

TEXAS PUBLIC FINANCE AUTHORITY

Request for Proposals

for

Executive Search Firm

RFP No. 2012-347-0002

Due: August 1, 2011

Time: 5:00 P.M. (CT)

Subsequent to the publication of this request for proposals, contact with any staff member or member of the Authority Board, other than through the individual designated herein, by the Proposer or its representatives may result in disqualification.

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Attachment -- Job Description of Executive Director's Position

TEXAS PUBLIC FINANCE AUTHORITY

August 1, 2011

Estimated Schedule for Search Firm Selection

The following dates will apply during the proposal and selection process. These dates are provided for planning purposes. TPFA reserves the right to modify this schedule as deemed necessary.

Issue RFP	July 22, 2011
Proposals Due	August 1, 2011 – 5:00 p.m. CT
TPFA Board of Directors Evaluate Responses and Identify Respondents for Interviews	August 4, 2011

I. INTRODUCTION AND BACKGROUND

The Texas Public Finance Authority is an agency of the State of Texas charged with providing the most cost-effective financing available to fund capital projects, equipment acquisitions, and programs as authorized by the Texas Legislature.

The Authority is governed by a seven-member Board of Directors (the "Board"), appointed by the Governor with consent of the Senate for six-year, staggered terms. The current members of the Board are: D. Joseph Meister; Chair; Ruth C. Schiermeyer, Vice Chair; Gerald Alley, Secretary; Rodney K. Moore, Robert T. Roddy, Mark W. Eidman, and Billy M. Atkinson, Jr., Members. The former Executive Director, Dwight D. Burns, was appointed in 2009 and resigned effective July 6, 2011. On July 7, 2011, the Board appointed Susan K. Durso, the agency's General Counsel, to serve as Interim Executive Director.

This purpose of this RFP is to solicit proposals from qualified executive search firms to assist the Board in selecting a new Executive Director. The Authority's request to use a private consultant to assist in the Executive Director Search has received the finding of fact required by Texas Government Code §2254.028(a)(3) for a contract amount not to exceed \$20,000, including expenses.

Agency Background Information:

The Authority or "TPFA" (formerly the Texas Public Building Authority) was created in 1983 by the 68th Texas Legislature. The TPFA is authorized to issue revenue bonds and general obligation bonds for the State of Texas to provide funding for purposes authorized by the Legislature. It has issued revenue and/or general obligation bonds on behalf of more than twenty-five state agencies and institutions of higher education and monitors the outstanding debt for compliance with state and federal laws, particularly federal tax and securities laws. The Authority currently administers six commercial paper programs; namely: the Master Lease Purchase Program, which is a revenue program used primarily for financing equipment acquisitions; the general obligation commercial paper programs Series 2002A and Series 2008 for certain general state government construction projects; the General Obligation Commercial Paper Program Series 2002B (Colonia Roadways), used to fund roadway projects in areas located in Texas border counties and the General Obligation CP Notes (Cancer Prevention and Research Institute of Texas Project), Series A (Taxable) and Series B (Tax-Exempt), used to fund grant awards for cancer research and prevention programs. In 2003, the Authority created a nonprofit corporation to finance projects for eligible charter schools pursuant to Chapter 53 of the Education Code. The Texas Public Finance Authority Charter School Finance Corporation administers and awards grant funds to finance facilities acquisition and construction projects for open enrollment charter schools and issues debt on behalf of qualified open enrollment charter schools. Staff of the Authority provides administrative support to the corporation pursuant to contract. Additionally, the Authority is designated to issue up to \$2.5 billion in public securities to catastrophic losses for claims payable by the Texas Windstorm Insurance Association.

