



Brazos River Authority



Request for Bids

January 8, 2009

RFB No. 09-04-391

Dear Prospective Bidder:

Sealed Bids will be received in the office of Administrative Services, Brazos River Authority, 4600 Cobbs Drive, Waco, Texas 76710 until 3:00 PM, Wednesday, April 8, 2009 for the Purchase of Property at Possum Kingdom Lake.

Bids must be submitted and received no later than the Bid opening date and time specified above. Bids will be opened publicly and the name of each bidder and the amount of each bid will be read aloud. Any Bid received later than the specified time, whether delivered in person or mailed, shall not be considered. It is the standard practice of the AUTHORITY to collect mail once daily from the U S Post Office. Our daily mail pickup is at approximately 9:00 AM, Monday thru Friday, excluding holidays. The AUTHORITY is **NOT** responsible for ensuring the delivery of Bids to our offices. The Bidder is solely responsible for the timely delivery of their Bid.

Mail Bids to: Administrative Services
Brazos River Authority
P.O. Box 7555
Waco, Texas 76714-7555

or Deliver to: Administrative Services
Brazos River Authority
4600 Cobbs Drive
Waco, Texas 76710

Bid envelopes must be plainly marked on the outside as follow:

SEALED BID - DO NOT OPEN	
BID:	<u>Purchase of Property at Possum Kingdom Lake</u>
BID NO:	<u>09-04-391</u>
BID DUE DATE:	<u>3:00 PM. Wednesday</u>
	<u>April 8, 2009</u>

The Brazos River Authority shall have the right to accept or reject any or all bids, or any part thereof; and to waive any technicalities in the sole discretion of the Authority.

Sincerely,

Jose G. (Lupe) Diaz
Administrative Services Manager

4600 Cobbs Drive • Waco, Texas 76710
254 761 3123 • Fax 254 761 3268

Brazos River Authority
Request for Bids
for the
Purchase of Property
at
Possum Kingdom Lake

I. **Invitation from the Brazos River Authority.** The Brazos River Authority (the “Authority”) owns approximately 30,000 acres (approximately 14,000 acres of which is located above the 1000’ contour line [as defined below]) (the “Authority Land”) at Possum Kingdom Lake (the “Lake”) in Palo Pinto, Stephens, Young, and Jack Counties, in the State of Texas. Pursuant to Section 49.226(a) of the Texas Water Code, the Authority may sell any land owned by the Authority which is declared to be “surplus” by the Authority’s Board of Directors (the “Board”) and not needed by the Authority.

The Lake is formed by Morris Sheppard Dam, which was constructed as part of a hydroelectric project pursuant to a license (“FERC License”) issued by the United States of America Federal Energy Regulatory Commission (“FERC”) to the Brazos River Authority. The FERC License governs and regulates a portion of the Authority Land (the “FERC Project Area”), as further defined in the FERC License for FERC Project No. 1490-003-Texas, issued September 8, 1989 (as may be extended, renewed, and amended from time to time), as well as in the Amendment to the previous FERC License issued in 1975, which Amendment is referenced in the current FERC License and was issued May 15, 1980. The FERC Project Area includes a buffer strip (the “FERC Buffer”) located adjacent to the Residential Leased Land (defined below). The FERC Buffer is 25 or 50 feet in width (depending on the location) and is measured landward horizontally from the 1000’ contour line (all as more defined in the FERC License), as such 1000’ contour line and FERC Buffer may move and shift from time to time due to natural forces, such as erosion and accretion.

