of debt
  - 1.6. Operations of the State Infrastructure Bank
  - 1.7. Management of the federal-aid highway program
  - 1.8. Other financing program responsibilities as determined necessary by TxDOT.
2. **HISTORY/BACKGROUND:** The State created the State Highway Commission on April 4, 1917, for the purpose of adopting and implementing a comprehensive system of State highways. In 1975, the Texas Legislature changed the name of the State Highway Commission to the State Highway and Public Transportation Commission. In 1991, the Texas Legislature changed the name to the current name, the Texas Transportation Commission (the Commission). The Texas Legislature directed the Commission to plan and make policies for the location, construction, and maintenance of a comprehensive system of State highways and public roads. In 2003, the Texas Legislature enacted Chapter 227, Transportation Code, which authorizes the Commission and TxDOT to designate, plan, and construct a comprehensive system of intermodal transportation facilities that will be known as the Trans-Texas Corridor and that will integrate highway, rail, and utility components.
  - 2.1. The Commission governs TxDOT and is charged by statute with policy-making responsibilities. TxDOT is charged with the management responsibilities for implementing the policies of the Commission. TxDOT is managed by the Executive Director and supported by the staff. The Texas Legislature provided that the Commission must divide the State into no more than 25 regional districts for the purpose of the performance of TxDOT's duties. There are currently 25 districts and 27 divisions/offices, including the Finance Division, which manages the financial matters of TxDOT.
  - 2.2. The Commission has the authority under various statutes to operate several revenue bond programs. The Commission's revenue bonds generally do not constitute a debt of the state and neither the full faith or credit nor the taxing authority of the State is in any manner pledged to the payment of the Commission's revenue bonds. An exception is certain bonds secured by money in the Texas Mobility Fund as described below. The Commission and TxDOT will need financial advisory services with respect to the issuance of bonds and other public securities under one or more of the following programs.
    - 2.2.1. **Chapters 361 and 362, Transportation Code.** Under these chapters, the Commission is authorized to issue turnpike revenue bonds to pay all or a part of the cost of a turnpike project, as defined in Chapter 361, and to enter into comprehensive development agreements to prosecute projects. Last year, the Commission issued revenue bonds and other public securities in the amount of \$2.2 billion to finance the Central Texas Turnpike System 2002 Project.
    - 2.2.2. **Chapter 227, Transportation Code.** Under this chapter, the Commission is authorized to issue revenue bonds to pay all or a part of the cost of developing facilities and systems on the Trans-Texas Corridor, as defined in Chapter 227, and to enter into comprehensive development agreements to prosecute projects. The Commission is authorized to issue bonds under the same terms and conditions as bonds are issued with respect to a turnpike project under Chapter 361.
    - 2.2.3. **Chapter 91, Transportation Code.** Under this chapter, the Commission is authorized to issue revenue bonds to pay all or part of the cost of developing state owned rail facilities, as defined in Chapter 91. The Commission is authorized to issue bonds under the same terms and conditions as bonds are issued with respect to a turnpike project under Chapter 361.
    - 2.2.4. **Section 222.003, Transportation Code.** Section 222.003 authorizes the issuance of bonds and other public securities secured by a pledge of and payable from revenue deposited to the credit of the state highway fund, the proceeds of which can be used to fund state highway improvement projects. The aggregate principal amount of bonds and other public securities that may be issued may not exceed \$3 billion. The authority to issue bonds under Section 222.003 was provided by the voters' approval of Proposition 14 in September 2003.

- 2.2.5. **Subchapter M, Chapter 201, Transportation Code.** Under this subchapter and Article III, Section 49-k, Texas Constitution, the Commission is authorized to issue bonds, notes, and other public securities secured by money in the Texas Mobility Fund, the proceeds of which can be used to fund state highway improvement projects, publicly owned toll roads, and other public transportation projects. Article III, Section 49-k of the Texas Constitution and this subchapter authorize the Commission, in accordance with the provisions of that legislation, to pledge the full faith and credit of the State of Texas to the payment of obligations if revenue dedicated to and deposited in the Texas Mobility Fund is insufficient for that purpose.
- 2.2.6. **Subchapter D, Chapter 222, Transportation Code.** Under this subchapter, the Commission may issue revenue bonds to provide money for the capitalization of the State Infrastructure Bank. Bonds issued under this subchapter are payable only from income and receipts of the State Infrastructure Bank as the Commission may designate. The State Infrastructure Bank provides financial assistance by direct loans and a variety of credit enhancements such as lines of credit, letters of credit, bond insurance, and capital reserves.
- 2.2.7. **Federal-Aid Programs.** In addition to the state statutes, TxDOT is seeking financial advisory services with respect to optimizing the use of provisions under the following federal programs:
- 2.2.7.1. Title 23, USC - Federal aid for highways
- 2.2.7.2. Title 49, USC - Federal aid for public transportation.
- 2.2.7.3. Transportation Infrastructure Finance and Innovation Act (TIFIA) - Secured Loan agreements.
3. **CONFLICT OF INTEREST:** Disclose any conflicts of interest as described in the attached rules. Disclose all contractual or informal business arrangement/agreements, including fee arrangements and consulting agreements, between your Firm and TxDOT staff and/or members of the Commission, or any entity that provides services to TxDOT. Any conflict of interest will disqualify the offer from consideration.
- 3.1. NOTE: The Financial Advisor shall be prohibited from participating, either directly or indirectly, in the initial purchase or sale of the municipal financing instruments for TxDOT.
4. **SERVICE REQUIREMENTS:** The vendor shall perform the following duties which include, but are not limited to, the following tasks:
- 4.1. NEW BOND ISSUANCE: For new bond issuances, the Financial Advisor will:
- 4.1.1. Devise and recommend to TxDOT a plan of financing for bonds to be issued. Plan shall include a maturity schedule and other terms and conditions, consistent with a minimum effective interest rate, resulting in the most advantageous terms for TxDOT.
- 4.1.2. Assist in preparing all orders, agreements, and other instruments pursuant to which bonds will be authorized, secured, sold and delivered in consultation with the Commission and TxDOT, bond counsel, underwriters and their counsel, and other consultants of the Commission and TxDOT.
- 4.1.3. Provide recommendations on the marketing of bonds, including by negotiated sale and/or sale by competitive bids, methods for enhancing the rating, advice on bond covenants, pledge of revenues, flow of funds, legal coverage requirements, the timing of the issue, and evaluating bids submitted for the purchase of bonds.
- 4.1.4. Provide advice and assistance on the requirements of various financing structures (alternatives), the principal amount of bonds to be sold, maturity schedules, basis of awarding bids, and types of sales.
- 4.1.5. Represent the Commission and TxDOT in the preparation of any contract that provides for the sale of bonds, ensuring that all participants, including underwriters and investment banking firm(s) retained by, or contracting with, the Commission and TxDOT disclose all conflicts of interest to and with the Commission and TxDOT and any parties involved in the bonds.
- 4.1.6. Assist in making presentations and required submissions, responding to inquiries of, and obtaining approval of the Bond Review Board, the Legislative Budget Board, the Legislature and any other State entity with supervisory powers over the issuance of bonds by the Commission.
- 4.1.7. Attend meetings of the Commission, Bond Review Board, legislative committees or other meetings to the extent required or requested by TxDOT.
- 4.1.8. Attend all bond document sessions..
- 4.1.9. Assist the Commission and TxDOT in presentations to the major rating agencies, Texas Legislature, US Congress, credit enhancers, or prospective bond purchasers to the extent requested.
- 4.1.10. Advise TxDOT with respect to the investment of bond proceeds and the accounting of arbitrage earnings.
- 4.1.11. Participate in Preliminary Official Statement (POS) and Official Statement (OS) preparation and delivery of a "camera-ready" copy to the printer.
- 4.1.12. Review such other documents as are customary and necessary in order to structure and issue bonds.
- 4.1.13. Provide advice on ongoing developments in the bond industry as they affect TxDOT;

