



TEXAS STATE SOIL AND WATER CONSERVATION BOARD

REQUEST FOR PROPOSALS FOR CONSERVATION PLAN DEVELOPMENT

RFP No. 592-22-010

SECTION I GENERAL

- 1.1 SCOPE.** The State of Texas, by and through the Texas State Soil and Water Conservation Board (TSSWCB) seeks sealed proposals to establish Antitrust Affirmation
- 1.2** contracts for conservation plan development in accordance with the specifications contained in this Request for Proposal (RFP). In particular, the services requested herein and to be provided under any contracts awarded as a result of this RFP are for activities associated with the development of conservation plans meeting the requirements for under the United States Department of Agriculture – Natural Resources Conservation Service’s (NRCS) Farm Bill.

The purpose of this agreement is to expand conservation planning and implementation to Texas private landowners utilizing Farm Bill resources as applicable and pertinent to encourage the wise and productive use of natural resources through voluntary private lands conservation. These activities will be coordinated with NRCS Field Offices to address priority resource concerns across Texas. Partner staff will be utilized to provide targeted conservation assistance to private landowners and field office assistance as needed to accomplish priority work and/or projects. NRCS will direct or assign our partner staff producers who are considering entering a conservation program or project, to accomplish upfront planning, and feasibility determination. Partner staff will process Farm Bill program applications, evaluations and necessary follow up as needed.

In a joint effort the TSSWCB and NRCS have entered into an initiative to address natural resource issues and to assist landowners with technical and program assistance. Both agencies have entered into a contribution agreement to accelerate the development of conservation plans and adoption of conservation practices in Texas.

In accordance with Chapter 201, Section 201.006, Agriculture Code, conservation plans, including all information collected by TSSWCB or a conservation district is not subject to Chapter 552, Government Code, and may not be disclosed if the information is collected in response to a specific request from a landowner or the landowner's agent or tenant for technical assistance relating to a water quality management plan or other conservation plan if the assistance is on private land that is part of a conservation plan or water quality management plan developed cooperatively with the state board or conservation district.

For this initiative, TSSWCB seeks to contract individuals in the capacity to develop conservation plans.

Conservation Planner (*multiple contract positions*)

General Position Description: These positions will receive assignments from the Location Project Manager contracted by TSSWCB through this RFP to develop conservation plans that meet the requirements for the applicable Farm Bill program. Positions will make contact with requesting landowners/operators and schedule on-site visits to conduct necessary activities and document plan requestors conservation needs. Positions will attend workshops conducted by NRCS and TSSWCB personnel prior to being assigned conservation plan request. These workshops do not substitute for qualifications and experience needed to develop a conservation plans meeting requirements. Positions will complete all necessary plan development activities onsite with requestors of plans and compile all information and transmit the information to the Location Project Manager upon completion. Completion

does not involve integrating the information into NRCS Customer Toolkit. Positions will complete and submit a reimbursement request on forms provided by the TSSWCB to the Location Project Manager prior to be compensated.

No Guarantee of Volume. *The State of Texas does not guarantee any specific amount of compensation, volume, minimum, or maximum amount of services under this solicitation and resulting contract.*

1.2 CONTRACT TERM. Contract services shall be provided for a period beginning September 16, 2021, or the last signature date of contract, whichever is later, and ending November 8, 2024 (*the ending date of the contribution agreement between TSSWCB and NRCS*). Each contract issued through this RFP may be renewed upon mutual agreement of the parties to be evidenced in writing prior to the expiration date of the initial term. An extension of the contribution agreement between NRCS and TSSWCB will be a determining factor in any potential renewals.

1.3 COMPENSATION. Each hour of work toward the development of a conservation plan will result in reimbursement of \$30.00 to \$40.00 (depending upon contractor qualifications and experience). Compensation rate for plan development is not negotiable. Reimbursement will be made for travel activities associated with conservation plan development. Travel activities eligible for reimbursement include mileage and lodging only. Mileage traveled in personal vehicles from the contractor's point of origin to the work location, or to the location at which the contractor assumes possession (*with permission, when and where available*) of a state, local, or federally owned vehicle to the ultimate work location, will be reimbursed at the current state approved rate. Lodging expenses will be reimbursed in accordance with the State of Texas' current policy, available at <https://fm.xcpa.state.tx.us/fm/travel/travelrates.php>. Meals will not be reimbursed.

Compensation Details for Conservation Planners: Conservation Planners will be reimbursed at an hourly rate of \$30.00-\$40.00 per hour. Position must document hours spent toward the development of a conservation plan on forms provided by the TSSWCB. Reimbursement requests should not exceed 168 hours, or \$6,720.00, on a single conservation plan assignment. If it appears at 50% of the way through the development of the conservation plan that the assignment may approach the 168 hour limit, continued progress toward development will be monitored and approved by the Location Project Manager at agreed upon increments until completion. Compensation for hours that exceed the 168 hour limit may be allowed when approved by the Location Project Manager. Positions will be compensated for attending NRCS Workshops approved by the Location Project Manager.

NOTICE: *Contract positions ARE NOT employees of the State of Texas, and as such, will not qualify for any employee benefits available to state employees. The contracting entity, TSSWCB, will not pay unemployment, disability, or worker's compensation insurance nor withhold taxes from payments to these contracted positions.*

SECTION II STATEMENT OF WORK

2.1 Commodity/SERVICE REQUIREMENTS. Commodities/Services shall include, but are not limited to, the requirements contained in this RFP. Commodities/Services set forth that contain the words "must" or "shall" are mandatory and must be provided as specified with no alteration, modification, or exception. Commodities/Services set forth that contain the words "may" or "can" allow Respondents to offer alternatives to the manner in which the commodities/services are provided. The requested commodities/services and corresponding deliverables are as follows:

Details for Conservation Planners

- Meet the qualifications and experience required for this position documented in Exhibit A of this RFP.
- Coordinate with Location Project Manager.
- Attend workshops conducted by NRCS and TSSWCB personnel regarding project.
- Receive conservation plan development assignments from Location Project Manager.
- Notify soil and water conservation district, NRCS Field Office personnel, and TSSWCB regional office personnel of assignments and intent to contact landowners requesting conservation plans.
- Contact landowners requesting conservation plans; arrange appointment onsite to conduct conservation plan development activities.
- Inform landowners of purpose, intent, water quality management plan certification, and other benefits of a conservation plan.
- Conduct onsite conservation plan development activities.
- Prepare conservation plan information for transmittal to the Location Project Manager.
- Complete reimbursement request forms for each conservation plan. Completion includes certification by the planner that all documented hours were performed toward the development of a conservation plan.
- Transmit conservation plan information and reimbursement request forms to the Location Project Manager.
- Coordinate with landowners, Location Project Manager, soil and water conservation districts, and TSSWCB regional office personnel to resolve technical differences in conservation plans.
- Maintain records of work performed and requests for reimbursement.
- Provide TSSWCB with information required for compensation.
- Travel, as required, to meetings with landowners, soil and water conservation districts, TSSWCB personnel, and NRCS personnel.
- Any others duties required within the scope of the contract.

