

REQUEST FOR PROPOSALS
RFP No. 452-2-0436

FOR

CONSULTING SERVICES
TO STUDY THE FEASIBILITY AND EFFECTS OF
IMPLEMENTING MAXIMUM FEES FOR
INCIDENT MANAGEMENT TOWING SERVICES

STATE OF TEXAS
DEPARTMENT OF LICENSING AND REGULATION
920 Colorado Street
Austin, Texas 78701

February 8, 2012

Request for Proposals for Consulting Services to Study the Feasibility and Effects of Implementing Maximum Fees for Incident Management Towing Services

February 9, 2012

To: Qualified Firms and Individuals

From: Texas Department of Licensing and Regulation

Re: Request for Proposals for Consulting Services to Study the Feasibility and Effects of Implementing Maximum Fees for Incident Management Towing Services (RFP No. 452-2-0436)

1. Purpose

The purpose of this Request for Proposals (“RFP”), issued by the Texas Department of Licensing and Regulation (TDLR) is to acquire the services of a qualified consulting firm or individual to serve as a consultant (hereinafter referred to as “Consultant” or “Selected Consultant”) to study and develop recommendation on incident management towing services; including but not limited to:

- the fees charged for motor vehicles towing services related to incident management towing,
- the feasibility and effects of the implementation of a fee schedule or establishment of a maximum fee for motor vehicle towing services,
- the terms and timing of payment to incident management towing companies for towing services including payment for the release of semitrailers and other motor vehicles, and
- the identification and evaluation of any other relevant aspect of incident management towing that may arise in the course of conducting this study.

House Bill 1 (H.B. 1), 82nd Texas Legislature, Reg. Session (2011), requires the Study of Nonconsent Towing Fees and Compliance with Local Consumer Regulations (“Services”). The solicitation, evaluation, and selection will require that Selected Consultant begin performance of duties under the Contract or contracts (Contract), if any, on March 20, 2012, or as soon thereafter as practical.

Because the Selected Consultant for this project will provide recommendations, strategies and options the State may consider with regard to towing fees and regulation, it is critical that the Selected Consultant be independent and objective in fact and in appearance. Therefore, vendors are not eligible to perform any of the contracted services if they: (1) are in the business of towing and storage of vehicles or otherwise have a conflict of interest in providing the Services, or (2) derive revenue or income from towing companies or vehicle storage facilities.

Selected Consultant, as an independent contractor, shall provide the Services under Contract with TDLR. TDLR specifically reserves the discretion and authority to award one or more Contract(s) as a result of the issuance of this RFP. TDLR shall not pay any costs or other amounts incurred by any entity in responding to this RFP or prior to the effective date of any Contract resulting from it. TDLR reserves the right, in its sole discretion, to reject any or all submitted proposals.

All proposals will become part of TDLR’s official procurement files and will be available for public inspection. No obligation is made by retention of these proposals. TDLR is not required to award any

Contracts resulting from the issuance of this RFP nor are any guaranteed minimum amounts due the Selected Consultant.

2. Scope of Work, Respondent Qualifications, Payment

The selected Consultant shall be responsible for developing a comprehensive study including the:

- Proposed Work plan;
- Project Approach and Methodology (includes Scope of Work);
- Research;
- Data compilation;
- Writing;
- Recommendations; and
- Cost Proposal.

Specific tasks include performing the following primary tasks including, but not limited to:

- Develop and maintain a detailed project work plan including deliverables, milestones, tasks, resources (TDLR and Consultant), task dependencies and timelines. The work plan must include quantifiable and completed fixed-price deliverables approximately every thirty (30) days that can be measured on a project percent completion basis and will represent support for periodic Consultant payments;
- Establish project infrastructure including project management and progress reporting, project organization, data gathering approach and information access expectations;
- Gather and analyze input related to study subject matter from sources including but not limited to:
 - tow associations;
 - tow companies performing incident management tows;
 - financial information from incident management tow companies;
 - all segments of the trucking industry and trucking associations, including large and small companies;
 - insurance companies providing commercial and personal vehicle coverage;
 - law enforcement agencies in: (1) counties with less than 1 million in population; and (2) law enforcement agencies in counties with more than 1 million in population;
 - automobile associations and auto clubs providing towing services to its members;
 - toll road authorities;
 - consumer interest groups;
 - groups providing mediation service to resolve incident management tow fee disputes;
 - local municipal and county governments regulating incident management tow services and fees;
 - contracts or towing requirements maintained by the Texas Department of Public Safety; and
 - any other groups interested in or affected by the feasibility study and related issues.
- Present study findings using statewide and regional metrics;
- Identify relevant issues related to light, medium, and heavy duty tows;
- Prepare final written report documenting results of Selected Consultant's analysis and information sources broken into three sections related to light, medium, and heavy duty tows; and

- Separately present study findings to TDLR management, Advisory Board, Commission, and staff including detailed explanation of each finding and recommendation.

TDLR provided resources and assistance:

- Proposals and work plans must identify all TDLR resources necessary to perform any of the tasks required by this RFP. If TDLR resources are not required, the proposal must contain a statement indicating that TDLR resources are not required to perform the services solicited by the RFP.

All proposals must include a detailed listing of the Respondent’s experience in providing the requested Services, as required by Exhibit C. All proposals must also include a description of the individuals proposed for the performance of the requested Services, together with their educational and professional qualifications and a representative list of relevant client references.

The proposal must also set forth the expected time frame for accomplishing the Services of the type requested supported by a detailed work plan, proposed fixed-price deliverable-based billing procedures and fully-loaded hourly rates that include all Selected Consultant’s fees and expenses whatsoever, and the anticipated method for obtaining approval of pertinent documents and deliverables and for reporting to TDLR. All respondents must also include detailed resumes of all personnel who will provide the Services under the Contract. All respondents must identify any personnel who will provide services under or have a financial interest in the Contract or who are current or former TDLR employees.

TDLR is prepared to award a contract or contracts for performance of the Services for a term beginning upon final signature of TDLR and extending through December 31, 2012. Any Contract resulting from this RFP may be amended only upon written agreement of the parties.

Selected Consultant must provide ongoing assistance, as provided by the Contract. TDLR does not guarantee any minimum amount of work under the Contract. Actual fees for the Services rendered under the Contract shall be reimbursed only after receipt and approval by TDLR of agreed deliverables and supporting detailed invoices. Payment shall be made in accordance with the Texas Prompt Payment Act. TDLR shall not prepay any amounts. Travel expenses (if any) must be included in the fully-loaded hourly rates for Selected Consultant’s staff and must specifically reconcile to agreed deliverables and detailed documentation and receipts. No additional allowances will be made for travel expenses in the Contract.

3. Schedule of Events

TDLR anticipates that the selection of a firm or Consultant and execution of a Contract will proceed according to the following approximate schedule:

February 8, 2012	Issuance of RFP (after 10:00 a.m. CST)
February 15, 2012	Deadline for Submission of Questions (2:00 p.m. CST)
February 20, 2012	Electronic Posting of Official Response to Questions (or as soon thereafter as practical)
February 28, 2012	Pre Proposal Conference
March 12, 2012	Deadline for Submission of Proposals (2:00 p.m. CST) (Late proposals will not be considered)
March 19, 2012	Contract Execution (or as soon thereafter as practical)

March 20, 2012	Commencement of Work (or as soon thereafter as practical)
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The above dates are subject to change. Notices of changes to items directly impacting the original RFP or proposal process will be posted on the Electronic State Business Daily located at: <http://esbd.cpa.state.tx.us>.

4. Contract and Evaluation Criteria

The Contract shall contain TDLR’s standard contract terms and conditions for these services. All respondents, if any, should review those terms and conditions with legal counsel prior to submitting a proposal. This RFP shall be incorporated into and form part of the Contract and shall control over conflicting language in the respondent’s proposal. Proposals submitted in response to this RFP will be evaluated under the criteria and weights set forth in Exhibit E of this RFP.

5. Proposal Content

Proposals must be organized according to, and include all of the information, described in Exhibit C of this RFP. Proposals without all of this information may be disqualified; however, TDLR reserves the right, in its sole discretion, to waive minor technicalities and errors in the best interests of TDLR and the State.

6. Deadline for Proposals; Issuing Office

For purposes of this RFP, proposals and correspondence must be submitted to the Purchasing Office, attention: Ben Delamater, Senior Purchaser, 920 Colorado Street, Austin, Texas 78701. To be considered, proposals must be received in the Purchasing Department by 2:00 p.m. (CST), March 12, 2012. One (1) original of the Proposal, eight (8) paper copies of the Proposal, and one (1) electronic copy of the Proposal in pdf format on a standard CD must be delivered to the Purchasing Office by the specified deadline. TDLR prefers hand or overnight delivery. Please indicate on the package face that the proposals are for RFP **452-2-0436** due on March 12, 2012. Faxed or e-mailed responses are not acceptable. **TDLR will not consider proposals from respondents that do not submit timely proposals. Respondents are solely responsible for verifying TDLR’s receipt of their proposals by the deadlines specified above. Late proposals will not be considered under any circumstances.**

Upon written request by TDLR prior to contract signature, Selected Consultant (and no other respondents) must provide to TDLR four (4) electronic copies of its complete proposal. Selected Consultant shall deliver to TDLR a total of four (4) CDs with the following material prior to its signature on the Contract, if any, resulting from this RFP:

- Two CDs, each containing a complete copy of the Selected Consultant’s Proposal in pdf format. A complete copy of the Proposal includes all documents contained in the Proposal submitted in response to this RFP including those documents with Selected Consultant’s signature. These two identical CDs should be titled: “Complete copy of [Name of Selected Consultant]’s Proposal. TDLR RFP No. 452-2-0436.”
- Two CDs, each containing a copy of Selected Consultant’s Proposal, which has excised, blacked out, or otherwise redacted information from its Proposal that Selected Consultant considers to be confidential and exempt from public disclosure under the Texas Public Information Act, Chapter 552 of the Texas Government Code (this should be a de minimis portion, if any, of Selected Consultant’s Proposal, such as social security numbers or e-mail addresses). Each CD shall also contain an Appendix for Selected Consultant’s Proposal which provides a cross reference for the location of each piece of material redacted by Selected Consultant and a general description of the redacted information. These two identical CDs

should be titled “For Public Release: Redacted Version of [Name of Selected Consultant]’s Proposal and Exhibits. TDLR’s RFP No. 452-2-0436.”

