

**REQUEST FOR QUALIFICATIONS
AUDIT SERVICES CONTRACT**

DATE: December 4, 2019

City of Texarkana, Texas
FINANCE DEPARTMENT
220 TEXAS BLVD
TEXARKANA, TEXAS 75501
PH: (903) 798-3923
kimberly.russ@txkusa.org

RFQ# 20-1601-01
RFQ CLOSING DATE December 19, 2019 @ 2 p.m. CST

PLEASE FILL IN ORGANIZATION NAME & ADDRESS IN THE SPACES PROVIDED:

DESCRIPTION OF REQUEST FOR QUALIFICATIONS

This document constitutes a request for qualifications for audit services for the City of Texarkana, Texas and Texarkana Water Utilities.

IN COMPLIANCE WITH THIS SOLICITATION, THE UNDERSIGNED RESPONDENT BY SIGNING BELOW CERTIFIES THEY HAVE EXAMINED THE REQUEST FOR PROPOSAL, THE CONTRACT DOCUMENTS (WHICH MAY INCLUDE THE ADVERTISEMENT FOR REQUEST FOR PROPOSALS, PROPOSAL INSTRUCTIONS, PROPOSAL, PROPOSAL DATA, CONTRACT AGREEMENT, PURCHASE ORDER, PERFORMANCE BOND, PAYMENT BOND, STANDARD TERMS AND CONDITIONS, SPECIAL CONDITIONS, SPECIFICATIONS, DRAWINGS, ADDENDA, CHANGE ORDERS, AS WELL AS THE SPECIFICATIONS AND DATA SUBMITTED BY PROPOSER); THAT THEY HAVE MADE ALL EXAMINATIONS OF THE CONTRACT DOCUMENTS AND PROPERTY, WHETHER REAL OR PERSONAL, OF WHICH THIS SOLICITATION IS CONCERNED, AND THAT THEY FULLY AND COMPLETELY UNDERSTAND THE REQUIREMENTS SET FORTH IN THIS REQUEST FOR PROPOSAL AND THE CONTRACT DOCUMENTS. BY SIGNING BELOW, THE UNDERSIGNED RESPONDENT REPRESENTS THEY ARE AUTHORIZED TO BIND THE COMPANY AND BY SIGNATURE THEY ARE SIGNING A BINDING CONTRACT WHICH INCLUDES ALL THE TERMS AND CONDITIONS OF THE CONTRACT DOCUMENTS. FAILURE TO EXECUTE THIS PORTION MAY RESULT IN PROPOSAL REJECTION.

Signature _____ Title _____

Print Name _____ Date _____

RETURN THIS ENTIRE DOCUMENT WITH YOUR PROPOSAL.

CITY OF TEXARKANA, TEXASS
RFQ# 20-1601-01

I. INSTRUCTIONS TO PROPOSERS

1. PROPOSAL DELIVERY, TIME & DATE

- 1.1 The City of Texarkana, Texas will receive written proposals until **2 p.m. CST, Thursday, December 19, 2019** at the office of the Contracts Manager listed below. Any proposal received after the date and hour specified will be rejected and returned unopened to the proposer. Proposals must be addressed to:

Physical Address:

Kim Russ, Contracts Manager
City of Texarkana, Texas
220 Texas Blvd
Texarkana, Texas 75501

Mailing Address:

Kim Russ, Contracts Manager
City of Texarkana, Texas
P.O. Box 1967
Texarkana, Texas 75504

- 1.2 The City of Texarkana, Texas reserves the right to postpone the date and time for accepting proposals through an addendum.

2. EXAMINATION OF DOCUMENTS AND REQUIREMENTS

- 2.1 Each proposer shall carefully examine all RFQ documents and thoroughly familiarize itself with all requirements prior to submitting a proposal to ensure that the proposal meets the intent of this RFQ.
- 2.2 Before submitting a proposal, each proposer shall be responsible for making all investigations and examinations that are necessary to ascertain conditions and requirements affecting the requirements of this RFQ. Failure to make such investigations and examinations shall not relieve the proposer from obligation to comply, in every detail, with all provisions and requirements of the Request for Qualifications.
- 2.3 To facilitate the clarification of requirements, please direct all questions concerning this RFQ to Kimberly Russ, Contracts Manager, by way of email to kimberly.russ@txkusa.org. Responses to questions, if any, will be posted on the City's website. The deadline for any questions will be Friday, December 13, 2019 at 4:00 p.m.

