



**TENTH COURT OF APPEALS  
PROCUREMENT PLAN**

**11-30-2023**



## **Tenth Court of Appeals Annual Procurement Plan**

### **Contents of the procurement plan:**

- Organizational chart of purchasing division/office.
- Procedures for utilizing credit cards if participating in the U. S. Bank Voyager Retail Fuel Card Program and/or Citi Bank Procurement and Travel Charge Card Program.
- Protest Procedures.
- List and sample of signatures authorized to approve or sign a proprietary justification letter.
- List and sample of signatures authorized to approve agency membership fees.
- The training and certification status of the purchasing employees.
- List of purchasers authorized to purchase on behalf of the State.
- Invitation for Bid (IFB) Template including terms and conditions.
- Internal purchasing procedures for agency.
- Conflict of interest statement(s) (statement signed annually for each purchaser or a memo stating that one is in the purchaser's personnel file).
- Internal purchasing procedures for System for Award Management (SAM), Excluded Parties List System (EPLS).
- The three (3) highest priority purchases the agency expects to make in fiscal 2024 that are not available through a term contract.
- Agency procedures for response to recommendations for delegated solicitation reviews by the Contract Advisory Team (CAT).



## Credit Cards

Procedures for utilizing credit cards if participating in the U. S. Bank Voyager Retail Fuel Card Program and/or the Citi Bank Procurement and Travel Charge Card Programs.

<b>Tenth Court of Appeals</b> Name of Section Procurement Card Program	
Chapter 01: Procurement Card Program N/A	
<b>Introduction</b>	The State makes Procurement Cards available to agencies.
<b>Policy</b>	It is the policy of the Court to not have or use a procurement card.
<b>Procedure</b>	N/A
<b>Authority</b>	N/A
<b>Approved</b>	DATE: <u>November 30, 2023</u> PROGRAM MANAGER: <u>not applicable</u> EXECUTIVE DIRECTOR: <u>Thomas W. Bray</u>



## Protest Procedures

<b>Tenth Court of Appeals</b>	
Chapter 01: Protest Procedures	
<b>Introduction</b>	This Protest Procedure applies anytime a RFB is utilized.
<b>Policy</b>	To allow for a protest and review of a contract awarded pursuant to a RFB.
<b>Procedure</b>	<p>(a) Any actual or prospective bidder or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the Tenth Court of Appeals. Such protests must be in writing and received in the Chief Justice's office within 10 working days after such aggrieved person knows, or would have known, of the occurrence of the action which is protested. Formal protests must conform to the requirements of, and shall be resolved in accordance with the procedure set forth in, this policy. Copies of the protest must be mailed or delivered by the protesting party to the other interested parties. For the purposes of this policy, "interested parties" means all vendors who have submitted bids or proposals for the contract involved.</p> <p>(b) In the event of a timely protest or appeal, the Tenth Court of Appeals shall not proceed further with the solicitation or with the award of the contract until the protest is resolved unless all Justices, after consultation with the Clerk, make a written determination that the award of the contract without delay is necessary to protect substantial interests of the State.</p> <p>(c) A formal protest must be sworn and contain:</p> <ol style="list-style-type: none"> <li>(1) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;</li> <li>(2) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in paragraph (1) of this subsection;</li> <li>(3) a precise statement of the relevant facts;</li> <li>(4) an identification of the issue or issues to be resolved;</li> <li>(5) argument and authorities in support of the protest; and</li> <li>(6) a statement that copies of the protest have been mailed or delivered to the identifiable interested parties, and identify each interested party and the address to which a copy was mailed or delivered.</li> </ol> <p>(d) The Clerk has the authority, prior to appeal to all Justices, to settle and resolve the protest. The settlement must be approved by a majority of the Justices. The Clerk may request written responses to the protest.</p> <p>(e) If the protest is not resolved by mutual agreement, the Clerk will issue a written determination on the protest. A protest not ruled on by the Clerk within 45 days after the date it is filed, or if a response is requested within 60 days of</p>

the date the protest was filed, is deemed denied without further notice at the expiration of the applicable 45 or 60 day time period.

(1) If the clerk determines that no violation of rules or statutes has occurred, the Clerk must deny the protest and so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination.

(2) If the Clerk determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, the Clerk must so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and the appropriate remedial action.

(3) If the Clerk determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, the Clerk must so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination, which may include ordering the contract to be voided.

(f) The Clerk's determination on a protest may be appealed by an interested party to all Justices. An appeal of the Clerk's determination must be in writing and must be received in the Chief Justice's office no later than 10 working days after the date of the Clerk's determination letter or deemed denial of the protest. The appeal is limited to a review of the Clerk's determination or deemed denial. Copies of the appeal must be mailed or delivered by the appealing party to the other interested parties in the same manner it is sent to the Chief Justice's office and the appeal must contain an affidavit that such copies have been provided.

(g) A majority of the Justices may request a written response to the protest, if one was not requested by the Clerk, and may also request a response to the appeal. The Justices must review the protest, the response to the protest, if any, the Clerk's determination or deemed denial, the appeal, and the response to the appeal, if any, and issue a written decision on the appeal by a majority vote of the Justices, which shall be the final administrative action of the Justices. An appeal not ruled on by a majority of the Justices within 45 days after the date it is filed, or if a response is requested, 60 days of the date the appeal was filed, is deemed denied without further notice at the expiration of the applicable 45 or 60 day time period.

(h) A protest or appeal that is not filed timely will not be considered, unless good cause for delay is shown. But no protest or appeal will be considered unless filed within 25 days of the applicable deadline.