- 4.1.14. If requested, solicit bids on behalf of TxDOT for the printing of bond offering documents, ratings, trustee and paying agent fees and related services, contract with the responsible parties, and pay for those services on behalf of TxDOT.
- 4.1.15. Provide financial advisory support for all other matters necessary or incidental to the issuance of the bonds.
- 4.1.16. Provide a written, post-transaction assessment of any/all financing(s) undertaken, including the development of closing memorandum and a final report to the Bond Review Board to include a verification of all costs of issuance. The Financial Advisor is permitted to provide such assessment and closing memorandum in conjunction with the selected underwriters.
- 4.2. OTHER DEBT OBLIGATIONS: Financial advisor shall perform all other matters necessary and incidental to the issuance and administration of debt obligations. The Financial Advisor shall:
  - 4.2.1. Advise the Commission and TxDOT on the feasibility of proposed debt restructuring techniques and monitor and advise TxDOT on refunding opportunities, derivatives and other financial products that would help TxDOT lower its cost of borrowing.
  - 4.2.2. Advise the Commission and TxDOT on possible ramifications and constraints of proposed investment transactions and supervise the bidding of investments, when requested.
  - 4.2.3. Advise the Commission and TxDOT in response to real or anticipated changes in state and federal law, regulation or public policy of the impact on bond issues and investment policy.
  - 4.2.4. Review legislation when requested by representatives of the Commission and TxDOT, recommend legislative action where appropriate, and assist with drafting of legislation at both the federal and state level.
  - 4.2.5. Assist TxDOT in the solicitation and evaluation of solicited and unsolicited proposals for public/private development of transportation projects under comprehensive development agreements, and review the proposed financing plans. Financial Advisor will, at the request of TxDOT, assist with the review of all documents relating to a comprehensive development agreement, and assist with reviewing all legal documents required of a public/private partnership financing by all jurisdictional governmental entities.
  - 4.2.6. Assist TxDOT in reviewing and commenting on agreements with the Federal Highway Administration and with political subdivisions relating to the financing of projects.
  - 4.2.7. Assist in writing, issuing, soliciting, and evaluating Requests for Proposals for underwriting services, and prepare recommendations on retention of underwriters and underwriting teams for the Commission and TxDOT.
  - 4.2.8. Provide information on questions and issues posed by, or presented to, the Commission and TxDOT on an ad hoc basis.
  - 4.2.9. Perform any other tasks as directed by TxDOT and Commission associated with the issuance and management of debt and the investment of bond proceeds.
5. STAFFING REQUIREMENTS: Any changes to staff, either before or during the term of the resulting contract, must be provided in writing, to TxDOT prior to their beginning work as part of the vendor's staff assigned to this project. In addition, all cost adjustments/modifications (if any) resulting from such staff changes must be submitted for approval by TxDOT.
  - 5.1. CONTINUITY OF PERSONNEL: The vendor agrees to ensure the continuity of the TxDOT approved main point of contact. The vendor represents and warrants that this individual be available for the entirety of the project and shall remain available throughout the term of the contract. TxDOT recognizes, however, that events beyond the control of the vendor such as the death, physical or mental incapacity, long-term illness, or the voluntary termination of employment of this individual may require the vendor to propose a replacement. In the event that such a replacement is necessary, respondent agrees that no replacement person shall begin work on the project without the prior written approval of TxDOT.
  - 5.2. REPLACING PERSONNEL: If TxDOT determines that vendor's point of contact is unable to perform satisfactorily or to communicate effectively, TxDOT may cause the immediate removal of that person from the contract. Replacement of approved personnel may be made, but requires prior approval of TxDOT. Replacement personnel shall have comparable qualifications.
6. TRAVEL GUIDELINES: All travel will be subject to prior approval by TxDOT. If travel is approved, TxDOT will pay the following :
  - 6.1. Per diem at the federal per diem rate for Austin (rates can be found at the following website: <http://policyworks.gov/org/main/mt/homepage/mtt/perdiem/travel.shtml>).
  - 6.2. Air travel shall be by commercial air at the economy rate.
  - 6.3. Auto rental at the economy rate or mileage at the state rate.
7. PAYMENT REQUIREMENTS
  - 7.1. Vendor's invoices shall be completed with all documentation and sent to the address shown on the purchase order.
  - 7.2. Payment will be made within 30 days upon receipt of a correct invoice and approval of final report for each project performed on a monthly basis.

