



**REQUEST FOR QUALIFICATIONS**

**FOR**

**MUNICIPAL BOND UNDERWRITING SERVICES**

**REQUEST FOR QUALIFICATIONS NO. 580-20-RFQ-0013**

**CLASS-ITEM CODE(S): 946/38**

**DEADLINE FOR SUBMISSION: APRIL 9, 2020, 2:00 PM (CDT)**

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Solicitation point of contact:

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You, the respondent, are responsible for checking the Electronic State Business Daily (ESBD) website, <http://www.txsmartbuy.com/sp>, for any addenda to this Solicitation. Please search under Agency Code 580 (Texas Water Development Board). The Respondent's failure to periodically check the ESBD will in no way release that Respondent from addenda or additional information resulting in additional requirements of the Solicitation.

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## **I. INTRODUCTION**

### **1.1. OVERVIEW**

The Texas Water Development Board (TWDB) is seeking responses to this Request for Qualifications (RFQ) for Municipal Bond Underwriting services. It is the intent of Texas Water Development Board to solicit proposals that meet the requirements below from qualified underwriters interested in serving as part of an underwriting pool for potential consideration for one or more future refunding, new money, and/or other financing transactions.

### **1.2 BACKGROUND**

The mission of the Texas Water Development Board (TWDB) is to provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas. Our mission is a vital part of Texas' overall vision and the state's mission and goals that relate to maintaining the viability of the state's natural resources, health, and economic development.

To accomplish our goals of planning for the state's water resources and providing affordable water and wastewater services, the TWDB provides water planning, data collection and dissemination, financial assistance, and technical assistance services to the citizens of Texas. The tremendous population growth that the state continues to experience, and the recurrent threat of severe drought only intensify the need for the TWDB to accomplish its goals in an effective and efficient manner.

Created as an agency of the state of Texas by constitutional amendment in 1957, the TWDB has committed over \$28.5 billion in financial assistance to program participants. The TWDB currently:

- supports the development of regional water plans and incorporates them into a state water plan for the orderly and responsible development, management, and conservation of the state's water resources;
- provides financial assistance to local governments for water supply projects; water quality projects, including wastewater treatment and nonpoint source pollution control; flood control projects; agricultural water conservation projects; rural and small community water and wastewater projects; and expenses related to administering groundwater conservation districts;
- provides financial assistance for the water and wastewater needs of the state's economically distressed areas;
- provides agricultural water conservation and water-related research and planning grants;
- conducts studies of the occurrence, quantity, quality, and availability of the state's surface water and groundwater;
- collects data and conducts studies concerning the freshwater needs of the state's bays and estuaries; and
- maintains a centralized data repository of information on the state's natural resources called the Texas Natural Resources Information System (TNRIS) and manages the Strategic Mapping (StratMap) Initiative.

### **1.3 TWDB AND STAFF**

The TWDB is composed of three full-time members who are appointed by the Governor, confirmed by the Texas Senate, and serve staggered six-year terms. A person appointed to the TWDB may not serve for more than two six-year terms. In accordance with state law, board members appoint an Executive Administrator who is responsible for the overall administration of the TWDB and its programs, and for directing the operations of TWDB staff (Staff). The Chief Financial Officer reports to the Executive Administrator and oversees, among other responsibilities, the financial operations teams of the agency, including accounting; budget; debt and portfolio management; and financial compliance. The Director of Debt and Portfolio Management reports to the Chief Financial Officer and manages the activities associated with debt issuance and repayment, including the underwriter contracts. Currently, Hilltop Securities serves as Financial Advisor to the TWDB. The TWDB, utilizing the relationship with Hilltop Securities, assumes responsibility for obtaining bond ratings and State of Texas approvals, preparing offering documents and investor roadshow presentations, and performing quantitative analysis and structuring of future bond issues.

### **1.4 DEFINITIONS**

**“ADA”** means the Americans with Disabilities Act.

**“Addendum”** means a written clarification or revision to the Request for Qualifications issued by the Texas Water Development Board. Respondents must acknowledge receipt of any addenda in the submission of the Solicitation Response.

**“Affiliate”** means any individual or entity that, directly or indirectly, controls, is controlled by, or is under common control with, Respondent. “Control” means the ability to directly or indirectly direct the management and policies of an entity, whether through the ownership of voting securities or membership interests, by contract, or otherwise.

**“Contract Documents”** means all documents which govern this Solicitation and any resulting contract including without limitation, the Project Manual, this Solicitation, the Architect/Engineer’s specifications and drawings, the Uniform General and Supplementary Conditions, Special Conditions, and all bonds and insurance.

**“Contract Price”** means the total compensation payable to Contractor for completion of the work in accordance with the terms of the contract.

**“Contractor”** means the Respondent(s) awarded a contract under this Solicitation.

**“ESBD”** means the Electronic State Business Daily, <http://www.txsmartbuy.com/sp>.

**“General Conditions”** means those items and related costs that are specified in in this document.

**“HUB”** means Historically Underutilized Business as defined by Chapter 2161 of the Texas Government Code.

“[HUB Subcontracting Plan](#)” or “[HSP](#)” means the form required by Texas Government Code §2161.252 and 34 Texas Administrative Code §20.285 for each contract with an expected value of \$100,000 or more, in which Respondent must demonstrate a Good Faith Effort to subcontract with HUBs. The HSP must be included with the Solicitation Response.

“[Key Staff](#)” means experienced, professional and/or technical personnel who will have major responsibilities under the contract and/or provide unusual or unique expertise essential for successful completion of the work performed.

“[Notice to Proceed](#)” or “[NTP](#)” means written notice provided by the TWDB to begin construction of the Project.

“[OSHA](#)” means the U.S. Occupational Safety and Health Administration.

“[PIA](#)” means the Public Information Act, Chapter 552 of the Texas Government Code.

“[Project](#)” means the work solicited under this Solicitation.

“[Respondent](#)” means the entity responding to this Solicitation.

“[RFQ](#)” means Request for Qualifications.

“[Solicitation](#)” means this RFQ.

“[Solicitation Response](#)” means the Respondent’s entire response to this Solicitation, including all documents requested.

“[SOQ](#)” means Statement of Qualifications.

“Staff” means TWDB employees assigned to work on transactions involving this solicitation and any resulting contract(s).

“[State](#)” means the State of Texas and any state agency; the Texas Water Development Board or state agency identified in this Solicitation, its officers, employees, or authorized agents.

“[TAC](#)” means Texas Administrative Code.

“[TWDB](#)” means Texas Water Development Board.

“[Uniform General Conditions](#)” or “[UGCs](#)” means the governing contractual terms and conditions as amended in the Project Manual.

## **1.5 AUTHORITY**

The TWDB is posting this solicitation pursuant to Texas Constitution art. 3, § 49-c and Texas Water Code §§ 6.012 and 6.190.

## **II. SCOPE OF WORK**

### **2.1 GENERAL DESCRIPTION OF THE SERVICES REQUIRED**

TWDB seeks responses to this Request for Qualifications (RFQ) from municipal bond underwriters interested in serving as part of an underwriting pool for potential consideration for one or more future refunding, new money, and/or other financing transactions. The initial term of the service period is May 21, 2020 through August 31, 2021 with an option to renew for up to two additional two-year terms.

The TWDB will name an underwriting pool selected from Respondents spanning the following three categories:

1. **National** – typically bulge bracket investment banks that represent the largest of multinational firms
2. **Regional** – firms with a national presence that typically focus on middle markets and mid-range deals
3. **“Other”** – firms that do not necessarily meet the national or regional descriptions above due to their specialty or market focus, including firms that are minority- or women-owned

**Respondents are required to identify the category for which they would like to be considered.** All responses will be evaluated along with other respondents in the same category, based upon the evaluation criteria detailed in this RFQ.

For each future bond transaction to be marketed, the TWDB will select, from the underwriting pool, a Senior Manager and Co-Managers (if any), and may also choose to designate a Co-Senior Manager if appropriate, known as a “team.” Factors for team selection could include the size and complexity of the transaction, expertise required, previous performance, current market conditions, quality of coverage provided to the TWDB, and formal presentation of financing ideas.

Ultimately, the team selected will consist of those underwriting firms best suited to the specifics of the transaction, with no pre-determined rotation or formula for participation.

The TWDB reserves the right to remove firms from the underwriting team at any time based on factors including, but not limited to: performance; change in firm organization, management, staffing, or financial condition; or a change in market conditions or development of new financing structures.