In its resolution, dated October 27, 2008, a copy of which is attached hereto as Exhibit “A”, the Board directed the Authority to develop a Request for Bids to purchase (a) that portion of the Authority Land located outside the FERC Project Area (as hereinafter defined) which is subject to a residential lease (“Residential Leased Land”) and that portion of the Authority Land subject to a commercial lease for land which is located wholly outside the FERC Project Area (the “Commercial Leased Land”; collectively referred to herein as the “Leased Tract”), (b) certain private roads located on the Authority Land (the “Roads”), and (c) certain strips of undeveloped land (the “Undeveloped Strips”), all as more particularly described in Section II below and collectively referred to herein as the “Property”. The Property to be sold is generally depicted on Exhibit “B” attached hereto and constitutes approximately 1,200 acres plus Authority maintained roads and undeveloped strips of land further described herein. **THE ATTACHED DESCRIPTIONS AND MAPS ARE NOT GUARANTEED TO BE COMPLETE AND ACCURATE BY THE AUTHORITY OR THE BOARD. YOU, AS A POTENTIAL PURCHASER, ARE REQUIRED TO VERIFY THE STATUS AND CONDITION OF THE PROPERTY AND ARE STRONGLY ADVISED TO PERSONALLY INSPECT THE PROPERTY.**

The Board also provided in the above referenced resolution that any such Request for Bids must protect the existing rights of the residential and commercial lessees of any portion of the Leased Tract, as well as provide options for such lessees to purchase their leased lots. Pursuant to such resolution, this Request for Bids includes certain mandatory requirements for the protection of the lessees, as further set forth in Section VI.d below.

The Property is offered subject to prior sale or removal from the market without notice. The Property will be sold only in its entirety. The Authority and its Board reserve the right to reject any and all bids.

II. **Property Subject to Request for Bids.** The Property offered for purchase under this Request for Bids consists of three tracts – the Leased Tract, the Roads, and the Undeveloped Strips. The

Request for Bid Possum Kingdom Lake

Authority is in the process of obtaining a survey which will include the current 1000' contour line, the back line and side line of the Leased Tract, and the boundary of the FERC Buffer, if needed (see V.a.i below) (the "Initial Survey"). The Initial Survey may also include a portion of the Roads and the Undeveloped Strips. The Initial Survey will not include the interior leased lot lines and may not encompass all the Roads or the Undeveloped Strips. The Successful Bidder will be responsible for obtaining, prior to Closing at its expense, an updated survey to accurately reflect the entire Property being conveyed as well as any improvements located within 50 feet landward, measured horizontally, from the 1000' contour line (the "Updated Survey"), which Updated Survey will be subject to the Authority's review and approval prior to Closing.

a. Leased Tract. The Residential Leased Land includes approximately 900 acres of residential leased property located outside the FERC Project Area; provided however, if the FERC Buffer is included as set forth in Section V.a.i, then the Residential Leased Land shall include a total of approximately 1,200 acres of land. The Residential Leased Land which is included as part of the Property includes only that portion which is located outside the FERC Project Area. The Residential Leased Land does not include that portion of the Authority Land which is subject to a residential lease where the leased premises are located wholly within the FERC Project Area but outside the FERC Buffer. The Commercial Leased Land includes approximately 50 acres of commercial leased properties wholly located outside the FERC Project Area. The Commercial Leased Land does not include that portion of the Authority Land which is subject to a commercial lease where the leased premises are located wholly or partially within the FERC Project Area. The Leased Tract also includes a portion of that land located outside the FERC Project Area which is subject to that certain Agreement by and among the Authority, The Ranch on Possum Kingdom, L.P., and Hill Country Harbor Village, L.P. (the "Ranch Agreement", a copy of which is attached hereto as Exhibit "M") effective as of August 1, 1997 and dated December 12, 1997, some of which land may be used for residential purposes and some of which may be used for commercial purposes. Representative lease forms for the residential and commercial leases currently in place on the Leased Tract are attached hereto as Exhibit "C". Attached hereto as Exhibit "D" is a lease summary which lists in detail the existing leases, their expiration dates, renewal options, current rental rate, and rent methodology for future increases. The leases on the Leased Tract shall remain subject to the terms, conditions, and covenants of the FERC License and the Possum Kingdom Shoreline Management Plan and Customer Guide ("Shoreline Management Plan") promulgated by the Authority (and as may be revised and/or amended from time to time), copies of which are attached hereto as Exhibits "E" and "F," respectively.