3. CONTENTS OF PROPOSAL

- 3.1 The Request for Qualifications shall be concise and complete. The following will be required for the evaluation process. The City will require six (6) hard copies and one digital copy of the proposals from the interested firm. The proposal should contain the following information and format:
- 3.1.1 Title Page showing the request for qualifications subject; the firm's name; the name, address, and telephone number of the contact person; and the date of the proposal.

- 3.1.2 Cover or Transmittal Letter briefly stating why the firm believes itself to be the best firm to perform the engagement.
- 3.1.3 Firm Profile
 - 3.1.3.1 The organization and size of your firm; whether it is local, regional, national, or international in operations.
 - 3.1.3.2 The names of person(s) authorized to represent your firm, their title(s), address, and telephone number(s).
 - 3.1.3.3 The location of the office from which the work is to be performed and the number of professional staff (by staff level) employed at that office.
 - 3.1.3.4 A description of the range of activities performed by the local office such as auditing, accounting, tax service, or management services.
 - 3.1.3.5 A positive statement that the following mandatory criteria are satisfied: An affirmation that you are properly licensed for practice as a certified public in the State of Texas (Texas and Arkansas license preferred) and an affirmation that your firm meets the independence requirements of Governmental Auditing Standards, published by the U.S. General Accounting Office.
 - 3.1.3.6 List and describe the Responder's (or proposed subcontractor's) professional relationships involving the City or any of its agencies for the past five years, together with a statement explaining why such relationships do not constitute a conflict of interest relative to performing the proposed audit.
 - 3.1.3.7 An affirmation that your firm does not have a record of substandard audit work or on-going allegations or litigation.
 - 3.1.3.8 An affirmation that your firm meets all specific requirements imposed by state or local law, rules, and regulations
- 3.1.4 Firm Qualifications
 - 3.1.4.1 Please identify the audit managers and field supervisors and other staff who will work on the audit on a full-time basis and the number and nature of the staff to be employed on a part-time basis; including staff from other than the local office.
 - 3.1.4.2 For the office that will be assigned the audit, list the most significant and relevant governmental engagements, up to a maximum of five, that have been performed within the last five years. Provide the name and telephone number of the principal client contact.
 - 3.1.4.3 If the firm is a joint venture or a consortium, the qualifications of each firm comprising the joint venture or consortium shall be separately identified and the firm that is to serve as the principal auditor shall be noted, if applicable.

3.1.4.4 A copy of the report on the firm's most recent external quality control review, with a statement whether that review includes review of specific government engagements.

3.1.4.5 The results of any peer reviews, federal or state desk reviews, or field reviews of its audits during the past three years. In addition, the Responder shall provide information on the circumstances and status of any disciplinary action taken or pending against the Responder during the past three years with state regulatory bodies or professional organizations. Responder shall provide a list of past and current litigation and pending claims against the firm, if any.

3.1.5 Audit Team Qualifications

3.1.5.1 Identify the principal supervisory and management staff, including engagement partners, managers, other supervisors and specialists, who would be assigned to the engagement. Indicate whether each person is registered or licensed to practice as a CPA in Texas (Texas and Arkansas license preferred) and if he/she is specifically trained in performing governmental audits.

3.1.5.2 The City recognizes that the engagement partners, managers, or other staff may change unforeseeably, but the City retains the right to approve, reject, or request partner and manager replacements.

3.1.5.3 Firms may subcontract portions of the engagement only if proposed subcontracting is clearly identified in the proposal. The City reserves the right to approve, disapprove, or request removal of subcontractors for any reason. The audit firm retains sole responsibility for execution of the terms and conditions of the services described in the scope of this RFQ.

3.1.6 Document Submission

3.1.6.1 Disclose the firm's preferred method of sending and receiving audit documentation such as email, drop box, standard mail, etc.

4. SELECTION CRITERIA

4.1 The audit committee will select the "best qualified" respondent. The respondent selected must have previous experience in performing audits of municipal governments. The evaluation criteria will include assessment of the following:

4.1.1 Years of experience of the firm and audit team in performing audits of municipal governments.

4.1.2 Qualifications of personnel to be assigned as engagement partner, manager, and other members of the audit team.

4.1.3 Knowledge of the reporting requirements as well as the basic concepts and conventions underlying local government accounting and financial reporting principles.

4.1.4 The overall satisfaction of other municipalities with the firm's services.

- 4.1.5 The firm's ability to use current technology to send and receive audit documentation.
- 4.1.6 During the evaluation process, the committee may request any one or all firms to make oral presentations. Such presentations will provide firms with an opportunity to answer any questions the selection committee may have on a firm's proposal.
- 4.1.7 The City reserves the right to conduct personal interviews of any or all firms prior to selection.
- 4.1.8 The City will not be liable for any cost incurred by the Responder in connection with oral presentations or interviews such as travel accommodations, etc.