2.2 SUBCONTRACTORS. Subcontractors providing commodities/services under the Contract shall meet the same requirements and level of experience as required of Respondent. No subcontract under the Contract shall relieve Respondent of responsibility for ensuring the requested commodities/services are provided. Respondents planning to subcontract all or a portion of the work to be performed shall identify the proposed subcontractors upon request.

2.3 PERFORMANCE TRACKING. TSSWCB will monitor the performance of the Contract issued under this RFP. All commodities/services under the Contract shall be performed at an acceptable quality level and in a manner consistent with the technical requirements for project management and conservation plans under the NRCS.

For Conservation Planners

- *Deviation from the scheduled time periods below for performance may result in refusal of reimbursement in part or in whole, reduction in assignments, or contract termination.*
 - Establish contact with Location Project Manager within one week of contract execution with TSSWCB.
 - Contact the appropriate soil and water conservation district, NRCS Field Office, and TSSWCB regional office within three business days of receiving assignment from Location Project Manager to develop a conservation plan.
 - Contact the landowner requesting a conservation plan within one week of receiving the assignment.
 - Establish an appointment to occur within 30 days to conduct conservation planning activities onsite with the landowner (or representative); exceptions may be granted with the approval of the Location Project Manager.
 - Transmit all necessary conservation plan information and reimbursement forms to the Location Project Manager within 30 days of the onsite appointment; exceptions may be granted with the approval of the Location Project Manager.
 - Respond to all inquiries by the soil and water conservation district, NRCS Field Office personnel, or TSSWCB regional offices personnel within three business days of the inquiries.

SECTION III PROPOSAL INFORMATION

3.1 SCHEDULE OF EVENTS. The solicitation process for this RFP will proceed according to the following schedule:

EVENT	DATE
Issue RFP/ESBD Posting Date	October 5, 2021
Pre-Proposal Teleconference	October 12, 2021
Deadline for Submission of Questions	October 14, 2021
Official Response to Questions Posted on the ESBD	October 15, 2021
Deadline for Submission of Proposals/RFP	October 26, 2021
Opening	October 27, 2021
Vendor Discussions	October 27, 2021 – October 28, 2021
Expected Award of Contract	October 29, 2021
Expected Contract Start Date	November 1, 2021

3.2 REVISIONS TO SCHEDULE. TSSWCB reserves the right to change the dates in the schedule of events above upon written notification to prospective Respondents through a posting on the Electronic State Business Daily (ESBD) as an Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Proposal. The Respondent's failure to neither periodically check the ESBD will in no way release the selected Contractor from the requirements of addenda or additional information nor will any resulting additional costs to meet the requirements be allowed after award(s).

3.3 PRE-PROPOSAL TELE-CONFERENCE. Participation in the pre-Proposal teleconference is not mandatory. A pre-proposal teleconference is scheduled for Thursday, October 12th at 10:00 am (Central Time, Temple, Texas). The call-in information for the pre-proposal tele-conference is (877)-885-3221, passcode 8700597. Respondents having difficulties accessing the teleconference should immediately call Amy Devereaux at (254) 773-2250, ext. 221.

3.4 PROPOSAL REQUIREMENTS.

(a) Submissions: Respondents shall submit one original Exhibit B, Execution of Proposal. Proposal pages should be numbered and contain an organized, paginated table of contents corresponding to the section and pages of the Proposal.

(b) Costs: The TSSWCB will not reimburse the Respondent for any cost related to its Proposal. The Respondent is responsible for any expense related to the preparation and submission of its Proposal.

(c) TSSWCB will not consider any Proposal that bears a copyright. Proposals will be subject to the Texas Public Information Act (PIA), Tex. Government Code, Chapter 552, and may be disclosed to the public upon request. The Proposal and other submitted information shall be presumed to be subject to disclosure unless a specific exception to disclosure under the PIA applies.

If it is necessary for the Respondent to include proprietary or otherwise confidential information in its Proposal or other submitted information, the Respondent must clearly label that proprietary or confidential information and identify the specific exception to disclosure in the PIA. Merely making a blanket claim the entire Proposal is protected from disclosure because it contains some proprietary information is not acceptable, and shall make the entire Proposal subject to release under the PIA. In order to initiate the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the Proposal that are considered by the Respondent to be proprietary or confidential must be clearly labeled as described below. Any information which is not clearly identified as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA. Subject to the Act, Respondents may protect trade and confidential information from public release. Trade secrets or other confidential information, submitted as part of a Proposal, shall be clearly marked at each page it appears. Such marking shall be in boldface type at least **14 point font**.

(d) Contents: Listed below is a summary of all information to be included in a Proposal submitted in response to this RFP. TSSWCB reserves the right, in its sole judgment and discretion, to waive minor technicalities and errors in the best interest of the state.

- (1) Respondent Information: Include a resume or other documentation specifying Respondent's qualifications and experience relating to the minimum required qualifications specified in Exhibit A of this RFP; and name, title, address, telephone number, facsimile number, and e-mail address of Respondent's primary contact.
- (2) The Respondent must provide evidence of the following: All contractors shall procure and maintain at own expense during the term of a contract or any extensions thereof, workers compensation and liability insurance as appropriate for performance of the contract.
- (3) Exhibit B – Execution of Proposal: Failure to sign and return the Execution of Proposal with the submitted Proposal will result in rejection of the Proposal.
- (3) Exhibit B – References: Include a minimum of three (3) references from individuals familiar with Respondent's qualifications and experience relating to the appropriate statement of work. Include contact names, positions, and company name and telephone number for each reference listed.