7. Contract Elements; Sample Contracts; Exceptions

The Contract between TDLR and Selected Consultant shall consist of a written contract for performance of all Services set forth in this RFP, together with any modifications thereto, and the successful proposal, together with any clarifications thereto that are submitted at the request of TDLR. In the event of any conflict or contradiction between or among these documents, the documents shall control in the order of precedence set forth in the **attached Sample Contract, Exhibit D to this RFP**. Specific exceptions to this general rule may be noted in the finally executed contract. The Contract may be amended only in writing and by mutual agreement of the parties.

The Contract will be based on the Sample Contract included as Exhibit D of this RFP and will incorporate the entire RFP. The Sample Contract includes boilerplate provisions and TDLR reserves the right, in its sole discretion, to recommend an award of the Contract without negotiation of these provisions or to modify the terms and conditions in the best interests of TDLR and the State of Texas.

Any exceptions to any RFP requirements, including, but not limited to, the guidelines and the terms and conditions included in the Sample Contract, must be specifically noted and explained by the respondent in the transmittal letter submitted with the proposal as a condition to becoming part of the Contract. Notwithstanding any exceptions or any other provision of any proposal to the contrary, Selected Consultant shall indemnify TDLR and the State, as specified in the Sample Contract. The State of Texas, TDLR, and their respective employees, officers, agents, and representatives, shall not indemnify Selected Consultant for any amount for any purpose, and any provisions to the contrary are void.

8. Disclosures; Conflicts of Interest

By submitting a proposal in response to this RFP, each respondent represents and warrants to TDLR that it and each of its subcontractors have the requisite resources and independence to conduct the Services free from outside direction, control, or influence, and subject only to the accomplishment of TDLR’s objectives. Respondents that cannot make this representation and warranty should not respond to this RFP.

In its proposal, each respondent must disclose any existing or potential conflicts of interest or appearances of impropriety relative to respondent’s (and its proposed subcontractors’) selection as Selected Consultant or its performance of the Contract. Proposals must list in chronological order all past, present and anticipated future contractual, business, financial or personal relationships between respondent and TDLR and between respondent’s proposed subcontractors and TDLR. For each item, respondent must provide a detailed explanation of why respondent does or does not believe such item poses a conflict of interest, potential conflict of interest, or appearance of impropriety issue relative to respondent’s selection as Selected Consultant or its performance of the Contract.

Other examples of potential conflicts of interest include, but are not limited to, an existing contractual, business, financial or personal relationship between respondent, its principals, employees, affiliates or subcontractors, and TDLR or any other entity or person involved in any way in the project. Similarly, any personal or business relationship between respondent, its principals, employees, affiliates or subcontractors, and any employee of TDLR or its suppliers must be disclosed. Any such relationship that might be perceived or represented as a conflict of interest or create the appearance of impropriety must be disclosed. Failure to disclose any such relationships or reveal personal relationships with state employees may be cause for contract termination. TDLR reserves the right, in its sole discretion, to determine if an actual or perceived conflict should result in proposal disqualification.

Each respondent must reveal any past or existing relationship between respondent, its principals, employees, affiliates or subcontractors, and any state agency, entity, state employee, or other person in any way

involved in the state's procurement and/or contracting processes. TDLR reserves the right, in its sole discretion, to determine if such relationship constitutes a conflict of interest. By submitting a proposal in response to this RFP, a respondent affirms that it has not given, 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 or any employee or representative of same, in connection with this procurement. Each respondent must also disclose any proposed personnel who are related to any current or former employees of TDLR or the State of Texas.

9. Written Questions

All questions concerning this RFP must be in writing and submitted in the Issuing Office set forth in Section 7 of this RFP no later than the date and time set forth in the Schedule of Events, Section 4 of this RFP. Questions must be faxed to 512-475-2854 or e-mailed to Ben@license.state.tx.us, Attn.: Ben Delamater, Senior Purchaser. On or before the date set forth in the Schedule of Events, TDLR expects to electronically post answers to written questions received by the deadline as a revision to the notice of the issuance of this RFP. This notice will be posted on the Electronic State Business Daily (<http://esbd.cpa.state.tx.us>).

10. Independent Contractor; Termination for Cause; Termination for Convenience

- 10.1** Selected Consultant shall serve as an independent contractor in providing services under the Contract. Selected Consultant's employees shall not be construed as employees of TDLR or the State of Texas.
- 10.2** TDLR reserves the right, in its sole discretion, to terminate such Contract on thirty (30) days written notice to Consultant. TDLR also reserves the right, in its sole discretion, to terminate the Contract immediately, with written notice to Consultant if TDLR believes that the integrity of the agency is in jeopardy, or it is in the best interests of TDLR or the State to do so.
- 10.3** Upon termination of the Contract for any reason, Consultant shall, in good faith and with reasonable cooperation, aid in the transition to any new arrangement and provider.
- 10.4** The continuation of the Contract beyond the biennium is subject to the availability of funds appropriated by the Texas Legislature.

11. Limitation on Authority; No Other Obligations

Selected Consultant shall have no authority to act for or on behalf of TDLR or the State of Texas except as expressly provided for in the Contract; no other authority, power or use is granted or implied. Selected Consultant may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of TDLR or the State of Texas.

12. No Liability Upon Termination; Right to Modify, Withdraw or Amend RFP

If any contract resulting from this RFP is terminated for any reason, neither TDLR nor the State of Texas shall be liable to Selected Consultant or any other entity or person for any damages, claims, losses, or any other amounts arising from or related to any such termination. TDLR reserves the right, in its sole discretion, to amend or modify any provisions of this RFP, or to withdraw this RFP, at any time prior to the award of a Contract, if it is in the best interests of TDLR or the State to do so. The decision of TDLR, or its designee, shall be administratively final in this regard.

13. Property Rights

For purposes of this RFP and for any contract resulting from this RFP, the term “Work” is defined as all work papers, work products, materials, approaches, designs, specifications, systems, software, programs, source code, documentation methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services to be provided by the Selected Consultant. TDLR and Selected Consultant intend any contract to be a contract for services and each considers the Work and any and all documentation or other products and results of the services to be rendered by Selected Consultant to be a work made for hire. In submitting a proposal in response to this RFP, Selected Consultant acknowledges and agrees that the Work (and all rights therein) belongs to and shall be the sole and exclusive property of TDLR.

If for any reason the Work would not be considered a work-for-hire under applicable law, Selected Consultant does hereby sell, assign, and transfer to TDLR, its successors and assigns, the entire right, title and interest in and to all copyright and other intellectual property rights in and to the Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. Selected Consultant agrees to execute all papers and to perform such other property rights, as TDLR may deem necessary to secure for TDLR or its designee the rights herein assigned.

Selected Consultant and Selected Consultant’s employees will have no rights in or ownership of the Work and any and all documentation or other products and results of the services or any other property of TDLR.

No later than the first calendar day after the termination or expiration of any contract resulting from this RFP or at TDLR’s request, Selected Consultant will deliver to TDLR all completed, or partially completed, Work and any and all documentation or other products and results of the Services under such Contract. Failure to timely deliver such Work or any and all documentation or other products and results of the Services will be considered a material breach of the Contract. Selected Consultant will not make or retain any copies of the Work or any and all documentation or other products and results of the Services provided under such Contract without the prior written consent of TDLR.

14. Incorporation of Exhibits

Exhibits A, B, C, D, E, F, and G are attached hereto and incorporated for all purposes, as part of this RFP.

EXHIBIT A

Texas Department of Licensing and Regulation General Terms and Conditions

1. GENERAL REQUIREMENTS:

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

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

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

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

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

1.6 Solicitation prices are requested to be firm for 30 days from solicitation opening date. "Discount from list" bids are not acceptable unless requested. Cash discounts are not considered in determining an award. Cash discounts offered will be taken if earned.

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

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

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

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

1.12 The telephone number for FAX submission of bids is (512) 475-2854. This is the only number that will be used for the receipt of bids/offers. The State shall not be responsible for the failure of electronic equipment or operator error. Late, illegible, incomplete, or otherwise non-responsive bids will not be considered.

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

2. SPECIFICATIONS:

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

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

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

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

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

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

2.7 (Reserved)

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

4. DELIVERY:

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

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

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

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

5. INSPECTION AND TESTS: All goods will be subject to inspection and test by the State. Tests may be performed on samples submitted with the solicitation or on samples taken from regular shipments. Awards may be denied if products tested fail to meet or exceed all conditions and requirements of the specification. Goods delivered and rejected in whole or in part may, at the State's option, be returned to the vendor or held for disposition at vendor's expense. Latent defects may result in revocation of acceptance.