### **2.2 NATURE OF SERVICES REQUIRED/DELIVERABLES**

1. Generally, underwriters will be expected to:
  - a. Remain current and knowledgeable with respect to the TWDB’s goals and efforts to provide financing assistance to its program participants;
  - b. remain knowledgeable of financing structures that will support the TWDB’s goals to provide low-cost financing options to its program participants;

- c. analyze financing options for new money origination and refunding bond issues and work with Staff and the TWDB's financial advisor to determine the relative merits of proposed structures;
  - d. coordinate with the working group (Staff, financial advisor, bond counsel, disclosure counsel, and others as necessary) to discuss various financing options;
  - e. provide market analysis and support in the identification of investors to participate in the TWDB's transactions and
  - f. provide other services as requested by the TWDB.
2. When serving as Senior Manager for a transaction, underwriters will act on behalf of the underwriters assigned to the transaction (the "Underwriting Syndicate") and will be expected to:
- a. Coordinate with the financing team for each transaction, and provide input on the transaction schedule and distribution list;
  - b. if requested, perform quantitative analysis of proposed debt service and program cash flows;
  - c. assist in the review of the Preliminary and Final Official Statements and other required documents, and attend any corresponding document review sessions;
  - d. provide a marketing plan discussing targeted markets and investors and outreach strategies for the issue;
  - e. provide a breakout of the proposed fees (including takedown) and expenses for the transaction and negotiate fees and expenses on behalf of the Underwriting Syndicate;
  - f. provide a proposed breakout of liabilities among the Underwriting Syndicate;
  - g. provide a proposed designation policy;
  - h. provide the TWDB with a draft Agreement Among Underwriters (electronic) and distribute final to co-managers for electronic execution prior to pricing;
  - i. keep Co-Managers for the transaction engaged and fully informed as to financing and structure details and transaction timing;
  - j. review all preliminary, pricing, and final wires with Staff and the TWDB's financial advisor prior to release;
  - k. provide TWDB's staff and financial advisor with access to real-time pricing information on an order-by-order basis through an electronic platform;
  - l. draft and execute the Bond Purchase Agreement on behalf of the Underwriting Syndicate;
  - m. submit to the TWDB a good faith check, typically 1% of the par amount of bonds being issued;
  - n. review and consult with Staff and the TWDB's financial advisor regarding the allotment of bonds to ensure that the agreed-upon designation policy is adhered to and to help ensure that Co-Managers are being treated fairly and investors/accounts are being treated in a manner that encourages interest and participation in future TWDB transactions;
  - o. provide Staff with preliminary, updated, and final information as requested regarding orders, allotments, and designations on an order-by-order basis;
  - p. assist in the closing arrangements as requested; and
  - q. provide a final pricing book to the TWDB, the form and timing of which is governed by the TWDB's Underwriting Policies and Procedures for Negotiated

Bond Transactions.

3. If serving as a Co-Manager for a transaction, responsibilities may generally include those listed for Senior Managers, except for managing the pricing process and the associated activities.

## **2.3 COMPENSATION AND CONTRACT TERMS**

The Senior Manager will negotiate the underwriting fees and expenses (including takedown) for the Underwriting Syndicate on an issue-by-issue basis and based on prevailing market conditions and terms at the time of negotiation. The exact terms of each issue, including underwriting fees and expenses, will be detailed in the Bond Purchase Agreement, which is the binding contract between the underwriters and the TWDB.

## **2.4 ORAL PRESENTATIONS**

While not currently anticipated, firms that have responded to this RFQ may be asked to make oral presentations to Staff. Should oral presentations be required, firms requested to present will be given not less than a three (3) business day notice, to include the date, time, and place, prior to such presentations. The TWDB reserves the right to re-score responses as a result of the interviews and to make award recommendations on that basis.

## **2.5 SUBCONTRACTORS**

Subcontractors providing services shall meet the same requirements and level of experience as required of the Respondent. No subcontract should relieve the primary Respondent of responsibility for the service. If the Respondent uses a subcontractor for any or all work required, the following conditions must apply under the listed circumstances:

1. Respondents planning to subcontract all or a portion of the work must identify the proposed subcontractors on the HUB Subcontracting Plan.
2. Subcontracting must be at the Respondent's expense.
3. TWDB retains the right to check a subcontractor's background and decide to approve or reject the use of submitted subcontractor. A subcontractor may not be compensated for any work prior to the approval date of the subcontract agreement between the Contractor and the Subcontractor by TWDB.
4. The Respondent shall be the only contact for TWDB and subcontractors. Respondent must list a designated point of contact for all TWDB and subcontractor inquiries.

# **III. PERFORMANCE STANDARDS**

3.1 Performance under this RFQ will be measured by:

1. Meeting or exceeding the expectations detailed in *Section II. Scope of Work, 2.2. Nature of Services Required/Deliverables*.
2. Selling bonds that, when compared with similar transactions in the market at that time, are competitively priced.
3. Submitting member orders at pricing that are generally in-line with (or exceeding) each respective underwriter's liability on the transaction.



4. Successful post-sale evaluations, as described in the TWDB's Underwriting Policies and Procedures for Negotiated Bond Transactions document.

#### **IV. DELIVERABLES**

4.1 Deliverables under this RFQ will include, but are not limited to, items described in Section II Scope of Work, 2.2 Nature of Services Required/Deliverables. Deliverables and deadlines will be established by Staff for each transaction. Staff will review deliverables and confirm completion and acceptance of the related information or will request additional information as necessary.

#### **4.2 LIQUIDATED DAMAGES**

If a selected Contractor breaches its obligation to provide deliverables as scheduled and in accordance with the schedule in Section II Scope of Work, 2.2 Nature of Services Required/Deliverables, the selected Contractor shall pay TWDB \$100.00 per day for each day of delay as liquidated damages. The parties agree that quantifying losses arising from the Contractor's delay is inherently difficult, and stipulate that the sum agreed upon for liquidated damages is not a penalty, but rather a reasonable measure of damages based on the parties' experience in the industry and the nature of the losses that may result from delay.

#### **V. RESPONSE TIME FRAME AND OTHER INFORMATION**

1. All responses must be received, and date/time stamped by TWDB by the Deadline for Submission noted in the SCHEDULE OF EVENTS listed below. TWDB will not and cannot accept late submittals.
2. Responses should be placed in a separate envelope or package and correctly identified with the RFQ number and Deadline for Submission date/RFQ opening date and time. It is Respondent's responsibility to appropriately mark and deliver the response to TWDB by the specified date and time.
3. Telephone, facsimile or emailed responses will not be accepted.
4. Receipt of all addenda, if applicable, to this response should be acknowledged by returning a signed copy of each addendum with the submitted response.

#### ***PLEASE NOTE:***

***It is the express policy of the TWDB that parties responding this request refrain from initiating any direct contact or communication with members of the TWDB about this RFQ during the selection process. Any violation of this policy will be considered a basis for disqualification.***

***Failure to return the required items with the response will result in rejection of your Statement of Qualifications. TWDB will not be responsible for locating or securing information that is not included in your response.***

## 5.1 SCHEDULE OF EVENTS

The solicitation process for this RFQ will proceed according to the following schedule:

Issue RFQ	<b>March 12, 2020</b>
RFQ Questions Due	<b>March 25, 2020, 5:00 PM (CDT)</b>
Anticipated Release of Answers	<b>April 3, 2020, 5:00 PM (CDT)</b>
Deadline for Submissions	<b>April 9, 2020, 2:00 PM (CDT)</b>
Expected Date of Award of Contract	<b>UPON EXECUTION</b>
Expected Contract Start Date	<b>UPON EXECUTION</b>

## 5.2 RESPONSE SUBMISSION ADDRESS

### U.S. Postal Service

Texas Water Development Board  
Contracting & Purchasing  
P.O. Box 13231  
Austin, TX 78711-3231

### Overnight/Express Mail or Hand Delivery

Texas Water Development Board  
1700 N. Congress Avenue, 6<sup>th</sup> Floor Reception  
Austin, TX 78701  
Hours – 8:00 a.m. to 5:00 p.m. (CDT)

## 5.3 REVISIONS TO SCHEDULE

TWDB reserves the right to change the dates in the Schedule of Events above upon written notification to prospective Respondent(s) as an addendum posted on the Electronic State Business Daily.

## 5.4. RESPONSE COSTS

All costs directly or indirectly related to the preparation of a response to this RFQ are the sole responsibility of and shall be borne by the Respondent.

## 5.5 MEETINGS

Any meetings and or/conference calls will be held on regular business days (Monday – Friday) during regular business hours (8:00 a.m. to 5:00 p.m. CDT) upon mutually agreed dates and times.

## 5.6 INQUIRIES

1. Contact - All requests, questions, or other communications about this RFQ must be made in writing to the TWDB's Purchasing Department, addressed to the person listed below.

Name: Angela Wallace, Contract Administration Manager, CTPM, CTCM  
Address: 1700 N. Congress Ave., Austin, TX 78701  
Email: **angela.wallace@twdb.texas.gov with a copy to**  
**[purchasing@twdb.texas.gov](mailto:purchasing@twdb.texas.gov)**

Subject: Ensure the RFQ number is included in all correspondence

2. Clarifications - The TWDB will allow written requests for clarification of this Solicitation. Questions may be e-mailed to the contact listed above. Respondents' names shall be removed from questions when the written answers are released. Questions shall be submitted in the following format. Submissions that deviate from this format may not be accepted:
  - a) Identifying Solicitation number
  - b) Section number

- c) Text of passage being questioned
- d) Question
- e) Provide company name, address, phone number, e-mail address, and name of contact person when submitting questions

### 3. Responses

All accepted questions will result in a written response posted to the ESBD at: <http://www.txsmartbuy.com/sp>. Responses shall be posted as an Addendum to the Solicitation. It is Respondent's responsibility to check the ESBD for updated responses.