II. INTENT

The intent of this Request for Qualifications (RFQ) is to provide proposers with sufficient information to prepare a proposal. The City is looking for a qualified and experienced public accounting firm, whose principal officers are independent certified public accountants, to obtain independent audit services for the City's annual financial audits for the fiscal years ending September 30, 2019, 2020, and 2021 with the option of auditing its financial statements for each of the two subsequent fiscal years, 2022 and 2023, based upon satisfactory performance. The requested audits are to be performed in accordance with generally-accepted auditing standards; the standards set forth for financial audits in the General Accounting Office's (GAO) Government Auditing Standards; the provisions of the federal Single Audit Act of 1984 (as amended in 1996); and U.S. Office of Management and Budget (OMB) Circular A-133 Audits of States, Local Governments, and Non-Profit Organizations.

III. LIMITATION OF LIABILITY

Neither Party hereto shall be liable to the other Party or its affiliates for any loss of profit, loss of revenue, loss of use or any other indirect, consequential or special damages excluding fines and penalties levied by the regulatory agency, even if caused by the sole or concurrent negligence of a party, whether active or passive, and even if advised of the possibility thereof. Nothing herein shall be construed as creating any personal liability on the part of any board member, any officer, employee or agent of the City of Texarkana.

IV. INSURANCE REQUIREMENTS

Prior to the award of this contract by the City and before commencing work, the successful respondent shall be required, at his own expense, to furnish the City of Texarkana, Texas, within ten (10) days of notification of award with certified copies of all insurance certificates showing the following insurance coverage to be in force throughout the term of the contract. The City shall have no duty to pay or perform under this contract until such certificate has been delivered to and approved by the City, and no officer or employee of the City shall have authority to waive this requirement without written approval from the City Manager.

(a) Commercial General Liability (CGL) insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage. Coverage must be written on an occurrence form. Contractual liability must be maintained with respect to the contractor's obligations contained in the contract. The general aggregate limit must be at least two (2) times the per-occurrence limit. CGL shall include coverage for:

1. Premises/Operations
2. Products Completed Operations
3. Personal Injury

(b) Workers Compensation insurance at statutory limits.

(c) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired vehicle coverage.

The required limits may be satisfied by any combination of primary, excess or umbrella liability insurances, provided the primary policy complies with the above requirements and the excess umbrella is following form. The successful respondent may maintain reasonable and customary deductibles, subject to approval by the City.

A comprehensive general liability insurance form may be used in lieu of a commercial general liability insurance form. In this event, coverage must be written on an occurrence basis, at limits of \$500,000 per occurrence, combined single limit; and coverage must include a broad form comprehensive general liability endorsement, coverage for products/completed operations, and broad form contractual liability covering the obligations included in the contract.

With reference to the foregoing insurance requirement, the successful respondent shall specifically endorse applicable insurance policies as follows:

- (1) The City shall be named as an additional insured with respect to general liability.
- (2) A waiver of subrogation in favor of the City of Texarkana, Texas shall be contained in the workers compensation coverage.
- (3) All insurance policies shall be endorsed to require the insurer to immediately notify the City of any material change in the insurance coverage.
- (4) All insurance policies shall be endorsed to the effect that the City will receive at least 10 days' notice prior to cancellation, non-renewal or termination of the insurance.
- (5) All copies of Certificates of Insurance shall reference the project/contract number for which the insurance is being supplied.

The City prefers that all insurance be purchased from an insurance company that meets the following requirements:

- 1) A financial rating of A: VII or better as assigned by the BEST rating Company or A or better by Standard and Poor's.
- 2) Written by companies approved by the State of Texas and acceptable to the City of Texarkana, Texas.

All insurance must be written on forms filed with and approved by the Texas State Board of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, and shall contain provisions representing and warranting the following:

- 1) The insurance set forth by the insurance company are underwritten on forms, which have been approved by the Texas State Board of Insurance.
- 2) Sets forth all endorsements and insurance coverage according to requirements and instructions contained herein.
- 3) Shall specifically set forth the notice of cancellation or termination provisions to the City of Texarkana, Texas.