Direction and Management of the Authority:

The Board-appointed Executive Director manages a state agency with a total of 14 authorized FTEs on a biennial operating budget of approximately \$1.8 million and manages outstanding debt of approximately \$4.6 billion. The agency is housed in the William B. Clements State Office Building at 300 W. 15th St., Room 411, Austin, Texas 78701. In addition to issuing debt, the agency is responsible for the timely payment of debt service, post-issuance monitoring to ensure compliance with state and federal laws affecting municipal debt issuance, and compliance with state laws governing the acts of state agencies, officers and employees. The Executive Director serves at the will of the Board and employs staff to carry out the Authority's mission within the parameters of state and federal law and Board policies.

II. SERVICES TO BE PROVIDED

This section of the RFP outlines the scope of services to be provided to TPFAs in connection with the search for a new Executive Director. At a minimum, the following services shall be provided by the Consultant.

1. The Consultant shall meet with and/or make presentations to a Search Committee of the Board or the Board of Directors of the TPFAs (hereinafter, the "Board" shall refer to either a Search Committee of the Board, if one is appointed, the Board of Directors, or both, as the context suggests or requires) at the start of the search in order to achieve a clear mutual understanding of the job requirements for the position and the search process. The Consultant shall attend follow up meetings and make presentations as directed by the Search Committee and/or the Board.
2. Advise and assist the Board in the development and implementation of a recruitment plan for publicizing the vacancy in compliance with state law.
3. Develop a job posting and/or vacancy notice for publication on the Texas Workforce Commission's WorkInTexas website (<http://www.workintexas.com>) in compliance with state law, and for publication through other publicly available sources.
4. Identify potential candidates through professional contacts, assembling names of candidates, contacting them and determining their interest in the position.
5. The Consultant will inform candidates for the position of Executive Director from the outset that information concerning the candidates will be available under the Texas Public Information Act and that agency heads are required to file personal financial disclosure statements with the Texas Ethics Commission, so that candidates can consider these factors in determining their interest in the position.

6. Review and evaluate State of Texas Applications/resumes received from all sources. All applicants must complete a State of Texas application.
7. Develop profiles for all candidates whose applications demonstrate that they meet the minimum qualifications for the position.
8. Evaluate, in consultation with the Board, the qualified candidates for the position of Executive Director and assist the Board in narrowing the field for conducting interviews with the top candidates. The Board reserves the right to review additional qualified candidates at any time during the process.
9. Provide appropriate compensation research and advice, as requested by the Board.
10. Provide application summaries for each candidate and recommend appropriate and legal questions to the Board for its interview of candidates.
11. Attend and assist the Board in any interview, as requested by the Board.
12. Assist the Board with confirming candidate qualifications, reference, and/or background checks as directed by the Board and pursuant to applicable law.
13. Provide weekly progress status reports and be accessible for consultation on any aspect of the project during the contract period as requested by the Board.
14. Handle all acknowledgement letters and other correspondence to applicants, nominators and nominees. All letters and correspondence shall be approved by TPFAs prior to issuance.
15. Assist in the development of a formal offer to the selected candidate, as requested.
16. Provide any other service, identified in the Consultant's proposal under the section entitled Respondent's Action Plan (paragraph IV. E below), that the Board requests.
17. To the extent permitted by applicable law, maintain confidentiality of information obtained through interactions with the Board and its members as a result of the contract.
18. Following completion or termination of the contract, return to the TPFAs all records developed as a part of the contract including but not limited to job descriptions, reports, search results, resumes, applications, profiles, evaluations, interview questions, interview materials, selection materials, and correspondence between any candidate, Board member and consultant. The Authority shall be the sole owner of any and all materials produced for this search, and the Proposer shall warrant that the Authority will have free and clear title to all materials produced and delivered to the Authority, including copyright.
19. The Authority will select a limited number of Respondents to make presentations and reserves the right to select such Proposers and to make its final selection based upon its evaluation of the criteria listed above.

20. The selected firm must be free of any conflict of interest and will be required to advise the Authority of any actual or potential conflict of interest.

III. RESPONSIBILITIES OF THE EXECUTIVE DIRECTOR

Attached is the current job description for the Executive Director position and the minimum qualification and experience requirements. A copy will be available on TPFAs website throughout the recruiting process.

