

**THE TEXAS DEPARTMENT OF AGRICULTURE
IN COORDINATION WITH THE PUBLIC UTILITY
COMMISSION OF TEXAS**

**REQUEST FOR PROPOSALS
TO PROVIDE BROADBAND MAPPING FOR THE STATE
OF TEXAS**



**Texas Department of Agriculture
Stephen F. Austin
1700 North Congress Ave.
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Austin, Texas 78701**

**Closing Time and Date--- 5:00 p.m., Central Daylight Time
June 19, 2009**

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THE TEXAS DEPARTMENT OF AGRICULTURE
IN COORDINATION WITH THE PUBLIC UTILITY COMMISSION OF TEXAS
(PUC PROJECT NO. 36774)
REQUEST FOR PROPOSALS
TO PROVIDE BROADBAND MAPPING FOR THE STATE OF TEXAS

SECTION 1 – PURPOSE

The Texas Department of Agriculture (TDA), in coordination with the Public Utility Commission of Texas (PUC), is inviting proposals from eligible entities to apply for a grant from the United States Department of Commerce (Commerce) to implement the programs and policy initiatives set forth in Public Law 110-385, the Broadband Data Improvement Act of 2008, 47 U.S.C. §1304 (BDIA), and the American Recovery and Reinvestment Act of 2009 (ARRA). TDA and PUC will pre-approve the grant application before submission to Commerce and perform strict monitoring to ensure that funds are utilized to meet TDA objectives and as required by BDIA and ARRA. Respondents must execute the scope of this RFP, Affirmations and RFP Acceptance, and complete other items listed in Section 6, Form of Response, of this RFP.

SECTION 2 – OVERVIEW

TDA, in coordination with PUC, will designate an entity to apply for BDIA and ARRA grant funds. To qualify as eligible entity, the respondent must be a nonprofit organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and that is exempt from taxation under section 501(a) of such Code. Responses to this RFP will be scored in accordance with the criteria set forth below. TDA and PUC will use a 100 point scale to make a final evaluation. Factors on which proposals will be judged are: (1) qualifications of the eligible entity; (2) technical approach and details provided in the response, including understanding and implementation of project objectives; and (3) cost and ability to timely meet project objectives.

SECTION 3 – DESIRED OUTCOMES

Obtain a BDIA grant to create a comprehensive geographic broadband inventory map and analysis of broadband services for the State of Texas and create such a map. Provide recommendations for use of the map: to develop strategies for the State, local governmental units, businesses, suppliers of critical infrastructure, non-profit organizations, and individuals to provide access to affordable and reliable broadband services to unserved, underserved, rural, and agricultural areas; to implement initiatives to stimulate demand for broadband services through improved technology literacy, increased computer ownership, and broadband use among citizens and businesses in unserved and underserved areas; and to establish and sustain an environment ripe for broadband services and information technology investment in Texas. In addition to gaps in broadband services for urban areas, many gaps exist in the availability of broadband

services for rural and agricultural areas in Texas. TDA will closely monitor the broadband mapping project's impact on all areas, especially rural and agricultural areas.

SECTION 4 – FORM OF RESPONSE

- a.** Provide a detailed response of how your firm meets the selection criteria and will complete the scope of work identified in Statement of Work attached to this RFP as Attachment A. The response must discuss all elements of the project, including priorities, timelines and estimated budget. Include a description of the qualifications of your firm. Provide a list of professionals and personnel to be assigned to the project, along with a description of their work experience and qualifications.
- b.** Describe your company's experience and involvement working with Historically Underutilized Businesses (HUB) certified companies (if your company is not HUB certified) or as a HUB certified company. Describe efforts made by your company to encourage and develop the participation of minorities and women.
- c.** The selected applicant shall be responsible for insurance and bonding and must furnish to TDA within ten (10) working days of being selected to perform this RFP, proof of insurance and bonding as follows: Insurance for professional liability, errors, omissions, or negligence arising in connection with duties under this RFP.
- d.** Disclose any conflicts of interest. Disclose all contractual or informal business arrangements/agreements, including fee arrangements and consulting agreements between your Company and TDA, TDA's staff, PUC, PUC's staff, or any entity that provides services to TDA or PUC. Disclose all relationships with telecommunications service providers and Internet service providers. The selected applicants must certify compliance with all state and federal laws pertaining to application for and use of grant funds. The selected applicant must be in compliance with all state and federal laws pertaining to ethics. No part of the net earnings of the selected applicant may inure to the benefit of any member, founder, contributor, or individual.
- e.** Proposers shall describe the financial capability of the person or entity to complete the work required and to sustain its operations. Acceptable evidence of financial capability includes a recent audited financial statement from a certified public accountant, a compiled financial report, or a statement from a certified public accountant or banker.