CONTRACTOR SHALL:

- (1) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filling of any coverage agreements;
- (2) provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;
- (3) provide the governmental entity, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project;
- (4) obtain from each person providing services on a project, and provide to the governmental entity:
 - (A) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (B) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (6) notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

V. TERMS AND CONDITIONS FOR PROPOSAL

1. Scope of Required Audit Services

- a. The City desires the auditor to express an opinion on the financial statements of its governmental activities, business-type activities, each major fund and the aggregate remaining fund information in conformity with United States generally accepted accounting principles.
- b. The auditor is required to audit the financial statements of the governmental activities, business-type activities, each major fund, and the aggregate remaining fund information, which collectively comprise the City's basic financial statements. However, the auditor is to provide an "in-relation-to" statement on the combining and individual fund financial statements and supplementary schedules based on the auditing procedures applied during the audit of the basic financial statements. The auditor is not required to audit the introductory section of the report or the statistical section of the report.
- c. The auditor shall also be responsible for performing certain limited procedures involving required supplementary information required by the Governmental Accounting Standards Board as mandated by the United States generally accepted auditing standards.

- d. The auditor is required to audit the schedule of expenditures of Federal and State financial assistance. This information should be subject to the auditing procedures applied in the audit of the basic financial statements and in accordance with Governmental Auditing Standards, the Federal Single Audit Act and (OMB) Circular A-133. The auditor is to provide an opinion on the fair presentation of this schedule in relation to the basic financial statements taken as a whole.
- e. The auditor is required to provide advice and assistance on current and future GASB pronouncements both during the implementation year and in subsequent years.
- f. For the initial year of the audit engagement, the auditor is required to meet separately with the City and Texarkana Water Utility staff to discuss the specific level of work required by their respective personnel in preparation for the annual audit. This will necessarily include discussion of the year end workpapers the auditor will need prepared by staff, as well as those to be prepared by the auditor.

2. Reports to be Issued

- a. Following the completion of the audit of the fiscal year's financial statements the independent auditor will be required to issue the following reports for the City by April 30th of the implementation year and March 31st of each subsequent fiscal year:
 - i. A report on the fair presentation of the financial statements in conformity with generally accepted accounting principles.
 - ii. A report on the internal control structure based on the independent auditor's understanding of the control structure and assessment of control risk.
 - iii. A report on compliance with applicable laws and regulations.
 - iv. A report on the schedule of expenditures of federal and state financial assistance.
 - v. A report on the internal control structure used in administering federal and state financial assistance programs.
 - vi. A report on compliance with laws and regulations related to major and non-major federal programs. This report should include an opinion on compliance with specific requirements applicable to major federal and state financial assistance programs, and a report on compliance with laws and regulations applicable to non-major federal and state financial assistance program transactions tested
 - vii. A report on component units.
 - viii. In the required reports on internal controls, the independent auditor shall communicate any reportable conditions found during the audit. A reportable condition shall be defined as a significant deficiency in the design or operation of the internal control structure, which could adversely affect the organization's ability to record, process, summarize, and report financial data consistent with the assertion of management in the financial statements. Non-reportable conditions

discovered by the independent auditor shall be reviewed with management. The reports on compliance shall include all material instances of non-compliance

3. Other Considerations

- a. Each year, the City submits its CAFR to the Government Finance Officers Association of the United States and Canada (GFOA) for review in its Certificate of Achievement for Excellence in Financial Reporting Program. The City has received the Certificate of Achievement for 28 years, and it is anticipated that the City will again receive the certificate for its fiscal year 2018 CAFR. Therefore, the successful audit firm will be required to provide special assistance to meet the requirements of this program.

STANDARD TERMS AND CONDITIONS

1. **APPLICATION:** These standard terms and conditions shall apply to all City of Texarkana, Texas (hereafter referred to as "City") solicitations and procurements, unless specifically excepted in the solicitation specifications or additional documents negotiated by the parties prior to formal award.
2. **REQUIREMENTS:** By submitting qualifications, the respondent agrees to provide the City of Texarkana, Texas with the agreed upon services described in the solicitation in accordance with these standard terms and conditions, at the agreed upon price and in compliance with the stated specifications, any subsequent addendums issued prior to the date of the opening, and any negotiated terms subsequent to the acceptance of submissions.
3. **SOLICIATION:** Responses may be submitted in person or by mail as follows:
 - (a) Submit response via mail to the City of Texarkana, Texas, Attn: Kim Russ, P. O. Box 1967, Texarkana, Texas 75504 or in person to City of Texarkana, Texas, Finance Office, 220 Texas Blvd., Texarkana, Texas.
 - (b) Response must be sealed and clearly labeled with your company name, the solicitation name, and the solicitation number.
 - (c) To submit a response via mail, all documents must be returned and an original signature provided on the solicitation document.
 - (d) Solicitation responses will not be accepted in either format without a signature.
 - (e) The City is not responsible for mail service.