<b>Authority</b>	Texas Government Code 2155.076
<b>Approved</b>	DATE: <u>November 30, 2023</u> PROGRAM MANAGER: <u>not applicable</u> EXECUTIVE DIRECTOR: <u>Thomas W Shay</u>



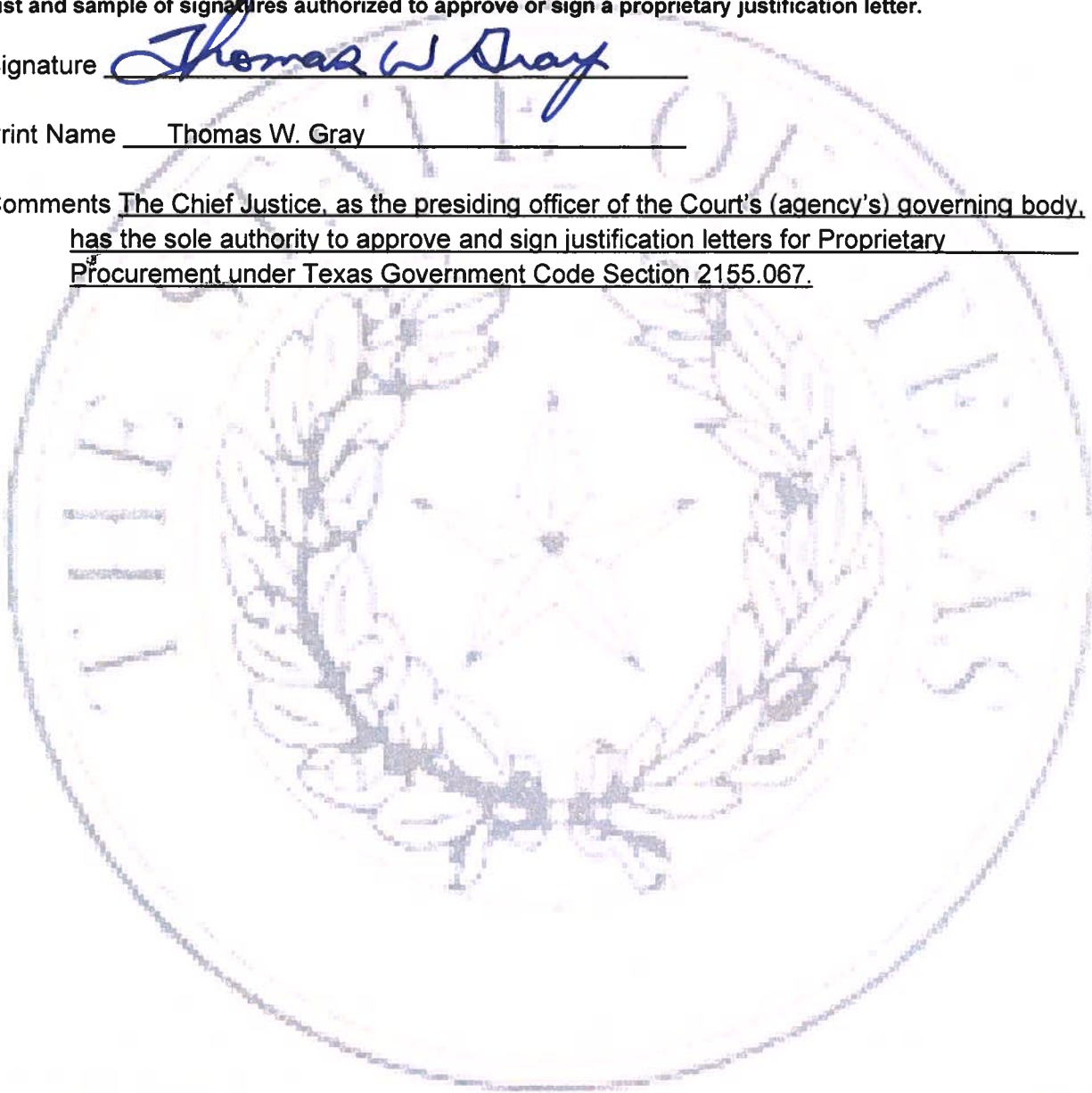
## Proprietary Justification

List and sample of signatures authorized to approve or sign a proprietary justification letter.

Signature *Thomas W Gray*

Print Name Thomas W. Gray

Comments The Chief Justice, as the presiding officer of the Court's (agency's) governing body, has the sole authority to approve and sign justification letters for Proprietary Procurement under Texas Government Code Section 2155.067.



Comments may indicate title, authorized individual or designated by authorized individual to sign, any other information.



### Agency Membership Fees

List and sample of signatures authorized to approve agency membership fees.

Signature Thomas W Gray

Print Name Thomas W. Gray

Comments The Chief Justice, as the administrative head of the Court (agency), has the sole authority under Texas Government Code Section 2113.104 to review and approve the expenditure of appropriated funds for membership fees and dues for professional organizations.