6. AWARD OF CONTRACT: A response to the solicitation is an offer to contract based upon the terms, conditions and specifications contained herein. Bids/offers do not become contracts until they are accepted through a purchase order. The contract shall be governed, construed and interpreted under the laws of the State of Texas. The factors listed in Texas Government Code, Title 10, Subtitle D, § 2155.074 & 2156.007 ("best value") shall also be considered in making an award.

7. PAYMENT: Vendor shall submit two copies of an itemized invoice showing order number on all copies. The State will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods or services and an uncontested invoice.

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

9. ASSIGNMENTS: Vendor/contractor hereby assigns to TDLR any and all claims for overcharges associated with this contract arising under the antitrust laws of the United States 15 U.S.C.A § 1, et seq., and the antitrust laws of the State of Texas, Tex. Bus. & Comm. Code Ann. §15.01. et seq.

10. AFFIRMATIONS

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

10.2 The vendor has not given, offered to give, nor intends to give at anytime hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted bid or offer.

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

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

10.5 Pursuant to Texas Family Code, Title 5, Subtitle D, § 231.006(d), regarding child support, the vendor/contractor certifies that the individual or business entity named in this bid or offer is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

10.5.1 Under Section 2155.006, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

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

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

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

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

10.9.1 Name of Former Executive: _____

10.9.2 Name of State Agency: _____

10.9.3 Date of Separation from State Agency: _____

10.9.4 Position with Vendor/Contractor: _____

10.9.5 Date of Employment with Vendor/Contractor: _____

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

10.11 By signing this bid/ offer vendor/ contractor certifies that if a Texas address is shown as the address of the vendor/contractor, vendor/contractor qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 1, Part 5, Chapter 111, Subchapter A, §111.2(10).

10.12 The contractor understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation of the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. The State Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the Contractor relating to this Contract. Contractor will ensure that this clause concerning the authority to audit state funds and the requirement to cooperate is included in any subcontract it awards. Texas Government Code, Title 10, Subtitle D, § 2262.003.

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

12. **NOTE TO BIDDER/ VENDOR:** The State of Texas Purchase Order, and its General Terms and Conditions, shall constitute a contract between TDLR and the selected/ awarded vendor. Any terms and conditions attached to a solicitation response will not be considered unless specifically referred to in the response. TDLR may elect to execute the referenced terms and conditions provided by the vendor (vendor contract) which shall supplement the purchase order. However, TDLR will not execute a vendor contract with unacceptable, vague, or conflicting terms and may result in disqualifying the bid or offer. In the event of a conflict between the PO and any executed vendor contract, the TDLR purchase order shall prevail.
13. **DISPUTE:** Pursuant to Chapter 2260 of the Texas Government Code, any dispute arising under a contract for goods and services, for which this chapter applies, must be resolved under the provisions of this chapter.
14. **TEXAS PUBLIC INFORMATION ACT AND CONFIDENTIAL INFORMATION:** Information, documents and other material connected with this solicitation or any resulting contract may be subject to public disclosure under the Texas Public Information Act unless vendor/contractor can show the response or specific parts of it are exempt from public disclosure. TDLR will not assert legal arguments on behalf of vendors/contractors. If the vendor/contractor believes that parts of a response to this solicitation are confidential, he must state in conspicuous letters the term "CONFIDENTIAL" on that part it believes to be confidential.
15. **CANCELLATION:** Unless otherwise specified in the solicitation, TDLR may cancel the purchase order without penalty, either in whole or in part for any reason.
16. **STATE LAWS:** The resulting contract/PO shall be governed by and in accordance with the laws of the State of Texas. Venue for any action arising hereunder shall be in Travis County, Texas.
17. **CONSTRUCTION:** The invalidity or unenforceability of any provision of the contract shall not affect the validity or enforceability of any other provision. Neither party may assign the contract without the prior written consent of the other party. Any amendment or modification will be effective only if in writing and signed by TDLR.
18. **DISCRETIONARY EXTENSION:** Contracts for services, whose original period were for one year or longer, may be extended for up to ninety (90) days beyond the normal expiration date of the contract, under substantially the same terms and conditions, provided the vendor/ contractor and the TDLR mutually agree to extension and pricing during the extension period.
- 19 **FORCE MAJEURE:** TDLR may grant relief if performance on the contract is prevented or hampered by events beyond the control of the vendor/ contractor because of fire, flood, weather, strikes, civil disturbances, and others of like nature.
- 20: **INDEPENDENT CONTRACTOR:** Contractor or Contractor's employees, representatives or agents and any subcontractors shall serve as an independent contractor in providing any services under this Contract. Contractor and Contractor's employees, representatives, agents, and subcontractors shall not be employees of TDLR or the State of Texas. Should Contractor subcontract any of the services required in this Contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), TDLR is in no manner liable to any subcontractor(s) of the Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with the Contract.
- 21: **IMMIGRATION:** Contractor agrees to comply with the Immigration Reform and Control Act of 1986, and Immigration Act of 1990 regarding employment verification and retention of verification forms of any individuals who will perform any labor or services under this contract.
22. In compliance with the provisions of Texas Government Code Section 2155.074, Section 2155.075, Section 2156.007, Section 2157.003 and Section 2157.125, 34 TAC §20.36, information obtained from the CPA's Vendor Performance Tracking System (<http://www2.cpa.state.tx.us/stpurch/ventoc.html>) may be used in evaluating responses to solicitations for goods and services to determine the best value for the state.
23. TDLR reserves the right NOT to consider a response from a bidder whose same, or similar, goods or services to TDLR have been documented as unsatisfactory in providing the same goods or service.

**Request for Proposals
RFP No. 452-2-0436**

24. In compliance with FEDERAL INCOME TAX WITHOLDING regulations, after December 31, 2011, TDLR will deduct three percent of all payments over \$10,000 and forward those funds to the Internal Revenue Service to be credited to the tax accounts of the vendor/ contractor.

25. Vendor hereby certifies that the network hardware or software, as applicable, procured or leased under this contract, has undergone independent certification testing for known and relevant vulnerabilities in accordance with Section 2059.060, Texas Government Code." The entire Rule may be found at:

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=1&pt=10&ch=217&rl=12](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=1&pt=10&ch=217&rl=12)

EXHIBIT B

Execution of Proposal

1. By signature hereon, Vendor represents and warrants that the provisions in this Execution of Proposal apply to Vendor and all of Vendor's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this RFP or any contract resulting from it.
2. By signature hereon, Vendor represents and warrants its intent to furnish the requested services at the prices quoted in its Proposal.
3. By signature hereon, Vendor represents and warrants that its prices include all costs of Vendor in providing the requested services that meet all specifications of this RFP, and that its prices will remain firm for acceptance for a minimum of ninety (90) days from deadline for submission of Proposal.
4. By signature hereon, Vendor represents and warrants that each employee, including 'replacement employees', will possess the qualifications, education, training, experience and certifications necessary to perform the services in the manner required by this RFP.
5. By signature hereon, Vendor represents and warrants that it has no actual or potential conflicts of interest in providing the requested services to TDLR under the RFP and any resulting contract, if any, and that Vendor's provision of the requested services under the RFP and any resulting contract, if any, would not reasonably create an appearance of impropriety.
6. By signature hereon, Vendor represents and warrants that it has not given, 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 Proposal.
7. By signature hereon, Vendor represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Texas Tax Code. In addition, if Vendor is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the following certification applies. Vendor represents and warrants that it holds a permit issued by the Office of the Comptroller of Texas to collect or remit all state and local sales and use taxes that become due and owing as a result of the individual's or entity's business in Texas or represents and warrants that it does not sell tangible personal property or services that are subject to the state and local sales and use tax. Under Section 2155.004, Texas Government Code, Vendor certifies that the individual or business entity named in this Proposal or any contract resulting from this RFP is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.
8. By signature hereon, Vendor hereby represents and warrants that, pursuant to 15 U.S.C. Sec. 1, et seq. and Tex. Bus. & Comm. Code Sec. 15.01, et seq., neither Vendor nor the firm, corporation, partnership, or institution represented by Vendor, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the Proposal made to any competitor or any other person engaged in such line of business.
9. By signature hereon, Vendor represents and warrants that all statements and information prepared and submitted in response to this RFP are current, complete and accurate.
10. By signature hereon, Vendor represents and warrants that the individual signing this document and the documents made part of this RFP and Proposal is authorized to sign such documents on behalf of

the company and to bind the company under any contract which may result from the submission of this Proposal.

11. By signature hereon, Vendor represents and warrants that if a Texas address is shown as the address of the Vendor, Vendor qualifies as a Texas Bidder as defined by 34 Texas Administrative Code §20.32(68).
12. By signature hereon, under Section 231.006, Texas Family Code, regarding child support, Vendor certifies that the individual or business named in the Proposal 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 Vendor subject to Section 231.006, Texas Family Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the Proposal. This information must be provided prior to award. Enter the Name and Social Security Number for each person below:

Name: SSN:

Name: SSN:

Name: SSN:

FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Disclosure of your Social Security Number (SSN) is required under Section 231.006(c) and Section 231.302(c)(2), Texas Family Code. The SSN will be used to identify persons that may owe child support. The SSN will be kept confidential to the fullest extent allowed under Section 231.302(e), Texas Family Code.