***Note: The deadline for submitting questions is noted in Section V., 5.1 above.***

## 5.7 AMENDMENT/ADDENDUM

Any Amendment to this RFQ will be posted as an addendum on the TWDB's website and on the Electronic State Business Daily (ESBD). It is the responsibility of interested parties to periodically check the TWDB's website and ESBD for updates to the procurement prior to submitting a response. The Respondent's failure to periodically check the TWDB's website and ESBD will in no way release the selected vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFQ.

## VI. RFQ RESPONSE FORMAT

### 6.1 RESPONSE INFORMATION

1. The response itself may include an optional Executive Summary, which gives in brief, concise terms, a summation of the response, or a cover letter. It shall then be organized in the format and informational sequence of Section VII below ("Response Content") and shall **not exceed 25 pages, excluding required appendices, as noted.** The font size must be no smaller than 12 point. Telephone, facsimile or emailed submissions will not be considered.
2. The Respondent shall submit one (1) original, four (4) originals marked "Copy", and one (1) electronic copy of the response as follows:
  - a. ORIGINAL: One (1) complete ORIGINAL RESPONSE (marked Original) and four (4) Original Responses marked "Copy". The response pages should be numbered and contain an organized, paginated table of contents corresponding to the section and pages of the RFQ.
  - b. COPIES: Four (4) complete Original Responses marked "Copy."
  - c. One (1) complete ELECTRONIC Portable Document Format file of the response on a flash drive.
  - d. Responses must be delivered to the address noted in the RFQ.
  - e. Responses must be clearly marked RESPONSE TO **580-20-RFQ-0013**.
  - f. Identify the item to be addressed in the introduction to each response.
3. Responses should be submitted by individual firms only; no joint responses will be accepted.
4. The TWDB recognizes that responding firms may have experienced bankers with recent history at prior firms. Banker experience is eligible for consideration, but RFQ

responses must clearly indicate information provided that pertains to firm experience versus information provided related to banker experience at a prior firm.

## **VII. RESPONSE CONTENT**

### **7.1 CATEGORY SUMMITTED**

Clearly indicate if your firm wishes to be considered in the “National,” “Regional,” or “Other” category. Only one category should be selected.

### **7.2 OVERVIEW OF FIRM**

Provide a brief overview of your firm, including the year the firm was founded, a brief history of the firm, the location of your headquarters and the location of your municipal trading desks. Provide an overview of any recent major changes in the firm’s organization, executive management or ownership.

### **7.3 DISTRIBUTION CAPABILITIES**

1. Please describe your firm’s distribution capabilities in detail. Include the name(s) and office location of the underwriter(s) that would be assigned to the TWDB’s account and describe their approach to marketing and pricing general obligation and revenue bonds, including their perspective on when to reprice versus underwrite unsold balances. Feel free to share examples of bonds underwritten, bonds repriced to a lower yield, and other information that will give the TWDB a sense of your firm’s capabilities and approach to selling bonds.
2. Next, provide the following information, in the order listed below:
  - a. Number of professionals specializing in public finance.
  - b. Indicate whether your firm has a separate and distinct group for water and wastewater infrastructure financing.
  - c. Number of professionals specializing in water and wastewater infrastructure financing.
  - d. Number of professionals specializing in pooled loan programs, including state revolving funds.
  - e. Number of municipal sales offices in the United States (U.S.).
  - f. Number of retail municipal bond salespeople in the U.S.
  - g. Number of institutional municipal bond salespeople in the U.S.

### **7.4 EXPERIENCE**

1. If you have served as a Senior Manager on a TWDB issuance, provide an overview of the transaction in case study format.
2. Provide the following information as a **required appendix**: Since January 2017, list in table form the relevant experience of the firm as underwriter for negotiated new money and refunding general obligation and revenue bond transactions. Utilize the bullets below to create column headings across the top of the table, in order from left to right. When dollar amounts are involved, please total each column to show an overall total.
  - Date of issue

- Name of issuer
- Dollar amount of issue
- Role in transaction (Senior Manager, Co-Senior Manager or Co- Manager)
- Dollar amount of liability
- Dollar amount of priority and/or retail orders submitted by your firm (can be submitted as two separate columns if easier)
- Dollar amount of member orders submitted by your firm

## 7.5 OTHER QUALIFICATIONS

1. Based on your knowledge and experience with pooled loan programs, please provide structure and/or programmatic recommendations that you believe would benefit the TWDB in meeting its goals of providing a significant financial benefit to its program participants, while maintaining flexibility and minimizing administration. When describing structure ideas, please include specifics and describe the relative merits and drawbacks of the financing approach. Case studies may be included in this section but must contain a summary and description of the applicability to the TWDB.
2. Discuss any recent or upcoming changes to State Revolving Fund (SRF) program requirements and how they could impact the TWDB's existing SRF programs.

## 7.6 PERSONNEL

Provide names, titles, and brief resumes of the personnel to be assigned to this account. Include the role of each team member assigned, such as that of a relationship banker, a quantitative or technical banker, an underwriter, an analyst, etc. Include as a **required appendix** the resumes for the Underwriter(s) that will be assigned to the TWDB's account.

## 7.7 LITIGATION

Please indicate your willingness to provide additional information on any litigation pending against your firm should the TWDB request it.

## 7.8 FINANCIAL/CAPITAL CONSIDERATIONS

**Failure to provide complete information in this section will result in the disqualification of your response.**

1. Of the transactions listed in in the "Experience" table, name three to five where the firm demonstrated its willingness to commit capital by underwriting bonds. Include the dollar amount of bonds underwritten in each instance
2. Provide the current equity capital positions (total equity capital, net equality capital, and excess net equity capital) in accordance with GAAP, or corresponding equity information if a bank. Do not refer to the annual audit or FOCUS report as a response to this question.
3. Provide a copy of your firm's most recent audited annual financial statements as a **required appendix**. Hard copy must be included in the original submittal
4. Provide a copy of your firm's most recent FOCUS I or FOCUS IIa report, as a **required appendix**. Hard copy must be included in the original submittal.

## **7.9 CONTENT ITEM 1**

Include the signed/dated "Execution of Response" form, as found in this RFQ.

## **7.10 CONTENT ITEM 2**

Include a signed/dated last page of the Underwriting Policies and Procedures for Negotiated Bond Transactions, as found in this RFQ.

## **VIII. RESPONSE EVALUATION AND AWARD**

**8.1** The TWDB will award the contract(s) to vendor(s) whose response(s) is/are considered to provide the best value to the State of Texas, as defined by Texas Government Code, Title 10, Section 2155.074.

**8.2** The TWDB reserves the right to select one or more firms that respond to this RFQ. In determining the number of firms to select, the TWDB will consider the number and type of bond transactions anticipated over the term of this engagement. The number of firms ultimately selected will be appropriate to the level of work anticipated.

1. A committee will be established by TWDB to evaluate the responses.
2. Responses will be referred to a panel of Staff for evaluation and scoring. Staff will review responses for compliance with the response content requirements and the potential for fulfillment of the scope of work criteria described herein. To assist in the preparation of the response, established criteria for review are provided below.
3. **All responses will be scored according to the category submitted. Specifically, National submittals will be rated against other National submittals, Regional submittals will be rated against other Regional submittals, etc.**

**8.3** Responses will be scored based on the responses provided in the section below. A total score of 100 possible points is available.

<b>Points Available</b>	<b>Established Criteria</b>
0 – 20	Distribution Abilities
0 – 30	Firm's Experience Issuing Municipal Bonds
0 – 20	Demonstrated Innovation
0 – 10	Qualifications of Personnel Assigned to TWDB
0 – 20	Financial/Capital Considerations
<b>100</b>	<b>Total Points Possible</b>

## **IX. LICENSE AGREEMENT**

**9.1** The TWDB will grant the awarded contractor a non-exclusive, irrevocable, world-wide, royalty-free, license to use, reproduce, distribute and display the materials created pursuant to this agreement, subject to the following terms and conditions.

**9.2** Each copy of the materials that the contractor distributes must indicate on the cover that the creation of the material was funded by the Texas Water Development Board. The contractor

agrees that it will not charge a fee for the distribution of the materials, except to recover actual duplication and mailing costs. Contractor shall not create derivatives of or modify the content of the materials except with the express written consent of the TWDB.

**9.3** Failure to comply with the terms of this license may result in immediate termination of the license agreement by the TWDB. Upon termination of this license agreement, contractor shall return the remaining materials to the TWDB, or shall destroy or distribute them, in accordance with the instructions of the TWDB.