## Internal Purchasing Procedures

<b>Tenth Court of Appeals</b>	
Chapter 01: Internal Purchasing Procedures	
<b>Introduction</b>	This policy applies to all purchase of tangible personal property and services other than employment and interagency agreements.
<b>Policy</b>	To document the authorized procedure to purchase supplies, equipment, and services.
<b>Procedure</b>	<p>1.1 The Purchaser for the Tenth Court of Appeals is the accountant. A deputy clerk may be designated by the Chief Justice as the back-up purchaser, with the advice of the Clerk, to perform these duties in the absence of the Purchaser beyond the period reasonably needed in which to perform these duties. A list of currently approved purchasers, and their training and certification status, is attached.</p> <p>1.2 Each purchase must have a P.O. prepared and approved by the purchaser and signed as required herein before the purchase is communicated to the vendor. Each reimbursement request must be signed by the claimant and approved by the claimant's supervisor, if any, and the Chief Justice.</p> <p>1.3 The purchaser has primary responsibility to determine that the purchase is made in conformity with State law, regulations, and this policy.</p> <p>1.4 Authorization and Form of Approval.</p> <p>1.4.1. Purchases of basic office supplies, under \$250.01 per order, such as pens, paper, envelopes, calendars, etc., may be purchased with only the approval of the purchaser.</p> <p>1.4.2. Purchases for office supplies over \$250.00 and for all other P.O.s under \$250.00, in addition to the P.O. signed by the Purchaser, require written authorization of the Chief Justice except as provided by 1.4.4. An e-mail from the Chief Justice requesting or instructing that the purchase be made or approving the purchase is considered a written authorization in addition to any other form of written authorization and is specifically considered compliance with this provision.</p> <p>1.4.3. All P.O.s over \$250.00 must be signed by the Purchaser and the Chief Justice except as provided by in 1.4.4.</p> <p>1.4.4. If the purchase of any item has been specifically approved by a majority of the Justices at an administrative meeting, and the Chief Justice disapproves or votes against the purchase, the P.O. must be signed by</p>



	<p>each of the Justices voting in favor of the purchase. The approval of the P.O. must be communicated to the Chief Justice prior to notification to the vendor of the purchase.</p> <p>1.4.5. Purchase order approvals may not be circumvented by arbitrarily breaking a P.O. into smaller purchases.</p> <p>2. If a purchase would cause the budgeted amount for an expense code to be exceeded, the budget must first be amended or the purchase order signed by two justices, one of which must be the Chief Justice.</p> <p>3. If, in the judgment of the two Justices other than the Chief Justice, the Chief Justice will be absent or unable to perform any action herein assigned to the Chief Justice, beyond the period reasonably necessary in which to perform the action, the two Justices may take action in place of the Chief Justice. Any action taken pursuant to this provision must be communicated to the Chief Justice in a timely manner.</p> <p>4. If, in the judgment of the Chief Justice, the Clerk will be absent or unable to perform any action herein assigned to the Clerk, beyond the period reasonably necessary in which to perform the action, the Chief Justice may designate any Justice not otherwise participating in the purchase to take action in place of the Clerk. Any action taken pursuant to this provision must be communicated to the Clerk in a timely manner.</p> <p>5. The Receiver must check all merchandise received against the applicable P.O. for description, quantity, and quality, including shipping damage, noting any exceptions on a copy of the P.O. attached to a copy of the packing slip, and provide a copy of both to the purchaser and the original marked copy and packing slip to the Clerk. The Chief Justice, with the advice of the Clerk, will appoint one or more Receiver(s) who cannot also be a Purchaser or a backup Purchaser. If, in the judgment of the Chief Justice, the Receiver(s) will be absent or unable to perform any action herein assigned to the Receiver(s), beyond the period reasonably necessary in which to perform the action, the Chief Justice may designate another employee not otherwise participating in the purchase to act as a Receiver. Any action taken pursuant to this provision must be communicated to the Receiver(s) and the Clerk in a timely manner.</p> <p>6. The Clerk, before signing the Purchase Voucher, must confirm that a P.O. has been properly prepared and approved and if the P.O. is for a purchase of tangible personal property, that appropriate documents have been forwarded to the Clerk indicating the receipt and condition of the items. Upon signing the Purchase Voucher, supporting documentation must be marked in a manner that it cannot be used to support a duplicate payment. If the Purchase Voucher is for reimbursement of expenses, such as a reimbursement request for travel, the original documentation supporting the purchase Voucher must be marked in a manner that it cannot be used to support a duplicate payment.</p> <p>7. For computing the distances between two locations for which travel reimbursement is being requested, the Tenth Court of Appeals of Texas adopts the use of the calculations from Google as calculated at <a href="http://www.google.com">http://www.google.com</a>. This policy is effective for all travel after January 1, 2010 at 12:01 a.m. in accordance with House Bill 605 adopted by the 81<sup>st</sup> Legislature. Adoption of this policy does not change any other travel policy, rule, regulation, or statute, including that reimbursable travel is charged from the employee's designated duty point to the destination for Court business.</p>
<b>Authority</b>	GAA, 88th Legislature, HB 1, Section 5 (Travel Regulations)

<b>Approved</b>	DATE: <u>November 30, 2023</u> PROGRAM MANAGER: <u>not applicable</u> EXECUTIVE DIRECTOR: <u>Thomas W Bray</u>
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## Conflict of Interest Statements

### MEMO

It is the policy of the court to obtain a signed conflict statement from each purchaser, receiver, clerk, and chief justice, annually and file it in the employee's personnel file with a copy in the supervisor's file. It is further the policy of the court to obtain a signed conflict of interest statement from each employee at the time they are employed and periodically thereafter when determined appropriate by the Chief Justice but not more often than once annually.