8. RESPONSE SUBMISSION: TxDOT will not be responsible for any expenses relating to response development, documentation, or presentation that may result from this solicitation. The respondent shall submit one signed original (marked original) and three complete copies (marked copy). All responses shall be unbound and tab indexed. Failure to submit all of the following response information in the following order shall result in disqualification of the response, unless stated otherwise below:
- 8.1. The submitted proposal must be executed by a duly authorized representative of the firm. The Execution of Proposal form shall be signed.
  - 8.2. All proposals must be in sealed envelopes clearly marked in the lower left hand corner: "SEALED RESPONSE TO RFP Q442004023118000 - FINANCIAL ADVISOR". All responses become the property of TxDOT. Response shall set forth accurate and complete information as required by this RFP and limited to a maximum of 30 pages.
  - 8.3. SECTION 1 – COMPANY INFORMATION AND REFERENCES: This section shall include, at a minimum, the following:
    - 8.3.1. Provide a brief history and general description of your firm, including the number of years your firm has been active in providing financial advisory services for governmental issuers.
    - 8.3.2. List how your firm is organized and how its resources will be put to work for the Commission and TxDOT. Include information relative to the capabilities and resources of the offices, and a listing of the offices personnel by discipline that definitely would be assigned to TxDOT's projects.
    - 8.3.3. Provide a synopsis of the firm's experience in providing financial advisory services to governmental issuers of tax-exempt revenue bonds, with particular attention being given to transportation project financings.
    - 8.3.4. List the governmental issues for which your firm served as financial advisor in the past five years. Please include the name of the issuer, contact information for a representative of the issuer, title of the bonds, date of the bonds, par amount of the issue, type of sale, and role the firm played. Indicate any issues for transportation projects. Specify for each issue the involvement, if any, of any staff who may be assigned to work with the Commission and TxDOT. Tabular format is acceptable.
    - 8.3.5. A summary of significant active projects expected to be underway in the firm's designated project office during the calendar years 2004 through 2007. The summary should indicate the magnitude of debt financing involved, the projects' percentage of completion in October 2003, and staff levels by discipline that the firm has pre-committed to those projects, all in sufficient detail to establish the firm's ability to provide the level of staffing required for the scope of services listed elsewhere.
    - 8.3.6. Please select **one** transaction from the above list that you feel best demonstrates your ability to serve the Commission and TxDOT and describe in detail the financial issues involved in the transaction and your firm's approach to the analysis. (Please limit discussion to no more than two pages.)
    - 8.3.7. Describe any innovations your firm has developed or worked on for tax-exempt security issues, briefly describing the problem, your solution and the results.
    - 8.3.8. Describe your firm's experience during the past two years with the major rating agencies on issuing bonds for new debt programs, and note the potential benefit to the Commission and TxDOT from this experience.
    - 8.3.9. Describe your firm's expertise and experience in assisting public finance clients in creating new financing programs.
    - 8.3.10. Describe your firm's capabilities in assisting public finance clients in complying with arbitrage regulations and other tax-related requirements. Include a brief description of your firm's experience in securing private letter rulings or other rulings (other than extensions of time or other procedural matters) from the Internal Revenue Service on behalf of any public finance clients, including a representative description of the types of rulings.
    - 8.3.11. Describe your firm's experience with credit supports, derivative products, refunding, and bond insurance.
  - 8.4. SECTION 2- SERVICE PLAN. Provide a detailed description of how you would manage the required services for TxDOT. Provide pricing as part of the plan. Provide your fee structure, including if applicable, hourly rates, and flat fees. Fees based on a percentage of the par amount of the bonds or on a per bond basis will not be considered.
  - 8.5. SECTION 3 – RESUMES: Provide resumes for those individuals who would be assigned to serve the Commission and TxDOT, including years of financial advisory experience and number and type of bond issues. Specify who would be assigned as the primary day-to-day contact for the Commission and TxDOT. Personnel on retainer consulting contracts will not be considered as employees of the responding firm.
  - 8.6. SECTION 4 – EXECUTION OF PROPOSAL form shall be signed and returned.
9. BASIS OF SELECTION: TxDOT will make its selection based on an evaluation of the respondent's demonstrated qualifications, expertise, experience, and competence in providing financial advisory services and advice to governmental agencies, particularly with respect to transportation projects, the expertise of the staff that will be assigned to work on such matters, and the capabilities and resources of the firm's offices, including the physical resources that will be assigned to TxDOT. Specific evaluation criteria include the following:
- 9.1. The completeness and thoroughness of a firm's response relative to information requested in RFP.

- 9.2. The extent and depth of the respondent's qualifications, expertise, experience, reputation, and record of success in providing financial advisory services to governmental entities issuing tax exempt bonds, particularly with respect to transportation projects, including the size and number of prior bond issues and experience in complex bond financings.
  - 9.3. The extent and depth of the qualifications, experience, reputation, and record of success of the staff that will be assigned to provide financial advisory services to the Commission and TxDOT, particularly with respect to transportation projects.
  - 9.4. The extent to which the respondent is organizationally structured to carry out the responsibilities potentially assigned to it, and the effectiveness of the physical resources that will be assigned to TxDOT.
  - 9.5. The reasonableness of the proposed fee structure.
  - 9.6. After evaluation of the written proposals, TxDOT may request oral presentations from two or more of the top ranked responses. Oral presentations will not be scored separately as part of this solicitation. Oral presentations will only be used to adjust the proposal scores accordingly (per the same evaluation criteria), based upon the information discussed at the presentation.
  - 9.7. TxDOT reserves the right to reject any and all responses to this RFP and to cancel the RFP if it is deemed in the best interest of TxDOT to do so. TxDOT also reserves the right to award the contract to the next-best qualified Financial Advisor if the selected Financial Advisor does not execute the contract within 30 days after final approval of the contract.
  - 9.8. Best and Final Offer (If applicable)
10. **EVALUATION PROCEDURE FOR PROPOSALS:** TxDOT will use a three step process to evaluate all responses and finalize the selection of a responsible vendor. Proposals will be evaluated based on the statutory factors for determining the "best value" for the State (see Section 2157, Government Code), and on the basis of Respondent qualifications, experience, references, demonstrated understanding of the project, quality of the work plan, scheduling and pricing. TxDOT will be the sole judge of which proposal is the most advantageous to and in the best interest of TxDOT and will make final selection of a vendor.
- 10.1. **STEP 1: INITIAL PROPOSAL EVALUATION**
- 10.1.1. A TxDOT evaluation committee will evaluate and score each proposal based on the best value criteria stated in this specification. All proposals will be evaluated according to the respondent's ability to best satisfy TxDOT's requirements. Only the companies whose proposals score the highest will be considered for further discussions.
  - 10.1.2. Only complete proposals meeting the Minimum Submission Requirements (see Attachment A) stated in this specification will be considered. Failure to meet the minimum requirements will result in a response being declared non-responsive.
  - 10.1.3. Proposals will be evaluated and scored based on the criteria included in Attachment B. Evaluation criteria will represent 60 of the score and pricing will represent 40%.
  - 10.1.4. Best value criteria to be used is as follows:
    - 10.1.4.1. Past experience in successfully providing this service.
    - 10.1.4.2. Responsiveness to the RFP service requirements and level of service proposed.
    - 10.1.4.3. Reporting that meets the advertised requirements of TxDOT.
- 10.2. **STEP 2 - ORAL PRESENTATIONS:** As part of the evaluation process, TxDOT may invite respondents to make oral presentations, demonstrate their proposed solution, or provide written clarification of their proposal. TxDOT may define specific areas of interest for oral presentations. Respondents shall be expected to have key named personnel from their proposal participate in the oral presentations.
- 10.3. **STEP 3 – BEST AND FINAL PROPOSAL (BAFO):** TxDOT may continue discussions with one or more respondents which will conclude with a request for a BAFO from one or more respondents. This is the submittal of the final price with any incentives or additional values proposed.
11. **AWARD:** TxDOT reserves the right to award on the basis of best value that meets the requirements of this RFP.
- 11.1. **TERM OF THE AGREEMENT:** The initial term of the purchase order will begin upon the issuance of the purchase order through August 31, 2005, renewable at TxDOT's option two times for up to two years each time.
  - 11.2. TxDOT retains the right to negotiate all elements of the contract for financial advisory services, including hourly compensation rates, and to terminate the contract for financial advisory services, for any reason, subject to written notice prior to the termination.
  - 11.3. In the event of termination, the Financial Advisor will be paid for all services completed to the effective date of termination plus any necessary services to effectively wind up and to effectively transfer any ongoing work.



SUBCHAPTER A. ETHICS REQUIREMENTS FOR FINANCIAL ADVISORS AND  
SERVICE PROVIDERS

§5.1. Purpose. Government Code, §2263.004, requires the governing body of a state governmental entity to adopt by rule standards of conduct applicable to certain financial advisors or service providers who provide financial services to the state governmental entity or advise the state governmental entity or a member of the governing body of the state governmental entity in connection with the management or investment of state funds. This subchapter prescribes standards of conduct and disclosure requirements for financial advisors and service providers that provide financial services and advice to the Texas Transportation Commission and the Texas Department of Transportation.