SECTION 5 – PROPOSAL MODIFICATION

Any proposal may be modified or withdrawn, at any time prior to the proposal due date. No material changes will be allowed after the expiration of the proposed due date; however, non-substantive correction or deletions may be made with the approval of TDA in coordination with PUC. TDA, in coordination with PUC, reserves the right to make amendments to the RFP, including amendments based on rules promulgated by Commerce or other federal agencies pertaining to the implementation of BDIA and/or ARRA. Further, TDA, in coordination with PUC, may require selection of certain subcontractors, competitive bidding for selection of certain types of subcontracts, and/or contract and grant amendments to meet TDA objectives or federal requirements for BDIA/ARRA grants.

SECTION 6 – TIME FOR RESPONSE

Proposals are due no later than 5:00 p.m., central daylight time, on June 19, 2009. Proposal responses, modifications or addenda to an original response received by TDA after the specified time and date for closing will not be considered. Each firm is responsible for ensuring that its response reaches TDA before the proposed due date. Companies should submit one unbound original and three copies of their proposal to: Rick Rhodes, Assistant Commissioner for Rural Economic Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711; Street Address: 1700 N. Congress, Stephen F. Austin Bldg., 11th Floor, Austin, Texas 78701. Electronic and fax submissions to TDA will not be accepted.

A duly authorized representative of the company must execute the response submitted to this RFP. An unsigned proposal will not be accepted. All proposals become the property of TDA. Proposals must set forth accurate and complete information as required by this RFP. Oral modifications will not be considered. Questions regarding this RFP should be submitted, in writing, to Rick Rhodes, Assistant Commissioner for Rural Economic Development, at the address listed above or by fax, (888) 216-9867. Contact or attempted contact with other TDA or PUC employees, including Commissioners and their staffs, may result in a proposer's immediate disqualification. The commissioner, TDA staff, and PUC staff will review the responses to this RFP.

SECTION 7 – SELECTION CRITERIA

The designated entity will be selected based on the following criteria:

- a.** The proposer's demonstrated knowledge, competence, and qualifications to provide the services outlined in Attachment A, as evidenced by:
 - (i) the proposer's description of its plan to provide the services, understanding of the issues related to this engagement, and understanding of the scope of this engagement;
 - (ii) the proposer's previous history, if any, of working with TDA or PUC;
 - (iii) issues related to conflicts of interest, if any; and
 - (iv) reasonableness of the proposed fee.
- b.** Ability to qualify as an eligible entity under BDIA, i.e., the designated entity must be a nonprofit organization that is described under section 501(c)(3) of the Internal Revenue Code of 1986 and that is exempt from taxation under section 501(a) of such Code. The designated entity must provide a copy of its 501(c) ruling letter from the IRS.
- c.** The entity's experience and history in performing broadband mapping services or delivery, or comparable experience.
- d.** The entity's transparency. The entity should supply detailed information pertaining to the entity's legal and governance structure, including names of the board of directors, names and titles of officers, membership structure, date founded, number and location of offices, total number of professionals and employees in the company, description of purpose of entity, and philosophy/mission statement of the entity. The entity should describe the method(s) by which it governs itself and provide detailed information regarding all parents, subsidiaries, or affiliates.

- e. The entity's accounting system and its ability to comply with state and federal standards pertaining to the use of grant funds.
- f. The entity's financial controls, including those controls designed to prevent misuse, misapplication, fraud, and/or waste of grant funds.
- g. Specific financial controls, if any, that the entity will put into place to ensure that grant funds are utilized to meet TDA objectives and as required by BDIA and ARRA.
- h. Ability to assist the State of Texas in satisfying its twenty percent matching obligation under BDIA, including the identification of organizations or sources of funds that will participate in satisfying the match obligation. For such matching organizations or funding sources, please provide detailed information pertaining to the entity's legal and governance structure, including names of the board of directors, names and titles of officers, membership structure, date founded, number and location of offices, total number of professionals and employees in the company, description of purpose of entity, and philosophy/mission statement of the entity. For such matching organizations or funding sources, describe the method(s) by which the entity governs itself and provide detailed information regarding all parents, subsidiaries, or affiliates.
- i. Experience in preparing grant requests, including past experience in applying for federal grant funds for broadband mapping.
- j. Cost and timeline for completing the project, including a list of milestones and expected cost for completing each stage of the project. Final project deliverables, milestones, and costs will be determined at the time of any contract, based on a grant award.