The compensation package includes:

- ◆ Salary commensurate with experience, within the range of \$96,000 to \$120,000, (within State of Texas Exempt Classification Group 4, the current classification of the position, but no greater than \$120,000 the amount authorized by the General Appropriations Act.)*
- ◆ Participation in the State of Texas Employee Retirement plan,
- ◆ The employee's choice of health, dental, and life insurance coverage from a group plan administered for all state employees,
- ◆ Optional participation in 401(k) and 457 deferred compensation plans, and
- ◆ Tax-savings options for expenses related to day-care and health expenses through reimbursement accounts.
- ◆ Agency paid parking.

The TPFAs website, located at www.tpfa.state.tx.us, provides comprehensive information about the TPFAs, including its debt programs and policies, legislative appropriations requests, and financial reports. The Employees Retirement System of Texas provides comprehensive information about the benefits available to state employees.

IV. PROPOSAL REQUIREMENTS

The submitted Proposals shall be titled "Search for an Executive Director" and shall clearly show the due date and time.

The Respondent's submitted Proposal shall include all information specified below. Responses will be evaluated based on responses to the required information. Respondents are solely responsible for their Proposals and all documentation submitted.

Responses should be as succinct as possible and provide clear, complete information to allow evaluation of the Respondent's qualifications, approach, and ability to meet TPFAs needs in a responsive and cost effective manner. Respondent shall provide detailed descriptions of how it will fulfill each requirement. The clarity and completeness of a proposal will be considered in evaluating responses.

*The group classification and the ranges in the group are subject to change by the Legislature.

A. Transmittal Letter

Provide a letter signed by an individual authorized to bind the firm contractually. The letter must include the name, title, address, phone number, fax number, and e-mail address of a contact authorized to provide clarifying information regarding the proposal.

B. Organizational Background

Provide written responses to the following questions.

1. How many years has the firm been providing executive search services?
2. Describe the ownership structure of the firm, including the relationships of each branch office to other branch offices and to the headquarters office. Identify the individual who has overall responsibility for the firm's operations. Identify the individuals, relative to the TPFAs account, who can bind the firm contractually, and who will interact with the Board.
3. Describe the operational structure of the firm. Identify the locations of the headquarters and branch offices that will be providing services under this contract. How many employees are at the location(s) where the services related to this contract will be performed?
4. Indicate whether the firm has fully staffed offices within the State of Texas. If not, such Respondents are classified as "non-resident" entities.
5. Describe the firm's usual process for interface with the client and normal process for flow of information with consulting clients.

C. Financial Strength

1. Demonstrate the firm's financial ability and financial soundness through submittal of an audited financial statement, for the most recent fiscal year, if available, or similar financial document.
2. Please describe any insurance the firm maintains, including the amount of coverage, the deductible and coinsurance, if applicable, and the coverage provider.

D. Experience

1. Describe your firm's experience in identifying and locating candidates for an executive position for a not-for-profit agency or governmental entity and any other relevant, similar professional-candidate search work. Include a record of achievement and recognized expertise in consulting on comparable recent searches for executive-level professionals for large corporations, trust funds, financial institutions, municipal debt issuers, or similar institutions.
2. Provide information on your firm's industry experience and history of client satisfaction, including the average length of retention of executives who were placed by the Respondent.
3. Describe your research capacity, including its ability to obtain the most recent information and the depth of executive information for individuals having credentials relevant to this search.

E. Methodology

In this section, describe the specific methodology to be used for required services identified in Section II of the RFP. Describe the "Respondent's Action Plan" for assisting with the search process, from commencement through selection.

Please include pertinent information regarding the firm's ability to perform extensive background checks which would address state Ethics Commission filings, SEC/Licensing authority, censures and allegations, criminal and civil legal filings, employment verification, verification of academic credentials, and article searches. Civil and criminal searches should identify litigation brought by or against the candidate including state and federal civil and criminal courts, personal bankruptcy, tax liens and tax cases for the past fifteen years. Indicate capabilities to perform searches for candidates who have lived in another country. TPFA will direct this activity pursuant to item #12 in Section II above.