§5.2. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Commission--The Texas Transportation Commission.
- (2) Comptroller--The Comptroller of Public Accounts of the State of Texas.
- (3) Department--The Texas Department of Transportation.
- (4) Direct placement investment--The direct sale of

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securities, generally to institutional investors, with or without the use of brokers or underwriters.

(5) Executive director--The executive director of the department.

(6) Financial advisor or service provider--A business entity or a person who is not an employee of the department, who acts as a financial advisor, financial consultant, money or investment manager, or broker, or who acts in another capacity to provide services in connection with the management or investment of state funds, and who:

(A) may reasonably be expected to receive, directly or indirectly, more than \$10,000 in compensation from the department during a fiscal year; or

(B) renders investment or funds management advice to the department or the commission.

(7) Fiscal year--An accounting period of 12 months that begins on September 1 of each calendar year and ends on August 31 of the following calendar year.

(8) State funds--Funds managed or invested by the commission or the department, and not by the comptroller, including bond proceeds held in trust outside the state treasury.

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§5.3. General Ethical Standards.

(a) Financial advisors and service providers must comply with the standards of conduct and conflict of interest provisions of Government Code, Chapter 572 and the provisions of Penal Code, Chapters 36 and 39 that are applicable to a state officer or employee.

(b) Financial advisors and service providers who are members of professional organizations that have promulgated standards of conduct must comply with those standards, and with other applicable ethics codes and standards of conduct. Financial advisors and service providers must also comply with the Code of Ethics and Standards of Professional Conduct of the Association for Investment Management and Research.

(c) Financial advisors and service providers must be honest in providing services and advice to the commission and the department, and loyal to the interests of the commission and the department to the extent that conflicting duties do not legally have priority. Financial advisors and service providers shall avoid personal, employment, or business relationships that create conflicts of interest, and shall disclose any conflicts of interest in the manner prescribed in §5.4 of this subchapter.

(d) Financial advisors and service providers shall not use nonpublic information gained through a relationship with the

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commission or the department to seek or obtain personal gain beyond agreed compensation and any authorized expense reimbursement.

(e) Financial advisors and service providers shall disclose in writing to the executive director any business or financial transaction greater than \$50 in value with a member of the commission or a department employee within 10 days of the transaction. This obligation does not apply to a financial account that is provided to a member of the commission or a department employee under the same terms and conditions as are provided to members of the general public.

#### \$5.4. Conflicts of Interest.

(a) A conflict of interest exists whenever financial advisors and service providers have a personal, private, commercial, or business relationship that could reasonably be expected to diminish their independence of judgment in the performance of their responsibilities for the commission or the department, including where an action taken by the financial advisor or service provider reasonably appears to be influenced by considerations of personal gain or benefit rather than motivated by the interests of the commission and the department.

(b) Financial advisors and service providers shall promptly

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disclose in writing to the executive director any relationship the financial advisor or service provider has with any party to a transaction with the commission or the department, other than a relationship necessary to the investment or funds management services performed for the commission or the department, when a reasonable person would consider a conflict of interest to exist because of that relationship.

(c) Financial advisors and service providers shall promptly disclose in writing to the executive director all direct or indirect pecuniary interests the financial advisor or service provider has in any party to a transaction with the commission or the department, if the transaction is connected with any services and advice provided to the commission and the department.

(d) Financial advisors and service providers shall annually file with the executive director and the state auditor a statement disclosing each relationship and pecuniary interest described by subsections (b) and (c) of this section, or a statement that no such relationships or pecuniary interests existed during the disclosure period. The statement shall be in the form prescribed by the department or the state auditor. A revised statement shall be promptly filed whenever a new relationship subject to subsection (b) of this section is

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entered into or a new pecuniary interest subject to subsection (c) of this section is created.

(e) Financial advisors and service providers shall promptly disclose in writing to the executive director any other possible conflicts of interest. Written disclosures sent to the executive director under this subsection or under subsection (b) of this section shall contain actions proposed by the financial advisor or service provider to avoid conflicts of interest.

Financial advisors and service providers may not give advice or provide services relating to a matter affected by the possible conflict of interest unless the executive director or designee waives this prohibition in writing.

§5.5. Prohibited Interests and Transactions.

(a) Financial advisors and service providers may not, unless waived in writing by the executive director or designee:

(1) have a financial interest in a direct placement investment of state funds;

(2) serve as an officer, director, or employee of an entity in which a direct placement investment of state funds is made; or

(3) serve as a consultant to, or receive any fee, commission, or payment from, an entity in which a direct

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placement investment of state funds is made.

(b) Financial advisors and service providers that provide investment or funds management advice to the department or the commission shall not engage in any transaction involving state funds with another financial advisor or service provider providing investment or funds management advice to the department or the commission.

§5.6. Contracts.

(a) The department shall notify any financial advisor or service provider under contract with the department of the requirements of this subchapter.

(b) Any contract with a financial advisor or service provider shall contain a provision requiring compliance by the financial advisor or service provider with the requirements of this subchapter, and provisions relating to termination of the contract for failure to comply.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Filed with the Office of the Secretary of State on  
December 19, 2003.



Richard D. Monroe  
General Counsel  
Texas Department of Transportation



**ATTACHMENT A**  
**Required Submittal Documents**  
**(Provided For Information Purposes Only)**

Proposing Company: \_\_\_\_\_

<b><u>SUBMITTAL INCLUDES:</u></b>	<b>Yes</b>	<b>No</b>	<b>Notes</b>
1. An original and 4 copies			
2. Conflict of Interest (Para. 3.0)			
3. Section 1 – Company Information (Para. 8.3)			
4. Section 2 – Service Plan including pricing (Para. 8.4)			
5. Section 3 – Resumes (Para. 8.5)			
6. Section 4 – Signed Execution of Proposal form (Para 8.6)			

**FAILURE TO RETURN THE REQUIRED DOCUMENTS AND INFORMATION SHALL RESULT IN PROPOSAL BEING CONSIDERED NON-RESPONSIVE.**

**THE ABOVE WAS CHECKED BY:** \_\_\_\_\_

**ATTACHMENT B - EVALUATION CRITERIA  
(FOR INFORMATIONAL PURPOSES ONLY)**

PROPOSER:	EVALUATOR NAME:
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**EXPERIENCE and EXPERTISE IN PROVIDING FINANCIAL SERVICES (See Para. 8)**

Provide a brief history and general description of your firm, including the number of years your firm has been active in providing financial advisory services for governmental issuers. (Para. 8.3.1)

List how your firm is organized and how its resources will be put to work for the Commission and TxDOT. Include information relative to the capabilities and resources of the offices, and a listing of the offices personnel by discipline that definitely would be assigned to TxDOT's projects. (Para. 8.3.2)

Provide a synopsis of the firm's experience in providing financial advisory services to governmental issuers of tax-exempt revenue bonds, with particular attention being given to transportation project financings. (Para. 8.3.3)