## **X. GENERAL TERMS AND CONDITIONS**

### **10.1 GENERAL TERMS AND CONDITIONS**

Any contract awarded as a result of this RFQ will contain the general terms and conditions provided in this document. Subcontractors must also comply, if applicable. The Contractor is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state. In addition, any contract awarded as a result of this RFQ shall be governed, construed, and interpreted under the laws of the state of Texas. The factors listed in Texas Government Code §§ 2155.074, 2155.144, 2156.007, and 2157.003 will also be considered in making an award when specified. Any legal actions must be filed in Travis County, Texas.

### **10.2 PATENTS OR COPYRIGHTS**

The Contractor agrees to protect the State and TWDB from claims involving infringement of patents or copyrights. TWDB will not consider any RFQ that bears a copyright. RFQs will be subject to the Texas Public Information Act, Texas Government Code Chapter 552, and may be disclosed to the public upon request. Subject to the Act, Respondents may protect trade and confidential information from public release. Trade secrets or other confidential information submitted as part of a SOQ must be clearly marked in **boldface type and at least 14-point font**.

### **10.3 CONTRACTOR ASSIGNMENTS**

Respondent hereby assigns to TWDB any and all claims for overcharges associated with the contract arising under the antitrust laws of the United States, 15 U.S.C.A. Section 1 et seq. (1973), and the antitrust laws of the state of Texas, Tex. Bus. & Com. Code Sec. 15.01 et seq. (1967).

### **10.4 CONTINUING PERFORMANCE**

Any contract(s) awarded as a result of this RFQ must include reporting responsibilities related to Historically Underutilized Business (HUB) subcontracting. Awarded contractors may not change any subcontractor without submitting a revised HUB Subcontracting Plan (HSP) to TWDB. Any change to a subcontractor and revised HSP must be approved in writing by TWDB prior to implementation.

### **10.5 HISTORICALLY UNDERUTILIZED BUSINESSES SUBCONTRACTING PLAN**

It is the policy of TWDB to make a good faith effort to achieve the annual program goals by contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with the Texas Government Code, Chapter 2161, Subchapter F, and HUB Rules promulgated by the Comptroller of Public Accounts (CPA), 34 TAC, Chapter 20.

HUBs are strongly urged to respond to this RFQ. Under Texas law, state agencies are required to make a good faith effort to assist HUBs in receiving certain percentages of the total value of contract awards. The contractors who meet the qualifications are strongly encouraged to apply for certification as HUBs.

ALL CONTRACTORS RESPONDING TO THIS RFQ, INCLUDING THOSE THAT ARE HUB CERTIFIED OR THOSE WHO DO NOT PLAN TO SUBCONTRACT, MUST COMPLETE A HUB SUBCONTRACTING PLAN (HSP) IN ACCORDANCE WITH THE STATE'S POLICY ON UTILIZATION OF HUBs. THE HSP MUST BE INCLUDED AS PART OF THE PROPOSAL TO THIS RFQ. FAILURE TO COMPLETE THE HSP AS INSTRUCTED MAY RESULT IN DISQUALIFICATION OF THE PROPOSAL FROM CONSIDERATION. Please review the HSP forms carefully and allow sufficient time to identify and contact HUBs and allow them to respond. Note that the contractors must demonstrate a good faith effort to contract with new HUBs if currently proposed HUBs have performed as subcontractors to the contractor for more than five (5) years. If the contractor does not plan to subcontract, the contractor must state that fact in their plan. The completed plan will become part of the contract that may be awarded as a result of this RFQ.

#### **10.6 HUB RESOURCES AVAILABLE**

A list of certified HUBs is available on the Texas Comptroller of Public Accounts (CPA) Web site at: <https://mycpa.cpa.state.tx.us/tpasscmlsearch/tpasscmlsearch.do>. For additional information, contact the CPA's HUB program office at [StatewideHUBProgram@cpa.texas.gov](mailto:StatewideHUBProgram@cpa.texas.gov). If contractors know of any businesses that may qualify for certification as a HUB, they should encourage those businesses to contact the CPA HUB program office.

#### **10.7 REQUIRED AFFIRMATIONS AND CERTIFICATIONS**

Submitting a Response (CONTENT ITEM 1 - Execution of Response to the Request for Qualifications) with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted response or any resulting contract(s). By signing CONTENT ITEM 1, the Respondent hereby represents and warrants that:

1. **Dealings with Public Servants.** Pursuant to Texas Government Code § 2155.003, Respondent represents and warrants that it 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 SOQ.
2. **Antitrust.** In accordance with Texas Government Code § 2155.005, neither Respondent nor the firm, corporation, partnership, or institution represented by the Respondent, or anyone acting for such firm, corporation, partnership or institution, has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws; or (2) communicated directly or indirectly the contents of this SOQ to any competitor or any other person engaged in same line of business as the Respondent.
3. **Financial Participation Prohibited.** Pursuant to Texas Government Code § 2155.004(a), Respondent certifies that neither Respondent or any person or entity represented by Respondent has received compensation from the TWDB or any agency of the State of Texas for participation in the preparation of the specifications for this



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

4. **Child Support Obligation.** Under Texas Family Code § 231.006, Respondent certifies that the individual or business entity named in its response 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;
5. **Prior Disaster Relief Contract Violation.** Texas Government Code §§ 2155.006 and 2261.053 prohibit state agencies from accepting a response or awarding a contract that includes financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster occurring after September 24, 2005, as defined by Texas Government Code § 418.004. Under Texas Government Code §§ 2155.006 and 2261.053, Respondent certifies that the individual or business entity named in its response is not ineligible to receive the specified contract and acknowledges that any contract resulting from this solicitation may be terminated and payment withheld if this certification is inaccurate.
6. **Debts and Delinquencies.** Respondent agrees that any payments due under a contract will be applied towards any debt or delinquency that is owed to the State of Texas, including but not limited to delinquent taxes and child support.
7. **Executive Head of a State Agency.** Under Texas Government Code § 669.003, Respondent certifies that it does not employ, or has disclosed its employment of, any former executive head of the TWDB. If § 669.003 applies, Respondent must provide the following information in its Response:  
Name of Former Executive: \_\_\_\_\_  
Name of State Agency: \_\_\_\_\_  
Date of Separation from State Agency: \_\_\_\_\_  
Position with Respondent: \_\_\_\_\_  
Date of Employment with Respondent: \_\_\_\_\_
8. **Suspension and Debarment.** Respondent certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed in the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the U.S. General Services Administration.
9. **Buy Texas.** In accordance with Texas Government Code § 2155.4441, Respondent 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. **Disaster Recovery Plan.** Upon request of the TWDB, Respondent shall provide the descriptions of its business continuity and disaster recovery plans.
11. **Entities that Boycott Israel.** Pursuant to Texas Government Code § 2270.002, Respondent certifies that either (i) it meets one of the exemption criteria under § 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. Respondent shall state any facts that make it exempt from the boycott certification in its Response.

12. **E-Verify Program.** Respondent certifies that for contracts for services, Respondent shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of any contract resulting from this solicitation to determine the eligibility of: (1) All persons employed by Respondent to perform duties within Texas; and (2) all persons, including subcontractors, assigned by Respondent to perform work pursuant to the contract within the United States of America.
13. **Excluded Parties.** Respondent certifies that it is not listed in the federal government's terrorism watch list as described in Executive Order No. 13224.
14. **Foreign Terrorist Organizations.** Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Texas Government Code § 2252.152.
15. **Lobbying Prohibition.** Respondent represents and warrants that TWDB's payments to Respondent and Respondent's receipt of appropriated or other funds under the contract are not prohibited by Texas Government Code §§ 556.005 or 556.0055, related to the prohibition on payment of state funds to a lobbyist or for lobbying activities.
16. **Requirement to Provide Contracting Information in Connection with a Public Information Request.** The requirements of Texas Government Code Chapter 552 Subchapter J may apply to this (Bid or Contract), and the Contractor (or Respondent) agrees that the Contract can be terminated if the Contractor or Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

## **10.8 INDEMNIFICATION**

Respondent shall defend, indemnify, and hold harmless the State of Texas and TWDB and/or their officers, directors, agents, employees, representatives, contractors, assignees and/or designees from any and all liability, actions, claims, demands or suits, and all related costs, attorney fees and expenses arising out of or resulting from any acts or omissions of the Respondent or its agents, employees, subcontractors, order fulfillers, or suppliers of subcontractors in the execution or performance of any contract arising from this RFQ. The defense shall be coordinated by Respondent with the Office of the Texas Attorney General when Texas state agencies are named defendants in any lawsuit, and Respondent may not agree to any settlement without first obtaining concurrence from the office of the Texas Attorney General. Respondent and the TWDB agree to furnish timely written notice to each other of any such claim.

## **10.9 ADDITIONAL TERMS**

Any terms and conditions attached to your SOQ will not be considered unless specifically referred to in this RFQ and may result in disqualification of your SOQ.