F. Personnel

Identify the primary contact person and others who will be involved in the search. Provide the qualifications and experience of the key individuals to be assigned to TPFA's search team. Attach the resumes of the key individuals as an exhibit to the Proposal.

G. References

Provide a list of references from current and past clients for whom comparable recruiting services have been performed. For each reference listed, include client name, address, and the telephone number and name of a contact person.

A minimum of three references shall be provided for the firm and each of the key individuals to be assigned to TPFA's search team.

H. Exceptions

Any exceptions to the specifications, terms and conditions of the RFP shall be explicitly set forth here. Enumerate and provide a detailed description of each deviation between your proposal and these specifications. TPFA will interpret your proposal to match the specifications herein except for deviations specifically noted and described in response to this item. Notwithstanding the foregoing, deviations will not become a part of the final contract unless expressly agreed to by TPFA in the main body of the Contract signed by TPFA. In the absence of any identified deviations, your organization will be bound to the terms of the RFP.

I. Fees

Provide a detailed description of all costs (fees and reimbursable expenses) that TPFA would incur, and how and when payments would be due. The Proposal must describe the extent to which TPFA will be obligated to pay the Respondent's cost if the search is not successfully completed or is terminated. In assessing its charges, Respondents should consider that TPFA will expect assistance with conducting an extensive search of public and private sector entities where prospects would reasonably be expected to be currently employed, and may require assistance in contacting a high number of candidates and conducting preliminary interviews.

If you offer video conferencing services, provide the associated charges. At a minimum and as applicable, the associated charges shall include: location; originator fee; receiver fee; hourly fee(s) including any difference in fees for first hour versus remaining hours; and cancellation fee.

J. Vendor Standing with State of Texas

1. Respondent, if incorporated, shall attach to the proposal a current franchise tax Certificate of Good Standing, issued by the Texas State Comptroller's Office or shall certify that it is not subject to the Texas corporate franchise tax. If Respondent is a certified-HUB vendor, please provide a copy of the current certificate. Making a false statement in regards to corporate franchise tax status may result in the termination of the contract at the option of TPFA.
2. Respondent shall provide to the TPFA, Respondent's nine (9) digit Federal Employer's Identification Number (FEI#) or Respondent's fourteen (14) digit State of Texas Vendor's Identification Number (VIN).

Respondent's FEI# _____

Respondent's VIN# _____

V. PROPOSAL SUBMISSION

- A. Submit nine (9) paper copies of the proposal, and one electronic copy in a Word compatible format in a sealed package. The electronic copy may be emailed to: paula.hatfield@tpfa.state.tx.us, with a copy to pamela.scivicque@tpfa.state.tx.us, with “Executive Search RFP” in the subject line.

All copies, electronic and paper, of proposals must be received at the TPFA offices no later than 5:00 p.m. CT on August 1, 2011. Mail or deliver to:

Paula Hatfield
Executive Assistant
Texas Public Finance Authority
300 W. 15th St., Room 411
Austin, Texas 78701

Clearly mark the outside of your sealed package “RESPONSE TO REQUEST FOR PROPOSAL – Search for Executive Director.” TPFA is not responsible for receipt of any proposal that is improperly labeled, or addressed and accepts no responsibility for lost and/or late delivery of proposals.

B. General Conditions

1. Respondent Affirmation—Signing this Proposal with a false statement is a material breach of contract and shall void the submitted Proposal or any resulting contract.
2. Respondents are cautioned that any oral representations made by TPFA staff, individual Board members, or other persons affiliated in any way with TPFA are not binding on either TPFA or the Respondents, and cannot be interpreted as modifications or clarifications of this RFP. Any modifications made by TPFA will be initiated in the form of a written addendum to the RFP and will be posted on the agency website and on the Texas Electronic Business Daily.
3. All proposal material and supporting documentation that is submitted in response to this proposal will not be returned.
4. TPFA is not responsible for any costs directly or indirectly related to preparation of a proposal or oral presentation, if any, required to supplement.
5. Written approval will be required for any news release regarding the award of contract or use of the agency as a reference.
6. The selection of a Proposal is conditioned upon the execution of a mutually acceptable contract between TPFA and the Respondent.
7. TPFA may waive any immaterial deviation or defect in a proposal. A TPFA waiver of an immaterial deviation or defect shall in no way modify the Request for Proposals documents or excuse the proposal from full compliance with the RFP requirements.
8. Texas Public Information Act:

In general, Respondents are advised that information they provide about their firm, the search, and candidates will be available to the public under the Texas Public Information laws. It is important that candidates for the position of Executive Director understand at the outset that information concerning candidates will be available under the Texas Public Information Act and that the candidate consider this in expressing their interest in the position.

Specifically, Respondents are advised that information included in a proposal is subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code (the PIA). Information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. All proposals shall be deemed, once submitted, to be the property of the Authority. Information submitted in response to this RFP shall not be released to the public by the Authority during the proposal evaluation process or prior to Board's contract award. After the evaluation process is completed by the Board's award of a contract, proposals and the information included therein may be subject to public disclosure under the PIA. All respondents have the right to assert the confidentiality of financial and trade information. Any information considered by Respondent to be confidential under the PIA must be clearly marked in all capitals and in bold, and cite to the relevant exception to disclosure under the PIA on each page where the confidential information appears:

**“CONFIDENTIAL PURSUANT TO
[IT IS RESPONDENT’S RESPONSIBILITY TO CITE TO THE RELEVANT
EXCEPTION TO DISCLOSURE UNDER THE PIA].”**

The Authority is not responsible for the release of confidential information after the award of a contract pursuant to this RFP if the document is not clearly marked as required. If a request for disclosure of a proposal is made for information marked confidential in accordance with this section, the Authority will notify the Respondent and give it an opportunity to present its argument and evidence for protection from disclosure to the Office of the Attorney General, in accordance with the provisions of the PIA.

9. By submitting a proposal, the Respondent waives any claim it has or may have against TPFA, the Board, and TPFA employees arising out of or in connection with (1) the administration, evaluation or recommendation of any proposal; (2) waiver of any requirement under this RFP; (3) acceptance or rejection of any proposal; and (4) award of the contract.

10. TPFA may issue addenda, amendments, and clarifications regarding this RFP that TPFA believes are necessary. All such addenda, amendments, and clarifications issued by TPFA become part of the RFP. All addenda, amendments, and clarifications to the RFP will be issued in writing and posted on the TPFA website and Texas Electronic Business Daily. TPFA will also e-mail or fax any addenda, amendments, or clarifications to all respondents that have provided TPFA with a fax number or e-mail.
11. TPFA reserves the right to terminate or modify this RFP and to reject any or all proposals submitted. TPFA is not required to select the proposal with the lowest fees but will select the Proposal, if any, that in its judgment represents that offers the best value to the State as determined from a combination of demonstrated competence, knowledge, qualifications, and reasonableness of the proposed fee for the services.
12. TPFA reserves the right to request additional documentation or information from Respondents. Requested information may vary by Respondent.
13. TPFA reserves the right to negotiate with the selected Respondent all provisions of this RFP and of the Proposal, including fees.
14. No Proposal shall be considered unless the Consultant warrants that upon execution of a contract with TPFA the Consultant will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of age, religion, race, color, sex, disability, or national origin and will submit a report as TPFA may thereafter require to assure compliance.
15. Respondent must certify in their Proposal to this RFP that it does not know, nor does it have any reason to know, that any Board member or employee of TPFA (i) has any relationship with or interest in Respondent that could reasonably be expected to diminish the independence of judgment of the Board member or employee in the performance of their responsibilities to TPFA, (ii) has any direct or indirect pecuniary interests in the contract, (iii) is employed by or participates in the management of Respondent, or (iv) owns or controls, directly or indirectly, more than a 10 percent interest in Respondent.
16. Pursuant thereto, Respondent acknowledges that any contract that results from the awarding of this RFP will contain a clause providing that if any Board member or employee of TPFA has any of the interests or relationships noted in section 15., subsections (i) through (iv) above, the contract may terminate or be terminated immediately.
17. By submitting a Proposal, Respondent certifies that the individual or business entity named in the proposal is not ineligible under Texas law to receive the contract and acknowledge that any resulting contract may be terminated and payment withheld if they are ineligible.