All respondents understand and agree that the respondent's solicitation response will become a legally binding contract upon acceptance in writing by the City. This contract may be superseded only if replaced with a more extensive contract that is agreed to by both parties.
4. **LEGAL COMPLIANCE:** Proposer must comply with all Federal, State and Local law, statutes, ordinances, regulations and standards in effect at the time of delivery of goods and services and must maintain any and all required licenses and certificates required under the same laws, statutes, ordinances, regulations and standards for services and/or goods provided in response to this solicitation.
5. **ESTIMATED QUANTITIES:** If the solicitation indicates estimated quantities, such quantities are estimated only and not guaranteed amounts. The actual amount ordered over the contract period may be more or less than the estimate. Quantities represent the City's best estimate, based on past history and anticipated purchases.
6. **MODIFICATIONS AND ADDENDENDUMS:** The City shall have the right to modify any of the solicitation documents prior to submission deadline and will endeavor to notify potential bidders, but failure to notify shall impose no liability or obligation on the City. All modifications and addendums must be in written form prepared by the City department issuing the solicitation. Submitters are responsible for incorporating any and all modifications and addendums into their submissions.
7. **CONTRACT/SOLICITATION DOCUMENTS:** It is understood and agreed that the advertisement, solicitation instructions, solicitation, solicitation data, contract agreement, purchase order, performance bond, payment bond, standard terms and conditions, special conditions, specifications, drawings, addenda, and change orders issued by City, and

specifications and data furnished by respondent and accepted by City, are the contract or solicitation documents and by executing this document, respondent agrees to be bound by the terms and conditions of the contract/solicitation documents. Reference to contract documents, solicitation documents, bid documents or proposal documents shall have the same meaning.

8. **INTERPRETATION OF SOLICITATION DOCUMENTS:** The City is the final judge of the meaning of any word(s) sentences, paragraphs or other parts of the solicitation documents. Submitters are encouraged to seek clarification, before submitting a proposal, of any portion of the bid documents that appears to be ambiguous, unclear, inconsistent, or otherwise in error. Clarifications will be in writing.
9. **LATE SUBMISSIONS:** Submissions must be received in the Purchasing Office by the time specified in the solicitation. The City will not accept late submissions and is not responsible for the lateness or non-delivery of submissions by the Postal Service or any private delivery firm.
10. **MINOR IRREGULARITIES:** The City reserves the right to waive any minor irregularities that do not materially affect the scope or pricing of submitted proposals.
11. **RESPONSIVENESS OF SUBMISSIONS:** The City wants to receive competitive proposals but will declare "non-responsive" submissions that fail to meet significant requirements outlined in the solicitation documents.
12. **REQUEST FOR NON-CONSIDERATION OR WITHDRAWAL OF SUBMISSIONS:** Submissions deposited with the City may be withdrawn prior to the time set for opening of the solicitation response. Request for non-consideration of a submission must be made in writing to the Contracts Manager and received by the City prior to the time set for opening of the solicitation submissions. Once a submission has been withdrawn, it can no longer be considered. After other solicitation submissions are opened and publicly read, the submission for which non-consideration is properly requested may be returned unopened. A solicitation submission may not be withdrawn after it has been opened, and the respondent, in submitting the same, warrants and guarantees that his/her response has been carefully reviewed and checked and that it is in all things true and accurate and free of mistakes and that such submission will not and cannot be withdrawn because of any mistake committed by the respondent.
13. **DISQUALIFICATION OF RESPONDENT:** The City may disqualify respondents, and their submissions will not be considered, for any of the following reasons:
 - (a) Reason for believing collusion exists among respondents;
 - (b) Respondent being in arrears or default on an existing or previous contract with the City, including failure to deliver goods and/or services of the quality and price solicitation or agreed upon;
 - (c) Respondent's lack of financial stability;
 - (d) Any factor concerning the respondent's inability to provide the quantity, quality, and timeliness of services specified in the solicitation;
 - (e) Respondent is involved in a current or pending lawsuit with the City;
 - (f) Uncompleted work, which in the judgment of the City will prevent or hinder the prompt completion of additional work if awarded;