List the governmental issues for which your firm served as financial advisor in the past five years. Please include the name of the issuer, contact information for a representative of the issuer, title of the bonds, date of the bonds, par amount of the issue, type of sale, and role the firm played. Indicate any issues for transportation projects. Specify for each issue the involvement, if any, of any staff who may be assigned to work with the Commission and TxDOT. Tabular format is acceptable. (Para. 8.3.4)

A summary of significant active projects expected to be underway in the firm's designated project office during the calendar years 2004 through 2007. The summary should indicate the magnitude of debt financing involved, the projects' percentage of completion in October 2003, and staff levels by discipline that the firm has pre-committed to those projects, all in sufficient detail to establish the firm's ability to provide the level of staffing required for the scope of services listed elsewhere. (Para. 8.3.5)

Please select **one** transaction from the above list that you feel best demonstrates your ability to serve the Commission and TxDOT and describe in detail the financial issues involved in the transaction and your firm's approach to the analysis. (Please limit discussion to no more than two pages.) (Ref. Para. 8.3.6)

Describe any innovations your firm has developed or worked on for tax-exempt security issues, briefly describing the problem, your solution and the results. (Ref. Para. 8.3.7)

Describe your firm's experience during the past two years with the major rating agencies on issuing bonds for new debt programs, and note the potential benefit to the Commission and TxDOT from this experience. (Ref. Para. 8.3.8)

Describe your firm's expertise and experience in assisting public finance clients in creating new financing programs. (Ref. Para. 8.3.9)

Describe your firm's capabilities in assisting public finance clients in complying with arbitrage regulations and other tax-related requirements. Include a brief description of your firm's experience in securing private letter rulings or other rulings (other than extensions of time or other procedural matters) from the Internal Revenue Service on behalf of any public finance clients, including a representative description of the types of rulings. (Ref. Para. 8.3.10)

Describe your firm's experience with credit supports, derivative products, refunding, and bond insurance. (Ref. Para. 8.3.11)

SECTION 2- SERVICE PLAN. Provide a detailed description of how you would manage the required services for TxDOT. (Ref. Para. 8.4)

SECTION 3 – RESUMES: Provide resumes for those individuals who would be assigned to serve the Commission and TxDOT, including years of financial advisory experience and number and type of bond issues. Specify who would be assigned as the primary day-to-day contact for the Commission and TxDOT. Personnel on retainer consulting contracts will not be considered as employees of the responding firm. (Ref. Para. 8.5)

**TEXAS DEPARTMENT OF TRANSPORTATION**

**TERMS AND CONDITIONS**

**PART I**

**GENERAL TERMS AND CONDITIONS**

Part I of the General Terms and Conditions shall apply to all solicitations [Request for Quote (RFQ), Invitation for Bids (IFB), Request for Offer (RFO) and Request for Proposal (RFP)] offered by TxDOT. Parts II and III are solicitation specific additions to Part I.

This procurement falls under the statutory authority of Texas Government Code, Title 10, Subtitle D, Section 2151, et seq. (commonly known as the "Purchasing Act"). The purchasing procedures include statutory requirements and those requirements established by rule of the Texas Building and Procurement Commission (TBPC) as contained in TBPC Rule 1TAC 113.1, et seq.

All purchases are on a firm, fixed price basis unless otherwise stated in the solicitation.

The purchase order may contain a "Total Cost Not to Exceed" statement. Vendor shall not perform any work that may exceed either the purchase order total or the not-to-exceed total without prior written authorization from the department.

**1. REQUIREMENTS AND ADDITIONAL INFORMATION**

- 1.1. Our system requires pricing per unit shown and extensions. Unit prices shall govern in the event of extension errors. If a trade discount is offered on the solicitation response, it should be deducted and net line extensions shown. Respondent guarantees product offered will meet or exceed specifications identified in this solicitation.
- 1.2. Response should be submitted on the solicitation form. If submitting multiple responses, each response should be placed in a separate envelope, correctly identified with the solicitation number and opening/closing date. Response must be time stamped in our Mail Room or hand delivered to the address on the solicitation before the hour and date specified for the solicitation opening/closing.
- 1.3. Late responses will not be considered under any circumstances. Correctly identified late responses will be returned to respondent unopened.
- 1.4. Documentation provided with the response should be complete and comprehensive. TxDOT will not be responsible for locating or securing information not included in the response. Failure to furnish required documentation with the response may result in the response being deemed incomplete and non-responsive, resulting in rejection. TxDOT will not be responsible for any expenses relating to responses or development of documentation that may result from this solicitation.
- 1.5. All prices shall be F.O.B. destination, freight prepaid and allowed. This means the vendor shall prepay and include the freight charges in the unit price.
- 1.6. All prices shall be firm for acceptance for 30 days from solicitation response date unless otherwise stated in the solicitation. "Discount from list" pricing is not acceptable unless requested. Cash discount will not be considered in determining the low response; however, all cash discounts offered will be taken if earned. Price(s) shall not increase during the term of the purchase order or the agreement unless otherwise stated in the specification. Vendor shall offer price reductions that result in reduced cost to the vendor during the term of the purchase order.
- 1.7. Failure to sign the solicitation manually in the required space will disqualify the response. The person signing the response shall have authorization to bind the company in contract. Solicitation response shall include Texas Identification Number (TIN), full firm name and address of company. The TIN is the taxpayer number assigned and used by the Comptroller of Public Accounts of Texas. Enter this TIN in the space provided on the solicitation.
- 1.8. Response cannot be altered or amended after opening/closing time. Any alterations made before opening/closing time should be initialed by respondent or authorized agent. Response may be withdrawn if requested in writing prior to the opening/closing date and time. No response can be withdrawn after opening/closing time without approval by TxDOT based on a written, acceptable reason.
- 1.9. At the time of opening/closing for negotiated solicitations, only the names of respondents will be announced. Prices will not be disclosed.
- 1.10. Purchases made for State use are exempt from the State Sales tax and Federal Excise tax. Do not include tax in response unless otherwise specified in the solicitation. Excise Tax Exemption Certificate will be furnished by TxDOT on request.

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\* This Revision Supersedes Previous Revision, Revised: October 2003.

- 1.11. TxDOT reserves the right to accept or reject all or any part of any response, waive minor technicalities and make award to best serve the interests of the State. TxDOT reserves the right to reject any response not prepared and submitted in accordance with the solicitation requirements.
- 1.12. Consistent and continued tie response pricing may lead to rejection of the response by TxDOT and/or investigation for antitrust violations.
- 1.13. Facsimile (FAX) responses may be submitted to the FAX number provided in the solicitation for procurements less than \$25,000, unless otherwise stated in the solicitation. For procurements \$25,000 and greater, FAX responses will not be considered unless otherwise stated in the solicitation. All FAX responses must be signed in space provided in the solicitation. TxDOT will not be responsible for failure of electronic equipment or operator error. Responses that are late, illegible, incomplete or otherwise non-responsive will not be considered.
- 1.14. It is the intent of TxDOT to purchase goods, equipment and services having the least adverse environmental impact within the constraints of statutory purchasing requirements, departmental need, availability and sound economical considerations. TxDOT encourages suggested changes and environmental enhancements for possible inclusion in future revisions of this specification.
- 1.15. TxDOT is committed to maintaining an alcohol- and drug-free workplace. Possession, use, or being under the influence of alcohol or controlled substances by vendor's employees while in the performance of any service is prohibited. Violation of this requirement shall constitute grounds for cancellation of the purchase order. Vendor's employees shall comply with TxDOT's policy prohibiting smoking in TxDOT buildings.
- 1.16. All work by the vendor shall be performed between the hours of 8:00 a.m. and 5:00 p.m., unless otherwise specified, only on working days observed by TxDOT. Working days are usually Monday through Friday of each week.