b. Roads. The Roads consist of approximately 49 miles of private paved and gravel roads owned by the Authority. In those areas where the paved and/or gravel roads are not wide enough to meet county standards, to the extent there is undeveloped land available on either side of such non-conforming road, which undeveloped land is not part of the FERC Project Area or otherwise needed by the Authority for its current or future operations, the Authority may, at its discretion, include in this Request for Bids, as part of the Roads, such additional land adjacent to the non-conforming road to permit the non-conforming road (or applicable portion thereof) to be widened to meet county standards. The Roads shall be subject to a Non-exclusive Access Easement Agreement in favor of the Authority (hereinafter referred to as an "Access Easement"), in the form attached hereto as Exhibit "G", to permit the Authority, its agents, tenants, lessees, licensees, successors and assigns the right of ingress and egress over, through and across the Roads (and any other roads which may be constructed on the Property in replacement of the Roads) for access to and from the Retained Land (as hereinafter defined) and the FERC Project Area. In addition, as set forth in the Declaration (as hereinafter defined), the form of which is attached hereto as Exhibit "H", the Successful Bidder will be required to ensure that no lessee or other user of the Property is permitted to obstruct, prevent, or otherwise restrict access over and across any portion of the Roads (or any other roads which

**Request for Bid
Possum Kingdom Lake**

may be constructed on the Property in replacement of the Roads), so that all lessees and other users of the Property shall have the right of ingress and egress through, over and across such Roads and such lessees shall at all times have access to and from their individual leased lots over and across such Roads, to the extent such access exists at Closing. The definition of Roads does not include those paved or gravel driveways located entirely within the boundaries of individual leased lots, which serve more than one residence or leased lot and are maintained by the lessees of such lots ("Common Driveways"). The Common Driveways are part of the Leased Tract. The Declaration shall provide that no owner or lessee which shares a Common Driveway with other owners or lessees shall be permitted to obstruct, prevent, or otherwise restrict access over or across any portion of the Common Driveways by such other owners or lessees, or their guests or invitees, so that all owners and/or lessees sharing a Common Driveway shall at all times have access to and from their portion of the Property.

c. Undeveloped Strips. The Undeveloped Strips consist of small strips of land located between individual leased lots (i.e., land which is not covered by the individual leases on either side of such strip of land) and small parcels of land between the Leased Tract and Roads (collectively referred to herein as "Undeveloped Strips"). The Authority will, in its discretion, establish a maximum size for the width of such strips of undeveloped land in order for such strips to be included within the Undeveloped Strips. The Authority will review parcels not meeting such size requirements on a case by case basis and may include, in its discretion, such parcels within the Undeveloped Strips.

III. Possum Kingdom Lake. The Lake is located on the main arm of the Brazos River northwest of Fort Worth and was the first water supply reservoir constructed in the Brazos River basin. The Lake is located in Young, Palo Pinto, Stephens, and Jack Counties. The boundary of the Lake is defined by the 1000' contour line, as that contour may meander and change over time with natural forces, including erosion and accretion. The "1000' contour line" means the line running along the periphery of the Lake if the surface of the Lake is at an elevation of 1000 feet above mean sea level, as measured from the top of the spillway crest gates of the Morris Sheppard Dam. The Lake covers an area of 16,700 acres with 310 miles of shoreline. The reservoir stores approximately 540,000 acre feet of water when full. Depth of the Lake varies with the terrain of the area and is approximately 100 feet at the Morris Sheppard Dam site. Possum Kingdom receives an estimated 1.5 million recreational visitors annually. Major activities on the Lake include recreational boating, swimming, fishing, water skiing, scuba diving and hiking and biking on designated trails. The Lake has a public fishing pier, seven public boat ramps, public access areas for picnicking, and a total of 400 primitive camp sites. The Possum Kingdom Airport is located on the East Side of the Lake and is available to all residents and visitors to the Lake. The airport is equipped with runway lights and restroom facilities, and houses 19 hangars.