13. By signature hereon, Vendor represents and warrants that no relationship, whether by relative, business associate, capital funding contract or by any other such kinship exist between Vendor and an employee of any TDLR component, and Vendor has not been an employee of any TDLR component within the immediate twelve (12) months prior to Vendor's Proposal. By signature hereon, Vendor certifies that it is in compliance with Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency. All such disclosures will be subject to administrative review and approval prior to TDLR entering into any contract with Vendor. Vendor acknowledges that any contract resulting from this RFP may be terminated at any time, and payments withheld, if this information is false.
14. By signature hereon, pursuant to Section 2155.004(a), Texas Government Code Vendor represents and warrants that neither it nor any person or entity which will participate financially in any contract resulting from this RFP has received compensation for participation in the preparation of specifications for this RFP.
16. By signature hereon, Vendor represents and warrants its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
17. By signature hereon, Vendor represents and warrants its compliance with the requirements of the Americans with Disabilities Act (ADA).
18. By signature hereon, in accordance with Section 2155.4441, Texas Government Code, Vendor 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.

19. By signature hereon, Vendor represents and warrants that TDLR's payments to Vendor and Vendor's receipt of appropriated or other funds under any contract resulting from this RFP are not prohibited by Section 556.005 or Section 556.008, Texas Government Code.
20. By signature hereon, Vendor represents and warrants that the offering 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 Vendor is in compliance with the State of Texas statutes and rules relating to procurement and that Vendor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.
21. Under Section 2155.006(b), Texas Government Code, a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under Section 2155.006, Texas Government Code, Vendor certifies that the individual or business entity named in the Proposal is not ineligible to receive the specified contract and acknowledges that any contract resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.
22. By signature hereon and by checking or initialing **either** Subsection (a) **or** Subsection (b), as applicable, Vendor represents and warrants the following:
 - (a) _____ Vendor represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Vendor or any of the individuals or entities included in Section 1 of this document that would or could impair Vendor's performance under any contract resulting from this RFP, relate to the solicited or similar goods or services, or otherwise be relevant to the agency's consideration of Vendor's Proposal. Vendor represents and warrants that it is not aware of any such court or governmental agency actions, proceedings or investigations, etc. against Vendor or any of these individuals or entities within the five (5) calendar years immediately preceding the submission of Vendor's Proposal in response to this RFP. In addition, Vendor represents and warrants that it shall notify TDLR in writing within five (5) business days of any changes to the representations or warranties in this Subsection (a) and understands that failure to so timely update TDLR shall constitute breach of contract and may result in immediate termination of the contract.
 - (b) _____ Vendor is unable to make the representation and warranty in Subsection (a) above and instead represents and warrants that it has included as a detailed attachment in its Proposal, which expressly references this Subsection (b), a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc., and specifically addresses whether any of such past, pending or threatened actions, proceedings or investigations, etc., would or could (1) impair Vendor's performance under any contract resulting from this RFP; (2) relate to the solicited or similar goods or services; or (3) be otherwise relevant to the agency's consideration of Vendor's Proposal. In addition, Vendor represents and warrants that it shall notify TDLR in writing within five (5) business days of any changes to the representations or warranties in this Subsection (b) or attachments in response to Subsection (b) and understands that failure to so

timely update TDLR shall constitute breach of contract and may result in immediate termination of the contract.

Vendor understands that a Proposal returned without the appropriate checked or initialed representation and warranty and the detailed attachment required in Subsection (b), when applicable, may be automatically disqualified.

25. By signature hereon, Vendor represents and warrants that it has read and agrees to all terms and conditions of this RFP, unless Vendor specifically takes an exception and offers an alternative provision in Vendor's Proposal as provided in Exhibit C, Section 2 of this RFP.

Authorized signatory on behalf of Vendor must complete and sign the following:

_____ Authorized Signature	_____ Date Signed
_____ Printed Name and Title of Authorized Signature	_____ Phone Number
_____ Company Name	_____ Fax Number
_____ Federal Employer Identification Number	_____ E-Mail Address
_____ Physical Street Address	_____ City, State, Zip Code
_____ Mailing Address, if different	_____ City, State, Zip Code

IMPORTANT NOTICE: IF YOUR RESPONSE TO THIS SOLICITATION DOES NOT CONTAIN ONE ORIGINAL OF THIS FULLY COMPLETED AND SIGNED EXHIBIT, YOUR RESPONSE MAY BE AUTOMATICALLY DISQUALIFIED FOR FAILURE TO COMPLY WITH THE ADVERTISED SPECIFICATIONS, EVEN IF ALL OTHER MINIMUM QUALIFICATIONS, LETTERS AND EXHIBITS ARE FULLY COMPLETED, SIGNED AND RETURNED. IN THE PROPOSAL RESPONSE MARKED "ORIGINAL", VENDORS MUST ENSURE BOTH FULL COMPLETION AND ORIGINAL INK SIGNATURE BY AN AUTHORIZED REPRESENTATIVE OF VENDOR.

EXHIBIT C

Proposal Content

Vendors must include all of the following in their offers in response to this RFP by the deadline set forth in the Schedule of Events. Failure to provide complete responses to any or all of these questions may result in the proposal being disqualified. Conciseness and clarity of content are required. **Vague and general offers will be considered non-responsive, and will result in disqualification.** Proposal pages must be numbered and contain an organized, paginated table of contents corresponding to the sections and pages of the proposal. All paper responses shall be indexed and submitted in individual three-ring notebooks.

1. General Organization

Proposals must be organized as follows:

- A) Table of Contents
- B) Transmittal Letter
- C) Executive Summary
- D) Vendor Information
- E) Vendor Qualifications & Experience
- F) Proposed Workplan
- G) Methodology for each study component
- H) Cost Proposal (Exhibit F)
- I) Proposed Personnel & Organizational Information
- J) Conflict of Interest Statement
- K) Execution of Proposal (Exhibit B)
- L) Criminal Conviction Certification (Exhibit G)

2. Transmittal Letter

Vendors must submit with their offers a transmittal letter that identifies the entity submitting the proposal, and includes a commitment by that entity to provide the software and services required by TDLR. The transmittal letter must state that the proposal is valid for **90 days from the deadline for delivery of offers to TDLR. Any proposal containing a term of less than 90 days for acceptance from this deadline may be rejected as non-responsive. The transmittal letter must also state the acceptance of contract terms; exceptions, if any, must be specifically stated.** The transmittal letter must be signed by a person legally authorized to bind Vendor to the representations in the response. The transmittal letter should include a statement of why Vendor believes that it is the most qualified Vendor to provide the RFP services.

3. Executive Summary

Vendor must provide an executive summary of its proposal and represent that its proposal addresses all of the requirements of this RFP. The executive summary must not exceed three (3) pages, and must represent a full and concise summary of the contents of the proposal. The executive summary must not include any information concerning the cost of the proposal. Vendor must identify any services or functionalities that are provided beyond those specifically requested. If Vendor is

providing services that do not meet the specific requirements of this RFP, but in the opinion of Vendor are equivalent or superior to those specifically requested, any such differences must be noted in the executive summary. However, failure to provide the services specifically required may result in disqualification of the proposal.

4. Vendor Information

Vendor must provide the following identifying information:

- name and address of Vendor firm submitting the proposal;
- all principals;
- type of business entity (i.e., corporation, partnership, broker/dealer);
- state of incorporation or organization and principal place of business;
- name and location of major offices, and other facilities that relate to Vendor's performance under this RFP;
- name, address, business and home telephone number, and fax number of Vendor's principal contact person regarding the Contract;
- the Vendor's Federal Employer Identification Number and Texas Tax Identification/Registration Number, if any;
- full name and address for each member, partner, associate, and employee of the Vendor (and any subcontractors) who will perform services on this project;
- a statement regarding the financial stability of Vendor, including the ability of Vendor to perform the requisite services and additional services included in its response;
- detail any firm ownership changes which have occurred in the last five (5) years, including changes pending;
- all affiliated companies and subsidiaries, or any joint ventures or other affiliations; and
- an organizational chart showing who is responsible for the function.

5. Vendor Qualifications and Experience

All Proposals must include a detailed listing of the Vendor's experience in providing the requested services. Vendor must provide a profile that:

- describes the general nature of previous similar work performed by Vendor, particularly work in the last five (5) years;
- describes the size and scope of all operations, including number of Vendor's employees and years in business;
- describes Vendor's prior contracting experience with TDLR and similar agencies;
- describes Vendor's capability to provide the requested services; and
- any other information Vendor believes is pertinent to this Proposal.

Vendor must briefly state why it believes its proposed software and Services best meet TDLR's objectives and RFP requirements.

6. Proposed Workplan

The proposal must include a detailed project workplan, including deliverables, milestones, tasks, Vendor resources (also TDLR, if any), estimated hours per resource, task dependencies and timelines. The workplan must include quantifiable and completed fixed-price deliverables that can be measured on a project percent completion basis. **The workplan must reflect a project start date of no earlier than March 20, 2012 and a projected completion date.** The proposed workplan must demonstrate Vendor's extensive experience in and understanding of the nature of the product and services required.

7. Vendor and Proposed Subcontractor(s) Project Personnel and Organizational Information

The proposal must identify all personnel who are to be part of the Selected Vendor's team and detail their experience together with their educational and professional qualifications and a representative list of relevant client references. TDLR reserves the right, in its sole discretion, to approve each member of the team and to request substitutions.

Vendor must include in the proposal detailed resumes of all proposed personnel who will provide Services under the Contract. Vendor must also provide for each person:

- a full name (including full middle name);
- a five-year employment history;
- a specific description of relevant experience and skills that person has with the scope of work (limit to one page);
- a specific indication of what role the individual will have in providing the Services to TDLR and what percent of those services will be performed on location at the offices of TDLR; and
- any additional helpful information to indicate the individual's ability to aid Vendor in successfully performing the required Services.