## 2. SPECIFICATIONS

- 2.1. The goods furnished or service performed shall be in accordance with the purchase specifications. TxDOT will decide all questions, which may arise as to the interpretation of the specifications and the quality, or acceptability of goods furnished or work performed. If the solicitation is for a service, TxDOT will decide the manner of performance and the rate of progress of the work and the acceptable fulfillment of the service on the part of the vendor.
  - 2.2. Any catalog, brand name or manufacturer's reference used in the solicitation is descriptive only (not restrictive), and is used to indicate type and quality desired. Responses on brands of like nature and quality will be considered unless advertised as proprietary or sole source under Texas Government Code (TGC), Title 10, Subtitle D, Section 2155.067. Show manufacturer, brand or trade name, and other description of product offered on response. If offer is for other than example(s) shown, include illustrations and complete description of product in the solicitation response. If respondent takes no exception to specifications or reference data in the response, the vendor will be required to furnish brand names, numbers, etc., as specified.
  - 2.3. Unless otherwise specified, all items offered shall be new and in first class condition, including shipping and storage containers. Verbal agreements to the contrary will not be recognized.
  - 2.4. Samples, when requested, must be furnished free of expense to TxDOT. If not destroyed in examination, samples will be returned upon request, at respondent's expense. Each sample should be marked with respondent's name and address, and TxDOT solicitation number. Do not enclose in or attach response to sample.
  - 2.5. TxDOT will not be bound by any oral statement or representation contrary to the written specifications of this solicitation. All addenda to and interpretations of this solicitation shall be in writing. Any addenda or interpretation that is not in writing will not legally bind TxDOT.
  - 2.6. Manufacturer's standard warranty shall apply unless otherwise stated in this solicitation.
  - 2.7. All electrical items shall meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.
3. **TIE RESPONSES:** Award will be made in accordance with RULE 1 Texas Administrative Code (TAC) Section 113.6(b)(3) and 113.8 (Preferences).
  4. **PREFERENCES** A respondent may claim a preference under Rule 1TAC 113.8. To claim a preference, a respondent shall identify the preference, on the face of the solicitation. If the appropriate area on the solicitation is not marked, a preference will not be granted unless other documents included in the bid show a right to the preference.

Preferences may be claimed for the following:

### Tie-Bid Preferences

- ◆ Supplies, materials or equipment produced in Texas or offered by a Texas bidder
- ◆ Agricultural products grown in Texas
- ◆ Agricultural products offered by Texas bidder
- ◆ USA produced supplies, material or equipment
- ◆ Products produced at facilities located on formerly contaminated property
- ◆ Products and services from economically depressed or blighted areas

**Source Preference**

- ◆ Products of persons with mental or physical disabilities

*Specification Preferences*

- ◆ Products made of recycled materials
- ◆ Energy efficient products
- ◆ Rubberized asphalt paving materials
- ◆ Recycled motor oil and lubricants

**5. DELIVERY**

- 5.1. Response should show number of *days* required to place material, or begin service (if required), at TxDOT's designated location under normal conditions. Failure to state delivery time obligates vendor to complete delivery in 14 calendar days. Unrealistic delivery promises may cause response to be rejected.
- 5.2. If delay is foreseen, vendor shall give written notice to TxDOT. TxDOT has the right to extend delivery date if reasons appear valid. Vendor shall keep TxDOT advised at all times of status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications, authorizes TxDOT to purchase goods or services elsewhere and charge full increase, if any, in cost and handling to defaulting vendor.
- 5.3. No substitutions or cancellations permitted without written approval of TxDOT.
- 5.4. Delivery shall be made during normal working hours only, unless prior approval has been obtained from TxDOT or otherwise stated in solicitation.
- 5.5. Receipt of goods does not constitute acceptance.

6. **INSPECTIONS AND TESTS:** Goods and services will be subject to inspection and test by TxDOT to the extent practicable at all times and places. Tests will be performed on samples submitted with the response or on samples taken from regular shipment. In the event samples tested fail to meet or exceed all conditions and requirements of the specification, the cost of the sample used and the cost of the testing shall be borne by the vendor. Goods which have been delivered and rejected in whole or in part may at TxDOT's option, be returned to the vendor or held for disposition at vendor's risk and expense. Authorized TxDOT personnel shall have access to any vendor's place of business for the purpose of inspecting goods and services. Latent defects may result in revocation of acceptance.

7. **AWARD OF PURCHASE ORDER:** A response to a solicitation is an offer to contract with TxDOT based upon the terms, conditions and specifications contained in the solicitation. Responses do not become contracts unless and until they are accepted through an authorized TxDOT designee by issuance of a purchase order.

- 7.1. Any purchase order resulting from this solicitation is subject to cancellation without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature. The purchase order for this procurement shall be governed, construed and interpreted under the laws of the State of Texas.

- 7.2. **BEST VALUE CRITERIA FOR PURCHASE OF GOODS OR SERVICES** – When specified in the solicitation, the factors listed in Texas Government Code, Title 10, Subtitle D, Section 2155.074 will also be considered in making a *best value* award. This section allows TxDOT to develop and apply award evaluation criteria for a procurement in order to obtain goods and services that provide the *best value* for TxDOT.

In determining *best value*, other relevant factors may be considered in addition to purchase price and whether the product meets specifications. Those factors are:

- installation costs; life cycle costs;
- the quality and reliability of goods and services;
- the delivery terms;
- indicators of probable vendor performance;
- cost of employee training associated with a purchase;
- the effect of a purchase on agency productivity; and
- other factors relevant to determining best value for the state in the context of a particular purchase.

Under these guidelines, a vendor is not automatically awarded a purchase order simply because they submit the lowest bid response.

- 7.3. The purchase order is void if sold or assigned to another company without written approval of TxDOT. Written notification of changes to company name, address, telephone number, etc. shall be provided to TxDOT as soon as possible but not later than 30 days from the date of change.

8. **PAYMENT:** Payment will be made in accordance with the Texas Prompt Payment Law, TGC, Subtitle F, Chapter 2251. Vendor shall submit two copies of a correct itemized invoice showing the purchase order number, payee I.D., remit to address, and phone number on all copies. TxDOT will incur no penalty for late payment if payment is made in 30 days or less from receipt of goods or services and a correct invoice, whichever is later.