18. No Proposal may be withdrawn for a period of 60 calendar days subsequent to the opening of proposals without the prior written approval of TPFA.
19. It is the policy of the Authority to make a good faith effort to include participation of Historically Underutilized Businesses (HUB) in its contracts. A "HUB" is a for profit business that meets the requirements of Tex. Gov't Code, Chapter 2161 and administrative rules of the Texas Comptroller of Public Accounts in 34 TAC Chapter 20, Subchapter B. (For further information on the State's HUB program, please refer to: [http://www.window.state.tx.us/procurement/prog/hub/.](http://www.window.state.tx.us/procurement/prog/hub/)) The Authority has determined that this contracting opportunity does not provide for subcontracting opportunities.

VI. EVALUATION PROCESS

Each proposal package will be date and time-stamped when received. Proposals received after the required date and time may not be accepted and may be returned to the Respondent unopened.

Respondent(s) may be required to meet with the Board. Such meeting may entail a presentation to and/or interview by the Board at its discretion. Any such meeting will be held at a location to be determined by the Board.

It is anticipated that this meeting will occur as early as August 4, 2011, or later at the discretion of the Board. TPFA will contact the Respondent(s) at the earliest possible time to schedule this meeting and provide any known requirements. It is anticipated that the Respondent's proposed personnel may be required to be in attendance.

References may be contacted. Negative responses from references may be cause for rejection of the proposal.

Proposals will be evaluated based on all requirements and specifications in this RFP, and a selection will be based on a number of criteria that may include, but is not limited to the following:

- Compliance of the Respondent's Proposal with the RFP.
- An evaluation of the quality and appropriateness of the Respondent's Proposal.
- An evaluation of the Respondent's experience, qualifications, and record of achievement.
- The adequacy of the resources of the Respondent to be committed to the project.
- The best combination, in the Board's judgment, of the Respondent's demonstrated competence, knowledge, qualifications, and reasonableness of the proposed cost for the services.
- In accordance with Texas Government Code, section 1201.027 the Authority will evaluate responses to this RFP to identify the best value for the state.

Fees proposed by Respondent will be used for evaluation purposes. However, TPFA reserves the right to negotiate the pricing prior to award.

The selected Respondent may be contacted and negotiations, if any, begun on the Contract. If for any reason during the negotiation period TPFA concludes that a timely acceptable agreement is unlikely, it may reopen consideration of the other Proposals and select another Respondent or may re-issue the RFP and seek additional responses.

VII. GENERAL CONDITIONS

Any contract resulting from an award under this RFP shall be in a form satisfactory to TPFA and will include the following provisions:

1. **THE TEXAS PUBLIC INFORMATION ACT**

TPFA is subject to the provisions of the Texas Public Information Act. If a request for disclosure of this Contract or any information related to the services performed pursuant to the Contract or information provided to TPFA under this Contract constituting a record under the Act is received by TPFA, the information must qualify for an exception provided by the Texas Public Information Act to be withheld from public disclosure.

2. **TERM OF CONTRACT**

The Contract term will begin immediately upon the execution of the Contract by both parties. It is TPFA's intent that the search will be completed in a period no longer than five months. However, should the search take a longer period of time, at TPFA's discretion the Consultant shall agree to continue the search process without additional fees or allocated costs. Except as provided in this section and the termination provision of the contract, the contract term will end upon the completion of the services to be provided under the contract.

