

(Commodity Code 918-12)

**REQUEST FOR PROPOSALS**  
**RFP No. 452-9-1164**

**FOR**

**CONSULTING SERVICES**  
**TO STUDY PRIVATE PROPERTY TOWING FEES**

STATE OF TEXAS  
DEPARTMENT OF LICENSING AND REGULATION  
920 Colorado Street  
Austin, Texas 78701

**August 3, 2009**

***Request for Proposals for Consulting Services to Study Private Property Towing Fees***

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**To: Qualified Firms and Individuals**

**From: Texas Department of Licensing and Regulation**

**Re: Request for Proposals for Consulting Services to Study Private Property Towing Fees (RFP No. 452-9-1164)**

**1. Purpose**

The purpose of this Request for Proposals (“RFP”), issued by the Texas Department of Licensing and Regulation (TDLR), is to acquire the services of a qualified consulting firm or individual to serve as a consultant (hereinafter referred to as “Consultant” or “Selected Consultant”) to TDLR in the development of a comprehensive study of and recommendations for Private Property Towing fees in the State of Texas.

Proposals responsive to this RFP must at a minimum:

- A. Examine towing fee studies conducted by other municipalities in this state, and
- B. Analyze the cost of towing services by company, the consumer price index, the geographic area, and individual cost components.

All proposals will become part of TDLR’s official procurement files and will be available for public inspection. No obligation is made by retention of these proposals. TDLR is not required to award any contract or contracts (Contracts) resulting from the issuance of this RFP nor are any guaranteed minimum amounts due the Selected Consultant.

**2. Background**

House Bill (H.B.) 2571, 81<sup>th</sup> Texas Legislature, Reg. Session (2009), requires TDLR to establish the maximum amounts that may be charged under HB 2571 by towing companies for private property tows and the maximum amount that may be charged for other fees, if any, in connection with private property tows.

Because the Selected Consultant for this project will provide recommendations, strategies and options the State may consider with regard to towing fees, it is critical that the Selected Consultant be independent and objective in fact and in appearance. Therefore, vendors are not eligible to propose on this engagement if they (1) are in the business of towing and storage of vehicles or otherwise have a conflict of interest in providing the Services, or (2) derive revenue or income from towing companies or vehicle storage facilities.

Selected Consultant, as an independent contractor, shall provide the Services under Contract with TDLR. TDLR specifically reserves the discretion and authority to award one or more Contract(s) as a result of the issuance of this RFP. TDLR shall not pay any costs or other amounts incurred by any entity in responding to this RFP. All costs incurred in responding to the RFP shall be the sole responsibility of the Respondent. TDLR reserves the right, in its sole discretion, to reject any or all submitted proposals.

The solicitation, evaluation, and selection will require that the Selected Consultant begin performance of duties under the contract or contracts (Contract), if any, on October 1, 2009, or as soon thereafter as practical.

### 3. Scope of Work

Statewide there are approximately 1,221 tow companies licensed by TDLR. Approximately 786 of the licensed tow companies are located within 23 Texas counties. While considering cost and other data related to the 1,221 licensed tow companies, the selected Consultant will be responsible for developing a comprehensive private property tow fee study including the:

- Proposed Work plan
- Project Approach and Methodology (includes Scope of Work)
- Research
- Data compilation
- Writing
- Recommendations
- Cost Proposal

Specific tasks include, but are not limited to, performing the following primary tasks:

- Develop a detailed project work plan including deliverables, milestones, tasks, resource identification (TDLR and Consultant), task dependencies and timelines. The proposed work plan must include quantifiable and completed deliverables approximately every thirty (30) days that can be measured on a project percent completion basis, to include:
  - Development of reasonable range of rates by type for private property tows through collection of statewide cost of service data with analysis using various analytical and statistically valid approaches; to include, but not limited to:
    - Cost of Service Questionnaires
    - Consumer Price Index Analysis
    - Study of Municipal Rate Studies
    - Analysis of Consent Tow Rates
    - Individual Cost Component Analysis
    - Analysis of Historical and Current Fee Schedules
  - In addition to the methodologies and approaches stated above, Respondents are required to propose alternate statistically valid approaches to the development of rates consistent with HB 2571 directives; including:
    - Weighting of some or all of the six approaches above
    - Statewide rates with regional variable tow costs recovery
- Model rates on statewide basis as well as multiple statistically valid geographic regions that consider population centers, communities of interest, geographic distances and other appropriate factors justifying inclusion in the proposed regions.
- Establish project infrastructure including project management and reporting, communication channels, project organization, data gathering approaches and information access expectations.
- Present study findings using statewide and regional metrics.
- Prepare final written report documenting results of Selected Consultant's analysis and information sources.