**NOTE: Warrants will not be issued to a vendor without a current Texas Identification Number and will be held by the State Comptroller if there is a tax liability.**

9. **PATENTS OR COPYRIGHTS:** The vendor agrees to protect TxDOT and the State from claims involving infringement of patent or copyrights.
10. **VENDOR ASSIGNMENTS:** Vendor hereby assigns purchaser any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States (15 U.S.C.A. Section 1, et seq. [1973]), and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Comm. Code Ann. Sec. 15.01, et seq. (1967). Inquiries pertaining to this solicitation must give solicitation number and opening/closing date.
11. **RESPONDENT AFFIRMATION:** Signing this solicitation with a false statement is a material breach of contract and shall void the submitted response or any resulting contracts, and the respondent shall be removed from all solicitation lists. By signature hereon affixed, the respondent hereby certifies that:
- 11.1. 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 the submitted response.
- 11.2. Under TGC, Title 10, Subtitle D, Section 2155.004, the respondent certifies that the individual or business entity named in this response is eligible to receive the specified contract and acknowledges that this contract may be terminated and/or payment withheld if this certification is inaccurate.
- 11.3. 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 this state, codified in Section 15.01, et. seq., Texas Business and Commerce Code, or the Federal Antitrust Laws, nor communicated directly or indirectly the solicitation made to any competitor or any other person engaged in such line of business.
- 11.4. The respondent has not received compensation for participation in the preparation of the specifications for this solicitation.
- 11.5. Under TGC, Title 5, Subtitle D, Section 231.006, Family Code (relating to child support), the individual or business entity named in this solicitation is eligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
- 11.6. Under Section 669.003 of the Texas Government Code, TxDOT may not enter into a contract with an individual who was the executive director of TxDOT during the four years before the date of the contract, or with anyone who employs a current or former TxDOT executive director, unless the Transportation Commission approves the contract in an open meeting.
- If Section 669.003 applies, respondent must provide the following information as an attachment to this solicitation response: Name of former TxDOT executive director, date of separation from TxDOT, position with respondent, and date of employment with respondent.
- 11.7. The response includes the names and Social Security Numbers of each person with a minimum of 25% ownership of the business entity submitting the response. Respondents that have pre-registered this information on the TBPC Centralized Master Bidders List have satisfied this requirement. If not pre-registered, provide the names and Social Security Numbers on the face of the solicitation response.
- 11.8. Respondent agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.
- 11.9. Respondent agrees to comply with TGC, Title 10, Subtitle D, Section 2155.4441, pertaining to service contract use of products produced in the state of Texas.
12. **SUBCONTRACTING REQUIREMENTS:** In accordance with Texas Government Code, Title 10, Subtitle D, Sections 2161.181-182 and Texas Administrative Code (TAC), Title 1, Section 111.11 and pursuant to the Texas Building and Procurement Commission's (TBPC) HUB Rules, TAC, Title 1, Section 111.13 and 111.14, all state agencies entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine if it is probable for subcontracting opportunities under the contract. If subcontracting opportunities are probable the state agency will state such probability in its bids, proposals, offers, or other applicable expression of interest and require the submission of a Historically Underutilized Business (HUB) Subcontracting Plan (HSP). The HSP, if acceptable to the agency, will be a provision of the contract. The HSP, if required, may be found at: <http://www.dot.state.tx.us/gsd/purchasing/purchasing.htm>.
13. **VENDOR EXCEPTIONS OR CONDITIONED RESPONSES:** Vendor exceptions and/or terms and conditions attached to a response will not be considered unless specifically referred to and clearly identified as such within the response.

**NOTE: Such exceptions and/or terms and conditions may result in disqualification of the response (e.g., response with the laws of a state other than Texas, requirements for prepayment, limitations on remedies, etc.).**

14. **DISPUTE RESOLUTION:** TxDOT has established a dispute resolution process under 43 TAC § 9.1 to attempt to resolve all disputes that may arise between the department and the vendor under any purchase order resulting from this solicitation. The dispute resolution process provided for in TGC, Title 10, Subtitle F, Chapter 2260 must be used by TxDOT and the vendor to attempt to resolve all disputes arising under this contract.
15. **VENDOR PERFORMANCE:** Vendors are advised that performance will be reported to the TBPC. In accordance with TGC, Title 10, Subtitle D, Chapters 2155.074 and 2155.075, vendor performance may be used as a factor in the award of a future solicitation.
16. **VENDOR RESPONSIBILITIES**
  - 16.1. The vendor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of the purchase order, including if applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the vendor shall furnish TxDOT with satisfactory proof of its compliance.
  - 16.2. The vendor shall be responsible for damage to TxDOT's equipment, and/or the workplace and its contents, by its work, its negligence in work, its personnel, or its equipment. The vendor shall be responsible and liable for the safety, injury, and health of its working personnel while its employees are performing work for TxDOT.
  - 16.3. The vendor shall provide all labor and equipment 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. No visitors, wives, husbands, children or other relatives of the vendor's employees will be allowed on state property during working hours, unless they are bona fide employees of the vendor.
  - 16.4. The vendor shall at all times have a minimum of one English-speaking employee on the job. All employees shall be well-groomed and appropriately dressed when on TxDOT property.
17. **DAMAGE CLAIMS:** The vendor 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 contractor or any agent, employee, subcontractor, or supplier of contractor in the execution or performance of this contract.
18. **ABANDONMENT OR DEFAULT:** If the vendor defaults on the purchase order, TxDOT reserves the right to cancel the purchase order without notice and either re-solicit or re-award the purchase order to the next lowest responsive and responsible respondent. The defaulting vendor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work unless the specification or scope of work is significantly changed.
19. **FORCE MAJEURE:** TxDOT may grant relief from performance of the purchase order if the vendor is prevented from and/or performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the vendor. The burden of proof for the need of such relief shall rest upon the vendor. To obtain release based on force majeure, the vendor shall file a written request with TxDOT.
20. **RIGHT TO AUDIT**
  - 20.1. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this purchase order or indirectly through a subcontract under this purchase order. Acceptance of funds directly under this purchase order or indirectly through a subcontract under this purchase order 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.
  - 20.2. TxDOT has the right to audit the vendor's books and records pertaining to the service during the hours of the normal workday.

## PART II

### PURCHASE OF SERVICES SPECIFIC TERMS AND CONDITIONS

1. **GENERAL:** The following applies to a solicitation for the purchase of services. These terms and conditions are in addition to those in Part I.
  - 1.1. If applicable to the service, TxDOT recommends that the respondent visit the site and examine the space and/or equipment to be serviced. The respondent shall carefully examine these specifications and, if necessary, secure additional information from the TxDOT purchaser that may be requisite to a clear and full understanding of the work.
  - 1.2. If products and/or materials are used in the performance of the service, the vendor shall buy Texas products and/or materials when they are available at a comparable price and delivery schedule.
2. **COMPETENCE OF VENDOR:** To be entitled to consideration, the vendor shall have available, the necessary organization and facilities to fulfill all the services required under the purchase order. Only personnel trained in services of this type shall be employed under and for the purchase order. Vendor shall obtain any licenses/permits required for the performance of the service.