- (g) Respondent's attempt to influence the outcome of the solicitation through unauthorized contact with City officials outside of those listed in the solicitation documents; and
 - (h) Respondent's attempt to offer gifts, gratuities, or bribes to any City employee or elected official in connection with a solicitation.
14. **COST OF SUBMISSIONS:** The cost of submitting proposals shall be borne by the submitter. The City will not be liable for any costs incurred by a bidder associated with the preparation, transmittal, or presentation of any proposals or materials submitted in response to any bid, quotation, or proposal.
 15. **AWARD:** The City of Texarkana, Texas reserves the right to accept or reject any and all bids in whole or in part and waive any minor technicality and enter into contract deemed to provide the best value to the City. The city of Texarkana, Texas reserves the right to award a separate contract to separate vendors for each item/group or to award one contract for the entire bid.
 16. **FAILURE TO DELIVER SERVICES:** If a submitter is unable to deliver the quantity or quality of specified services or is unable to deliver within a time period agreed upon prior to award, the City shall be authorized to purchase from any other available, source, consistent with State of Texas Procurement statutes.
 17. **TAXPAYER IDENTIFICATION:** Submitters must provide the City a current W-9 "Request for Taxpayer Identification and Certification" before services can be procured from the submitter.
 18. **TAXES:** The City is exempt from all federal excise taxes and all state and local sales and use taxes. If such taxes are listed on a submitter's invoice, they will not be paid. Additionally, submitters cannot use the City's tax exemption status to purchase goods or services related to this solicitation.
 19. **PAYMENT:** Payment will be made net 30 days after invoice is received by the City contingent upon Natural Resources Damage Assessment (NRDA) funds received by the City.
 20. **OUTSTANDING LIABILITIES:** Submitters shall not have outstanding, unpaid liabilities owed to the City. Liabilities may include, but are not limited to, property taxes, hotel occupancy taxes, license or permit fees, and water bills. Submissions will be considered non-responsible and not given further consideration if submitted by a submitter with such outstanding liabilities.
 21. **OFFSET:** The City may, at its option, offset any amounts due and payable under a contract award under this solicitation against any debt lawfully due the City from a vendor, whether or not the amount due arises pursuant to the terms of the contract and whether or not the debt has been reduced to judgment by a court.
 22. **INDEPENDENT CONTRACTORS:** It is expressly agreed and understood by both parties that the City is contracting with successful submitter as an independent contractor. The City shall not be liable for any claims which may be asserted by any third party occurring in connection with services performed by the successful bidder, and the successful bidder has no authority to bind the City.
 23. **GOVERNING LAW:** All proposals submitted in response to this solicitation and any resulting contract shall be governed by, and construed in accordance with, the charter and ordinances of the City of Texarkana, Texas, and the laws and court decisions of the State of Texas.
 24. **CONTROLLING DOCUMENTS:** In the case of a discrepancy between the solicitation and the formal contract, the formal contract will prevail and control.

25. **ASSIGNMENT:** Submitter shall not assign, transfer, or pledge a contract awarded under this solicitation, in whole or in part, without the prior written consent of the City's purchasing manager. Assignment of the contract, if approved by the City, shall not relieve the submitter's obligations under the contract. Approval by the City of one assignment shall not constitute approval of any future assignment of the contract.
26. **TERMINATION:** If an awarded submitter fails in any manner to fully perform each and all of the terms, conditions and covenants of a contract awarded by this solicitation, he shall be in default and notice of default shall be given to the bidder by the City's purchasing manager. In the event that Vendor continues in default for a period of seven (7) days after receipt of the above-mentioned notice of default, City may terminate or cancel the contract. The City may also cancel a contract for convenience and without cause with thirty days' written notice. In any cancellation of contract, the City will pay the bidder for any and all services provided and accepted up to and including the date of termination.
27. **INDEMNIFICATION:** Submitter shall defend, indemnify, and hold harmless the City of Texarkana, Texas, its officers, agents, employees, appointees and volunteers against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by bidder's breach of any of the terms or provisions of any contract awarded as a result of this solicitation, or by any negligent or strictly liable act or omission of the bidder, its officers, agents, employees, or subcontractors, in the performance of an awarded contract; except that the negligence or fault of the City, its officers, agents or employees, and in the event of joint and concurrent negligence or fault of the bidder and City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to the City under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
28. **VENUE:** The obligations of the parties under a contract awarded through this solicitation are performed in Bowie County, Texas, and if legal action is necessary to enforce same, exclusive venue shall be within Bowie County, Texas.
29. **FUNDING:** State of Texas statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. Orders or other obligations that may arise beyond the year for which a budget has been approved. Orders or other obligations that may arise beyond the end of the current fiscal year shall be subject to approval of budget funds. Funding of this project is contingent on Natural Resources Damage Assessment (NRDA) award and funds received by the City.
30. **SOLICITATION RESULTS:** The City normally posts solicitation results online by the end of the next business day after submissions are received. The City's web site is www.ci.texarkana.tx.us. Results are on the Purchasing solicitation page, in the same place as the original solicitation documents. In the case of RFP's, only the names of the submitters are listed. Results are for informational purposes only and are not a notice of award.
31. **INTERPRETATION:** This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.
32. **NO WAIVER:** Neither the inspection by the City or any of its officials, employees, agents, nor any order by the City for payment of money, or any payment for, or acceptance of, the whole or any part of the work by the City, nor any extension of time, nor any possession taken by the