- Separately present study findings to TDLR management, Advisory Board, Commission, and Staff including detailed explanation of each finding and recommendation.

TDLR provided resources and assistance:

- TDLR Staff will provide all filed tow fee schedules in electronic format or hardcopy; and
- TDLR Staff in its sole discretion will work with the Selected Consultant to collect data and other information related to the tasks identified in the approved workplan.

TDLR is prepared to award one contract for performance of the Services for a term beginning upon final signature of TDLR and extending through August 31, 2010, with an option to extend through 2012. Any Contract resulting from this RFP may be amended only upon written agreement of the parties.

Selected Consultant must provide ongoing assistance, as provided by the Contract. TDLR does not guarantee any minimum amount of work under the Contract. Actual fees for the Services rendered under the Contract shall be paid only after receipt and approval by TDLR of agreed deliverables and supporting detailed invoices. Payment shall be made in accordance with the Texas Prompt Payment Act. TDLR shall not prepay any amounts. All costs must be included in the fully-loaded hourly rates for Selected Consultant's staff and must specifically reconcile to agreed deliverables and detailed documentation and receipts. No allowances will be made for travel expenses in the Contract.

All proposals must include a detailed listing of the Respondent's experience in providing the requested Services, as required by Exhibit C. All respondents must also include detailed resumes of all personnel who will provide the Services under the Contract. All respondents must identify any personnel who will provide services under or have a financial interest in the Contract or who are current or former TDLR employees.

The proposal must also set forth the expected time frame for accomplishing the services of the type requested, supported by a detailed work plan, proposed fixed-price deliverable and fully-loaded hourly rates that include all Selected Consultant's fees and expenses whatsoever, and the anticipated method for obtaining approval of pertinent documents and deliverables and for reporting to TDLR.

#### **4. Contract Term**

A contract, if any, will be effective upon signing by the Department and the Selected Consultant for an initial term starting October 1, 2009 and ending August 31, 2010, with an option to extend until August 31, 2012 for the purpose of updating the study, at the sole discretion of the Department.

The Department, without invalidating the purchase order may order changes within the general scope of the purchase order consisting of additions, deletions, or other revisions. All such changes will be authorized by a purchase order change notice executed by a Department authorized purchaser. Proposals shall separately specify maximum contract costs for a Department authorized update. Costs associated with the study update must be in the format required by Exhibit F, Minimum Cost Proposal. Prior to exercising its right to extend the contract through August 31, 2012, the Department reserves the right to negotiate the final costs of updating the tow fee study, subject to legislative appropriations.

#### **5. Schedule of Events**

TDLR anticipates that the selection of a firm or Consultant and execution of a Contract will proceed according to the following approximate schedule:

July 31, 2009	- Issuance of RFP (after 10:00 a.m. CTZ)
<b>August 10, 2009</b>	- <b>Deadline for Submission of Questions (2:00 p.m. CTZ)</b>
August 17, 2009	- Electronic Posting of Official Response to Questions (or as soon thereafter as practical)
August 24, 2009	- Pre Proposal Conference
<b>September 3, 2009</b>	- <b>Deadline for Submission of Proposals (2:00 p.m. CTZ)</b> <b>(Late proposals will not be considered)</b>
September 21, 2009	- Contract Execution (or as soon thereafter as practical)
October 1, 2009	- Commencement of Work (or as soon thereafter as practical)
April 30, 2010	- Fee Study Completion

The above dates are subject to change. Notices of changes to items directly impacting the original RFP or proposal process will be posted on the Electronic State Business Daily located at: <http://esbd.cpa.state.tx.us>.

## 5. Contract and Evaluation Criteria

The Contract shall contain TDLR’s general contract terms and conditions for these services as set forth in Exhibit A. All respondents, if any, should review those general terms and conditions with legal counsel prior to submitting a proposal. This RFP shall be incorporated into and form part of the Contract and shall control over conflicting language in the respondent’s proposal. Proposals submitted in response to this RFP will be evaluated under the criteria and weights set forth in Exhibit E of this RFP.

## 6. Proposal Content

Proposals must be organized according to and include all of the information described in Exhibit C of this RFP. Proposals without all of this information may be disqualified; however, TDLR reserves the right, in its sole discretion, to waive minor technicalities and errors in the best interests of TDLR and the State.