SECTION 8 – BASIS OF AWARD

Selection will be based on the criteria and scope of work set forth in this RFP, along with demonstrated competence, experience, knowledge and qualifications. By this RFP, however, TDA has not committed itself to select a designated entity to apply for BDIA and/or ARRA grant funds, nor does the suggested scope of this project or term of agreement require that TDA employ or select any firm for any or all of the purposes discussed in this RFP. TDA is not bound to accept the lowest-priced proposal. TDA's decision on these matters is final. TDA reserves the right to negotiate individual elements of any proposal and to reject any and all proposals. TDA reserves the right to meet with and negotiate terms with one or more applicants.

SECTION 9 – AGREEMENT TERM

The agreement term is from date of execution by both parties until completion of the work described in the scope of work set out in Attachment A to this RFP. TDA retains the right to terminate the agreement for any reason and at any time, including the termination of the selected applicant as the designated entity for receipt of BDIA or ARRA grant funds awarded as a result of this RFP. In particular the agreement and designation may be terminated if the applicant fails to file a grant application, fails to obtain funds for the 20% match (or a waiver of the match requirement), or fails to meet a milestone in the agreement. Upon termination, the selected applicant shall cooperate fully to transfer all data, including all broadband mapping data, and all publications,

documents, property, equipment, and/or other material related to work under this RFP to TDA.

The designated entity will be expected to enter into a contract with TDA and apply for a BDIA or ARRA grant within 30 days after any award that results from this RFP. The designated entity must consult with and obtain the approval of TDA and PUC before submitting any grant request. The terms of this RFP also include the General Terms and Conditions set forth in Attachment B to this RFP.

SECTION 10 – COSTS INCURRED IN RESPONDING

All costs directly or indirectly related to preparation of a response to the RFP or any oral presentation required to supplement and/or clarify the RFP which may be required by TDA shall be the sole responsibility of, and shall be borne by the applicant.

SECTION 11 – TEXAS PUBLIC INFORMATION ACT

Any information and documentation submitted to TDA is subject to disclosure under the Texas Public Information Act. However, until a selection is made, or a decision is made not to select a designated entity, TDA will withhold, in accordance with law, any information that might give an advantage to a competitor or bidder with respect to this RFP. Applicants should clearly identify all confidential, proprietary, and/or trade secret information submitted as part of a proposal under this RFP.

ATTACHMENT A – STATEMENT OF WORK

The designated entity must complete the following tasks:

- 1.** Provide a detailed plan of how the entity will accomplish broadband mapping for the State of Texas that addresses the following categories:
 - A. The approach taken to prepare a map of existing facilities, addressing the following matters: geographic granularity, identification of facilities based on speed tiers and broadband technology, feasibility of integrating a state map into a searchable national database, access by telecommunications providers and public entities to mapping information, and plans and methodology for updating the map after the completion of initial mapping;
 - B. Identification of unserved or underserved areas, including the approach taken to assess demand for broadband service and the long-term feasibility of providing broadband service to those areas.
 - C. The approach taken to ensure widespread participation of broadband providers and potential providers in the collection of data and representation of facilities on the broadband map, including steps to address issues relating to confidentiality of proprietary and trade secret information.
 - D. Utilization of any resulting broadband map to assist the State of Texas in establishing programs to improve computer ownership and Internet access for unserved, underserved, rural, and agricultural areas.
- 2.** Provide a baseline assessment of broadband service deployment in the State of Texas;
- 3.** Identify and monitor areas in Texas that have low levels of broadband service deployment, including unserved and underserved areas;
- 4.** Identify and monitor the rate at which residential and business users adopt broadband service and related information technology services;
- 5.** Identify possible suppliers of broadband services for Texas;
- 6.** Identify barriers to the adoption by individuals and businesses of broadband and related information technology services, including whether or not (A) the demand for such services exists and (B) the supply for such services is capable of meeting the demand;
- 7.** Identify the speeds of broadband connections made available to individuals, businesses, rural areas, agricultural areas, and suppliers of critical infrastructure in Texas including educational institutions, emergency responders, fire departments, health care providers, law enforcement, and local governmental institutions, and, at a minimum, rely on the data rate benchmarks for broadband service utilized by the Federal Communications Commission (Commission) to reflect different speed tiers, to promote consistency of Texas data with data gathered from other states;
- 8.** Facilitate, in coordination with TDA, PUC, county or regional technology planning teams with members representing a cross section of the community, including representatives of businesses, labor organizations specifically involved in the field of telecommunications, K-12 education, health care, public safety, libraries, higher education, community-based services, local government, tourism, parks and recreation, and agriculture; (i) setting benchmarks for technology use across relevant community