## **10.10 DISPUTE RESOLUTION**

The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by the TWDB and the Respondent to attempt to resolve all disputes arising under any contract resulting from this solicitation.

## **10.11 NON-APPROPRIATION OF FUNDS**

Any contract resulting from this solicitation is contingent on the continued availability of lawful

appropriations by the Texas Legislature. If the Texas Legislature fails to continue funding for the payments due under an order referencing the contract, the order will terminate as of the date that the funding expires, and TWDB will have no further obligation to make any payments.

#### **10.12 PUBLIC INFORMATION ACT**

Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Texas Government Code Chapter 552 (the "Public Information Act"). In accordance with Texas Government Code § 2252.907, Respondent is required to make any information created or exchanged with the State pursuant to the solicitation or contract and not otherwise excepted from disclosure under the Public Information Act available in a format that is accessible to the public at no additional charge to the State.

#### **10.13 GOVERNING LAW AND VENUE**

Any contract resulting from this solicitation will be governed by the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under a contract resulting from this solicitation is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the TWDB.

#### **10.14 ETHICS**

Under Texas Government Code § 2155.003, an individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in 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 that are interested in seeking business opportunities with the state must be mindful of these restrictions when interacting with public purchasers of TWDB or purchasers of other state agencies. Specifically, a TWDB 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.

#### **10.15 FRAUD STATEMENT**

Respondents understand that the TWDB does not tolerate any type of fraud. The TWDB's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Any violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. Contractors are expected to report any possible fraudulent or dishonest acts, waste, or abuse to the agency's Internal Audit division at 512-463-7978 or [Nicole.Campbell@twdb.texas.gov](mailto:Nicole.Campbell@twdb.texas.gov).

#### **10.16 CONFLICT OF INTEREST**

A Respondent will not be selected if there is a conflict of interest that will or may arise during the performance of its obligations under the contract. For this reason, the submission in response to this RFQ must disclose all business interests and all relationships that could

reasonably be considered to pose possible conflicts of interest in the respondent's performance of the contract obligations. In addition, respondents must represent and warrant in the response to this RFQ and in the contract that in the performance of services under the contract, (1) Respondent does not have and will not have any actual or potential conflict of interest, and (2) Respondent will take whatever reasonable actions may be necessary and prudent to avoid even the appearance of impropriety.

#### **10.17 RIGHT TO AUDIT**

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under a contract or indirectly through a subcontract under the contract. The acceptance of funds under a contract or subcontract 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, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

#### **10.18 CONTRACT ADMINISTRATION**

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

#### **10.19 CONTRACT AMENDMENT/TERMINATION**

This contract may be altered or amended by mutual written consent or terminated by the Executive Administrator at any time by written notice to the contractor. Upon receipt of such termination notice, the contractor shall, unless the notice directs otherwise, immediately discontinue all work in connection with the performance of the contract and shall promptly cancel all existing orders insofar as such orders are chargeable to the contract. The contractor shall submit a statement showing in detail the work performed under the contract to the date of termination. The TWDB shall then pay the contractor promptly that proportion of the prescribed fee, which applies to the work performed under the contract, less all payments that have been previously made. Thereupon, copies of all work accomplished under the contract shall be delivered to the TWDB.

#### **10.20 STOP WORK ORDER**

The Executive Administrator may issue a Stop Work Order to the contractor at any time. Upon receipt of such order, the contractor shall discontinue all work under the contract and cancel all orders pursuant to the contract, unless the order directs otherwise. If the Executive Administrator does not issue a Restart Order within 60 days after receipt by the contractor of the Stop Work Order, the contractor shall regard the contract terminated in accordance with the foregoing provisions.

### **10.21 CONTRACTOR PERFORMANCE**

State agencies are required to report a contractor's performance on any purchase of \$25,000 or more from contracts administered by the TWDB or any other purchase made through an agency's delegated authority or a purchase made pursuant to the authority in Government Code, Title 10, Subtitle D or a purchase exemption from CPA/TPASS procurement rules and procedures.

### **10.22 DEFAULT**

If the contractor is found to be in default under any provision of the contract, TWDB may cancel the contract without notice and either re-solicit or award the contract to the next best responsive and responsible Respondent. In the event of abandonment or default, the contractor will be responsible for paying damages to TWDB including but not limited to re-procurement costs, and any consequential damages to the state of Texas or TWDB resulting from the contractor's non-performance. The defaulting contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work is significantly changed.

### **10.23 FORCE MAJEURE**

Neither the contractor nor TWDB shall be liable to the other for any delay in, or failure of performance, of any requirement included in the contract resulting from this RFQ 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.

### **10.24. OWNERSHIP/INTELLECTUAL PROPERTY, INCLUDING RIGHTS TO DATA, DOCUMENTS AND COMPUTER SOFTWARE**

For the purposes of the contract, the term "Work" is defined as all reports, statistical analyses, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, research, materials, and intellectual property or other property developed, produced, or generated in connection with the contract. All work performed pursuant to the contract is made the exclusive property of TWDB. All right, title and interest in said property shall vest in TWDB upon creation and shall be deemed to be a work for hire and made in the course of the services rendered pursuant to the contract. To the extent that title to any such work may not, by operation of law, vest in TWDB, or such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to TWDB. TWDB shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations, or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. The contractor must give TWDB and/or the state of Texas, as well as any person designated by TWDB and/or the state of Texas, all

assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to the contractor for the services rendered under the contract.

The contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under the contract funds were expended in accordance with the laws and regulations of the state of Texas, including but not limited to, requirements of the Comptroller of the state of Texas and the State Auditor. The contractor shall maintain all such documents and other records relating to the contract and the State's property for a period of four (4) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. The contractor shall make available at reasonable times, upon reasonable notice, and for reasonable periods, all documents and other information related to the "Work" as defined as work products developed by the contractor and subcontractor using funds provided under the contract or otherwise rendered in or related to the performance in whole or part of the contract, including but not limited to reports, drafts of reports, or other material, data, drawings, studies, analyses, notes, plans, computer programs and codes, or other work products, whether final or intermediate. The contractor and the subcontractor shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. The contractor must retain all work and other supporting documents pertaining to the contract, for purposes of inspecting, monitoring, auditing, or evaluating by TWDB and any authorized agency of the state of Texas, including an investigation or audit by the State Auditor.

The contractor shall cooperate with any authorized agents of the state of Texas and shall provide them with prompt access to all such State's work as requested. The contractor's failure to comply with this Section will constitute a material breach of the contract and will authorize the TWDB and the state of Texas to immediately assess appropriate damages for such failure. Pursuant to Texas Government Code Section 2262.003, the acceptance of funds by the contractor or any other entity or person directly under the contract, or indirectly through a subcontract under the contract, constitutes acceptance of the authority of the State Auditor to conduct an audit or investigation in connection with those funds.

#### **10.25 DRUG-FREE WORKPLACE POLICY**

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

#### **10.26 SMOKE FREE POLICY**

The TWDB has a smoke free agency policy. The policy reflects our commitment to providing a healthy environment for our employees and visitors. This policy prohibits smoking within any state building or on the grounds. Contractor, by acceptance of this contract, agrees to abide by this policy when on the property of TWDB.

### **10.27 INSURANCE AND OTHER SECURITY**

The contractor represents and warrants that it will obtain and maintain for the term of the Contract all insurance coverage required to ensure proper fulfillment of the Contract and its liabilities thereunder, including but not limited to professional liability coverage. The Respondent shall insure any of its motor vehicles used to fulfill its duties under the Contract and ensure that its subcontractors do the same.

The contractor represents and warrants that all the above coverage is with companies licensed in the state of Texas, with "A" rating from A.M. Best, and authorized to provide the corresponding coverage. The contractor represents and warrants that it shall maintain the above insurance coverage during the term of the contract and shall provide TWDB with an executed copy of the policies immediately upon request.

### **10.28 ORDER PRECEDENCE**

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

### **10.29 PROPRIETARY INFORMATION**

The TWDB is a government agency subject to the Texas Public Information Act (PIA), Chapter 552, Texas Government Code. The Proposal and other information submitted to the TWDB by the Respondent are subject to release as public information. The Proposal and other submitted information shall be presumed to be subject to disclosure unless a specific exception to disclosure under the PIA applies. If it is necessary for the Respondent to include proprietary or otherwise confidential information in its Proposal or other submitted information, the Respondent must clearly label that proprietary or confidential information and identify the specific exception to disclosure in the PIA. Merely making a blanket claim that the entire Proposal is protected from disclosure because it contains some proprietary information is not acceptable and shall make the entire Proposal subject to release under the PIA. In order to trigger the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the Proposal that are considered by the Respondent to be proprietary or confidential must be clearly labeled as described above. Any information which is not clearly identified as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA.

### **10.30. PUBLIC DISCLOSURE**

No public disclosures or news releases pertaining to the contract may be made without prior written approval of TWDB.