3.5 INQUIRIES.

(a) All inquiries shall be submitted in writing to Amy Devereaux at facsimile 254-773-3311 or by e-mail to adevereaux@tsswcb.texas.gov by, October 14, 2021 5:00 pm Central Time, Temple, Texas, the date listed as the deadline for submission of questions as specified in Section 3.1 above.

(b) All inquiries will result in written responses with copies posted to the Electronic State Business Daily, available at <http://esbd.cpa.state.tx.us>. If a Respondent does not have Internet access, a copy of all written responses will be available October 15, 2021 and may be obtained through the point of contact listed above.

(c) Except as otherwise provided in this Section, upon issuance of this RFP, other employees and representatives of TSSWCB will not answer questions or otherwise discuss the contents of the RFP with any potential Respondent or its representatives. Failure to observe this restriction may result in disqualification of any subsequent response. This restriction does not preclude discussions unrelated to this RFP.

(d) If Respondent takes any exceptions to any provisions of this RFP, these exceptions must be specifically and clearly identified by Section in Respondent's Proposal in response to this RFP and Respondent's proposed alternative must also be provided in the Proposal. Respondents cannot take a "blanket exception" to this entire RFP. If any Respondent takes a "blanket exception" to this entire RFP or does not provide proposed alternative language, the Respondent's Proposal may be disqualified from further consideration. Any exception may result in the Contract not being awarded to the Respondent.

Respondents are strongly encouraged to submit written questions during the official question and answer period regarding any term or condition of this RFP and whether TSSWCB may negotiate that provision under this particular RFP.

3.6 PROPOSAL SUBMISSION.

(a) All Proposals shall be received and time stamped at TSSWCB prior to, October 26, 2021 at 5:00 pm, Central Time, Temple, Texas, the date specified in the Schedule of Events above. TSSWCB reserves the right to reject late submittals.

(b) Proposals should be placed in a separate envelope or package and correctly identified with the RFP number and submittal deadline/RFP opening date and time. It is Respondent's responsibility to appropriately mark and deliver the Proposal to Amy Devereaux, TSSWCB, by the specified date. A U.S. Postal Service (USPS) postmark or round validation stamp; a mail receipt with the date of mailing, stamped by the USPS; a dated shipping label, invoice, or receipt from a commercial carrier; or any other documentation in lieu of the on-site time stamp MAY NOT be accepted.

(c) Telephone and facsimile Proposals may not be accepted.

(d) Receipt of all addenda to this RFP should be acknowledged by returning a signed copy of each addendum with the submitted Proposal.

1.7 DELIVERY OF PROPOSALS. Proposals shall be submitted to TSSWCB by one of the following methods:

U.S Postal Service	Overnight/Express Mail	Hand Deliver
TSSWCB Amy Devereaux 1497 Country View Lane Temple, Tx 76504	TSSWCB Amy Devereaux 1497 Country View Lane Temple, TX 76504	TSSWCB Amy Devereaux 1497 Country View Lane Temple, TX 76504 Hours -8:00AM to 5:00 PM (CT)

3.8 PROPOSAL OPENING. Proposals will be opened on October 27, 2021 at the TSSWCB headquarters location at 1497 Country View Lane Temple, TX 76504.

(a) All submitted Proposals become the property of TSSWCB after the RFP submittal deadline/opening date. The submitted Proposals and accompanying documentation will not be returned.

(b) Proposals submitted shall constitute an offer for a period of ninety (90) days or until selection is made by TSSWCB, whichever occurs earlier.

3.9 PROPOSAL EVALUATION AND AWARD.

a) TSSWCB shall award contracts to proposals considered to best meet the qualifications specified in Exhibit A of this RFP.

b) A committee will be established to evaluate the Proposals. The committee will include employees of TSSWCB and other persons invited by TSSWCB to participate.

c) TSSWCB reserves the right to award contract(s) without any negotiations and reserves the right to not make awards.

d) The evaluation committee will determine best value by applying the following criteria and assigned weighted values:

<u>Criteria</u>	<u>Weight</u>
<u>Qualifications</u>	<u>90%</u>
<u>Experience</u>	<u>10%</u>
	<u>100%</u>

**SECTION IV
GENERAL TERMS AND CONDITIONS**

1.1 Any Contract awarded as a result of this RFP will contain the general terms and conditions listed below in this Section.

Notice: The following contract is an example only. The contract awarded in response to a proposal will include ONLY the statement of work applicable to the type of position for which the proposal is submitted. This example contract includes the statements of work for all three types of positions.

**CONTRACT TO PERFORM
1. BETWEEN
TSSWCB AND**

Contract No. _____

This agreement (Contract #) is entered into by the TSSWCB, an agency of the State of Texas, and _____ (Contractor), located at _____.

I. Recitals

Whereas, on October 5, 2021 TSSWCB issued a Request for Proposals from qualified, independent contractor _____ and on October 15, 2021 issued its official response to questions; and

Whereas, Contractor submitted a proposal dated _____, 2021, in response to TSSWCB RFP; and

Whereas, Contractor was selected to _____;

Now Therefore, the TSSWCB and Contractor hereby agree as follows:

II. Authority

This Contract is entered into pursuant to _____.

III. Services, Standards of Performance and Contract Administration

Contractor shall provide the services and the deliverables described herein in the manner required by all of the following documents:

1. This Contract
2. Exhibit A: The Statement of Work
3. Exhibit B: The RFP

All of the above are attached to and incorporated as part of this Contract for all purposes. All of these documents constitute the Standards of Performance for this Contract.

In the case of conflicts between this Contract and any of the above exhibits, the following shall control in this order of priority:

1. This Contract
2. Exhibit A: The Statement of Work
3. Exhibit B: The RFP

Contractor shall provide all of the above services and all reasonably related services in accordance with applicable professional standards of a Contractor. Contractor represents and warrants that it has the requisite qualifications, experience, personnel and other resources to perform in the manner required by this Contract.

TSSWCB shall designate a Project Manager for this Contract. The Project Manager will serve as the point of contact between the TSSWCB and Contractor. TSSWCB Project Manager shall supervise TSSWCB review of Contractor's technical work, deliverables, draft reports, the final report, payment requests, schedules, financial budget administration and similar matters. The Project Manager does not have any express or implied authority to vary the terms of the Contract, amend the Contract in any way or waive strict performance of the terms or conditions of the Contract.