#### **Legal Authority:**

1 Texas Government Code Title 10, Subtitle D, Chapter 2155.00



**System for Award Management (SAM)  
Excluded Parties List System (EPLS)**

Internal purchasing procedures for SAM/Excluded Parties List System (EPLS)

<b>Tenth Court of Appeals</b>	
Chapter 01: Prohibited Sellers	
<b>Introduction</b>	The Court is prohibited from buying from certain sellers.
<b>Policy</b>	This policy is designed to prevent the Court from making any purchases from prohibited sellers.
<b>Procedure</b>	Prior to awarding any contracts, including the purchase of supplies, the purchaser must check the list of vendors excluded from doing business at the federal level by utilizing the federal Excluded Persons List System (EPLS). No contract will be awarded to any person/entity found on the EPLS system as a prohibited seller.
<b>Authority</b>	TX Government Code, Section 2155.077; Texas Administrative Code, Title 1, Part 5, Chapter 113, Subchapter F, Rule 113.102(d)(8); and in compliance with the Executive Order 13224 (Blocking Property and Prohibiting Transactions with Person who Commit, Threaten to Commit, or Support Terrorism, dated September 23, 2001 as implemented by 31CFR, Parts 500 through 599.
<b>Approved</b>	DATE: <u>November 30, 2023</u> PROGRAM MANAGER: <u>not applicable</u> EXECUTIVE DIRECTOR: <u>Thomas W Gray</u>

