

Standard Purchase Order Terms and Conditions - Services

1. **Award of Contract/Acceptance Of Purchase Order:** A response to a TPWD solicitation and/or Contractor's fulfillment of the Purchase order constitutes Contractor's acceptance of the PO and its terms and conditions. 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, Sections 2155.074, 2156.007, and 2157.003 shall also be considered in making an award when specified. Any legal actions must be filed in Travis County, Texas.
2. **New and Unused:** Unless otherwise specified, items ordered shall be new and unused and of current production. Items shall be free from all material defects and shall conform to the requirements of its intended purpose.
3. **Substitutions:** No substitutions or cancellations are permitted without written approval of TPWD.
4. **Freight:** Quote FOB destination, freight prepaid and allowed unless otherwise stated within the specifications.
5. **Delivery:**
 - A. Show number of days required to place material in receiving agency's designated location under normal conditions. Delivery days mean calendar days, unless otherwise specified. Failure to state delivery time obligates Contractor to deliver in 14 calendar days. Unrealistic delivery promises may cause solicitation to be disregarded.
 - B. If delay is foreseen, Contractor shall give written notice to the TPWD. Contractor must keep the TPWD advised at all times of status of order.
 - C. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the TPWD to purchase supplies elsewhere and charge full increase, if any, in cost and handling to defaulting Contractor.
 - D. **Substitutions:** No substitutions permitted without written approval of TPWD.
 - E. Delivery shall be made during normal working hours only, unless prior approval has been obtained from ordering agency. Normal working hours are 8:00 AM until 5:00 PM Monday through Friday except State and National holidays.
6. **Testing and Inspection:**
 - A. TPWD may test and inspect goods and services purchased under the Contract to ensure compliance with the specifications of this solicitation and the Contract. TPWD may also test and inspect goods and services before they are purchased under the Contract. Authorized TPWD personnel shall have access to the Contractor's place of business for the purpose of inspecting the goods. To the extent practical, TPWD inspections will not disrupt the Contractor's daily operations. Tests shall be performed on samples submitted with the Bid/Proposal or on samples taken from regular shipments. All costs of testing and inspection shall be borne by the Contractor. In the event the goods tested fail to meet or exceed all conditions and requirements of the solicitation and Contract, the goods will be rejected in whole or in part, at the State's option, and returned to the Contractor or held for disposition at the Contractor's expense. Latent defects may result in cancellation of the Contract at no expense to the state.
 - B. If material fails to meet specifications, the Contractor will be notified by fax / mail or e-mail. The Contractor will have ten (10) working days after receipt of the notification to remove the rejected material from state property. Material will be removed at the Contractor's expense. Material not removed in the allotted time period will be disposed by TPWD. The Contractor will be charged for all disposal expenses conducted by TPWD.
7. **Changes:** TPWD may at any time, by a written order, make changes within the general scope of this contract, in the definition of services to be performed, and the time (i.e., hours of the day, days of the week, etc.) and place of performance thereof. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the services under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or time of performance or both and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change, provided, however, that TPWD, if it decides that the facts justify such action, may receive and act upon such claims asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Dispute Resolution."
8. **Insurance and Other Security:**
 - A. Contractor represents and warrants that it will, within ten (10) business days of executing this agreement, provide TPWD with current certificates of insurance or other proof acceptable to TPWD of the required insurance coverage.
 - B. The Contractor represents and warrants that it will obtain and maintain for the term of the Contract all insurance coverage required under this solicitation. Contractor's failure to obtain or maintain the specified coverage during the term of the agreement will be considered a breach of the Contract.
 - C. The Contractor represents and warrants that all of the above coverage will be obtained from companies that are licensed in the state of Texas, have an "A" rating from A.M. Best Company, and are authorized to provide the coverage. The Contractor shall furnish proof of insurance upon request of TPWD.
9. **Termination:** This contract shall terminate upon full performance of all requirements contained in this contract, unless otherwise extended or renewed as provided in accordance with the contract terms and conditions.