City or its employees, nor any action of the City shall operate as a waiver of any provision of the Contract Documents, or of any power herein reserved to the City, or of any right to damages herein, nor shall any waiver of any breach in the Contract Documents be held to be a waiver of any other or subsequent breach.

33. DISPUTE RESOLUTION: If a dispute arises between the parties relating to rights, duties, or obligations arising out of the Contract Documents, the parties agree to the following dispute resolution procedures:

- (a) A meeting shall be held promptly between the parties or their designated representatives to attempt in good faith to informally negotiate a resolution of the dispute. Such negotiations may include one or both parties securing legal counsel or consultants who may participate in the negotiation.
- (b) If resolution is not readily achieved by informal negotiations, the parties may agree to select a neutral third party ("NTP") to assist in resolution of the dispute. The NTP shall promptly convene a private meeting with all representatives of the parties to hear the parties' positions and render oral recommendations for resolution of the dispute. The recommendations of the NTP shall not be binding on any party. By separate written agreement, the parties may further define the role of the NTP and may expand the NTP to consist of a team of persons possessing the necessary expertise. Use of the NTP is voluntary. No party will be deemed to be in breach of the Contract Documents solely because of a refusal to utilize a NTP.
- (c) If resolution is not achieved by informal negotiations, the dispute shall be settled by mandatory arbitration in accordance with and governed by Texas state law. Each party shall select a disinterested representative; then the parties' respective shall choose a third person; and the three persons shall then comprise the "arbitration panel" with authority as provided under Chapter 171 of the Texas Civil Practice and Remedies Code. The arbitration panel shall then determine the matter in dispute, which determination shall be binding on both parties. Neither federal law nor the provisions of the Federal Arbitration Act shall apply to any arbitration required by this Contract.
- (d) At all times during the course of any dispute resolution, the parties shall continue diligently and without delay to perform their respective obligations of the Contract.
- (e) Each party shall pay its own costs and expenses, including attorney's fees, incurred during any facet of dispute resolution procedures outlined above. The fees and expenses of the NTP and arbitration panel shall be divided equally between the parties.

34. NOTICE: Any and all notices required pursuant to the terms of this Agreement shall be sent to the following:

As to City:

City of Texarkana, Texas
Attn: Kimberly Russ, Contracts Manager
Address: P. O. Box 1967
Texarkana, Texas 75501
Email: kimberly.russ@txkusa.org

As to respondent:

Name: _____

Attn: _____

Address: _____

Email: _____

All notices, demands or communications required in accordance with the terms of this agreement, shall be sent by registered or certified mail, return receipt requested, by nationally recognized overnight courier service with notice effective five days after deposit in the mail or delivery to the courier service, or by email sent to the email address designated by the parties effective upon receipt of a delivery notice. The notices shall be sent to the addresses set forth above unless otherwise designated, in writing, by the parties.

35. OPEN RECORDS: Submissions do not become public record until an award is made. Trade secrets and other material considered confidential by the respondent should be clearly marked as such. If a request is made under the Texas Open Records Act (the "Act") to inspect information designated as trade secret or confidential in a solicitation, the City will forward the appropriate documents to the Attorney General of Texas who will contact the respondent to request sufficient written reasons and information as to why the information should be protected from disclosure. Upon review of the respondent's response the Attorney General will make a determination as to the confidentiality of the requested material(s), or lack thereof, and the City will respond accordingly. The City has made no representation as to whether any information submitted by respondent to the City is excepted from required disclosure under the Act.

36. CONFLICT OF INTEREST DISCLOSURE: Disclosure requirements of potential conflicts of interest involving counties, cities, and other local government entities must be filed by respondents or potential respondents to local government entities. The requirements are set forth in Chapter 176 of the Texas Local Government Code added by H.B. No. 914 of the last Texas Legislature.

A local government entity includes counties, municipalities, school districts, and other political subdivisions of the state or any entity to which a member is appointed by a county commissioner's court or the mayor or governing body of a municipality. A local government officer means a member of the governing body of a local government entity and the person designated as the chief executive officer of the local government entity.