### **10.31 TAXES**

The contractor represents and warrants that it shall pay all taxes or similar amounts resulting from the contract, including, but not limited to, any federal, state, or local income, sales or excise taxes of the contractor or its employees. TWDB shall not be liable for any taxes resulting from the contract.

### **10.32 ACTS OR OMISSIONS**

The contractor shall indemnify and hold harmless the state of Texas and TWDBs, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the contractor or its agents, employees, subcontractors, order fulfillers, or suppliers of subcontractors in the execution or performance of the contract and any purchase orders issued under the contract. THE DEFENSE SHALL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND THE CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. THE CONTRACTOR AND THE TWDB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

### **10.33 INFRINGEMENTS**

1. The contractor shall indemnify and hold harmless the state of Texas and the TWDB, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES, from any and all third-party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. THE CONTRACTOR AND THE TWDB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. THE CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND THE CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.
2. The contractor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without the contractor's written approval, (iii) any modifications made to the product by the contractor pursuant to the TWDB's specific instructions, (iv) any intellectual property right owned by or licensed to the TWDB, or (v) any use of the product or service by the TWDB that is not in conformity with the terms of any applicable license agreement.
3. If the contractor becomes aware of an actual or potential claim, or the TWDB provides the contractor with notice of an actual or potential claim, the contractor may (or in the case of an injunction against TWDB, shall), at the contractor's sole option and expense (i) procure for the TWDB the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that the TWDB's use is non-infringing.



#### **10.34 TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE – INCLUDING INDEMNITY**

1. THE CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, THE CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF THE CONTRACTOR'S AND THE CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. THE CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE TWDB AND/OR THE STATE SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY TWDB.
2. THE CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS TWDBS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. THE CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. THE CONTRACTOR AND THE TWDB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

#### **10.35 REMEDIES**

All remedies available to TWDB for breach or anticipatory breach of the contract by the contractor are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies. Notwithstanding any exercise by Agency of its rights of early termination, Outside Counsel shall not be relieved of any liability to Agency for damages due to Agency by virtue of any breach of this OCC by Outside Counsel or for amounts otherwise due Agency by Outside Counsel.

Liquidated damages, actual damages, cost projections, injunction relief and/or performance bonds may also be invoked either separately or combined with any other remedy in accordance with applicable law.

Section 8 of the Standard Outside Counsel Contract (available from the Office of Attorney General) contains required Certifications of Outside Counsel to include licenses and conduct, prohibitions and compliance with state law provisions. These sections compel compliance and frame the monitoring approach. Counsel is also monitored through the payment approval

process that requires three levels of sign off, including the OAG, before reimbursement will occur.

#### **10.36 INTERESTED PARTIES**

All non-governmental contractors are required to submit a Certificate of Interested Parties at the time the signed contract is submitted to the TWDB. The Certificate of Interested Parties (Form 1295) is a sworn statement by the contracting business entity and must be submitted even if there is no interested party in the transaction. The Form 1295 and instructions for completing and submitting the form are available at: <https://www.ethics.state.tx.us/tec/1295-Info.htm>. The TWDB is prohibited from executing a contract unless the contracting business entity submits a completed Form 1295. Any contract resulting from a TWDB procurement with a business entity will be void if the Certificate of Interested Parties is not submitted within 30 days of submitting an executed contract.

#### **10.37 CONFIDENTIALITY AND SECURITY**

Contractor must maintain and protect any information it receives, compiles, or creates as a result of the Contract in accordance with any federal, state, or local laws and regulations that apply. Contractor must establish a method to secure the confidentiality of records and other information relating to the TWDB in accordance with applicable federal and state laws, rules, and regulations.

**CONTENT ITEM 1**  
**EXECUTION OF RESPONSE**  
to the  
**REQUEST FOR QUALIFICATIONS**

---

Company Name: \_\_\_\_\_

Authorized Representative: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Vendor ID: \_\_\_\_\_

(aka: Texas Taxpayer ID)

Phone Number: \_\_\_\_\_

E-Mail: \_\_\_\_\_

I, \_\_\_\_\_, am the above-referenced company's representative and I am authorized to submit this response and sign future contract documents. By signing below, the representative certifies that if a Texas address is shown as the address, the respondent qualifies as a Texas Bidder as defined in 34 TAC Rule 20.32(68).

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title:

**CONTENT ITEM 2**  
**TWDB**  
**UNDERWRITING POLICES AND PROCEDURES**  
for  
**NEGOTIATED BOND TRANSACTIONS**

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A. Definitions

The following definitions shall apply:

*Agreement Among Underwriters or AAU:* The contract establishing the underwriting Syndicate formed to market the bonds. The AAU will include provisions covering the liability of each Syndicate member, stated as a percentage, and if such percentage shall apply equally to underwriting commitments, profits and losses; a description of order types, order priority, pricing of the bonds and requirements respecting a public offering; and other matters relating to trade practice and applicable rules of the Municipal Securities Rulemaking Board (MSRB).

*Authorized Representative (AR):* The Executive Administrator and the Development Fund Manager, together with any other employee designated to act on behalf of the TWDB as an Authorized Representative.

*Bond Purchase Agreement:* The contract between the Syndicate and the TWDB setting forth the final terms, prices and conditions upon which the Syndicate purchases a new issue of bonds issued by the TWDB.

*Expenses:* The costs of operating the Syndicate for which the senior manager may be reimbursed.

*Good Faith Deposit:* A sum of money required to be delivered to the TWDB by the Syndicate pursuant to the Bond Purchase Agreement. The Good Faith Deposit is generally provided in the form of a certified or cashier's check in an amount determined by the TWDB, a minimum of 1.00% of the par amount of bonds or another amount as determined by the TWDB.

*Group Net Order:* An order for bonds that is allocated at the public offering price without deducting the concession or takedown. A Group Net Order benefits all members of the Syndicate according to their respective percentage liability commitments as detailed in the AAU, as further provided in Section E.

*HUB (Historically Underutilized Businesses) Firms:* Firms owned by minorities, or women as defined by State law.

*Liability:* The principal amount of securities to be underwritten by each member of the Syndicate, expressed as a percentage of the total par amount of the underwriting.

*Managers:* The book-running senior manager and other members of the Syndicate that may be allotted a portion of the Management Fee, if any.

*Member Order:* An order for bonds placed by a member of the Syndicate confirmed to that member at the takedown, as further provided in Section E.

*National Retail Order:* An order for bonds which is a direct purchase by an individual resident of any state outside of Texas. National Retail Order does not include trust departments, investment advisors or money managers acting on behalf of such residents, or separately managed accounts ("SMAs"). Orders by broker dealers or dealer banks are not considered retail accounts and may not be submitted as retail orders. The TWDB, together with its designated financial advisor, will clarify and define with the senior manager, prior to each issuance, accounts and orders to be considered as retail orders. The orders are usually subject to a maximum limit defined in writing prior to release of the preliminary pricing, and the priority provisions set forth in Section E. Under no circumstance will a Syndicate member enter multiple orders for a specific maturity for the same individual to circumvent this maximum amount.

*Net Designated Order:* An order for bonds submitted by a Syndicate member on which all or a portion of the takedown is to be credited to firms designated by the purchaser of the bonds according to the percentages designated by the said purchaser within the parameters agreed to by the AR and the Senior Manager and set forth in the pricing wire, as further provided in Section E.

*Priority Order:* A Group Net Order, Net Designated Order, or Member/Retail Order targeted toward a specific purchaser, such as Texas resident, and given preferential treatment in the bond allocation process.

*Selling Group:* Other members of the TWDB's underwriting team used to assist in the marketing of the bonds. Selling Group members are not a party to the AAU and do not have underwriting liability.

*Spread (or Underwriters' Discount):* The differential between the prices paid to the TWDB for a new issue of bonds issued by the TWDB and the prices at which the securities are initially offered to the investing public. This is also termed the "gross spread," "gross underwriting spread" or "production." To the extent that the initial offering prices are subsequently lowered by the Syndicate, the full amount of the spread may not be realized by the Syndicate. The spread is usually expressed in dollars per bond. Although one or more components may not be present in any particular offering, generally the spread consists of four components: Expenses, Management Fee, Takedown, and Underwriting Risk.

*State:* The State of Texas.

*Syndicate:* A group of underwriters formed to purchase and reoffer the TWDB's bonds for sale to the public at a stated offering price. Each member of the Syndicate has a percentage in the liability of the financing, as detailed in the AAU.

*Takedown:* The discount from the public offering price allowed to members of an underwriting account on Orders.

*Texas Retail Order:* An order which is a direct purchase by an individual resident of Texas, or trust departments, investment advisors or money managers acting on behalf of a resident of Texas. Orders by broker dealers or dealer banks are not considered retail accounts and may not be submitted as retail orders. The TWDB, together with its designated financial advisor, will clarify and define with the senior manager, prior to each issuance, accounts and orders to be considered as retail orders. The orders are usually subject to a maximum limit defined in writing prior to release of the preliminary pricing, and the priority provisions set forth in Section E. Under no circumstance will a Syndicate member enter multiple orders for a specific maturity for the same individual to circumvent this maximum amount. Upon request, an underwriter must immediately submit to the TWDB copies of all initial trade confirmations to verify retail orders.