Resumes must present the required personnel information in sufficient detail to provide TDLR with a convincing indication that the personnel involved can successfully provide the Services and that the personnel meet the experience requirements set forth in this RFP. The personnel, as identified in the proposal, are considered essential to the Services. No substitutions of personnel following Contract award will be made without the prior written consent of TDLR. All requested substitutes must be submitted to TDLR, together with their resumes, for approval, in accordance with this RFP and any Contract resulting from it.

Each of Selected Vendor's personnel is subject to removal from the Contract by TDLR and replacement personnel must have prior approval by TDLR. TDLR reserves the right, in its sole discretion, to approve each member of the team and to request

substitutions. Vendor must provide an organizational chart covering the services offered in its proposal, indicating lines of authority, names, titles, and functions of individuals assigned. Selected Vendor's personnel must be clearly reflected in the detailed workplan submitted as part of the proposal. Vendor must assign and identify in the proposal a contact person for the services and provide the person's home telephone number, office telephone number, and fax number.

8. Proposal Details

Vendor must clearly and completely explain the details of the proposal. Vendor must list each deliverable and the proposed methodology used to produce the deliverable.

9. Cost Proposal

Vendor must provide, in the minimum format attached as Exhibit F to this RFP, an estimate of the total costs proposed for the Contract. All costs must be clearly allocated among the Vendor's proposed fixed-price deliverables. These costs are subject to negotiation in the best interests of TDLR and may be negotiated prior to contract signature. Vendor must include in its cost proposal all costs and expenses associated with its attendance at, and participation in, all meetings as requested by TDLR. Proposed costs must be detailed by the personnel proposed to provide the services under the Contract. No additional allowances will be made for travel or other expenses in the Contract. Additionally, should legislative testimony or other support be required this will be understood to be included in total costs on a "firm-fixed price" basis.

10. Conflicts of Interest

By submitting a proposal in response to this RFP, Vendor represents and warrants to TDLR that it and its personnel have the requisite professional expertise, resources and independence to perform the Services free from outside direction, control, or influence, and subject only to the accomplishment of Contract objectives. Vendors who cannot make this representation and warranty should not respond to this RFP.

In its proposal, Vendor must disclose any existing or potential conflicts of interest or appearances of impropriety relative to Vendor's selection as Selected Vendor. Proposals must list in chronological order all past, present and anticipated future contractual, business, financial, adversarial or personal relationships between Vendor, its principals, clients and employees and TDLR. For each item, Vendor must provide a detailed explanation of why Vendor does or does not believe such item poses a conflict of interest, potential conflict of interest, or appearance of impropriety issue relative to Vendor's selection as Selected Vendor.

Each Vendor must reveal any past or existing relationship between Vendor, its principals, employees, affiliates or subcontractors, and any state agency, entity, state employee, or other person in any way involved in the state's procurement and/or contracting processes. TDLR reserves the right, in its sole discretion, to determine if such relationship constitutes a conflict of interest. Each Vendor must also disclose any proposed personnel who are related to any current or former employees of TDLR or the State of Texas.

**Request for Proposals
RFP No. 452-2-0436**

By submitting a proposal in response to this RFP, Vendor affirms that it has not given, 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 or any employee or representative of same in connection with this procurement.

EXHIBIT D
Sample Contract

**AGREEMENT FOR CONSULTING SERVICES TO STUDY THE
FEASIBILITY AND EFFECTS OF IMPLEMENTING MAXIMUM FEES
FOR INCIDENT MANAGEMENT TOWING SERVICES**

BETWEEN

TEXAS DEPARTMENT OF LICENSING & REGULATION

AND

[Selected Vendor]

Contract No. 452-2-0436

This consulting services contract to study the feasibility and effects of implementing maximum fees for incident management towing services ("Contract") is entered into by the Texas Department of Licensing and Regulation ("TDLR"), an agency of the State of Texas, and [Selected Vendor] ("Vendor"), located at [address information].

I. Recitals

Whereas, on February 8, 2012, TDLR issued a Request for Proposals ("RFP") from qualified, independent firms to provide Consulting Services to Study the Feasibility and Effects of Implementing Maximum Fees for Incident Management Towing Services to TDLR as set forth in the RFP;

Whereas, Vendor submitted a proposal dated March __, 2012 in response to TDLR's RFP ("Proposal");

Whereas, Vendor was selected as the Selected Vendor.

The parties hereby agree as follows:

II. Services and Standards of Performance

Vendor shall provide to TDLR all of the Services and deliverables described in and in the manner required by all of the following documents:

This ___ (__) page document;

Exhibit A: TDLR's RFP;

Exhibit B: Authorized Personnel and Compensation;

Exhibit C: Agreed Workplan;

Exhibit D: Vendor's Offer; and

Exhibit E: HUB Subcontract Plan.

All of the above are attached to and incorporated as part of this Contract for all purposes. All terms and conditions of TDLR's RFP shall apply.

In the case of conflicts between this ___ (__) page document and any of the above exhibits, the following shall control in this order of priority:

- This ___ (__) page document;
- Exhibit A: TDLR's RFP;
- Exhibit B: Authorized Personnel and Compensation;
- Exhibit C: Agreed Workplan;
- Exhibit D: Vendor's Offer; and
- Exhibit E: HUB Subcontract Plan.

Vendor represents and warrants that it has the requisite qualifications, experience, personnel and other resources to provide all of the required consulting services to TDLR in the manner required by this Contract.

III. Personnel

Vendor shall act as an independent contractor in providing services under this Contract. Vendor's employees shall not be construed as employees of TDLR in providing services under this Contract. Vendor shall assign to this Contract only those persons as employees who are approved by TDLR's project manager specified in the RFP. Vendor shall assign only qualified personnel to this Contract. As of the date of TDLR's execution of this Contract, TDLR's project manager has authorized the personnel listed in Exhibit B of this Contract to provide services under this Contract. Vendor shall not be reimbursed for any changes in staff or employees or their classifications, as approved by TDLR's project manager, unless previously approved by TDLR. Vendor represents and warrants that none of its employees, including, but not limited to, those authorized to provide services under this Contract, are present or former employees of TDLR. Vendor shall provide to TDLR prior written notice of any proposed change in personnel involved in providing services under this Contract. The actual change in personnel shall occur only after Vendor has received TDLR's prior written approval. The foregoing conditions relating to changes in personnel shall apply regardless of the reason for such proposed change in personnel.

IV. Evaluation and Written Acceptance

Prior to authorizing any invoices for payment under Paragraph VI of this Contract, TDLR shall evaluate Vendor's performance against the Standards of Performance and with all other requirements of this Contract. Prior to authorizing any such payments, TDLR shall evaluate and specifically reserves the right to provide written notice of TDLR's acceptance of Vendor's services under the procedures described in this Contract.

V. Payments

Vendor shall submit all statements for services as set out in the Agreed Workplan. In submitting these statements, Vendor acknowledges and by execution of this Contract

certifies to the following: that invoices have been carefully reviewed for detailed description of the Services performed; that the Services have been performed in compliance with the Contract; that the amount of the invoice and all previous invoices together does not exceed the contractual cap of the Contract, Vendor's Cost Offer, or negotiated fees; and that all appropriate and required supporting documentation is attached. TDLR may, in its sole discretion, require additional documentation to support payment and Vendor shall respond to any such requests within five (5) days of receipt. All payments hereunder shall be subject to the Texas Prompt Payment Act.

In any event, total payments by TDLR to Vendor under this Contract shall not exceed [To be added before Contract signature] and no/100 Dollars (**\$XXXXXXXX**) **inclusive of all Vendor's fees and expenses whatsoever. No other amounts shall be paid.**

VI. Term and Termination

This Contract shall become effective on the date signed by TDLR, after having first been signed by Vendor, and shall terminate the later of December 31, 2012 or the date the final deliverable is accepted by TDLR, including any testimony before any governing body unless otherwise sooner terminated as provided in this Contract. Further, TDLR reserves the right, in its sole judgment and discretion, to renew this Contract for one (1) additional one (1) year term, upon reasonable written notice to Vendor. Notwithstanding the termination or expiration of this Contract, the provisions of this Contract regarding confidentiality, indemnification, dispute resolution, right-to-audit, and records shall survive the termination or expiration dates of this Contract. Further, Vendor's obligation to provide legislative testimony and support under this Contract to TDLR shall survive the termination or expiration of this Contract.

In addition to the Contract termination provisions included in the RFP, TDLR may, in its sole discretion, terminate this Contract for cause or convenience upon thirty (30) days written notice to Vendor, with no further liability to any party whatsoever to TDLR upon such effective date of termination. Such notice may be provided by facsimile or certified mail; return receipt requested and is effective upon Vendor's receipt.

VII. Confidentiality and Open Records

Vendor shall comply with the provisions of the Nondisclosure Agreement, Exhibit A of the RFP. Vendor's personnel must also sign the Nondisclosure Agreement prior to beginning any work under this Contract. Notwithstanding any provisions of this Contract to the contrary, Vendor understands that TDLR is bound by the provisions of the Texas Public Information Act (formerly the Texas Open Records Act) and Attorney General Opinions issued under that statute. Within three (3) days of receipt, Vendor will refer to TDLR any third party requests, received directly by Vendor, for information to which Vendor has access as a result of or in the course of performance under this Contract.