IV. Funding

All obligations of the TSSWCB and Customers are subject to the availability of legislative appropriations and, for Customers expending federal funds, to the availability of the federal funds applicable to the Contract. The Respondent acknowledges that the ability of the TSSWCB and the Customers to make payments under the Contract is contingent upon the continued availability of funds. The Respondent further acknowledges that funds may not be specifically appropriated for the Contract and the TSSWCB or Customers continual ability to make payments under the Contract is contingent upon the funding levels appropriated for each particular appropriation period. The TSSWCB and the Customers will use all reasonable efforts to ensure that such funds are available. The Respondent agrees that if future levels of funding for TSSWCB or a Customer are not sufficient to continue operations without any operational reductions, TSSWCB or the Customer, in its discretion, may terminate the Contract or a pending order under the Contract, either in whole or in part. In the event of such termination, TSSWCB or the Customer will not be considered to be in default or breach under the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination. TSSWCB and the Customer shall make best efforts to provide reasonable written advance notice to the Respondent of any such Contract or order termination. In the event of such a termination, the Respondent shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination, either on the particular order if an order is being terminated, or the Contract, if the Contract is being terminated. TSSWCB or the Customer shall be liable for payments limited only to the portion of work the TSSWCB or the Customer authorized in writing and which the Respondent has completed, delivered to the TSSWCB or Customer, and which has been accepted by TSSWCB or Customer. All such work shall have been completed, per the Contract requirements, prior to the effective date of termination.

V. Personnel

Contractor shall assign only qualified personnel to this Contract. On the date of TSSWCB execution of this Contract, TSSWCB project manager shall authorize the key personnel listed in Exhibit D of this Contract to provide services under this Contract. Contractor, in its reasonable discretion, reserves the right to substitute appropriate key personnel to accomplish its duties so long as the substituted personnel are equally qualified and skilled in the tasks necessary to accomplish the tasks and services required. Contractor shall provide to TSSWCB prior written notice and obtain written approval from TSSWCB prior to any change in key personnel involved in providing services under this Contract.

Subcontractors providing services under the Contract shall meet the same requirements and level of experience as required of Contractor. No subcontract under the Contract shall relieve Contractor of responsibility for ensuring the requested services are provided. If Contractor uses a subcontractor for any or all of the work required, the following conditions shall apply:

- (a) Contractors planning to subcontract all or a portion of the work to be performed shall identify the proposed subcontractors.
- (b) Subcontracting shall be solely at Contractor's expense.
- (c) TSSWCB retains the right to check subcontractor's background and approve or reject the use of submitted subcontractors.
- (d) Contractor shall be the sole contact for TSSWCB. Contractor shall list a designated point of contact for all TSSWCB inquiries.

VI. Payments

Prior to authorizing payment to Contractor, TSSWCB shall evaluate Contractor's performance using the performance standards set forth in all documents constituting this Contract. Contractor shall provide reimbursement requests to TSSWCB Contracted Location Project Manager for Commodities/Services provided/performed. Reimbursement requests must be submitted on forms provided by the TSSWCB. An example reimbursement request is included as Exhibit D in this RFP. Reimbursement requests must be approved by the Location Project Manager and the soil and water conservation district prior to reimbursement. No payment whatsoever shall be made under this contract without the prior submission of detailed, correct reimbursement requests. Subject to the foregoing, TSSWCB must make all payments in accordance with the Texas Prompt Payment Act, *Government Code*, Chapter 2251. Payments under this Contract are subject to the availability of appropriated funds. Contractor acknowledges and agrees that payments for services provided under this Contract are contingent upon TSSWCB receipt of funds appropriated by the Texas Legislature.

VII. Term and Termination

This Contract shall become effective on the date signed by the appropriate official of TSSWCB and shall expire on October 31, 2024 unless otherwise sooner terminated as provided in this Contract. Notwithstanding the termination or expiration of this Contract, the provisions of this Contract regarding confidentiality, indemnification, transition, records, right to audit and independent audit, property rights, dispute resolution, invoice and fees verification, and default shall survive the termination or expiration dates of this Contract. TSSWCB may, in its sole discretion, terminate this Contract upon thirty (30) days' written notice to Contractor. Such notice may be provided by facsimile or certified mail; return receipt requested and is effective upon Contractor's receipt.

Convenience

TSSWCB may, in its sole discretion, terminate this Contract upon thirty (30) days' written notice to Contractor. Such notice may be provided by facsimile or certified mail return receipt requested and is effective upon Contractor's receipt. In the event of such termination, the Respondent shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. Customers shall be liable only for payments for any goods or services ordered from the Respondent before the termination date.

Cause/Default

If the Respondent fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any terms or conditions of the Contract. TSSWCB may, upon written notice of default to the Respondent, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies as provided in equity, by law or under the Contract. TSSWCB 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. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless TSSWCB notifies the Respondent in writing prior to the exercise of such remedy. The Respondent shall be liable for all costs and expenses, including court costs, incurred by TSSWCB with respect to the enforcement of any of the remedies listed herein.

Rights upon Termination or Expiration

In the event that the Contract is terminated for any reason, or upon its expiration, the TSSWCB and Customers shall retain ownership of all associated work products and documentation obtained from the Respondent under the Contract.

Survival of Terms

Termination of the Contract for any reason shall not release the Respondent from liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice and fees verification.

VIII. Confidentiality and Public Information

Notwithstanding any provisions of this Contract to the contrary, Contractor understands that TSSWCB will comply with the Texas Public Information Act, Government Code, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. TSSWCB agrees to notify Contractor in writing within a reasonable time from receipt of a request for information related to Contractor's work under this contract. Contractor will cooperate with TSSWCB in the production of documents responsive to the request. TSSWCB will make a determination whether to submit a Public Information Act request to the Attorney General. Contractor will notify TSSWCB General Counsel within twenty-four (24) hours of receipt of any third party requests for information that was provided by the State of Texas for use in performing the Contract. This Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. Contractor agrees to maintain the confidentiality of information received from the State of Texas and any landowner during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers.

IX. Insurance and Other Security

Contractor represents and warrants that it will, within five (5) business days of executing this agreement, provide TSSWCB with current certificates of insurance or other proof acceptable to TSSWCB of the following insurance coverage:

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

Contractor shall procure and maintain at own expense during the term of the contract or any extensions thereof, workers compensation and liability insurance as appropriate for performance of the contract.