IV. Property Condition. As set forth in the Special Warranty Deed, the form of which is attached hereto as Exhibit "J", the Property is being sold "as is", and without warranties of any kind whatsoever, expressed or implied, except for the warranty of title set forth in the Special Warranty Deed. The Authority and the Board neither warrant nor guarantee the accuracy or completeness of the information contained in this Request for Bids. The Property is sold subject to any and all leases on the Property, as well as any and all easements, rights-of-way, and other matters of record, and those visible and apparent on the Property, affecting or related to it (including, without limitation, any easements or agreements, whether or not recorded, between the Authority and the Water Supply Corporation for the installation, maintenance, repair, or replacement of water lines located beneath the Property). Each bidder is responsible for determining that the Property meets the bidder's requirements regarding access, size, shape, location, zoning, use, environmental standards and easements.

a. Legal Access. Portions of the Property have no legal access and can only be reached by crossing privately owned property. It is strongly suggested that bidders obtain an access

**Request for Bid
Possum Kingdom Lake**

agreement with such adjoining landowners prior to purchasing the Property. In addition, there are portions of the Property that are only accessible by water and have no access from land.

b. Roads. The Roads are private and may not be continuous (i.e., the Roads may be separated by gravel and/or paved roads located on land not owned by the Authority and not being conveyed hereunder). In addition, portions of the Roads may be located wholly or partially within the boundaries of individual leased lots. The Roads, in many instances, are not sufficient to meet county standards and the Roads are not maintained by the counties in which the Roads are located. As set forth in the Access Easement, the Successful Bidder will be responsible for maintaining such Roads or ensuring that such Roads are maintained by the counties or some other governmental or non-governmental entity (or, for those Roads which are subject to the Ranch Agreement, cause such Roads to be maintained by the applicable association as set forth in such Ranch Agreement). The Successful Bidder will be required to execute the Access Easement in favor of the Authority and its agents, tenants, lessees, licensees, successors and assigns so that such parties will have access to and from the Retained Land and the FERC Project Area.

c. Meandering Boundary and Encroachments. The boundary of the Property is, in part, a meander line that changes over time due to natural forces, such as accretion and erosion. Therefore, the Property will increase or decrease over time as the 1000' contour line and the FERC Buffer, which is 25 or 50 feet landward measured horizontally from the 1000' contour line, changes. At the present time, some improvements on the Residential Leased Land encroach into the FERC Project Area or across individual leased lot lines and onto a neighboring leased lot. If the FERC Buffer is not removed from the FERC Project Area before Closing (see V.a. below), then the Authority intends to file after Closing an application with FERC to obtain permission for selected existing encroachments into the FERC Project Area to remain in place, at the sole discretion of the Authority. If FERC does not approve such encroachments, such encroachments may have to be removed or substantially modified to conform to FERC's requirements. **Regardless, any further encroachments into the FERC Project Area are strictly prohibited.** In addition, the metes and bounds description for individual leases may overlap with the metes and bounds descriptions for an adjacent leased lot (i.e., two leases purportedly convey rights in the same strip of land).

d. Lessee Compliance and Enforcement. As set forth in the Assignment, Assumption and Ratification of Leases and Rents (the "Assignment", the form of which is attached hereto as Exhibit "K"), the Successful Bidder and its successors and assigns agree to enforce the terms of the leases and to cooperate with the Authority to ensure the lessees' compliance with the leases, the Shoreline Management Plan and other Authority rules and regulations, the Declaration and the FERC License both inside and outside the FERC Project Area.