## 7. Deadline for Proposals; Issuing Office

For purposes of this RFP, proposals and correspondence must be submitted to the Purchasing Office, attention: Ben Delamater, Senior Purchaser, 920 Colorado Street, Austin, Texas 78701. To be considered, proposals must be received in the Purchasing Department by 2:00 p.m. (CTZ), September 3, 2009. One (1) original copy of the Proposal, five (5) paper copies of the Proposal, and four (4) electronic copies of the Proposal in pdf format (as specified below) on a standard CD must be delivered to the Purchasing Office by the specified deadline. TDLR prefers hand or overnight delivery. Please indicate on the package face that the proposals are for RFP No. 452-9-1164 due on September 3, 2009. Faxed or e-mailed responses are not acceptable. **TDLR will not consider proposals from respondents that do not submit timely proposals. Respondents are solely responsible for verifying TDLR’s receipt of their proposals by the deadlines specified above. Late proposals will not be considered under any circumstances.**

Upon written request by TDLR prior to contract execution, Selected Consultant (and no other respondents) must provide to TDLR four (4) electronic copies of its complete Proposal. Selected Consultant shall deliver to TDLR a total of four (4) CDs with the following material prior to its execution on the Contract, if any, resulting from this RFP:

- Two CDs, each containing a complete copy of the Selected Consultant’s Proposal in pdf format. A complete copy of the Proposal includes all documents contained in the Proposal submitted in response to this RFP including those documents with Selected Consultant’s signature. These two identical CDs should be titled: “Complete copy of [Name of Selected Consultant]’s Proposal. TDLR’s RFP No. 452-9-1164.”
- Two CDs, each containing a copy of Selected Consultant’s Proposal, which has excised, blacked out, or otherwise redacted information from its Proposal that Selected Consultant considers to be confidential and exempt from public disclosure under the Texas Public

Information Act, Chapter 552 of the Texas Government Code (this should be a de minimis portion, if any, of Selected Consultant's Proposal, such as social security numbers or e-mail addresses). Each CD shall also contain an Appendix for Selected Consultant's Proposal which provides a cross reference for the location of each piece of material redacted by Selected Consultant and a general description of the redacted information. These two identical CDs should be titled "For Public Release: Redacted Version of [Name of Selected Consultant]'s Proposal and Exhibits. TDLR's RFP No. 452-9-1164."

## **8. Contract Elements; Sample Contracts; Exceptions**

The Contract between TDLR and Selected Consultant shall consist of a written contract for performance of all Services set forth in this RFP, together with any modifications thereto, and the successful proposal, together with any clarifications thereto that are submitted at the request of TDLR. In the event of any conflict or contradiction between or among these documents, the documents shall control in the order of precedence set forth in the **attached Sample Contract, Exhibit D to this RFP**. Specific exceptions to this general rule may be noted in the finally executed contract. The Contract may be amended only in writing and by mutual agreement of the parties.

The Contract will be based on the Sample Contract included as Exhibit D to this RFP and will incorporate the entire RFP. The Sample Contract includes standardized provisions and TDLR reserves the right, in its sole discretion, to recommend an award of the Contract without negotiation of these provisions or to modify the terms and conditions in the best interests of TDLR and the State of Texas.

Any exceptions to any RFP requirements, including, but not limited to, the guidelines and the terms and conditions included in the Sample Contract, must be specifically noted and explained by the respondent in the transmittal letter submitted with the proposal as a condition to becoming part of the Contract. Notwithstanding any exceptions or any other provision of any proposal to the contrary, Selected Consultant shall indemnify TDLR and the State, as specified in the Sample Contract. The State of Texas, TDLR, and their respective employees, officers, agents, and representatives, shall not indemnify Selected Consultant for any amount for any purpose, and any provisions to the contrary are void.

## **9. Disclosures; Conflicts of Interest**

By submitting a proposal in response to this RFP, each respondent represents and warrants to TDLR that it and each of its subcontractors have the requisite resources and independence to conduct the services free from outside direction, control, or influence, and are subject only to the accomplishment of TDLR's objectives. Respondents that cannot make this representation and warranty should not respond to this RFP.

In its proposal, each respondent must disclose any existing or potential conflicts of interest or appearances of impropriety relative to respondent's (and its proposed subcontractors') selection as Selected Consultant or its performance of the Contract. Proposals must list in chronological order all past, present and anticipated future contractual, business, financial or personal relationships between respondent and TDLR and between respondent's proposed subcontractors and TDLR. For each item, respondent must provide a detailed explanation of why respondent does or does not believe such item poses a conflict of interest, potential conflict of interest, or appearance of impropriety issue relative to respondent's selection as Selected Consultant or its performance of the Contract.

Other examples of potential conflicts of interest include, but are not limited to, an existing contractual, business, financial or personal relationship between respondent, its principals, employees, affiliates or subcontractors, and TDLR or any other entity or person involved in any way in the project. Similarly, any personal or business relationship between respondent, its principals, employees, affiliates or subcontractors, and any employee of TDLR or its suppliers must be disclosed. Any such relationship that might be perceived or represented as a conflict of interest or create the appearance of impropriety must be disclosed. Failure to disclose any such relationships or reveal personal relationships with state employees may be cause

for contract termination. TDLR reserves the right, in its sole discretion, to determine if an actual or perceived conflict should result in proposal disqualification.