VIII. Insurance

Vendor represents and warrants that it will, within five (5) business days of executing this Contract, provide TDLR with current certificates of insurance or other acceptable proof of the following insurance coverages for Vendor and Vendor's employees:

Standard Workers Compensation Insurance covering all personnel who will provide services under this Contract;

Commercial General Liability Insurance \$250,000 minimum each occurrence limit; \$500,000 minimum aggregate limit; and

Vendor represents and warrants that all of the above coverages are with companies licensed in the State of Texas, with “A” rating from Best, and authorized to provide the corresponding coverages. Vendor also represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least thirty (30) days prior written notice to TDLR. Vendor represents and warrants that it shall maintain all of the above insurance coverages during the term of this Contract.

IX. Indemnification

VENDOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES, AND TDLR, ITS OFFICERS, AND EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS’ FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONSULTANT OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF VENDOR IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT WITH VENDOR RESULTING FROM THIS RFP. VENDOR SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY TDLR.

THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE VENDOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TDLR FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF TDLR OR ITS EMPLOYEES.

X. Dispute Resolution

Chapter 2260 of the Texas Government Code (“Chapter 2260”) prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. As required by Chapter 2260, TDLR has adopted rules under Chapter 2260, codified at 34 Texas Administrative Code 55, and may adopt revisions to these throughout the term of this Contract, including any extensions. Vendor shall comply with such rules and amendments, if any.

The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by TDLR and Vendor to attempt to resolve any claim for breach of Contract made by Vendor under this Contract.

XI. Representations, Warranties, and General Provisions

11.1 Family Code. Under Section 231.006 of the Texas Family Code (relating to child support), Vendor represents and warrants that Vendor is not ineligible to receive the specified payment and acknowledges that this Contract may be terminated and payment withheld if this representation and warranty is inaccurate.

11.2 Eligibility. Under Section 2155.004 of the Texas Government Code, Vendor represents and warrants that Vendor is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this representation and warranty is inaccurate.

11.3 Liability for Taxes. Vendor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, state, or local income, sales or excise taxes of Vendor or its employees. TDLR shall not be liable for any such taxes resulting from this Contract.

11.4 HUBs. Vendor represents and warrants that if the total contract price exceeds \$100,000 it shall comply with the Historically Underutilized Business requirements of this Contract.

11.5 Amendments. Except as provided in Section 11.12 and 11.19 of this Contract, this Contract may be amended only upon written agreement between TDLR and Vendor; however, this Contract may not be amended so as to make it conflict with the laws of the State of Texas.

11.6 Applicable Law; Venue. This Contract shall be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit brought for any breach of this Contract is fixed in any court of competent jurisdiction of Travis County, Texas.

11.7 Time Limits. Time is of the essence in the performance of this Contract. Vendor shall strictly comply with all of the deadlines, requirements, and Standards of Performance for this Contract.

11.8 Assignments. Vendor may not assign this Contract, in whole or in part, and may not assign any right or duty required under it.

11.9 Partially Completed Work. No later than the first calendar day after the termination of this Contract, or at TDLR's request, Vendor shall deliver to TDLR all completed, or partially completed, work and any and all documentation or other products and results of these services. Failure to timely deliver such work or any and all documentation or other products and results of the services shall be considered a material breach of this Contract. Vendor shall not make or retain any copies of the work or any and all documentation or other products and results of the services without the prior written consent of TDLR.

11.10 Federal, State, and Local Requirements. Vendor shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Vendor is responsible for both Federal and State Unemployment insurance

coverage and standard Worker's Compensation Insurance coverage. Vendor shall comply with all Federal and State tax laws and withholding requirements. TDLR shall not be liable to Vendor or its employees for any Unemployment or Workers' Compensation coverage, or Federal or State withholding requirements. Vendor shall indemnify TDLR and pay to TDLR all costs, penalties, or losses resulting from Vendor's omission or breach of this Section.

11.11 Severability Clause. In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

11.12 Applicable Law and Conforming Amendments. Vendor must comply with all laws, regulations, requirements and guidelines applicable to a contractor providing services to the State of Texas and to a Vendor providing professional financial or similar services to TDLR, as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. TDLR reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for TDLR's or Vendor's compliance with all applicable state and federal laws, regulations, requirements and guidelines.

11.13 No Waiver. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to TDLR as an agency of the State of Texas or otherwise available to TDLR. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities available to TDLR under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TDLR does not waive any privileges, rights, defenses, or immunities available to TDLR as an agency of the State of Texas, or otherwise available to TDLR, by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract. **The modification of any privileges, rights, defenses, remedies, or immunities available to TDLR must be in writing, must reference this section, and must be signed by TDLR to be effective, and such modification of any privileges, rights, defenses, remedies, or immunities available to TDLR shall not constitute waiver of any subsequent privileges, rights, defenses, remedies, or immunities under this contract or under applicable law.**

11.14 No Liability upon Termination. If this Contract is terminated for any reason, TDLR and the State of Texas shall not be liable to Vendor for any damages, claims, losses, or any other amounts arising from or related to any such termination.

11.15 Independent Contractor. Vendor shall serve as an independent contractor in providing services under this Contract. Vendor's employees are not and shall not be construed as employees of TDLR.

11.16 Limitation on Authority; No Other Obligations. Vendor shall have no authority to act for or on behalf of TDLR or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of TDLR or the State of Texas.

11.17 No Other Benefits. Vendor shall have no exclusive rights or benefits other than those set forth herein.

11.18 Patent, Trademark, Copyright and Other Infringement Claims. Vendor shall indemnify, save and hold harmless TDLR and the State of Texas from and against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from TDLR's or Vendor's use of or acquisition of any services or other services provided to TDLR by Vendor or otherwise to which TDLR has access as a result of Vendor's performance under this Contract, provided that TDLR shall notify Vendor of any such claim within a reasonable time of TDLR's receiving notice of any such claim. Vendor shall pay all reasonable costs of TDLR's counsel. If Vendor is notified of any claim subject to this Section, Vendor shall notify TDLR of such claim within five (5) working days of such notice. If TDLR determines that a conflict exists between its interests and those of Vendor or if TDLR is required by applicable law to select separate counsel, TDLR shall be permitted to select separate counsel and the reasonable costs of such TDLR's counsel shall be paid by Vendor. No settlement of any such claim shall be made by Vendor without TDLR's prior written approval. Vendor shall reimburse TDLR and the State of Texas for any claims, damages, losses, costs, expenses, judgments or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. Vendor represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and permits.

11.19 Supporting Documents; Right to Audit; Independent Audits. Vendor shall maintain and retain supporting fiscal documents adequate to ensure that claims for Contract funds are in accordance with applicable TDLR and State of Texas requirements. Vendor shall maintain all such documents and other records relating to this Contract and the state's property for a period of four (4) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Vendor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all information related to the State's property, such as work papers, reports, books, data, files, software, records, and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by TDLR, the State of Texas or their authorized representatives. Vendor shall cooperate with auditors and other authorized TDLR and State of Texas representatives and shall provide them with prompt access to all of such State's property as requested by TDLR or the State of Texas.

This Contract may be amended unilaterally by TDLR to comply with any rules and procedures of the State Auditor in the implementation and enforcement of Section 2262.003. Under procedures provided by the state auditor on September 5, 2003, in addition to the above, (1) Vendor understands that the acceptance of funds under this Contract acts as acceptance of the authority of the state auditor to conduct an audit or investigation in connection with those funds; (2) Vendor further agrees to cooperate fully with the state auditor in the conduct of the audit or investigation, including providing all records requested; and (3) Vendor shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors, if any, through Vendor and the requirement to cooperate is included in any subcontract it awards; and (4) the state auditor shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the Vendor relating to this Contract.

11.20 DTPA; Unfair Business Practices. Vendor represents and warrants that it has not been the subject of a Deceptive Trade Practices Act or any unfair business practice administrative hearing or court suit and that Vendor has not been found to be guilty of such practices in such proceedings. Vendor certifies that it has no officers who have served as officers of other entities who have been the subject of a Deceptive Trade Practices Act or any unfair business administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

11.21 Immigration. Vendor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under this Contract.

11.22 Equal Opportunity. Vendor represents and warrants that it shall comply with the Civil Rights Act in giving equal opportunity without regard to race, color, creed, sex or national origin.

11.23 Antitrust. Vendor represents and warrants that neither Vendor nor any firm, corporation, partnership, or institution represented by Vendor, nor anyone acting for such firm, corporation or institution has violated the antitrust laws of Texas codified in 15.01, et. seq., Business and Commerce Code, or the federal antitrust laws, nor communicated directly or indirectly the proposal to any competitor or any other person engaged in such line of business.

11.24 No Conflicts. Vendor represents and warrants that Vendor has no actual or potential conflicts of interest in providing services to TDLR under this Contract and that Vendor's provision of services under this Contract would not reasonably create an appearance of impropriety.

11.25 Financial Interests; Gifts. Vendor represents and warrants that neither Vendor nor any person or entity that will participate financially in this Contract has received compensation from TDLR for participation in preparation of specifications for this Contract. Vendor represents and warrants that it has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to any public servant or employee in connection with this Contract.

11.26 ADA. Vendor represents and warrants that it shall comply with the requirements of the Americans with Disabilities Act (ADA).

11.27 Buy Texas. Vendor represents and warrants that it shall purchase products and materials produced in Texas when they are available at a comparable price and in a comparable period of time.

11.28 Felony Criminal Convictions. Vendor represents and warrants that Vendor has not and Vendor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Vendor has fully advised TDLR as to the facts and circumstances surrounding the conviction.

11.29 Notices. Any written notices required under this Contract will be by either hand delivery to Vendor's office address specified on Page 1 of this Contract or to TDLR's

General Counsel, 920 Colorado Street, Austin, TX 78701, or by U.S. Mail, certified, return receipt requested, addressed to the appropriate foregoing address. Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this Section by written notification to the other party.