3. **TERMINATION**

The Contract may be terminated at any time by TPFA upon ten (10) days prior written notice to Consultant. Upon such termination, all indemnities herein, including without limitation those set forth in this Contract, shall survive the termination of this Contract and shall remain in full force and effect.

4. **REIMBURSABLE EXPENSES**

TPFA will reimburse eligible expenses in the manner described in this section. Expenses shall be limited to travel, meals, lodging, and related expenses. The reimbursable portion of any expense for travel, meals, lodging and related expenses for Consultant and candidates shall be governed by The State of Texas Travel Allowance Guide for state agency travel cost. Expense limitations and documentation requirements for travel, meals, lodging, and related expenses can be obtained by contacting: pamela.scivicque@tpfa.state.tx.us.

5. INDEMNIFICATION

The Consultant shall hold harmless and indemnify TPFAs, its officers and employees from any and all claims of any nature, including claims of employees or agents of Consultant, resulting from or arising out of the actions or omissions of the Consultant or its agents, officers, employees, or subcontractors under this Contract. The provisions of this section shall not be construed to eliminate or reduce any other indemnification or right which TPFAs has. This section shall survive the termination of the contract.

6. AMENDMENTS

Any alterations, additions, or deletions to the terms of the Contract shall be by an amendment in writing executed by both parties to this Contract.

7. ASSIGNMENTS

The Consultant agrees that it shall not have the right to assign, transfer, or convey any of its rights, title, or interest hereunder or to delegate any of its duties or obligations hereunder to a third party without the prior written consent of TPFAs. Any assignment in violation of this provision shall be void.

9. ANTITRUST

The Consultant shall certify that neither the Consultant nor any one acting for the Consultant has violated the antitrust laws of the State of Texas, codified in section 15.01 et seq., Texas Business and Commerce Code or the Federal Antitrust Laws, nor communicated directly or indirectly the Proposal made to any competitor or any other person engaged in such line of business.

10. SEVERABILITY

The invalidity, illegality, or unenforceability of any provisions of the Contract shall in no way affect the validity, legality, or enforceability of any other provisions. The Contract contains the final complete, and exclusive understanding of, and supersedes all prior contemporaneous, oral or written, Contracts, understandings, representations, and negotiations between parties relating to the subject matter of the Contract. The parties further agree that the Contract may not in any way be explained or supplemented by a prior or existing course of dealings between the parties, by usage of trade or custom, or by any prior performance between the parties pursuant to the Contract or otherwise.

11. DISCRIMINATION

Consultant warrants that upon execution of this Contract the Consultant will not engage in employment practices that have the effect of discrimination against employees or prospective employees because of age, religion, race, color, sex, disability, or national origin and will submit a report as TPFAs may hereafter require to assure compliance.

12. RESPONSIBILITY

The Consultant will be completely responsible for all contract services performed and will specifically assume all liability for any and all such services provided by subcontractors hired by the Consultant.

13. **AUDIT ACCESS**

At any time during the term of the Contract and for a period of four (4) years thereafter, the Texas State Auditor's Office may audit Consultant's records and books relevant to all services provided under this Contract. The acceptance of funds directly under contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the Sate Auditor to conduct an audit or investigation in connection with those funds.

14. **FAMILY CODE**

By signature hereon, the Consultant certifies that it is not ineligible under Section 231.006, Family Code, to receive payment under this Contract and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

15. **COMPLY WITH LAWS**

The Consultant shall comply with all applicable federal and state statutes, rules, and regulations.

16. **GOVERNING LAW**

This Contract shall be construed by and governed in accordance with the laws of the State of Texas.

17. **CUMULATIVE RIGHT**

Each and every right granted to the parties hereunder or under any other document delivered hereunder or in connection herewith, or allowed them by law or equity, shall be cumulative and may be exercised from time to time. No failure on the part of either party to exercise and no delay in exercising any right will operate as a waiver thereof, nor will any single or partial exercise thereof or the exercise of any other right.