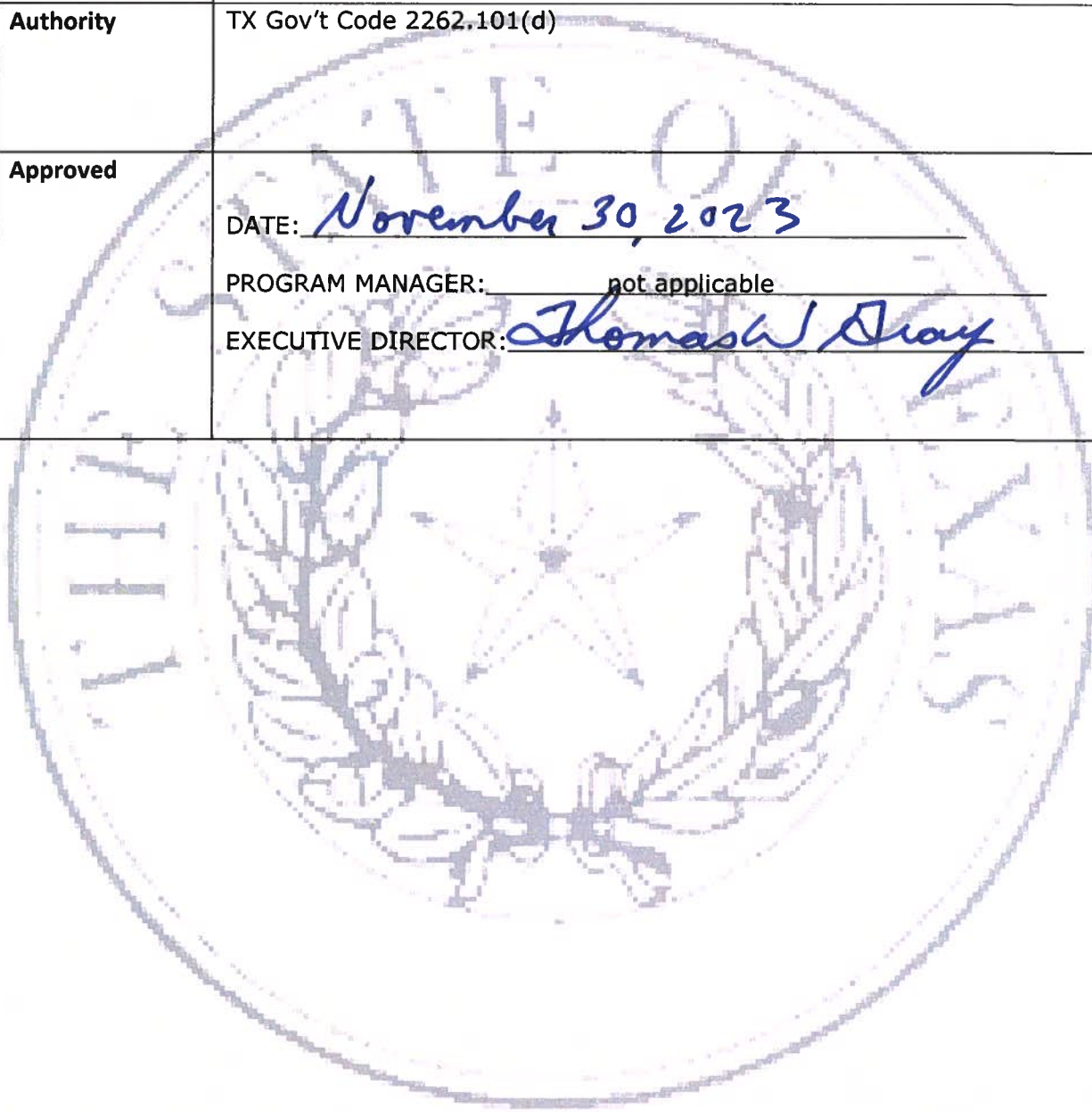


## Response to CAT Recommendations

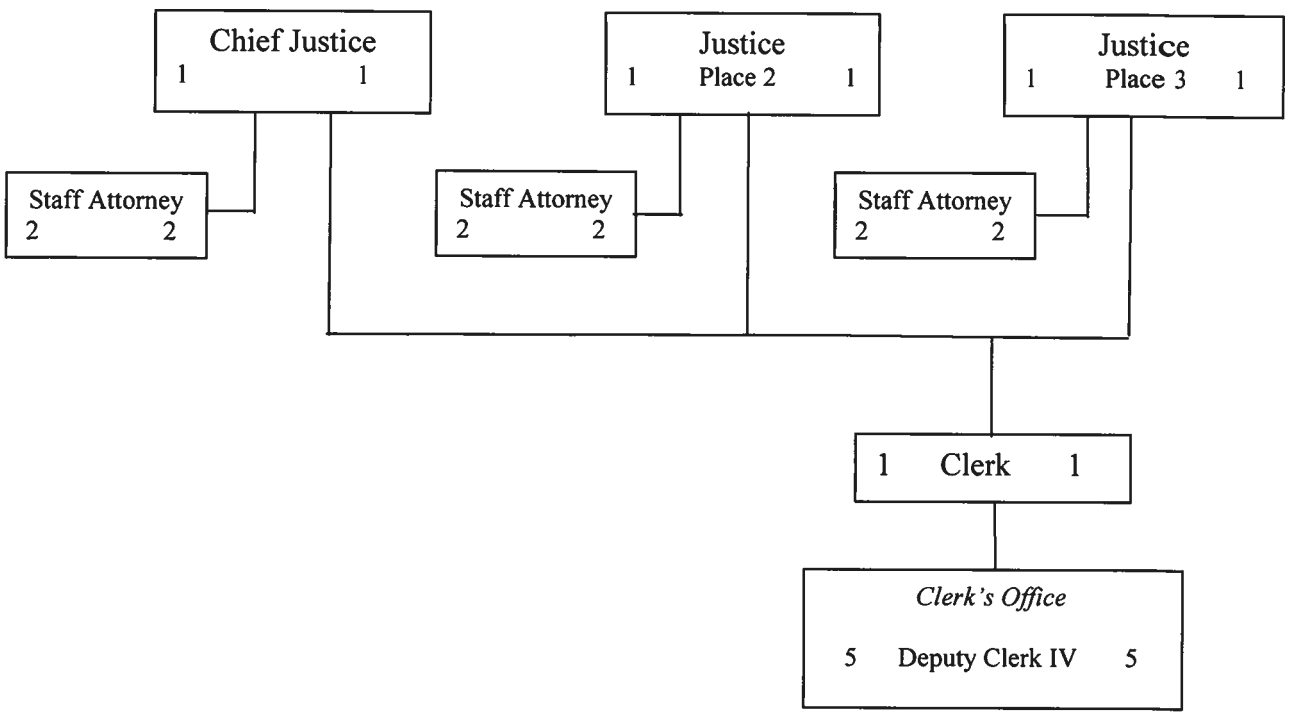
Agency procedures for response to recommendations for delegated solicitation reviews by the Contract Advisory Team (CAT).

<b>Tenth Court of Appeals</b>	
Chapter 01: Contract Advisory Team Review	
<b>Introduction</b>	The State provides contract assistance to assure best value and efficiency in making large purchases through its Contract Advisory Team procedures.
<b>Policy</b>	To assure that the Court utilizes the Contract Advisory Team when required or appropriate to achieve its intended benefits to the State.
<b>Procedure</b>	<p>The Court submits solicitations to CAT-RAD (Contract Advisor Team – Delegation and Review) as required by statute for delegated authority if and when necessary. As far as we can recall, we have never had any purchase meet the requirement to be submitted to CAT-RAD. Further, no such purchase is anticipated in the future. If, however, we were required to submit a solicitation to CAT-RAD, and upon receipt of CAT-RAD’s review and recommendations as then found in the delegation letter provided by CAT-RAD, the Court will:</p> <ol style="list-style-type: none"> <li>1. Review the recommendations provided by CAT-RAD in the delegation letter sent to the Court in response to the solicitation that was submitted for review.</li> <li>2. Upon review and discussion of the recommendations of CAT-RAD, the Court will determine what actions to take regarding acceptance or rejection of CAT-RAD’s input for the reviewed solicitation.</li> <li>3. The Court will determine if all of CAT-RAD’s recommendations will be implemented and the solicitation will be revised to incorporate this information or if only some recommendations will be utilized.</li> <li>4. The Court will respond to CAT-RAD’s recommendations by addressing each item included in the delegation letter provided by CAT-RAD. The Court will provide a response where the recommendation was either accepted or rejected. Where the Court accepts the recommendation by CAT-RAD, the Court will simply respond “Accepted.” Where the Court rejects a recommendation by CAT-RAD, the Court will respond “Rejected” and provide an explanation.</li> <li>5. The Court shall provide a written explanation justifying the decision to reject a recommendation by CAT-RAD for the solicitation reviewed. The response will clearly state what the reason(s) are for rejecting the recommendation and how this decision was determined.</li> </ol>

	<p>6. The Court will provide CAT-RAD with an electronic response to the delegation letter and recommendations provided by CAT-RAD through delivery utilizing the email system and CAT-RAD will include the response within its files.</p> <p>7. The Court will maintain a copy of all CAT-RAD responses within the solicitation file for documentation purposes in the event of a procurement audit by the Fiscal Management Division of the Comptroller's Office.</p>
<b>Authority</b>	TX Gov't Code 2262.101(d)
<b>Approved</b>	DATE: <u>November 30, 2023</u> PROGRAM MANAGER: <u>not applicable</u> EXECUTIVE DIRECTOR: <u>Thomas W. Gray</u>