Contractor represents and warrants that all of the above coverage is with companies licensed in the state of Texas, with "A" rating from Best, and authorized to provide the corresponding coverage. Contractor also represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least thirty (30) days prior written notice to TSSWCB. Contractor represents and warrants that it shall maintain the above insurance coverage during the term of this Contract, and shall provide TSSWCB with an executed copy of the policies immediately upon request.

X. INDEMNIFICATION

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES, AND TSSWCB, 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 CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT. CONTRACTOR SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY TSSWCB. THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TSSWCB FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF TSSWCB OR ITS EMPLOYEES.

XI. Dispute Resolution

The dispute resolution process provided for in Texas *Government Code*, Chapter 2260 shall be used by TSSWCB and Contractor to resolve any dispute arising under the Contract.

The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, to attempt to resolve a claim for breach of contract asserted by the Respondent under the Contract. If the Respondent's claim for breach of Contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Respondent shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee. The notice shall also be given to the individual identified in the Contract for receipt of notices. Compliance by the Respondent with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

The contested case process provided in Chapter 2260 is the Respondent's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the TSSWCB if the Parties are unable to resolve their disputes as described above.

Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the Contract by the TSSWCB nor any other conduct of any representative of the TSSWCB relating to the Contract shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under the Contract, the TSSWCB and the Respondent shall first attempt to resolve them through direct discussions in a spirit of mutual cooperation. If the Parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by the TSSWCB and the Respondent within fifteen (15) days after written notice by one of them demanding mediation under this Section. The Respondent shall pay all costs of the mediation unless the TSSWCB in its sole good faith discretion, approves its payment of all or part of such costs. By mutual agreement, the TSSWCB and the Respondent may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that the TSSWCB and the Respondent shall, in good faith, utilize mediation or another non-binding dispute resolution process before pursuing litigation. The TSSWCB participation in, or the results of, any mediation or other non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by the TSSWCB of (1) any rights, privileges, defenses, remedies or immunities available to the TSSWCB as an

agency of the State of Texas or otherwise available to the TSSWCB; (2) the TSSWCB termination rights; or (3) other termination provisions or expiration dates of the Contract.

Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the TSSWCB the Respondent shall continue performance and shall not be excused from performance during the period any breach of contract claim or dispute is pending under either of the above processes; however, the Respondent may suspend performance during the pendency of such claim or dispute if the Respondent has complied with all provisions of §2251.051, Gov't Code, and such suspension of performance is expressly applicable and authorized under that law.

XII. Representations, Warranties, and General Provisions

12.1. Family Code

Under Texas Family Code, Title 5, Subtitle D, Section 231.006(d), regarding child support, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any bidder subject to Section 231.006 must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award.

12.2. Eligibility

Under Government Code, Section 2155.004 (relating to certain taxes), Contractor represents and warrants that Contractor 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. Contractor represents and warrants that it is not delinquent in the payment of any franchise taxes owed the State of Texas. Also, Government Code, Section 2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitation or specifications for the Contract.

12.3. Liability for Taxes

Contractor 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 Contractor or its employees. TSSWCB shall not be liable for any taxes resulting from this Contract.

12.4. Amendments

Except as provided in Section 11.12 of this Contract, this Contract may be amended only upon written agreement between TSSWCB and Contractor; however, any amendment of this Contract that conflicts with the laws of the State of Texas shall be void ab initio.

12.5. 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 arising under this Contract is fixed in any court of competent jurisdiction of Travis County, Texas.

12.6. Strict Compliance

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

12.7. Assignments

Without the prior written consent of TSSWCB Contractor may not assign this Contract, in whole or in part, respondent may not assign the contract or assign, transfer or delegate, in whole or in part, any of its interest in, or rights or obligations under, the contract without the prior written consent of the TSSWCB, and any attempted or purported assignment, transfer or delegation thereof without such consent shall and void.

12.8. Partially Completed Work

No later than the first calendar day after the termination of this Contract, or at TSSWCB request, Contractor shall deliver to TSSWCB 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. Contractor 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 the TSSWCB.

12.9. Federal, State, and Local Requirements

Contractor 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. Contractor is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation Insurance coverage. Contractor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Contractor or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Contractor's omission or breach of this Section.

12.10. 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.

12.11. Applicable Law and Conforming Amendments

Contractor must comply with all laws, regulations, requirements and guidelines applicable to a Contractor providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. TSSWCB reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for TSSWCB or Contractor's compliance with all applicable State and federal laws, and regulations.

12.12. No Waiver

Nothing in this Contract shall be construed as a waiver of the state's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas 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. TSSWCB does not waive any privileges, rights, defenses, or immunities available to TSSWCB by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

12.13. No Liability upon Termination

If this Contract is terminated for any reason, TSSWCB and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Contractor may be entitled to the remedies provided in Government Code, Chapter 2260.

12.14. Independent Contractor

Contractor or Contractor's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under any purchase order resulting from this RFP. Contractor or Contractor's employees, representatives, agents and any subcontractors shall not be employees of TSSWCB. Should Contractor subcontract any of the services required in this RFP, Contractor expressly understands and acknowledges that in entering into such subcontract(s), TSSWCB is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve bidder of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this RFP.

12.15. Limitation on Authority; No Other Obligations

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

12.16. Patent, Trademark, Copyright and Other Infringement Claims

Contractor shall indemnify, save and hold harmless the State of Texas from and against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from the State's or Contractor's use of or acquisition of any services or other items provided to the State of Texas by Contractor or otherwise to which the State of Texas has access as a result of Contractor's performance under this Contract, provided that the State shall notify Contractor of any such claim within a reasonable time of the State's receiving notice of any such claim. If Contractor is notified of any claim subject to this section, Contractor shall notify TSSWCB of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Contractor without TSSWCB prior written approval. Contractor shall reimburse 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. Contractor shall pay all reasonable costs of the State's counsel and shall also pay costs of multiple counsel, if required to avoid conflicts of interest. Contractor represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and permits.

12.17. Supporting Documents, Retention; Right to Audit; Independent Audits

Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract funds were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and the State's property for a period of seven (7) after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the Work as defined in this Contract. Contractor and the subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Contractor must retain all work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by TSSWCB and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor.

Contractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. Contractor's failure to comply with this Section shall constitute a material breach of this Contract and shall authorize the TSSWCB and the State of Texas to immediately assess appropriate damages for such failure. Pursuant to Government Code, §2262.003 the acceptance of funds by Contractor or any other entity or person directly under this Contract, or indirectly through a subcontract under this Contract, shall constitute acceptance of the authority of the State Auditor to conduct an audit or investigation in connection with those funds. Contractor acknowledges and understands that the acceptance of funds under this Contract shall constitute consent to an audit by the State Auditor, Comptroller or other agency of the State of Texas. Contractor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Furthermore, under the direction of the legislative audit

committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

12.18. Deceptive Trade Practices; Unfair Business Practices

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com. Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

12.19. Equal Opportunity

Contractor represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, and disability in the performance of this Contract.

12.20. Antitrust

Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the Proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

12.21. No Conflicts

Contractor represents and warrants that Contractor has no actual or potential conflicts of interest in providing services to the State of Texas under this Contract and that Contractor's provision of services under this Contract would not reasonably create an appearance of impropriety.

12.22. Financial Interests; Gifts

Contractor represents and warrants that neither Contractor nor any person or entity that will participate financially in this Contract has received compensation from TSSWCB or any agency of the State of Texas for participation in preparation of specifications for this Contract. Contractor 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.

12.23. Felony Criminal Convictions

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

12.24. Notices

Any written notices required under this Contract will be by either hand delivery to Contractor's office address specified on Page 1 of this Contract or by U.S. Mail, certified, return receipt requested, to TSSWCB, 1497 Country View Lane Temple, TX 76504. 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.

12.25. False Statements; Breach of Representations

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

12.26. Force Majeure

Neither Contractor nor TSSWCB shall be liable to the other for any delay in, or failure of performance, of any requirement included in any purchase order resulting from this RFP caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. 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.

12.27. Debts or Delinquencies to State

Respondent agrees that any payments due under the contract shall be applied towards any debt or delinquency that is owed to the State of Texas.

12.28. Buy Texas

In accordance with Government Code, Section 2155.4441, the State of Texas requires that during the performance of a contract for services, Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside the state.

12.29. Work Made for Hire

For the purposes of this Contract, the term work is defined as all reports, statistical analyses, work papers, work products, materials, approaches, designs, specifications, systems, conservation plans, reimbursement requests, other documentation, methodologies, concepts, research, materials, intellectual property or other property developed, produced, or generated in connection with this Contract. All work performed pursuant to this Contract is made the exclusive property of TSSWCB. All right, title and interest in and to said property shall vest in TSSWCB upon creation and shall be deemed to be a work for hire and made in the course of the services rendered pursuant to this Contract. To the extent that title to any such work may not, by operation of law, vest in TSSWCB, or such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to TSSWCB. TSSWCB shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor must give TSSWCB and/or the State of Texas, as well as any person designated by TSSWCB and/or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to Contractor for the services rendered under this Contract.

12.30. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapter 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)

1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter

213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

2) Vendor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act) or indicate that the product/service accessibility information is available from the General Services Administration —Buy Accessible Wizardll (<http://www.buyaccessible.gov>). Vendors not listed with the —Buy Accessible Wizardll or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the —Buy Accessible Wizard or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

12.31. Default

If Contractor is found to be in default under any provision of this Contract, TSSWCB may cancel the Contract without notice and either re-solicit or award the contract to the next best responsive and responsible Respondent. In the event of abandonment or default, Contractor will be responsible for paying damages to TSSWCB including but not limited to re-procurement costs, and any consequential damages to the State of Texas or TSSWCB 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.

12.32. Note to Respondent

Any terms and conditions attached to the response will not be considered unless specifically referred to on this Request for Proposal and may result in disqualification of the response.

12.33. Prohibited Use of Appropriated or other Funds under Control of State Agency; Lobbying

The Contractor represents and warrants that ordering entities' payments to the Contractor and Contractor's receipt of appropriated or other funds under any of this or any resulting agreement are not prohibited by Government Code §556.005 or §556.008.

12.34. Certification Concerning Hurricane Relief

Sections §2155.006 and §2261.053, Government Code, prohibit state agencies from awarding a contract to any 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 §418.004 Gov't code, occurring after September 24, 2005. Under §2155.006, Gov't Code, the Respondent certifies that the individual or business entity named in its Proposal is no ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certifications inaccurate.

12.35. Immigration

The Contractor represents and warrant that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verifications forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) enacted on September 30, 1996.

12.36. Drug Free Work Place

The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

12.37. Substitutions

Substitutions are not permitted without written approval of TSSWCB.

12.38. Public Disclosure

No public disclosures or news releases pertaining to this contract shall be made without prior written approval of TSSWCB.

12.39. Testing and Inspection

TSSWCB may test and inspect goods and services purchased under the Contract to ensure compliance with the specifications of this RFP and the Contract. The TSSWCB may also test and inspect goods and services before they are purchased under the Contract. Authorized TSSWCB personnel shall have access to the Respondent's place of business for the purpose of inspecting the goods. To the extent practical, the TSSWCB inspections will not disrupt the Respondent's daily operations. Tests shall be performed on samples submitted with the Proposal or on samples taken from regular shipments. All costs of testing and inspection shall be borne by the Respondent. In the event the goods tested fail to meet or exceed all conditions and requirements of the RFP and Contract, the goods will be rejected in whole or in part, at the State's option, and returned to the Respondent or held for disposition at the Respondent's expense. Latent defects may result in cancellation of the Contract at no expense to the state.

If material fails to meet specifications, the Respondent will be notified by fax/mail or e-mail. The Respondent 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 Respondent's expense. Material not removed in the allotted time period will be disposed by the Customer. The Respondent will be charged for all disposable expenses conducted by the Customers.

12.40. Order Precedence

In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: Signed Contract (or Notice of Award), Attachments to the Contract (or Notice of Award), Request for Proposals, and Respondent's Response to Request for Proposals.

12.41. Dealings with Public Servants

Respondent has not given, offered to give, nor intends to give at any time hereafter and economic opportunity future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.

12.42. Excess Obligations Prohibited

The contract is subject to termination or cancellation, without penalty to TSSWCB, wither in whole or in part, subject to the availability of state funds.