18. **SALES TAX**

Sales tax are not applicable to any parts, material, labor or specialized service furnished hereunder on all amounts, becoming payable by TPFAs to the Consultant under this Contract. A Tax Exemption Certificate is available upon request.

19. **FRANCHISE TAX**

The Consultant certifies by signature hereon that either (a) its Texas State Franchise taxes are current or (b) that it is not subject to the Texas State Franchise Tax. Making a false statement as to corporate franchise status with regard to a state contract shall be grounds for the cancellation of this Contract at the option of TPFAs.

20. **RESPONSIBILITY FOR EMPLOYEES**

The Consultant agrees that it shall have the total responsibility for its employees in the areas of wrongful discharge lawsuits, unemployment issues, workers' compensation, employment taxes and reimbursement due to losses in these areas. Consistent therewith, the Consultant agrees that it shall make its own arrangements to provide its employees with workers' compensation benefits and TPFAs is, in no way, a party to such arrangements.

21. **CONTROL OF EMPLOYEES**
Regarding its employees, the Consultant shall have the sole authority to hire, fire, transfer, train, evaluate, discipline, pay and assign work.
22. **INDEPENDENT CONTRACTOR**
The Consultant is an independent contractor and shall perform the services under this Contract as an independent contractor. Neither the Consultant nor any of its employees are to be considered employees of TPFA or the State of Texas as a result of any action taken under the Contract.
23. **AFFIRMATION**
The Consultant has not given, offered to give, nor intends to give at anytime hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted proposal.
24. **PREPARATION OF SPECIFICATIONS**
Consultant certifies by signature hereon that it has not received compensation for participation in the preparation of specifications for this solicitation.
27. **NOT INELIGIBLE FOR CONTRACT AWARD**
The Consultant certifies that the individual or business entity named in this contract is not ineligible under Texas law to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
28. **STATE DEBT**
Consultant 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.
29. **CONFLICT OF INTEREST**
Consultant certifies that it does not know, nor does it have any reason to know, that any Board member or employee of TPFA (i) has any relationship with or interest in Consultant that could reasonably be expected to diminish the independence of judgment of the Board member or employee in the performance of their responsibilities to TPFA, (ii) has any direct or indirect pecuniary interest in the contract, (iii) is employed by or participates in the management of Contractor, or (iv) owns or controls, directly or indirectly, more than a 10 percent interest in Consultant. If any Board member or employee of TPFA has any of the interest or relationships noted in subsections (i) through (iv) above, the Contract may terminate or be terminated immediately.
30. **INSURANCE**
Consultant shall comply with the following:
 - a. Consultant shall carry Professional Liability Insurance in an amount agreeable to TPFA.

- b. Consultant shall maintain Worker's Compensation and Employee's Liability protection of employees in accordance with Texas Workers Compensation Commission Laws, Rules and Regulations.
 - c. All insurance policies shall be issued by companies authorized to do business under the laws of the state of Texas.
 - d. Renewal policies shall be furnished not less than 30 days prior to the expiration of the policy.
31. **SUBCONTRACTORS**
TPFA reserves the right to reject any subcontractor. Contractor is fully responsible for all work performed by Contractor's subcontractors. The Board has not identified subcontracting opportunities associated with this procurement.
32. **CONFLICT WITH TEXAS LAW**
Any terms and conditions of this Contract that conflict with the law of the state of Texas shall not be enforceable and will not be binding.
33. **REPRESENTATIONS AND WARRANTIES**
Consultant acknowledges that all of its representations and warranties contained in the Contract are material and have been relied upon by TPFA in entering into the Contract. Consultant warrants and represents that all of its statements and representations made in its Proposal and during the negotiation of the Contract are material, true, and correct. Consultant shall promptly notify TPFA in the event any representation or warranty is no longer true and correct.
34. **DISPUTE RESOLUTION PROCESS**
The dispute resolution process provided for in Gov't Code, Chapter 2260 shall be used by the TPFA and Contractor to resolve any dispute arising under the Contract.