11.30 False Statements; Breach of Representations. By signature to this Contract, Vendor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Vendor signed its proposal with a false statement or signs this Contract with a false statement or it is subsequently determined that Vendor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Vendor shall be in default under this Contract and TDLR may terminate or void this Contract for cause and pursue other remedies available to TDLR under this Contract and applicable law.

11.31 Force Majeure. Except as otherwise provided, neither Vendor nor TDLR shall be liable to the other for any delay in, or failure of performance, of any requirement contained in this Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. Force majeure is defined as those causes generally recognized under Texas law as constituting impossible conditions. Each party must inform the other in writing with proof of receipt within three (3) business days of the existence of such force majeure or otherwise waive this right as a defense.

11.32 Debts or Delinquencies to State. Vendor acknowledges and agrees that, to the extent Vendor owes any debt or delinquent taxes to the State of Texas, any payments or other amounts Vendor is otherwise owed under or related to the Contract may be applied by TDLR toward any debt or delinquent taxes the Vendor owes the State of Texas until the debt or delinquent taxes are paid in full. These provisions are effective at any time Vendor owes any such debt or delinquency. Vendor shall comply with all applicable laws and regulations regarding satisfaction of debts and delinquencies to the State of Texas.

11.33 Prohibited Use of Appropriated or other Funds under Control of State Agency; Lobbying. Vendor represents and warrants that TDLR's payments to Vendor and Vendor's receipt of appropriated or other funds under any of this or any resulting agreement are not prohibited by §556.005 or §556.008, Tex. Gov't. Code.

XII. Signatories

The undersigned signatories represent and warrant that they have full authority to enter into this Contract on behalf of the respective parties.

XIII. Entire Agreement

This Contract contains the entire agreement between Vendor and TDLR relating to the rights granted and the obligations assumed in it. Any oral representations or modifications concerning this Contract shall be of no force or effect unless contained in a subsequent writing, signed by both parties.

XIV. Funding

TDLR's performance of its obligations under this Contract is contingent upon and subject to the availability of and actual receipt by TDLR of sufficient and adequate funds from the

sources contemplated by this Contract. This Contract is subject to immediate cancellation or termination, without penalty to TDLR or the State of Texas, subject to the availability and receipt of these funds. In addition, TDLR is a state agency whose authority and appropriations are subject to the actions of the Texas Legislature. If TDLR becomes subject to a legislative change, revocation of statutory authority or lack of funds that would render the services to be provided under this Contract impossible or unnecessary, TDLR may terminate this Agreement without penalty to TDLR or the State of Texas. In the event of a termination or cancellation under this Section, TDLR shall not be required to give notice and shall not be liable for any damages or losses caused or associated with such termination or cancellation.

**Texas Department of
Licensing and Regulation**

[Selected Vendor]

By: _____

William H. Kuntz, Jr.
Executive Director

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

**EXHIBIT D
SAMPLE CONTRACT
Exhibit 1**

**Contract Exhibit 1
TDLR's RFP**

TDLR's RFP, issued February 8, 2012, TDLR's official responses to questions dated [insert date] (collectively "RFP"), are incorporated by reference into this Contract as Contract Exhibit 1.

**EXHIBIT D
SAMPLE CONTRACT**

**Contract Exhibit 2
Authorized Personnel and Compensation**

Vendor's authorized personnel are those individuals specified in the "Proposed Personnel" portion of its Offer; however, Vendor may not use in its performance of this Contract any individuals whose services are prohibited by the following standard exceptions arising under State of Texas procurement law:

- (1) Vendor understands that it may not use personnel in its performance of this Contract any individual previously employed by TDLR within the past twelve months. Section 2252.901, Texas Government Code
- (2) Vendor understands that it may not use personnel in its performance of this Contract any individual previously employed by TDLR within the two years prior to its proposal without making the disclosures required by law. Section 2254.033, Texas Government Code

Compensation:

Vendor's sole compensation under this Contract shall be determined as described in Section V of this Contract.

**EXHIBIT D
SAMPLE CONTRACT**

**Contract Exhibit 3
Final Workplan**

Upon final written approval of TDLR's Project Manager, the final agreed Project Workplan shall be incorporated by reference into this Contract as Contract Exhibit 3. Vendor shall submit monthly progress reports as well as changes to the final work plan which affect the contract timeline or deliverable to the Project Manager, Financial Services, and the Office of the General Counsel.

Initial for identification:

Lee Parham
Project Manager

[The Successful Vendor]

Date: _____

Date: _____

**EXHIBIT D
SAMPLE CONTRACT**

**Contract Exhibit 4
Vendor's Proposal**

Vendor's Offer dated _____ is incorporated by reference into this Contract as Contract Exhibit 4.

**EXHIBIT E
EVALUATION CRITERIA**

Only those proposals that meet minimum qualifications will be evaluated. Proposals that meet the minimum qualifications will be evaluated based on the weights and percentages of the following criteria.

**I. Vendor's Qualifications & Experience:
Weight: 15%**

- Vendor firm and/or individual qualifications and experience, as relevant to the services required in this RFP, including individual Vendor qualifications and its proposed subcontractor(s);
- Vendor has the mandatory minimum of five (5) years past experience in providing, to private and governmental entities, similar software and services;
- Vendor firm's or individual's quality of performance on previous engagements, including any TDLR projects; and
- Vendor demonstrates that the assigned employees or individuals and the proposed team personnel includes individuals and specific personnel with all the specific skills and experience required to successfully complete all workplan deliverables and the services requested by the RFP.

**II. Proposal Methodology
Weight: 30%**

- For each deliverable, Vendor must clearly and completely explain its approach to determining and providing the feasibility and effects of implementing maximum fees for incident management towing services in Section 2 of this RFP – Scope.

**III. Workplan
Weight: 35%**

- Vendor proposes a workplan and timeline that is consistent with TDLR's goals, deadlines, and requirements for consulting services; proposed workplan and timeline adheres to TDLR's, timelines and constraints.
- Vendor's organizational chart and workplan demonstrates appropriate and sufficient assignments of tasks to individuals and personnel with relevant qualifications & experience and that a clear line of authority exists and responsibility is assigned to ensure quality and timely results.
- Workplan includes all required components including deliverables, milestones, tasks, resources (TDLR and Vendor), task dependencies and timelines. The workplan must include quantifiable and completed fixed-price deliverables approximately every thirty (30) days that can be measured on a project percent completion basis and will represent support for periodic Vendor payments.

IV. Cost

Weight: 20%

- Vendor’s Cost Proposal must provide a clear identification of all proposed rates, fees, and costs. All fees and costs must be presented within fully-loaded hourly rates for each of the Vendor’s proposed employees. All costs must be allocated to specific fixed-price deliverables as identified in the workplan submitted in Exhibit C and listed on the cost proposal chart required in Exhibit G. (See Exhibit F, attached, for example of Cost Proposal Chart Format). **No additional amounts will be paid.**

All Vendor Cost Proposals will be evaluated utilizing the following formula:

Lowest Cost Proposal = Awarded Maximum Points (i.e. 30 points)

Lowest Cost Proposal/Next Lowest Cost Proposal x 30 = Points Awarded to Next Lowest Cost

**TOTAL POINTS POSSIBLE FOR ALL CRITERIA: 100
Points**

Cost Example:

Assume four Proposals received:

	<u>Rank</u>		<u>Points</u>
Proposal 1 \$300	#1		30
Proposal 2 \$700	#2	$\frac{300}{700} \times 30 =$	13
Proposal 3 \$900	#3	$\frac{300}{900} \times 30 =$	10
Proposal 4 \$1,500	#4	$\frac{300}{1,500} \times 30 =$	6

Evaluation Process

Evaluation Committee

- TDLR Staff will review all proposals for compliance and thoroughness. The proposals found to be in compliance will then be distributed to the members of an Evaluation Committee established by TDLR. All proposals meeting the minimum criteria will be evaluated according to the criteria and weights set forth in the evaluation form as shown in Exhibit F to this RFP.
- Upon the approval of a Selected Vendor, TDLR will proceed with contract negotiations and attempt to finalize a Contract with Selected Vendor. TDLR anticipates that these negotiations will involve few issues and be expedited; however, if a Contract cannot be successfully negotiated within a reasonable period of time, contract negotiations will be terminated, and negotiations with the next highest-ranking Vendor may commence. This process may continue until a contract is signed

or the RFP is withdrawn. However, TDLR reserves the right, in its sole discretion, and at any time upon failure of negotiations, to reissue or withdraw the RFP rather than continue with negotiations.

- As soon as possible after the execution of the Contract with Selected Vendor, all other Vendors will be provided with formal notification via facsimile. TDLR will make every reasonable effort to fax this notification within one (1) business day of the date the Contract is fully executed.

VI. Clarification of Agency's Intent and Project Manager

After execution of the Contract, Selected Vendor shall direct all questions regarding the Contract to TDLR's Project Manager:

Lee Parham, Project Manager
Compliance Division
Post Office Box 12157
Austin, Texas 78711
(512) 463-3536 (phone)
Lee@license.state.tx.us (e-mail)

TDLR will use reasonable best efforts to provide reasonable and timely resolutions to questions of policy or procedure as they may affect Selected Vendor's efforts. Key TDLR staff will be available to Selected Vendor on a reasonable basis but may not be available on state holidays or weekends.

VII. Protest Procedures

Any vendor aggrieved by the contract award may formally protest. Protest proceedings shall be in accordance with *16 TAC 55.40*.