sectors; (ii) setting goals for improved technology use within each sector; and (iii) developing a tactical business plan for achieving its goals, with specific recommendations for online application development and demand creation;

9. Work collaboratively with broadband service providers and information technology companies to encourage deployment and use, especially in unserved areas and areas in which broadband penetration is significantly below the national average, through the use of local demand aggregation, mapping analysis, and the creation of market intelligence to improve the business case for providers to deploy;

10. Establish programs to increase computer ownership and Internet access for unserved areas and areas in which broadband penetration is significantly below the national average;

11. Collect and analyze detailed market data concerning the use and demand for broadband and related information technology services;

12. Facilitate information exchange regarding the use and demand for broadband services between public and private sectors;

13. Create a geographic map of broadband service within the State of Texas, including the data rate benchmarks utilized by the Commission to reflect different speed tiers. The map must:

A. identify gaps in broadband service through a method of geographic information system mapping of service availability based on the geographic boundaries of where service is available or unavailable among residential or business customers;

B. provide a baseline assessment of statewide broadband deployment in terms of households with high speed availability; and

C. identify various layers of user businesses and organizations such as those involved in telecommunications, K-12 education, health care, public safety, libraries, higher education, community-based services, local government, tourism, parks and recreation, and agriculture.

14. Provide a detailed plan to utilize any resulting broadband map and baseline assessment for the State of Texas to increase broadband service to suppliers of critical infrastructure in unserved, underserved, rural, and agricultural areas, including educational institutions, emergency responders, fire departments, health care providers, law enforcement, and local governmental institutions.

15. To the extent not addressed in 1 through 14 above, the following minimum requirements must be met by the grantee:

A. Identify all broadband providers in the State of Texas;

B. Use a geographic information system and produce maps that show:

(i) areas of Texas unserved by any broadband provider;

(ii) areas of Texas served by a single broadband provider;

(iii) areas of Texas served by multiple broadband providers;

(iv) the location of towers or other infrastructure used to transmit and receive broadband signals;

(v) actual upstream and downstream transmission speeds at the census tract level of detail or such other level of granularity as may be negotiated between the parties; and

- (vi) the types of technology, specified by location on the map, used to provide broadband services, including, but not limited to, cable modem, DSL, ADSL, VDSL, fiber optics, wireless, and satellite.
- C. Ensure that mapping data is capable of being integrated with demographic data from other sources, including, but not limited to, population density and household income to allow for production of maps that measure, down to the census block level of detail (or such other level of granularity as may be negotiated between the parties), various characteristics of residents in areas receiving different levels of broadband services and utilizing different technologies.
- 16.** To the extent not addressed in 1 through 15 above, formulate a detailed strategy to identify and monitor, through customer surveys and other publicly available sources, statewide residential and business computer ownership, Internet use, adoption of related technology, relevant information related to behaviors, perceptions and trends of technology use and any barriers to adoption.
- 17.** To the extent not addressed in 1 through 16 above, provide a written description of how data gathered from this project, including data regarding aggregate local demand, broadband mapping data, mapping analysis, and market intelligence can be used to encourage deployment and use of broadband services in unserved, underserved, rural, and agricultural areas.
- 18.** Create a written plan to collaborate with TDA, PUC, and other interested agencies or governmental units within the State of Texas to increase computer ownership and broadband access for disenfranchised populations across the state, including rural, low-income, and agricultural areas.

ATTACHMENT B – GENERAL TERMS AND CONDITIONS

1.1. Indemnification. The contractor agrees to defend, indemnify, and hold harmless the State of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of the contractor or any agent, employee, subcontractor, or supplier of contractor in the execution or performance of this RFP.