12.43. Executive Head of a State Agency

In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Respondent certifies that it is not (1) the executive head of the Agency, (2) a person who at any time during the four years before the date of the contract was the executive head of the Agency, or (3) a person who employs a current or former executive head of the Agency.

12.44. Financial Participation Prohibited

Under Section 2155.004(b) of the Texas government Code, Respondent certifies that the individual or business entity named in this response or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.

12.45. Former Agency Employees

Respondent represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were former employees of the Agency during the twelve (12) month period immediately prior to the date of execution of the contract.

12.46. Governing Law and Venue

Under Section 2155.0061 of the Texas Government Code, the contract shall be governed by and construed in accordance with the laws of the United State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting agency.

12.47. Human Trafficking Prohibition

Under Section 2155.0061 of the Texas Government Code, the Respondent 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.

12.48. No Conflicts of Interest

Respondent represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

12.49. Prior Disaster Relief Contract Violation

Under Sections 2155.006 and 2261.053 of the Texas government Code, the respondent certifies tat 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.

12.50. Suspension and Debarment

Respondent certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendors List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration.

12.51. Terms and Conditions Attached to Response

Any terms and conditions attached to a Response will not be considered unless specifically referred to in the Response.

12.52. Texas Bidder Affirmation

Respondent certifies that if a Texas address is shown as the address of the Respondent on this Response, Respondent qualifies as a Texas Bidder aw defined in Section 2155.444© of the Texas Government Code.

XIII. Signatories

By submitting the response, respondent represents and warrants that the individual submitting this document and the documents made part of this response is authorized to sign such documents on behalf of the respondent and to bind the respondent under any contract that may result from the submission of this response.

XIV. Merger

This Contract contains the entire agreement between Contractor and TSSWCB and supersedes any prior understandings or oral or written agreements between TSSWCB and Contractor on the matters contained herein. No modification, alteration, or waiver of any term, covenant, or condition of this Contract and any attachments shall be valid unless in writing and executed by TSSWCB and Contractor.

By: _____

By: _____

Rex Isom

Name: _____

Executive Director, TSSWCB

Title: _____

Date: _____

Date: _____



EXHIBIT A OF CONTRACT NO. _____
Statement of Work

2.1 Commodity/SERVICE REQUIREMENTS. Commodities/Services shall include, but are not limited to, the requirements contained in this RFP. Commodities/Services set forth that contain the words "must" or "shall" are mandatory and must be provided as specified with no alteration, modification, or exception. Commodities/Services set forth that contain the words "may" or "can" allow Respondents to offer alternatives to the manner in which the commodities/services are provided. The requested commodities/services and corresponding deliverables are as follows:

Details for Conservation Planners

- Meet the qualifications and experience required for this position documented in this RFP.
- Coordinate with Location Project Manager.
- Attend workshops conducted by NRCS and TSSWCB personnel regarding project.
- Receive conservation plan development assignments from Location Project Manager.
- Notify soil and water conservation district, NRCS Field Office personnel, and TSSWCB regional office personnel of assignments and intent to contact landowners requesting conservation plans.
- Contact landowners requesting conservation plans; arrange appointment onsite to conduct conservation plan development activities.
- Inform landowners of purpose, intent, regulatory predictability, water quality management plan certification, and other benefits of a conservation plan.
- Conduct onsite conservation plan development activities.
- Prepare conservation plan information for transmittal to the Location Project Manager.
- Complete reimbursement request forms for each conservation plan. Completion includes certification by the planner that all documented hours were performed toward the development of a conservation plan.
- Transmit conservation plan information and reimbursement request forms to the Location Project Manager.
- Coordinate with landowners, Location Project Manager, soil and water conservation districts, and TSSWCB regional office personnel to resolve technical differences in conservation plans.
- Maintain records of work performed and requests for reimbursement.
- Provide TSSWCB with information required for compensation.
- Travel, as required, to meetings with landowners, soil and water conservation districts, TSSWCB personnel, and NRCS personnel.
- Any others duties required within the scope of the contract.

Signatures:

• _____

• TSSWCB

• _____

• Date: _____

• _____

• _____

• _____

• Date: _____



**EXHIBIT B OF CONTRACT NO. _____
RFP**

The attached true and correct copy of TSSWCB's Request for Proposal is incorporated into Contract No. _____.

Signatures:

• _____

• TSSWCB

•

• **Date:** _____

• _____

•

•

• **Date:** _____



EXHIBIT A to RFP No. 592-22-010

MINIMUM REQUIRED QUALIFICATIONS FOR CONTRACTED POSITIONS

Conservation Planner:

Must have 10 years experience developing conservation plans consistent with the Field Office Technical Guide (FOTG) requirements for plans developed for/by the United States Department of Agriculture – Natural Resources Conservation Service (NRCS) and/or Texas State Soil and Water Conservation Board (TSSWCB) requirements for water quality management plans.

Must have knowledge developing conservation plan maps using ArcMap using NRCS map symbols for all existing resources including property location/vicinity maps, soil description maps with soil descriptions, ecological site maps with legend clearly listing all ecological sites, ecological site maps with one mile radius, grazeable acres maps (inventory transects shown on map using GPS to mark points), water distribution maps using topographical maps, brush overlay maps for required aerial, mechanical, or individual plant treatment (IPT), and crucial habitat assessment tool (CHAT) overlay maps showing location of property.

Must have knowledge of developing TX-802-Similarity Index Worksheets, brush canopy transect worksheets, IPT worksheets, rangeland health and trends worksheets, photo points required for all transects and monitoring points, forage clippings in field and enter data into electronic worksheets, determining grazeable acres in the field and entering data into worksheets and maps, and forage inventories (809d) or equivalent.

Must have knowledge of developing grazing plans (written format, prescribed grazing 809b worksheet or equivalent), drought management plan (with consistency triggers), proper grazing use (NRCS-RANGE-414), specific job sheets, and grazing exclosures to monitor degree of utilization.

Must have knowledge developing conservation plan of operations (CPO) and supporting documents including specific plan narratives, engineering designs, technical assistance notes (CTA-6) hardcopies, district agreement sheets, flow charts (from conference opinion), wildlife habitat evaluation guides (WHEG), threats checklists, environmental assessments (CPA-52), and predictability letters (NRCS and USFW).