VIII. HUB Subcontracting

TDLR has determined that there are few, if any, sub-contracting opportunities for this type of work. A HUB Subcontracting plan is not required.

IX. Tie-Breaking Preferences

Respondents may claim preferences. This is optional, and, will otherwise have no effect on the evaluation except to decide between tie scores.

By signing this RFP, respondent certifies that if a Texas address is shown as the address of the respondent, respondent qualifies as a Texas Resident Respondent as defined in Rule 1 TAC

Check below if preference claimed under Rule 1 TAC 113.8

- Supplies, materials or equipment: produced in TX/offered by TX vendors
- Agricultural products grown in TX
- Agricultural products offered by TX vendors*
- USA produced supplies, materials or equipment

- Products of persons with mental or physical disabilities
- Products made of recycled, remanufactured, or environmentally sensitive materials
- Energy efficient products
- Rubberized asphalt paving material
- Recycled motor oil and lubricants
- Products produced at facilities located on formerly contaminated property
- Products and services from economically depressed or blighted areas

EXHIBIT F
Minimum Cost Proposal Format

COST PROPOSAL

Using this form, each Vendor must state its proposed costs under the Contract. All fees, out-of-pocket expenses, travel expenses, and other amounts must be included in the fully-loaded hourly costs. All proposed fully-loaded hourly costs must be listed and broken out by personnel and by fixed-price deliverable. See Cost Proposal Chart Format on next page of this RFP. Final fees and costs for Selected Vendor shall be subject to negotiation and approval by TDLR, assuming award of a Contract to Vendor.

Total Cost Subject to Evaluation \$ _____

=====

Name of Vendor: _____

Signature: _____

Printed Name and Title: _____

Date: _____

IMPORTANT NOTICE: IF YOUR RESPONSE TO THIS SOLICITATION DOES NOT CONTAIN ONE ORIGINAL OF THIS FULLY COMPLETED AND SIGNED EXHIBIT, YOUR RESPONSE MAY BE AUTOMATICALLY DISQUALIFIED FOR FAILURE TO COMPLY WITH THE ADVERTISED SPECIFICATIONS, EVEN IF ALL OTHER MINIMUM QUALIFICATIONS, LETTERS AND EXHIBITS ARE FULLY COMPLETED, SIGNED AND RETURNED. IN THE PROPOSAL RESPONSE MARKED "ORIGINAL", VENDORS MUST ENSURE BOTH FULL COMPLETION AND ORIGINAL INK SIGNATURE BY AN AUTHORIZED REPRESENTATIVE OF VENDOR.

EXHIBIT F--Continued

Cost Proposal Chart Format

Deliverable (1) (Date Completed)	Personnel Name	Fully-Loaded Hourly Rate	No. of Hours	Total Personnel Cost (Rate x Hrs)	Percent Complete (2)
Deliverable 1 (xx/xx/20__)					
	Resource 1	\$	XX	\$	
	Resource 2	\$	XX	\$	
	Resource 3	\$	XX	\$	
Deliverable 1 Total			XX	\$	%
Deliverable 2 (xx/xx/20__)					
	Resource 1	\$	XX	\$	
	Resource 2	\$	XX	\$	
	Resource 3	\$	XX	\$	
Deliverable 2 Total			XX	\$	%
Deliverable 3 (xx/xx/20__)					
	Resource 1	\$	XX	\$	
	Resource 2	\$	XX	\$	
	Resource 3	\$	XX	\$	
Deliverable 3 Total			XX	\$	%
TOTAL ALL DELIVERABLES			XX	\$	100%

- (1) Deliverables, number of deliverables and completion dates must agree with the Vendor's submitted workplan.
- (2) Vendor must include each fixed-price deliverable's percent of the total project with the total of all deliverables equaling 100% of the Vendor's total cost subject to evaluation.
- (3) Vendor must add additional deliverable to the format to match the number of deliverables identified in the proposal.

=====

Name of Vendor: _____

Signature: _____

Printed Name and Title: _____

Date: _____

EXHIBIT G

CRIMINAL CONVICTION CERTIFICATION

This Criminal Conviction Certification Form is incorporated as part of Vendor's proposal and any resulting Agreement for all purposes.

Vendor represents and warrants that it shall comply with all of the following requirements:

Vendor must take appropriate steps and perform due diligence -- at a minimum, as described in this Exhibit G -- to become informed as to each assigned employee's felony criminal convictions, if any, and must promptly inform TDLR's Contract Administrator of any such felony criminal convictions for any assigned employee. At a minimum, Vendor must take these appropriate steps and perform due diligence at each of these three (3) intervals: (1) within the seven (7) business days immediately prior to submission of Vendor's proposal; (2) within the seven (7) business days prior to the proposed effective date of any renewal or extension of this Agreement; and (3) within the seven (7) business days prior to requesting approval for assignment of a new employee (such as a substitute employee). Vendor must inform TDLR in writing within three (3) business days of Vendor's receipt of any information on any felony convictions of assigned employees obtained from any of these steps at any of these intervals.

At each of the above three (3) intervals, Vendor must take minimum steps to review and perform due diligence of every assigned employee's criminal history. Vendor's minimum steps shall include, at a minimum, (1) Vendor's compliance with Vendor's published employee policies and procedures for background and criminal checks of Vendor's employees and (2) Vendor's comprehensive search of the public information portion of a online criminal conviction database, such as the DPS criminal conviction database at:

https://records.txdps.state.tx.us/DPS_WEB/Portal/index.aspx. If such DPS criminal conviction database is not appropriate for a particular assigned employee, Vendor must submit with its proposal, its renewal or extension, or with its request for assignment, as appropriate, sufficient documentation that an equivalent or more extensive search was conducted and that the alternative is appropriate for that assigned employee.

Upon request by TDLR, Vendor must provide to TDLR, no later than five (5) business days after receiving such request, the written results of these minimum steps for all assigned employees.

For purposes of this Exhibit G, "assigned employees" includes, without limitation, all employees or personnel, for example, who will or may (1) be assigned as lead or key employees or personnel under this Agreement; (2) interact on site at TDLR's premises with any TDLR personnel, assets, records or resources in connection with this Agreement; or (3) otherwise access or interact with any assets, records or resources of TDLR in connection with this Agreement.

By signing this form and initialing the appropriate space, Vendor represents and warrants that it took the above minimum steps and performed due diligence as required by this Exhibit G to become informed as to each assigned employee's felony convictions. If one or more proposed individuals have felony convictions, Vendor must describe the nature and timing of each conviction in a separate letter as part of Vendor's proposal (and in its renewal or extension, request for assignment, etc., as appropriate).

If TDLR becomes aware that the completed certification form is false, or if Vendor fails to promptly advise TDLR of a felony criminal conviction occurring after the certification becomes effective, Vendor

shall be in breach of this Agreement and TDLR shall have the option to terminate the Agreement without further obligation to Vendor and may pursue all other remedies and rights available to TDLR under this Agreement, at law, or in equity.

Vendor must have an authorized company representative initial and sign this document in the blanks provided below, and must return the initialed and signed form along with the other required paperwork with its proposal (and as appropriate, its renewal or extension, or with its request for assignment).

Vendor shall indicate, by initialing in the space provided to the left of applicable Services 1-3 below, its intent to comply with these provisions. Vendor **SHALL, IN EVERY CASE, INITIAL ITEM 2** and initial **EITHER** Item 1 **OR** 3 as applicable. Additionally, Vendor shall sign, date, and provide the title of the person executing this Criminal Conviction Certification on its behalf in the space provided below at the end of this document.

1. _____ Vendor represents and warrants that it performed all minimum steps and due diligence described in this Exhibit G and that all currently assigned employees and all employees proposed for assignment have no felony criminal convictions. (If Vendor cannot make this unqualified representation and warranty, Vendor must initial blank #3 below and provide the detailed letter as an attachment to this Exhibit G, detailing and explaining any such convictions.)

2. _____ Vendor represents and warrants that it shall notify TDLR’s Contract Administrator in writing if any future proposed employee (for example, a substitute or other newly assigned employee) has any felony criminal conviction or if any information for any previously assigned employee has changed, no later than three (3) business days prior to such proposed employee’s proposed assignment starting date or no later than three (3) business days after Vendor’s receipt of such changed information, whichever is applicable.

3. _____ Vendor represents and warrants that it performed all minimum steps and due diligence described in this Exhibit G and that all currently assigned employees and all employees proposed for assignment have no felony criminal convictions except those noted on the attached separate letter. Vendor represents and warrants that it has attached a separate letter with this Exhibit G and that the attached detailed information describes the nature and timing of each felony conviction for each employee listed.

Signature of Authorized Representative

Date Signed

Printed Name of Authorized Representative

Title of Authorized Representative

IMPORTANT NOTICE: IF YOUR RESPONSE TO THIS SOLICITATION DOES NOT CONTAIN ONE ORIGINAL OF THIS FULLY COMPLETED, INITIALED AND SIGNED EXHIBIT, YOUR RESPONSE MAY BE AUTOMATICALLY DISQUALIFIED FOR FAILURE TO COMPLY WITH THE ADVERTISED SPECIFICATIONS, EVEN IF ALL OTHER MINIMUM QUALIFICATIONS, LETTERS AND EXHIBITS ARE FULLY COMPLETED, INITIALED, SIGNED AND RETURNED. IN THE PROPOSAL RESPONSE MARKED “ORIGINAL”, VENDORS MUST ENSURE BOTH FULL COMPLETION AND ORIGINAL INK INITIALS AND SIGNATURE BY AN AUTHORIZED REPRESENTATIVE OF CONSULTANT.