Each respondent must reveal any past or existing relationship between respondent, its principals, employees, affiliates or subcontractors, and any state agency, entity, state employee, or other person in any way involved in the state's procurement and/or contracting processes. TDLR reserves the right, in its sole discretion, to determine if such relationship constitutes a conflict of interest. By submitting a proposal in response to this RFP, a respondent affirms that it has not given, 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 or any employee or representative of same, in connection with this procurement. Each respondent must also disclose any proposed personnel who are related to any current or former employees of TDLR or the State of Texas.

## **10. Written Questions**

All questions concerning this RFP must be in writing and submitted in the Issuing Office set forth in Section 7 of this RFP no later than the date and time set forth in the Schedule of Events, Section 4 of this RFP. Questions must be faxed to 512-475-2854 or e-mailed to [ben@license.state.tx.us](mailto:ben@license.state.tx.us), Attn.: Ben Delamater, Senior Purchaser. On or before the date set forth in the Schedule of Events, TDLR expects to electronically post answers to written questions received by the deadline as a revision to the notice of the issuance of this RFP. This notice will be posted on the Electronic State Business Daily (<http://esbd.cpa.state.tx.us>).

## **11. Independent Contractor; Termination for Cause; Termination for Convenience**

- 11.1** Selected Consultant shall serve as an independent contractor in providing services under the Contract. Selected Consultant's employees shall not be construed as employees of TDLR or the State of Texas.
- 11.2** TDLR reserves the right, in its sole discretion, to terminate such Contract on thirty (30) days written notice to Consultant. TDLR also reserves the right, in its sole discretion, to terminate the Contract immediately, with written notice to Consultant if TDLR believes that the integrity of the agency is in jeopardy, or it is in the best interests of TDLR or the State to do so.
- 11.3** Upon termination of the Contract for any reason, Consultant shall, in good faith and with reasonable cooperation, aid in the transition to any new arrangement and provider.
- 11.4** The continuation of the Contract beyond the biennium (September 1, 2009 – August 31, 2011) is subject to the availability of funds appropriated by the Texas Legislature.

## **12. Limitation on Authority; No Other Obligations**

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

## **13. No Liability on Termination; Right to Modify, Withdraw or Amend RFP**

If any contract resulting from this RFP is terminated for any reason, neither TDLR nor the State of Texas shall be liable to Selected Consultant or any other entity or person for any damages, claims, losses, or any other amounts arising from or related to any such termination. TDLR reserves the right, in its sole discretion, to amend or modify any provision of this RFP, or to withdraw this RFP, at any time prior to the award of a Contract, if it is in the best interests of TDLR or the State to do so. The decision of TDLR, or its

designee, shall be administratively final in this regard.

#### **14. Property Rights**

For purposes of this RFP and for any contract resulting from this RFP, the term “Work” is defined as all work papers, work products, materials, approaches, designs, specifications, systems, software, programs, source code, documentation methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services to be provided by the Selected Consultant. TDLR and Selected Consultant intend any contract to be a contract for services and each considers the Work and any and all documentation or other products and results of the services to be rendered by Selected Consultant to be a work made for hire. In submitting a proposal in response to this RFP, Selected Consultant acknowledges and agrees that the Work (and all rights therein) belongs to and shall be the sole and exclusive property of TDLR.

If for any reason the Work would not be considered a work-for-hire under applicable law, Selected Consultant does hereby sell, assign, and transfer to TDLR, its successors and assigns, the entire right, title and interest in and to all copyright and other intellectual property rights in and to the Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. Selected Consultant agrees to execute all papers and to perform such other property rights, as TDLR may deem necessary to secure for TDLR or its designee the rights herein assigned.

Selected Consultant and Selected Consultant’s employees and subcontractors will have no rights in or ownership of the Work and any and all documentation or other products and results of the services or any other property of TDLR.

No later than the first calendar day after the termination or expiration of any contract resulting from this RFP or at TDLR’s request, Selected Consultant will deliver to TDLR all completed, or partially completed, Work and any and all documentation or other products and results of the Services under such Contract. Failure to timely deliver such Work or any and all documentation or other products and results of the Services will be considered a material breach of the Contract. Selected Consultant will not make or retain any copies of the Work or any and all documentation or other products and results of the Services provided under such Contract without the prior written consent of TDLR.

#### **15. Incorporation of Exhibits**

Exhibits A, B, C, D, E, F, and G are attached hereto and incorporated for all purposes, as part of this RFP.