# Organizational Chart Tenth Court of Appeals 2024





TENTH COURT OF APPEALS
INVITATION FOR BIDS

IFB 3/2008

IF NOT BIDDING
DO NOT RETURN THIS FORM.
BIDDER AGREES TO COMPLY WITH
ALL TERMS & CONDITIONS OF THIS IFB

Form with fields: AGENCY TO INVOICE, DESTINATION OF GOODS IF DIFFERENT THAN ABOVE

BID OPENING > ## AM/PM ## ## ##

REQUISITION NO. > ##### # ##### #

PAGE X OF Y

FAILURE TO SIGN WILL DISQUALIFY BIDDER

AUTHORIZED SIGNATURE

DATE

By signing this bid, bidder certifies that if a Texas address is shown as the address of the bidder, bidder qualifies as a Texas Bidder as defined in 34 TAC Rule 20.32(68).

WHEN BIDDING:

Each bid must be placed in a separate envelope with bid opening date and requisition number annotated immediately below return address on SEALED BID ENVELOPE.

IF BIDDING, RETURN SEALED BIDS TO:

TENTH COURT OF APPEALS
501 Washington Ave. Rm. 415, Waco, TX. 76701-1373
OR MAY BE HAND DELIVERED
(8:00 am - 5:00 pm)

FAX NUMBER FOR BIDS & ADDENDUMS ONLY:
254-757-2822

Call 254-757-5200 for FAX confirmation (8:00 am - 5:00 pm)

VENDOR ADDRESS AND IDENTIFICATION NUMBER

Vendor ID # \_\_\_\_\_

AN IDENTIFICATION NUMBER IS REQUIRED TO PROCESS PAYMENT FOR GOODS/SERVICES PURCHASED AGAINST CONTRACT AWARDS. THE FEDERAL EMPLOYERS IDENTIFICATION NUMBER (EIN) WILL BE USED TO ESTABLISH A PAYEE ID NUMBER:

PLEASE ENTER YOUR FEDERAL EIN: [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]

Every vendor MUST have an EIN prior to receiving payment under an awarded contract. This is being required in an effort to minimize identity theft. For information on obtaining your EIN, you may call the IRS at 800-829-4933 or visit the following web site: http://www.irs.gov/businesses/

CHECK HERE IF YOU ARE A SOLE OWNERSHIP OR PARTNERSHIP AND COMPLETE SECTION 11: [ ]

PREFERENCES

See Section 2.38 of the State of Texas Procurement Manual regarding preferences.

Check below to claim a preference under 34 TAC Rule 20.38

- Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
Agricultural products grown in Texas
Agricultural products offered by a Texas bidder
Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
Services offered by a Texas bidder that is not owned by a Texas resident service disabled veteran
Texas Vegetation Native to the Region
USA produced supplies, materials or equipment
Products of persons with mental or physical disabilities
Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
Energy Efficient Products
Rubberized asphalt paving material
Recycled motor oil and lubricants
Products produced at facilities located on formerly contaminated property
Products and services from economically depressed or blighted areas



**TEXAS PROCUREMENT AND SUPPORT SERVICES**  
**STANDARD TERMS AND CONDITIONS:**  
**ITEMS BELOW APPLY TO AND BECOME PART OF BID.**  
**ANY EXCEPTIONS THERETO MUST BE IN WRITING.**

**1. BIDDING REQUIREMENTS:**

- 1.01. Bidders must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of this form.
- 1.02. Bids should be submitted on this form. Bidders must price per unit shown. Unit prices shall govern in the event of extension errors. If a price quotation is submitted as part of the bid, the quotation must be referenced on the bid document and signed by the bidder to establish formal linkage to the bid.
- 1.03. Bids must be time stamped at Tenth Court of Appeals (TCA) on or before the hour and date specified for the bid opening.
- 1.04. Late and/or unsigned bids will not be considered under any circumstances. Person signing bid must have the authority to bind the firm in a contract.
- 1.05. Quote FOB destination, freight prepaid and allowed unless otherwise stated within the specifications.
- 1.06. Bid prices are requested to be firm for TCA acceptance for 30 days from bid opening date. "Discount from list" bids are not acceptable unless requested. Cash discounts are not considered in determining an award. Cash discounts offered will be taken if earned.
- 1.07. Bidder should enter Texas Identification Number System (TINS) number, full firm name and address of bidder on the face of this form. Enter in the space provided, if not shown. Additionally, firm name should appear on each continuation page of a bid, in the block provided in the upper right hand corner.
- 1.08. Bid cannot be altered or amended after opening time. Alterations made before opening time should be initialed by bidder or his authorized agent. No bid can be withdrawn after opening time without approval by the TCA based on an acceptable written reason.
- 1.09. Purchases made for State use are exempt from the State Sales tax and Federal Excise tax. Do not include tax in bid. Excise Tax Exemption Certificates are available upon request.
- 1.10. **AWARD NOTICE:** The State reserves the right to make an award on the basis of low line item bid, low total of line items, or in any other combination that will serve the best interest of the State and to reject any and all bid items at the sole discretion of the State. The State also reserves the right to accept or reject all or any part of any bid, waive minor technicalities and award the bid to best serve the interests of the State. Any contract may also be extended up to three months at the sole discretion of the State.
- 1.11. Consistent and continued tie bidding could cause rejection of bids by the TCA and/or investigation for antitrust violations.
- 1.12. The telephone number for FAX submission of bids is 1-254-757-2822. This is the only number that will be used for the receipt of bids. The State shall not be responsible for failure of electronic equipment or operator error. Late, illegible, incomplete, or otherwise non-responsive bids will not be considered. Call 254-757-5200 for FAX confirmation.
- 1.13. Inquiries pertaining to this IFB must include the requisition number, class/item codes, and opening date.