1.2. Failure of Indemnification Provisions. If for any reason the contractor fails to cooperate with the Texas Office of the Attorney General and/or the foregoing indemnification is insufficient to hold the customer harmless, then the contractor shall reimburse TDA for all amounts paid or payable by TDA as a result of such claims, which shall include, without limitation, for example, costs of the Texas Office of the Attorney General of defending against any claims. The reimbursement, indemnity and contribution obligations of the contractor under this section shall extend upon the same terms and conditions to TDA employees, officers, agents, successors, assigns, licensees and customers and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives, and the relevant provisions will survive the termination of any contract awarded to an applicant responding to this RFP.

1.3. Indemnification by TDA of Contractor. TDA can neither agree to hold the contractor harmless nor agree to indemnify the contractor, and any provisions to the contrary are void.

1.4. TDA Duties. The contractor's obligations under paragraph 1.2 above may be limited to the extent that TDA (i) does not promptly notify the contractor in writing of any claim, (ii) does not provide the contractor with all reasonable assistance for the defense or settlement of such claims, except as it relates to the responsibilities of the Texas Office of the Attorney General, and (iii) does not cooperate with the Texas Office of the Attorney General in defense of such claim.

1.5 Force Majeure. Except as otherwise provided, neither awarded contractor nor TDA shall be liable to the other for any delay in, or failure of performance, of any requirement contained in this RFP caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. Force majeure is defined as those causes generally recognized under Texas law as constituting impossible conditions. 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.

1.6 Application of Law; Venue; Dispute Resolution. Any contract resulting from this RFP shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any action arising hereunder shall be in the state district courts of Travis County, Texas, and pursuant to the dispute resolution provisions in Chapter 2260, Texas Government Code. This RFP shall be binding upon any successor or permitted

assignee. In the event of any default, or dispute the parties shall, in addition to and without limitation on the remedies provided under the terms of this RFP, be liable for those damages commonly available to the prevailing party under Texas law.

1.7. Assignment or Subcontract. Absent the express written consent of TDA, the awarded contractor may not assign or subcontract any right or duty under this RFP.

1.8. Texas Government Code Eligibility. Under Sec. 2155.004, Texas Government Code (relating to certain taxes), contractor represents that the contractor is eligible to receive an award under this RFP, and that any resulting contract may be if this representation is inaccurate.

1.9. Suspension or Debarment; Compliance with State Laws and Rules.

Contractor represents that as the respondent to this RFP, and any of its principals, are eligible to participate in any resulting agreement and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity. Contractor further represents that the contractor is in compliance with the State of Texas statutes and rules relating to procurement and that contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.

1.10. Audits or Investigations by State Auditor's Office or TDA. The contractor understands that acceptance of funds under this RFP acts as acceptance of the authority of the State Auditor's Office (SAO), any successor agency to SAO or TDA to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with SAO, SAO's successor or TDA in the conduct of the audit or investigation, including providing all records requested and providing SAO or TDA with access to any information SAO or TDA considers relevant to the investigation or audit. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through subcontractor and the requirement to cooperate is included in any subcontract awards.

1.11. Access to Information by State Auditor's Office. The contracted firm understands that in addition to SAO's access to information as provided by paragraph 1.11, above, SAO will receive a copy of the contract between the agency and the contractor, and the contractor's final report. The SAO also has access to working papers related to procured services and all draft and final reports and memoranda of discussions with agency management

1.12. Release of Information and Open Records. Once submitted, all proposals shall be deemed the property of TDA and subject to the Texas Public Information Act (Act). Under the Act, information submitted in response to this RFP may not be released by TDA during the proposal evaluation process or prior to the awarding of an agreement. After the evaluation process is completed by TDA and an agreement is awarded, proposals and information included therein may be subject to public disclosure under the Act.

1.13. Media releases. TDA is the only entity authorized to issue news releases relating to this RFP and performance hereunder by contractor.

ATTACHMENT C – HUB SUBCONTRACTOR PLAN INFORMATION

Proposers can find the HUB Subcontracting Plan forms and instructions for filling out the forms on the Comptroller of Public Account's website at

<http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan>

As required by Govt. Code 2161.252 (b), TDA will reject all proposals that fail to include a HUB subcontracting plan.