*True Interest Cost:* The rate, compounded semi-annually, necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received on the closing date of the issue.

*Underwriting Policies and Procedures or UPPs:* These Underwriting Policies and Procedures for Negotiated Bond Sales.

*Underwriting Risk:* The amount paid under certain specific circumstances to the Syndicate members to provide for the risk that other components of the spread will not be sufficient to cover future incurred losses associated with the underwriting of the bonds.

B. Overview

1. All Syndicate members will be expected to perform at a level which provides maximum benefit to the State and which reflects their liability percentage as defined in the AAU. The AR will conduct a post-sale evaluation of each Syndicate member's performance approximately 30 days after the close of the transaction. The results of the evaluation will be used in the selection process for book-running senior manager and other Syndicate members for future TWDB financings.
2. All Syndicate members will be expected to provide a positive financial impact in each bond transaction. To allow Syndicate members the opportunity to make a meaningful contribution, the book-running senior manager will be expected to actively involve Syndicate members in the preliminary discussions regarding the coupon structuring and pricing of the issue. The book-running senior manager will give the orders of Syndicate members no less attention than it would give to its own priority orders and make a bona fide attempt to fill those orders, giving due consideration for the Syndicate member's liability and the Priority Provisions, unless the effect would be to produce an outcome that is overall not in the best interest of the TWDB.
3. All Syndicate members will be expected to help further the TWDB's good faith efforts of including HUB firms in all facets of the financing. HUB firms are expected to participate fully throughout the financing process.

4. All Syndicate members will be expected to make themselves available to participate, when requested, in various aspects of the financing (e.g., informational meetings, pre-pricing conference calls, due diligence calls, and other meetings prior to the issuance of bonds, etc.).

C. Municipal Securities Rulemaking Board (“MSRB”) Rules

MSRB rules shall be followed at all times in the underwriting of the bonds.

1. The priority of orders for bonds for purposes of allocation must be established and disclosed in writing to the Syndicate prior to the first offer of any bonds, in accordance with MSRB rules and Section E.
2. In placing an order with the book-running senior manager, all Syndicate members shall state whether it is a National Retail Order, a Texas Retail Order, a Group Net Order, a Net Designated Order, a Member Order or any other appropriate designation, including whether the order is for a related account. Any change in the designation of order type after order placement must be communicated to the book-running senior manager during the order period.
3. Any bonds sold by the Syndicate must be at the then-applicable respective public offering prices. Each member of the Syndicate agrees to make a bona fide public offering of all bonds allocated to it at the respective public offering prices. Syndicate members may reallocate the concessions or any part thereof agreed upon by the Syndicate at a Syndicate meeting or any part thereof on sales to: (a) dealers who are members of the National Association of Securities Dealers, Inc. (“NASD”); or (b) dealer banks or divisions or departments of banks. This provision applies until the book-running senior manager issues a written release of Syndicate restrictions. The book-running senior manager shall execute and deliver prior to the delivery of the bonds an “issue price certificate” as required by the Bond Purchase Agreement in such form as is mutually acceptable to the book-running senior manager and bond counsel (as identified in the Bond Purchase Agreement).
4. Under no circumstance will any Syndicate member re-allocate any portion of the takedown to any non-Syndicate account, broker-dealer or dealer bank in the form of a concession without the consent of the book-running manager unless the concession is stated on the pricing wire.

D. Liability

1. No later than two weeks prior to the day of pricing, the book-running senior manager must provide to the AR for review a recommended liability assignment for each Syndicate member. Upon approval by the AR, the book-running senior manager must incorporate the liability assignments into the AAU.

2. In general, the AR expects that the book-running senior manager will recommend itself 30% - 50% of the issue as its liability. All liability assignments are subject to the approval of the AR.
3. Performance shall be a factor in the bond allocation process. The allocation of bonds is also based on the distribution of liability to the Syndicate.

E. Priority Provisions

Priority Provisions are the rules adopted by an underwriting Syndicate specifying the priority to be given different types of orders received by the Syndicate. As required by the MSRB, the priority provisions must be adopted in writing in the AAU and provided to all Syndicate members. The types of orders are:

1. Texas Retail Order;
2. National Retail Order;
3. Group Net Order;
4. Net Designated Order; and
5. Member Order.

F. Agreement Among Underwriters (AAU)

1. The AAU must include the liability assignments, the priority of orders for purposes of allocation and the takedown designation policy in effect for the transaction. The book-running senior manager must deliver to the AR, and the AR shall review, the AAU prior to its distribution to Syndicate members, or the liability assignments if an electronic Master AAU is used.
2. The book-running senior manager must provide a written copy of the AAU to each of the Syndicate members if an electronic Master AAU is not used. Each Syndicate member must review the terms and conditions set forth in the AAU and return a signed copy to the book-running senior manager, if distributed in physical form, or approve the electronic AAU via an electronic delivery system such as Ipreo, at least two business days prior to the day of pricing.

G. Takedown and Designation Policies

1. Two weeks prior to the day of pricing, the book-running senior manager must provide to the AR a proposed priority of orders for purposes of allocation and a proposed policy for the designation of takedown on Net Designated Orders. The policy must include a maximum and minimum percentage of takedown to be designated to any one firm, as well as a minimum number of firms if applicable to be designated on any one Net Designated Order. Upon the approval of the AR, the priority of orders and the designation policy may be included in the AAU.



2. Any takedown not designated on Net Designated Orders within seven business days of the day of pricing will be distributed among the Syndicate members according to their respective liability assignments.
3. The book-running senior manager must include in the final pricing book a breakdown of takedown designations on all Net Designated Orders for each Syndicate member. The final pricing book must be provided to the AR no later than 30 days after the day of closing.
4. Changes to the takedown designation policy must be approved by the AR and communicated by wire to Syndicate members.

#### H. Marketing Plan

1. Unless otherwise agreed to by the AR, no later than two weeks prior to the day of pricing or the day before the preliminary official statement posts, whichever is sooner, the book-running senior manager must provide a marketing plan to the AR. This plan should discuss target markets (e.g., casualty companies, trust departments, bond funds, retail) for the issue, as well as couponing scenarios, the feasibility of term bonds, and other ideas for consideration to achieve the best price for the issue.
2. The following percentages of bonds allocated should be viewed as overall targets or guidelines: generally, no more than 50% to any one firm and a minimum percent to be determined by the AR based on the transaction structure and the number of firms in the syndicate.
3. Any proposed use of a selling group must be approved by the AR and will generally include other firms in the approved underwriting pool of the TWDB.

#### I. Fees and Expenses

The AR reserves the right to review and approve all fees and expenses of the Syndicate and request their substantiation. It is expected that any excess funds raised beyond those required to meet issue expenses will be returned to the TWDB.

1. The book-running senior manager must provide a final estimate of the expense component to the AR no later than one week prior to the expected day of pricing. The expense component of the underwriting spread must be finalized by the book-running senior manager and approved by the AR the day of pricing. Syndicate member expenses will only be permitted subject to prior approval by the AR and supported with documentation.
2. In general, the TWDB does not reimburse the MAC fee.
3. In general, the TWDB does not reimburse the book-running senior manager for clearance fees except for the per issue amount of \$800.00 for the Depository Trust

Company (DTC) on issues that are registered in book-entry form only. All other clearance fees must be justified in writing and are subject to the review and approval of the AR prior to the day of pricing on a case by case basis.

4. There will be no consideration of an Underwriting Risk component of the underwriting spread until after the order period closes. At that time, the AR and the book-running senior manager will review the book of orders and discuss the need for including Underwriting Risk in the underwriters' spread for any unsold bonds. Any Underwriters' Risk component must be approved by the AR. There will be no negotiation of Underwriting Risk after the verbal award has been given by the AR to the Syndicate.
5. Proposed takedowns for all maturities must be included as part of the proposed pricing terms received by the AR at least two hours prior to the first pre-pricing conference call. All changes to takedowns are subject to review and approval by the AR.

J. Discussion of Business Terms

Unless otherwise agreed to by the AR, no later than one week prior to the day of pricing, the book-running senior manager must communicate in writing to the AR following items previously discussed with the AR by the book-running senior manager: (a) priority of orders for purposes of allocation; (b) policy covering the distribution of takedown on Net Designated Orders; and (c) a timetable of events during pricing. These items are subject to the approval of the AR.