- A. **Termination for Convenience:** TPWD reserves the right to terminate the contract at any time, in whole or in part, without cost or penalty, by providing 30 calendar days' advance written notice if TPWD determines that such termination is in the best interest of the state. In the event of such a termination, the Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TPWD will be liable for payments limited only to the portion of work authorized by TPWD in writing and completed prior to the effective date of cancellation, provided that TPWD shall not be liable for any work performed that is not acceptable to TPWD and/or does not meet contract requirements. All work products produced by the Contractor and paid for by TPWD shall become the property of TPWD and shall be tendered upon request. Termination under this paragraph shall not relieve the Contractor of any obligation or liability that has occurred prior to cancellation.
- B. **Termination for Cause/Default:** If the Contractor fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any of the terms or conditions of the Contract, TPWD may, upon written notice of default to the Contractor, terminate all or any part of the Contract after providing an opportunity to cure the default.
- i. Contractor will be responsible for paying damages to TPWD including but not limited to re-procurement costs, and any consequential damages to the State of Texas or TPWD resulting from Contractor's non-performance. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work is significantly changed.
- C. The rights and remedies of TPWD provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.
- D. TPWD may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless TPWD notifies the Contractor in writing prior to the exercise of such remedy. The Contractor shall remain liable for all covenants and indemnities under the Contract. The Contractor shall be liable for all costs and expenses, including court costs, incurred by TPWD with respect to the enforcement of any of the remedies listed herein.
10. **Amendments:** Except as provided in *Section III, Paragraph 8* of this Contract, this Contract may be amended only upon written agreement between TPWD and Contractor; however, any amendment of this Contract that conflicts with the laws of the State of Texas shall be void. The Contractor shall not be entitled to payment for any additional services, work, or products that are not authorized by a properly executed Contract amendment.
11. **Change Management:** The Contractor agrees that the key personnel assigned to the Contract shall remain available for the entirety of the project throughout the term of the Contract as long as that individual is employed by the Contractor or unless TPWD agrees to a change in the key personnel.
12. **Invoicing:**
- A. Contractors must submit an invoice to the location listed in the AGENCY TO INVOICE box of the Purchase Order. The invoice must include the following information:
 - i. the Contractor name as shown on the purchase order and correct "Remit to:" address;
 - ii. a valid Texas Identification Number (T.I.N.) issued by the Comptroller of Public Accounts;
 - iii. the purchase order number and requisition number, if applicable;
 - iv. a description of each item for the goods or services listed on the purchase order in sufficient detail to identify the order that relates to the invoice. Item numbers shown must correspond with the item numbers on the purchase order.
 - v. quantity delivered, unit and total price of each item must be shown and all prices extended on the invoice. All extensions on the invoice must be totaled and a grand total shown;
 - vi. discounts, if applicable, must be stated, extended and deducted to arrive at a Net Total for the invoice;
 - vii. shipment date of merchandise or completion date of services;
 - viii. other relevant information supporting and explaining the payment requested or identify a successor organization to an original Contractor, if necessary.
13. **Payment:**
- A. Payment normally will be made to the Contractor within 30 days after receipt of a properly prepared invoice or the receipt and acceptance of goods ordered or services rendered, whichever is later. State agencies are required by state law to pay properly submitted invoices within 30 days or the Contractor will receive a late payment fee established by law.
 - B. Payments for merchandise purchased with state appropriated funds may be made by warrants or electronic payments drawn upon the State Treasury by the Comptroller of Public Accounts. Warrants are forwarded to TPWD for distribution to the Contractor. Electronic payments are preferred. To setup electronic payments please contact Accounts Payable at (512) 389-4833.
 - C. Partial payments are an exception but may be made with prior written approval.
 - D. If a purchase order extends beyond a state biennial appropriation period, payments for consumable merchandise delivered or services completed after the end of the state biennium are contingent upon the continued availability of appropriations to make such payments.

- E. According to Texas Government Code, Section 403.903 any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.
14. **Taxes:** TPWD is exempt from the State Sales tax and Federal Excise tax. Do not include tax in your invoice. Excise Tax Exemption Certifications are available upon request.
 15. **Independent Contractor:** The Contract shall not render the Contractor an employee, officer, or agent of TPWD for any purpose. The Contractor is and shall remain an independent contractor in relationship to TPWD. TPWD shall not be responsible for withholding taxes from payments made under the Contract. The Contractor shall have no claim against TPWD for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.
 16. **Cybersecurity Training:** If Contractor has access to any state computer system or database, Contractor shall complete cybersecurity training and verify completion of the training program to TPWD pursuant to and in accordance with Gov't Code § 2054.5192.
 17. **Material Safety Data Sheets:** A Contractor must provide, at no cost, at least one copy of any applicable Manufacturer's Material Safety Data Sheet(s) (MSDS) with each shipment during the term of the purchase order. If OSHA or Federal or State laws have additional requirements, those requirements must be met in addition to the MSDS requirement.
 18. **OSHA:** All items must meet all applicable OSHA standards and regulations and all electrical items must bear the appropriate listing from UL, FMRC or NEMA.
 19. **Cancellation of Purchase Orders:** Purchase orders are canceled in writing. Orders may be canceled without the consent of the Contractor for failure to meet contractual obligations. If cancellation is requested by TPWD for some other reason, through no fault of the Contractor, the Contractor's permission to cancel is required except for funding and budgeting reasons.
 20. **Advertisement:** Contractors are prohibited from using award information, sales values/volumes and/or State of Texas customers in sales brochures or other promotions, including press releases, unless prior written approval is obtained from TPWD.
 21. **Indemnification Clause:** **The 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 Contractor or any agent, employee, subcontractor, or supplier of Contractor in the execution or performance of this contract.**
 22. **Damage to Government Property:** Contractor shall be liable for all damage to government-owned, leased, or occupied property and equipment caused by the Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the contract. Contractor shall notify the TPWD in writing of any such damage within one (1) calendar day. Contractor is responsible for the removal of all debris resulting from work performed under the contract.
 23. **Dispute Resolution.** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code will be used by TPWD and the Contractor to attempt to resolve all disputes arising under this contract.
 24. **Right to Audit:** Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, TPWD or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including providing access to any information the state auditor considers relevant to the investigation or audit. Contractor shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards.
 25. **Records Retention:** Contractor shall maintain and retain all records relating to the performance of the contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records will be maintained and retained by Contractor for a period of seven (7) years after the contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later.
 26. **Conflict of Interest:** Contractor represent and warrants that the provision of goods and services under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
 27. **Vendor Performance:** All state agencies must report unsatisfactory Contractor performance in accordance with Texas Government Code 2155.089. Contractor performance may be used as a factor in future awards.
 28. **Force Majeure:** Neither Contractor nor TPWD shall be liable to the other for any delaying, or failure of performance, of any requirement in the contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, fires, explosions, hurricanes, floods, epidemics or pandemics, national or regional emergency, failures of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. The burden of proof for the need of such relief shall rest upon the Contractor. To obtain release based on force majeure, the Contractor shall file a written request with TPWD reasonably promptly from the time the force majeure event occurs.
 29. **Assignment of Purchase Order or Contract:** Contractor shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from the TPWD. Any attempted assignment in violation of this Section is void and without effect.