**2. SPECIFICATION:**

- 2.01. Catalogs, brand names or manufacturer's references are descriptive only, and indicate type and quality desired. Bids on brands of like nature and quality will be considered unless advertised under §2155.067, Texas Government Code (Gov't Code). If bidding on other than references, bid should show manufacturer, brand or trade name, and other description of product offered. If other than brand(s) specified is offered, illustrations and complete description of product offered are requested to be made part of the bid. Failure to take exception to specifications or reference data will require bidder to furnish specified brand names, numbers, etc.
- 2.02. Unless otherwise specified, items shall be new and unused and of current production.
- 2.03. All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.
- 2.04. Samples, when requested, must be furnished free of expense to the State. If not destroyed in examination, they will be returned to the bidder, on request, at bidder's expense. Each sample should be marked with bidder's name and address, and requisition number. Do not enclose in or attach bid to sample.
- 2.05. The State will not be bound by any oral statement or representation contrary to the written specifications of this Invitation for Bids (IFB).
- 2.06. Manufacturer's standard warranty shall apply unless otherwise stated in the IFB.

**3. TIE BIDS:**

Awards will be made in accordance with 34 TAC Rules 20.36(b)(3) and 20.38 (Preferences).

**4. DELIVERY:**

- 4.01. Show number of days required to place material in receiving agency's designated location under normal conditions. Delivery days mean calendar days, unless otherwise specified. Failure to state delivery time obligates bidder to deliver in 14 calendar days. Unrealistic delivery promises may cause bid to be disregarded.
- 4.02. If delay is foreseen, bidder shall give written notice to the TCA and the ordering agency. Bidder must keep the TCA and ordering agency advised at all times of status of order.
- 4.03. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the TCA to purchase the goods or services of this IFB elsewhere and charge any increased costs for the goods or services, including the cost of rebidding, to the bidder.
- 4.04. No substitutions permitted without written approval of TCA.
- 4.05. Delivery shall be made during normal working hours only, unless prior approval has been obtained from ordering agency.

**5. INSPECTION AND TESTS:**

All goods will be subject to inspection and test by the State. Authorized TCA personnel shall have access to supplier's place of business for the purpose of inspecting merchandise. Tests shall be performed on samples submitted with the bid or on samples taken from regular shipment. All costs shall be borne by the bidder in the event products tested fail to meet or exceed all conditions and requirements of the specification. Goods delivered and rejected in whole or in part may, at the State's option, be returned to the bidder or held for disposition at bidder's expense. Latent defects may result in revocation of acceptance.

**6. AWARD OF CONTRACT:**

A response to this IFB is an offer to contract based upon the terms, conditions, and specifications contained herein. Bids do not become contracts until they are accepted through an open market purchase order. The contract shall be governed, construed, and interpreted under the laws of the State of Texas. The factors listed in §§2155.074, 2155.144, 2156.007, and 2157.003, Gov't Code, shall also be considered in making an award when specified. Any legal actions must be filed in Travis County, Texas.

**7. PAYMENT:**

Bidder shall submit 2 copies of an itemized invoice showing State order number and agency requisition number on all copies. The State will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods or services and an uncontested invoice. Payment shall be made in accordance with Chapter 2251, Gov't Code.

**8. PATENTS, TRADEMARKS, OR COPYRIGHTS:**

Bidder agrees to defend and indemnify the TCA and State from claims involving infringement or violation of patents, trademarks, copyrights, trade secrets, or other proprietary rights, arising out of the TCA's or the State's use of any good or service provided by the bidder as a result of this IFB.

**9. BIDDER ASSIGNMENTS:**

Bidder hereby assigns to the TCA any and all claims for overcharges associated with this contract arising under the antitrust laws of the United States 15 U.S.C.A. §1, *et seq.*, and the antitrust laws of the State of Texas, Tex. Bus. & Comm. Code §15.01, *et seq.*

**10. BIDDER AFFIRMATIONS:**

Signing this bid with a false statement is a material breach of contract and shall void the submitted bid and any resulting contracts, and the bidder shall be removed from all bid lists. By signature hereon affixed, the bidder hereby certifies that:

- 10.01. The bidder has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted bid.
- 10.02. Pursuant to 15 U.S.C. §1, *et seq.* and Tex. Bus. & Comm. Code §15.01, *et seq.* neither the bidder nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
- 10.03. Pursuant to §2155.004, Gov't Code, neither the bidder nor any person or entity which will participate financially in any contract resulting from this IFB has received compensation for participation in the preparation of the specifications for this IFB.
- 10.04. Pursuant to §231.006(d), Texas Family Code, regarding child support, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any bidder subject to §231.006, Gov't Code, must include 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. Enter the Name & Social Security Numbers for each person below:

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

- 10.05. Under §2155.004, Gov't Code, the bidder certifies that the individual or business entity named in this bid or any contract resulting from this IFB is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate. §2155.004 prohibits a person or entity from receiving a state contract if they received compensation for participating in preparing the solicitation or specifications for the contract.
- 10.06. As required by §2252.903, Gov't Code, bidder agrees that any payments due under a contract resulting from this IFB shall be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support, until the debt is paid in full. Bidder shall comply with rules adopted by TCA under §§403.055, 403.0551, 2252.903, Gov't Code and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.
- 10.07. Pursuant to §669.003, Gov't Code, TCA may not enter into a contract with a person who employs a current or former executive head of the TCA until four years has passed since that person was the executive head of the TCA. By submitting a bid, the bidder certifies that it does not employ any person who was the executive head of the TCA in the past four years. If bidder does employ a person who was the executive head of the TCA, provide the following information:  
 Name of Former Executive: \_\_\_\_\_  
 Name of State Agency: \_\_\_\_\_  
 Date of Separation from State Agency: \_\_\_\_\_  
 Position with Bidder: \_\_\_\_\_  
 Date of Employment with Bidder: \_\_\_\_\_
- 10.08. In accordance with §2155.4441, Gov't Code, bidder agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
- 10.09. Bidder certifies that the bidding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that bidder is in compliance with the State of Texas statutes and rules relating to procurement and that bidder is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>

- 10.10. Sections 2155.006 and 2261.053, Gov't Code, prohibit state agencies from awarding contracts 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, bidder certifies that the individual or business entity named in its bid is not ineligible to receive a contract and acknowledges that any contract resulting from this IFB may be terminated and payment withheld if this certification is inaccurate.
- 10.11. Bidder represents and warrants that payment to the bidder and the bidder's receipt of appropriated or other funds under any contract resulting from this IFB are not prohibited by §556.005 or §556.008, Gov't Code, relating to the prohibition of using state funds for lobbying activities.
- 10.12. Bidder represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to TCA under the IFB and any resulting contract, if any, and that bidder's provision of the requested items under the IFB and any resulting contract, if any, would not reasonably create an appearance of impropriety.
11. **NOTE TO BIDDER:**  
If bidder takes any exceptions to any provisions of the IFB, these exceptions must be specifically and clearly identified by section in bidder's bid in response to the IFB and bidder's proposed alternative must also be provided in the bid. Bidders cannot take a 'blanket exception' to the entire IFB. If any bidder takes a 'blanket exception' to the entire IFB or does not provide proposed alternative language, the bidder's bid may be disqualified from further consideration.
12. **PROTEST PROCEDURES:**  
Any actual or prospective bidder who is aggrieved in connection with this IFB, evaluation, or award of any contract resulting from this IFB may formally protest as provided in TCA's rules at 34 TAC Rule 20.384.
13. **DISPUTE RESOLUTION:**  
The dispute resolution process provided for in Chapter 2260, Gov't Code must be used by the TCA and the bidder to attempt to resolve any dispute arising under any contract resulting from this IFB.
14. **NON-APPROPRIATION OF FUNDS:**  
Any contract resulting from this IFB is subject to termination or cancellation, without penalty to TCA, either in whole or in part, subject to the availability of state funds. TCA is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If TCA becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render TCA's or bidder's delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, TCA will not be liable to bidder for any damages, which are caused or associated with such termination, or cancellation and TCA will not be required to give prior notice.
15. **TEXAS PUBLIC INFORMATION ACT:**  
Notwithstanding any provisions of this IFB to the contrary, bidder understands that TCA will comply with the Texas Public Information Act (Chapter 552, Gov't Code) as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to the Texas Public Information Act. Within three (3) days of receipt, bidder will refer to TCA any third party requests, received directly by bidder, for information to which bidder has access as a result of or in the course of performance under any contract resulting from this IFB. Any part of the solicitation response that is of a confidential or proprietary nature must be clearly and prominently marked as such by the bidder.
16. **CONFLICT OF INTEREST:**  
Under §2155.003, Gov't Code, a TCA employee may not have an interest in, or in any manner be connected with a contract or bid for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Section 1.2 of the State of Texas Procurement Manual, which outlines the ethical standards required of public purchasers, employees, and bidders who interact with public purchasers in the conduct of state business, and with any opinions of or rules adopted by the Texas Ethics Commission. Entities who are interested in seeking business opportunities with the State must be mindful of these restrictions when interacting with public purchasers of TCA or purchasers of other state agencies.
17. **FORCE MAJEURE:**  
Neither bidder nor TCA shall be liable to the other for any delay in, or failure of performance, of any requirement included in any contract resulting from this IFB caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. 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.
18. **INDEPENDENT CONTRACTOR:**  
Bidder is and shall remain an independent contractor in relationship to the TCAS. The TCA shall not be responsible for withholding taxes from payments made under any contract resulting from this IFB. Bidder shall have no claim against the TCA 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.

19. **INDEMNIFICATION:**  
BIDDER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES, AND TCA, 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 BIDDER OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF BIDDER IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT WITH BIDDER RESULTING FROM THIS IFB. BIDDER SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY TCA. THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE BIDDER TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TCA FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF TCA OR ITS EMPLOYEES.
20. **RIGHT TO AUDIT:**  
In addition to and without limitation on the other audit provisions of this IFB, pursuant to §2262.003, Texas Government Code, the state auditor may conduct an audit or investigation of the bidder 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 bidder 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 bidder 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. This IFB or any contract resulting from this IFB may be amended unilaterally by TCA to comply with any rules and procedures of the state auditor in the implementation and enforcement of §2262.003, Texas Government Code. Bidder will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the bidder and the requirement to cooperate is included in any subcontract it awards.



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ITEM NO.	CLASS & ITEM	DESCRIPTION	QUANTITY	UNIT	MAKE/MODEL	UNIT PRICE	EXTENSION
		(BID TEXT ENTRY HERE)					