K. Pricing Procedures

1. The book-running senior manager must be prepared to initiate a conference call with the AR, the designated financial advisor of the TWDB and Syndicate to review overall financing goals and plans to accomplish them. The call, *to be confirmed at the discretion of the AR*, must be initiated no later than two business days prior to the day of pricing. The plans proposed by the book-running senior manager must address, among other things, the TWDB goals of obtaining the best price for the issue, allocating bonds on the basis of work performed, and maintaining favorable long-term market access.
2. Prior to, or coincidental with the call referenced in 1. above, the book-running senior manager will have a discussion with the AR as to whether having sealed bids on the first maturities would or would not provide for optimal pricing results.
3. At least one hour prior to the pre-pricing conference call (one business day prior to the day of pricing) between the AR and the Syndicate, the book-running senior manager must review with the AR and the designated financial advisor of the TWDB the proposed pricing terms. This is to allow for thorough evaluation of the proposed pricing terms by the AR. The list of pricing terms provided to the AR must include

- principal amounts, interest rates, yields, prices, optional redemption features, concessions and takedowns per maturity and any maturities designated to be priced by a sealed bid process, detailing the cutoff time for bids and if a stated takedown will apply. The book-running senior manager must also provide the AR with the price views of each co-manager.
4. On the day preceding pricing, the book-running senior manager must initiate a pre-pricing conference call with the AR, the designated financial advisor of the TWDB, and Syndicate to discuss the proposed pricing terms, order period, underwriting spread components and other necessary pricing information. The time of the call should be communicated at least 24 hours in advance of the call, whenever possible. At the conclusion of the conference call, the book-running senior manager will send out a consensus scale to each co-manager.
  5. On or before the day preceding pricing, the book-running senior manager will secure and distribute login information for an electronic order viewing platform, such as Game Day or other comparable proprietary platform, to individuals designated by the AR,
  6. Prior to its release, the preliminary pricing wire is subject to the approval of the AR. The wire must include, among other things, all pricing terms agreed upon by the AR, book-running senior manager and Syndicate during the pre-pricing conference call, and the priority of orders for bonds for purposes of allocation.
  7. On the morning of the day of pricing (prior to the start of the order period), if the book-running senior manager believes that a change in any of the pricing terms approved on the pre-pricing conference call, such as interest rates, yields, prices, optional redemption features, concessions and additional takedowns per maturity, is required, the book-running senior manager must review with the AR, the designated financial advisor of the TWDB and Syndicate the proposed pricing terms and any suggested changes in light of current market conditions. Moreover, the AR may require the book-running senior manager to initiate a conference call prior to the start of the order period for large issues and/or during turbulent market conditions.
  8. Any change in the initial pricing terms on any maturity during the order period must be approved by the AR.
  9. During the order period, the senior manager must provide the AR and the designated financial advisor of the TWDB with access to an electronic order entry system or another comparable service as referenced in 5. above.
  10. The book-running senior manager must track the receipt of orders broken down by maturity, amount, type and firm. Status reports on the pricing, including total orders received, broken down by maturity, amount, type and firm, may be requested by the AR at any time during the order period. The Game Day "Orders and Allotments by Maturity" report is an acceptable report for these purposes. Should the AR request it,

the book-running senior manager must also provide submittal times and copies of confirmations for all orders or other specialized reports.

11. If the book-running senior manager feels a co-manager has incorrectly entered an order, the book-running senior manager will immediately bring it to the attention of the AR for resolution. Under no circumstances will the book-running senior manager make a unilateral decision pertaining to any order entered by a co-manager.
12. The book-running senior manager must receive approval from the AR before terminating any order period on any maturity before the previously determined close of the order period.
13. Immediately at the close of the order period, the book-running senior manager must provide the AR with a status report of all orders received and posted at that time.
14. Within one hour after the close of the order period, the book-running senior manager must provide in writing in a format acceptable to the AR, a listing of total orders received broken down by maturity, amount, type and firm, through the end of the order period. The Game Day "Orders and Allotments by Maturity" report is an acceptable report for this purpose.
15. Within two hours after the close of the order period, the book-running senior manager must make a concerted effort to provide the AR and the designated financial advisor of the TWDB with the true interest cost of the issue. After this information has been provided to the AR, the book-running senior manager must review the book of orders and negotiate any change in pricing terms (e.g., interest rates, yields, prices, optional redemption features, concessions and additional takedowns per maturity) or other necessary proposed changes, such as underwriting spread components, prior to the verbal award of the bonds to the Syndicate by the AR.
16. Within two hours after the close of the order period, the book-running senior manager will confirm with all co-managers the orders received by the co-managers.
17. Any changes in the pricing terms negotiated between the AR, book-running senior manager and Syndicate prior to receiving the verbal award on the bonds must be confirmed to the Syndicate via a final pricing wire, subject to the approval of the AR. The book-running senior manager must also ensure that the AR receives a copy of the final pricing wire for its records.
18. A complete set of final number runs by the book-running senior manager must be provided to the AR and the designated financial advisor of the TWDB before the AR signs the Bond Purchase Agreement. The number runs must include, but not necessarily be limited to, a table of sources and uses of funds, a summary of assumptions and results (including significant dates, underwriting spread breakdown, ratings, true interest cost, etc.) and any additional tables that include interest rates, yields, prices, takedowns, principal amounts and related debt service by maturity.

19. The book-running senior manager and underwriters' counsel are responsible for coordinating the execution of the Bond Purchase Agreement and the delivery of the Good Faith Deposit to the AR. The good faith check must be payable to the Texas Water Development Board and should include return instructions.
20. The AR reserves the right to postpone the pricing if the above pricing procedures are not strictly followed.

L. Allocation of Bonds

1. The book-running senior manager will be responsible for ensuring that the overall allocation of bonds meets the goals of: (a) obtaining the best price for the issue; (b) providing firms with allocations that are commensurate with work performed (the type and amount of orders submitted); and (c) providing opportunity for meaningful participation from all Syndicate members, including HUB firms.
2. The AR will review the allocation process with the book-running senior manager prior to its release to the co-managers.
3. Before allocating any bonds, the book-running senior manager must provide in writing to the AR a final listing of orders by maturity, amount and type for each of the Syndicate and selling group members. The AR must approve the proposed allocation of bonds before the book-running senior manager can release the allocation. This approval shall be given by the AR in a timely manner. Upon approval by the AR, the book-running senior manager shall make allotments to the members within one hour. In no case shall allotments be withheld overnight without the prior approval of the AR.

M. Post-Sale Support

1. Credits designated by a customer must be distributed after the delivery of the bonds to the customer, in accordance with MSRB rules.
2. The book-running senior manager must send a report of the designations by maturity, by investor to the AR for approval.
3. Final settlement of a Syndicate account and distribution of any profit due to members must be made after delivery of the Syndicate's bonds, in accordance with MSRB rules.
4. The Syndicate agrees to comply with any Syndicate rules prohibiting the selling of bonds below the public offering price (less the full takedown) prior to the release of Syndicate restrictions. In addition, each Syndicate member agrees to inform the AR of any firm in noncompliance with such Syndicate rules. Violations of Syndicate restrictions by members, other dealers or purchasers could result in unfavorable consideration on future TWDB bond sales and the forfeiture of any takedown

associated with such orders.

5. The book-running senior manager must be prepared to provide the AR on an ongoing basis for at least seven business days following the release of Syndicate restrictions secondary market price levels, unsold balance, and level of trading activity of the bonds.
6. The AR expects the Syndicate to provide liquidity in the secondary market for the issue on an ongoing basis.

N. Post-Sale Evaluation

To acknowledge performance and build accountability into Syndicate participation, the AR may conduct post-sale evaluations of the Syndicate. The book-running senior manager evaluations may consider pricing logistics, compliance with directives and deliverable instructions, marketing and corresponding materials, as well as pricing and deal support. Evaluation of other Syndicate members will consider compliance with directives and deliverable instructions as well as pricing and deal support.

1. The entire Syndicate, including the book-running senior manager, must provide to the AR in a timely manner all necessary information required to carry out the post-sale evaluation.
2. The book-running senior manager must provide the AR as well as the designated Financial Advisor of the TWDB each with an electronic version and one hard copy of the final pricing book. The final pricing book must include, but not necessarily be limited to, a discussion of market conditions leading up to and during the pricing, the financing schedule, comparable issues in the market, spread analysis to the MMD scale indices, media coverage where applicable, rating agency credit reports, and the final number runs.
3. To facilitate the post-sale evaluation as well as the Texas Bond Review Board (BRB) final report, the final pricing book should also include a summary of the liability assignments, total orders and allotments by firm and total income earned for each Syndicate member, including selling group members, if applicable.
4. The final pricing book must be provided no later than 40 days after the day of closing.

**TEXAS WATER DEVELOPMENT BOARD**

**UNDERWRITING POLICIES AND PROCEDURES**

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The firm of \_\_\_\_\_ has read and understands the TWDB Underwriting Policies and Procedures (UPPs) adopted by the Texas Water Development Board on March 12, 2020. Should our firm be selected to serve in any underwriting Syndicate of the TWDB, we agree to adhere to the guidelines and procedures as established in the UPPs.

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Lead Investment Banker (Print Name and Sign)

\_\_\_\_\_  
Senior Underwriter (Print Name and Sign)

\_\_\_\_\_  
Date