30. **Funding:** Contract is subject to termination or cancellation, without penalty to TPWD, either in whole or in part, subject to the availability of state funds. TPWD is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If TPWD becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render TPWD's or Contractor's delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, TPWD will not be liable to Contractor for any damages, which are caused or associated with such termination, or cancellation and TPWD will not be required to give prior notice.
31. **Public Disclosure / News Releases:** No public disclosures or news releases pertaining to this solicitation shall be made without prior written approval of TPWD.
32. **Drug Free Workplace:** Contractor represents and warrants that it shall comply with the applicable provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq) and maintain a drug-free work environment.
33. **Equal Employment Opportunity:** Contractor represents and warrants that it will comply with all applicable duly enacted state and federal laws governing equal employment opportunities.
34. **Human Trafficking Prohibition:** Under Section 2155.0061 of the Texas Government Code, the Contractor certifies that the individual or business entity named in this Response 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.
35. **Immigration:** Contractor represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act and all subsequent immigration laws and amendments.
36. **Buy Texas** In accordance with §2155.4441, Gov't Code, the Contractor 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 Texas.
37. **Prevailing Order:** In the case of conflicts between the contract documents, the following shall control in this order of priority:
 - A. Signed Contract/Purchase Order (or Notice of Award)
 - B. Attachments to the Contract/Purchase Order (or Notice of Award)
 - C. Contractor's Response to the Solicitation and Contractor's Best and Final Offer, if applicable
38. **Accessibility Standards:** Under Texas Government Code, Chapter 2054, Subchapter M, TPWD must procure products that comply with the Accessibility Standards defined in the Texas Administrative Code, 1 TAC 206 and 1 TAC 213, when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. Accordingly, Contractor must provide electronic and information resources and associated product documentation and technical support that complies with these Accessibility Standards (in the form of a Voluntary Product Accessibility Template, or "VPAT") in its response to this RFO. Contractors who do not already have accessibility documentation should complete the form located here: <http://www.itic.org/policy/accessibility/>. Contractors that claim their products are exempt from accessibility requirements must present that position to TPWD as a question during the question and answer period of the solicitation.
39. **Certification Regarding Debarment, Suspension, Ineligibility, And Voluntary Exclusion:** Contractor certifies that the responding 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 the Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
40. **System For Award Management (SAM):** Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration. Prior to awarding state funds for goods and/or services rendered, the State of Texas will conduct a required search of your firm using SAM. This is a Federal government-maintained database that records and tracks organizations, either known to or suspected of contributing to terrorist organizations. No state funds may be paid to an individual or firm whose name appears on this list. TPWD reserves the right, in its sole discretion, to deny and/or exclude any individual or firm from an award whose name appears on this list.
41. **E-Verify Program:** Contractor certifies that utilizes and will continue to utilize the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:
 1. All persons employed to perform duties within Texas during the term of the contract; and
 2. all persons, including subcontractors, assigned by Contractor to perform work pursuant to the contract within the United States of America.
42. **Federal Disaster Relief Fraud:** Sections 2155.006 and 2261.053 of the Gov't Code, prohibit state agencies from accepting a response or awarding a contract that includes proposed financial participation by a person who, in the past five years has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Gov't Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Gov't Code, Contractor certifies that the individual or business entity named in this response 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.