3. **RENEWAL OF SERVICES:** The purchase order may be renewed for up to two additional periods of time, or as otherwise stated in the solicitation, provided both parties agree in writing to do so prior to the expiration of the purchase order. A purchase order in its final renewal period may be further extended for a period up to 90 days at the option of TxDOT. The renewed purchase order shall be for the original price, terms and conditions, and any approved changes.
4. **CANCELLATION:** The purchase order may be cancelled, without penalty, by either party by providing 30 days written notice to the other party. TxDOT will pay the vendor 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. The vendor shall refund any balance of unused prepaid funds.
5. **PAYMENT:** Payment will be made in accordance with Part I, Para. 8 using one of the following methods as specified on the solicitation.
  - 5.1. The service was completed to the satisfaction of TxDOT, and within 30 days from receipt of a correct invoice or billing statement.
  - 5.2. On a monthly basis and within 30 days from receipt of a correct invoice or billing statement.
  - 5.3. As otherwise stated in the specifications or on the solicitation document.
6. **INSURANCE:** Prior to beginning work, the vendor shall provide TxDOT with a completed TxDOT Certificate of Insurance Form 20.102 or Form 1950 (only TxDOT forms are acceptable) providing the below listed coverage. TxDOT shall be included as an Additional Insured by Endorsement to policies issued for coverage listed in 6.3 and 6.4.

Waiver of Subrogation Endorsement in favor of TxDOT shall be a part of each policy for coverage listed. TxDOT will allow deductible policies. The vendor shall pay the deductible amount. Such coverage shall remain in effect during the full term of service. Required insurance coverage is specified on the solicitation document.

- 6.1. **WORKERS' COMPENSATION INSURANCE:** Amount – Statutory, Texas
  - 6.1.1. The vendor is responsible for both Federal and State Unemployment Insurance coverage and Standard Workers' Compensation Insurance coverage. Vendor shall comply with all federal and state tax laws and withholding requirements.
- 6.2. **ACCIDENT INSURANCE:** This is acceptable, in lieu of Workers' Compensation Insurance, for services that are NOT provided on the highway right of way, and are NOT building or construction services. The successful bidder shall notify the purchaser responsible for the procurement to use this type of insurance and request the appropriate Form 1950. Required coverage shall be inclusive of the following:
  - \$300,000 for medical expenses and coverage for at least 104 weeks;
  - \$100,000 for accidental death and dismemberment, 70% of employee's pre-injury income for not less than 104 weeks when compensating for loss of income; and
  - \$500 for maximum weekly benefit.
- 6.3. **COMMERCIAL GENERAL LIABILITY INSURANCE:** Bodily Injury/Property Damage each occurrence and in the aggregate:
  - 6.3.1. \$325,000 **OR**
  - 6.3.2. \$150,000
- 6.4. **TEXAS BUSINESS AUTOMOBILE POLICY**
  - 6.4.1. Amounts – Bodily Injury \$100,000 each person  
\$300,000 each occurrence
  - 6.4.2. Property Damage \$ 25,000 each occurrence
7. **MINIMUM WAGE RATE REQUIREMENTS:** (Applies only for services performed on the highway right of way) Notwithstanding any other provision of the order, the vendor hereby covenants and agrees that the vendor and its subcontractors shall pay to each of their employees and contract labor engaged in any way in work hereunder, a wage not less than what is generally known as the Federal Minimum Wage as set out in 29 U.S.C., Paragraph 206, and any amendments thereto. Furthermore, the vendor shall produce proof of compliance with this provision by the vendor and its subcontractors to the state. TxDOT will withhold payments due to the vendor until the vendor has complied with this provision.

Prior to any payment being made for work satisfactorily completed and accepted, the vendor shall submit a Wage Rate Affidavit (on TxDOT's standard Wage Rate Affidavit Form) with the billing document, affirming that all employees and contract labor have been paid not less than the Federal Minimum Wage as set forth in 29 U.S.C., Paragraph 206, and any amendments thereto. The vendor shall keep a copy of each payroll showing the name, number of hours worked each day, and wage rate paid each employee and contract laborer together with a complete record of all deductions made from such wages. These payroll records shall be available for inspection at all reasonable hours of the normal workday by any authorized representative of the state.

**PART III**

**CATALOG PURCHASE SPECIFIC TERMS AND CONDITIONS**

1. **GENERAL:** The following terms and conditions apply to solicitations advertised under the Catalog Information Systems Vendor (CISV) Catalog Purchasing Program governed by TGC, Title 10, Subtitle D, Section 2157 and TBPC rule 1TAC 113.19. These terms and conditions supersede those in the CISV Catalog and are in addition to those in Part I and Part II as applicable.

1.1. **DEFINITIONS**

- 1.1.1. **Request for Offer (RFO):** This term is used to identify a solicitation issued to a CISV in order to obtain an offer and facilitate negotiations for prices, terms and conditions through the Catalog purchasing program.
- 1.1.2. **Catalog Information Systems Vendor (CISV):** A vendor that has been approved and Catalog to sell automated information systems type products and/or services to eligible entities in the state of Texas.
- 1.1.3. **Best Value:** The lowest overall cost for Automated Information System (AIS) equipment or services will be based on the following factors including, but not limited to:
- purchase price
  - compatibility to facilitate exchange of existing data
  - capacity for expansion and upgrading to more advanced levels of technology
  - quantitative reliability factors
  - level of training required to bring end-users to a stated level of proficiency
  - technical support requirements for maintenance of data across a network platform and management of the networks hardware and software
  - compliance with applicable Department of Information Resources (DIR) statewide standards validated by criteria adapted by the department by rule TAC (1 TAC 113.9).

1.2. **VENDOR REQUIREMENTS**

- 1.2.1. Vendors that are not approved CISV, may respond to the RFO. However, vendors must seek CISV status and vendor shall be an approved CISV no later than the date TxDOT awards a purchase order. Vendors may check their status with the TBPC by calling 512-463-5315 or at <http://www.tbpc.state.tx.us/ecat/index.html>.
- 1.2.2. The respondent shall submit the required number of responses specified on the solicitation. Responses should be unbound. Ring binders or excessive information are not preferred. Responses may be tab indexed.

1.3. **BEST VALUE CRITERIA:** Best value criteria will be used on all Catalog purchases.

- 1.3.1. For purposes of determining the best value available, TxDOT will consider items, features, etc., which are in addition to requirements listed, as well as factors which, in TxDOT's opinion, add value to the product/service but are not specifically required within the specification.
- 1.3.2. Negotiations for "best value" will occur with Catalog vendors, instead of making selections for goods and services based solely on the published prices, terms and conditions in the Catalogs.
- 1.3.3. TxDOT will be the sole judge as to which offer is the most advantageous and in the best interest of TxDOT.
- 1.3.4. During the evaluation phase, TxDOT reserves the right to conduct formal negotiations pertaining to a respondent's initial responses, specifications, and prices.
- 1.3.5. Negotiations will be conducted only with responsive respondents who submitted sealed responses and were judged to be the best offers.

1.4. **TECHNOLOGY ACCESS CLAUSE:** "The Vendor expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Vendor represents and warrants to the Texas Department of Transportation that the technology provided to the Texas Department of Transportation for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

- 1.4.1. providing equivalent access for effective use by both visual and non-visual means;
- 1.4.2. presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
- 1.4.3. being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

- 1.4.4. For purposes of this paragraph, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.