Companies and individuals who contract, or seek to contract, with the City of Texarkana, Texas and its agents (including employees involved in the business with the entity) must file with the City Secretary's Office at 220 Texas Blvd., Room 102, Texarkana, Texas 75501 a Conflict of Interest Questionnaire that describes, among other things, affiliations or business relationships with the City officers, or certain family members or other businesses of the City officer, and certain employees or other contractors of the City with which such persons do business. These requirements are in addition to any other disclosures required by law. A violation of the filing requirements is a Class C misdemeanor.

The Conflict of Interest Questionnaire (Form CIQ) may be downloaded from <https://www.ethics.state.tx.us/data/forms/conflict/CIQ.pdf>.

- 37. HB 1295 DISCLOSING INTERESTED PARTIES TO A CONTRACT:** House Bill 1295, adopted by the 84th Legislature, created §2252.908, Texas Government Code. Section 2252.908 requires a business entity entering into certain contracts with a governmental entity or state agency to file with the governmental entity or state agency a disclosure of interested parties at the time the business entity submits the signed contract to the governmental entity or state agency.

§2252.908, Texas Government Code requires the commission to adopt rules necessary to implement the new disclosure requirement and to prescribe the disclosure form. Section 2252.908 requires the disclosure form to be signed by the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury. Section 2252.908 applies only to a contract that requires an action or vote by the governing body of the governmental entity or state agency before the contract may be signed or has a value of at least \$1 million. Section 2252.908 provides definitions of certain terms occurring in the section.

An interested party is defined as a person who has a controlling interest in a business entity with whom a governmental entity or state agency contracts or who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity.

Contractors are required to acquire Form 1295 via the Texas Ethics Commission website. This requires registration, generation of Form 1295 with a unique Certificate Number & filing date, printing the form, notarizing and returning the form to City of Texarkana Purchasing & Contract Management Department. Once the form is received by the Purchasing and Contract Management Department, the Buyer associated with the project will log-in to the Texas Ethics Commission portal and acknowledge receipt of the form not later than the 30th day after the date the contract for which the form was filed binds all parties to the contract. This will complete the form for the contract with which the form is associated. The completed form will be made available via the Texas Ethics Commission website.

Form 1295 can be generated via the Texas Ethics Commission web portal. The website and detailed instructions are located at: <https://www.ethics.state.tx.us/filinginfo/1295/>.

- 38. ANTI-LOBBYING PROVISION:** During the period between the proposal closing date and the contract award, respondents, including their agents and representatives, shall not directly discuss or promote their solicitation with any member of the Texarkana, Texas City Council or City staff except in the course of City sponsored inquiries, briefings, interviews, or presentations, unless requested by the City. This provision is not meant to preclude respondents from discussing other matters with City Council members or City staff.

City of Texarkana, Texas

Suspension and Debarment Certification

Federal Law (A-102 Common Rule and OMB Circular A-110) prohibits non-Federal entities from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000 and all non-procurement transactions (e.g., sub-awards to sub-recipients).

Contractors receiving individual awards of \$25,000 or more and all sub-recipients must certify that their organization and its principals are not suspended or debarred by a Federal agency.

Before an award of \$25,000 or more can be made to your firm, you must certify that your organization and its principals are not suspended or debarred by a Federal agency.

I, the undersigned agent for the firm named below, certify that neither this firm nor its principals are suspended or debarred by a Federal agency.

COMPANY NAME: _____

FEDERAL TAX ID or SOCIAL SECURITY No. _____

Signature of Company Official: _____

Printed name of company official signing above: _____

Date Signed: _____

City of Texarkana, TX
Chapter 2270 Prohibition on Contracts with Companies Boycotting Israel

House Bill 793, adopted by the 86th Legislature, modifies the provisions of HB 89 (2017) §2270.001, Texas Government Code, Section Subtitle F, Title 10, which provides that neither a state agency nor a political subdivision may enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract – by providing that: (1) “company” does not include a sole proprietorship; and (2) the law applies only to a contract that: (a) is between a governmental entity and a company with 10 or more full-time employees; and (b) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity. (September 1, 2019)

I, the undersigned agent for the company named below, certify that the Company does not boycott Israel and will not boycott Israel during the term of the contract.

COMPANY NAME: _____

FEDERAL TAX ID or SOCIAL SECURITY No. _____

Signature of Company Official: _____

Printed name of company official signing above: _____

Date Signed: _____