Must have access to motor vehicle for traveling to job sites and possess a valid drivers license and required liability insurance.

Must have a computer (or access to a computer) with internet access, a working email address, and must have a telephone (or access to).

Must have ability to complete reimbursement forms for compensation.



**EXHIBIT B
EXECUTION OF PROPOSAL
RFP No. 592-22-010**

NOTE: THIS EXHIBIT MUST BE SIGNED AND RETURNED WITH THE PROPOSAL. PROPOSALS THAT DO NOT INCLUDE THIS EXHIBIT WILL BE DISQUALIFIED. THE PROPOSAL SHALL BE VOID IF FALSE STATEMENTS ARE CONTAINED IN THIS EXHIBIT.

By signature hereon, Respondent certifies that:

All statements and information prepared and submitted in the response to this RFP are current, complete, and accurate. Respondent has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.

Neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent or anyone acting for such firm, corporation, or institution has (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated the contents of this Proposal either directly or indirectly to any competitor or any other person engaged in the same line of business during the procurement process for this RFP.

When a Texas business address shown hereon that address is, in fact, the legal business address of Respondent and Respondent qualifies as a Texas Resident Bidder under Texas Administrative Code, Title 34, Part 1, Chapter 20.

Under Government Code § 2155.004, no person who prepared the specifications or this RFP has any financial interest in Respondent's Proposal. If Respondent is not eligible, then any contract resulting from this RFP shall be immediately terminated. Furthermore, "under Section 2155.004, Government Code, the vendor [Respondent] 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."

Under Family Code § 231.006, relating to child support obligations, Respondent and any other individual or business entity named in this solicitation are eligible to receive the specified payment and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate.

Any Proposal submitted under this RFP shall contain the names and social security numbers of person or entity holding at least a twenty-five percent (25%) ownership interest in the business entity submitting the Proposal.

Name:	Social Security Number:
Name:	Social Security Number:
Name:	Social Security Number:

Under Government Code § 669.003, relating to contracting with an executive of a state agency, Respondent represents that no person who, in the past four years, served as an executive of the TSSWCB) or any other state agency, was involved with or has any interest in this Proposal or any contract resulting from this RFP. If Respondent employs or has used the services of a former executive head of TSSWCB or other state agency, then Respondent shall provide the following information: Name of former executive, name of state agency, date of separation from state agency, position with Respondent, and date of employment with Respondent.

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

TSSWCB is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit,

Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross referencing respondents/vendors with the Federal General Services Administration's Excluded Parties List System (EPLS), <http://www.epls.gov>, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

Respondent 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 that Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent 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>.

Under Section 2155.006(b) of the 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 of the Texas Government Code, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified contract and acknowledges that any contract resulting from this IFB may be terminated and payment withheld if this certification is inaccurate.

Pursuant to Section 2262.003 of the Texas Government Code, the state auditor may conduct an audit or investigation of the vendor or any other entity or person receiving funds from the state directly under this contract or indirectly through a subcontract under this contract. The acceptance of funds by the Respondent or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Respondent or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Respondent will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the vendor and the requirement to cooperate is included in any subcontract it awards.

Respondent Represents and warrants that the individual signing this Execution of Proposal is authorized to sign this document on behalf of Respondent and to bind Respondent under any contract resulting from this proposal.

RESPONDENT: _____

SIGNATURE (INK): _____

NAME (TYPED/PRINTED): _____

TITLE: _____ **DATE:** _____

STREET: _____

CITY/STATE/ZIP: _____

TEXAS IDENTIFICATION NUMBER (TIN): _____



Exhibit C to RFP No. 592-22-010 Compensation and Fees

Each hour of work toward the development of a conservation plan will result in reimbursement of \$30.00-\$40.00 . Compensation rate for plan development is not negotiable. Reimbursement will be made for travel activities associated with conservation plan development. Travel activities eligible for reimbursement include mileage and lodging only. Mileage traveled in personal vehicles from the contractor's point of origin to the work location, or to the location at which the contractor assumes possession (*with permission, when and where available*) of a state, local, or federally owned vehicle to the ultimate work location, will be reimbursed at the current state approved rate. Lodging expenses will be reimbursed in accordance with the State of Texas' current policy, available at <https://fm.xcpa.state.tx.us/fm/travel/travelrates.php>. Meals will not be reimbursed.

Compensation Details for Conservation Planners: Conservation Planners will be reimbursed at an hourly rate of \$30.00-\$40.00 per hour. Position must document hours spent toward the development of a conservation plan on forms provided by the TSSWCB. Reimbursement requests should not exceed 168 hours, or \$6,720.00, on a single conservation plan assignment. If it appears at 50% of the way through the development of the conservation plan that the assignment may approach the 168 hour limit, continued progress toward development will be monitored and approved by the Location Project Manager at agreed upon increments until completion. Compensation for hours that exceed the 168 hour limit may be allowed when approved by the Location Project Manager. Positions will be compensated for attending NRCS Workshops approved by the Location Project Manager.

NOTICE: Contract positions ARE NOT employees of the State of Texas, and as such, will not qualify for any employee benefits available to state employees. The contracting entity, TSSWCB, will not pay unemployment, disability, or worker's compensation insurance nor withhold taxes from payments to these contracted positions.



Exhibit D to RFP No. 592-22-010
Example Reimbursement Request Form for Conservation Planners

INVOICE FOR TEXAS STATE SOIL AND WATER CONSERVATION BOARD
NAME
COMPTROLLER VENDOR ID: ##### MAIL CODE: 000
PAGE ___ OF ___

Table with columns: DATE, TIME, HOURS, PLAN NUMBER, MILEAGE AND LODGING (DETAIL*, CITY TO CITY/ODOMETER, CITY), RATE** (MILES @ RATE, RATE), BILLABLE AMOUNT, COMMENTS. Includes a TOTAL DUE row at the bottom.

I Certify that above travel costs were incurred in performance of contract number - LHPC-P-2015-#### (NRKCS Agreement No. 65-7442-14-390).

TSSWCB APPROVED Signature Date

NAME Signature Date

*Mileage is calculated using Rand McNally mileage calculator available at www.randmcnally.com. Lodging claims require submission of a zero - balance receipt.
** State travel reimbursement rates for mileage and lodging are available at the following web link: https://fmx.cpa.state.tx.us/fm/travel/travelrates.php