e. Platting and Subdivision. To the extent any county may require the Property, Roads, or any portion of the Property or Roads to be platted (whether as a result of the purchase of the Property pursuant to this Request for Bids or otherwise), such platting requirements, as well as any additional surveying requirements, shall be the sole responsibility of the Successful Bidder.

f. The Ranch. A portion of the Property to be conveyed hereunder is a part of that certain subdivision (the "Ranch") of record in Palo Pinto County, Texas according to the map or plat of record in Volume 7, Page 71, Plat Records of Palo Pinto County, Texas, as it may be amended or modified from time to time. The portion of the Property which is part of the Ranch is subject to the terms and conditions set forth in the Ranch Agreement, as well as that certain Declaration of Covenants, Conditions and Restrictions for The Ranch on Possum Kingdom Palo Pinto County, Texas (the "Ranch Declarations", a copy of which are attached hereto as Exhibit "N") dated December 8, 1997, as recorded in Vol. 944, Page 403 of the Official Public Records of

**Request for Bid
Possum Kingdom Lake**

Palo Pinto County, Texas. As set forth in the Assignment of the Ranch Agreement, a copy of which is attached hereto as Exhibit "O", the Successful Bidder and its successors and assigns agree to enforce the terms and conditions of the Ranch Agreement and Ranch Declarations and to cooperate with the Authority to ensure the lessees' compliance with the same.

V. **Reservations.** The following described property is being retained by the Authority (the "Retained Land") and is expressly excluded from the Property (except as may be specifically set forth below):

a. **FERC Project Area.** At this time, the FERC Project Area is not included in this Request for Bids and will be retained by the Authority. If the Authority does not obtain FERC approval to remove the FERC Buffer from the FERC Project Area prior to Closing (see subsection i. below), the individual residential leases will remain in effect as between the Authority and the lessees for the FERC Buffer to the extent each residential lease covers the FERC Buffer; thus during the remaining term of the residential leases, the lessees will continue to have the same access and use of the FERC Buffer as provided in their existing leases.

- i. The Authority is pursuing the option of a fee simple sale of the FERC Buffer adjacent to the residential leases and will, in conjunction with this Request for Bids, submit an Application to Amend the FERC License with FERC, requesting the removal of the FERC Buffer from the FERC Project Area and replacing such removed land with a portion of the Retained Land. In the event such Application is approved prior to the Closing date, the FERC Buffer so removed from the FERC Project Area shall be included in the Property covered by this Request for Bids, and the residential leases assigned to the Successful Bidder will include the FERC Buffer as part of the Property. Upon filing of such Application, a copy of the Application will be made available on the Authority's website at www.brazos.org>Purchasing and Professional Services>Request for Bids.
- ii. In the event such Application to Amend the FERC License is not granted on or before Closing, then, to the extent not needed for the Authority's future operations, the Authority may grant a residual interest in the FERC Buffer located immediately adjacent to the Residential Leased Land to the Successful Bidder, which residual interest will run with the land and inure to the benefit of the successors-in-interest to the Successful Bidder. For example, in the event an individual lessee exercises its purchase option (as described below), then such individual lessee will be the holder of such residual interest, as it applies to the FERC Buffer located immediately adjacent to the lessee's purchased lot, measured by extending the common boundary lines on both sides of the leased lot being purchased in a straight line to the then current 1000' contour line (which is and will remain a meander line that changes over time, due to natural forces, such as accretion and erosion). The residual interest shall be triggered at such time as the FERC License (including any renewals thereof) no longer applies to such FERC Buffer; provided however, if such residual right is not triggered on or before the earlier of August 31, 2040 (such date being the 21st anniversary after the expiration of the existing FERC License before any extensions or renewals), or ten days after the expiration (including any extensions or renewals) of the existing FERC License, then such residual interest shall be terminated and of no further force or effect. The residual interest is described more fully in the Special Warranty Deed, the form of which is attached hereto as Exhibit "J".

**Request for Bid
Possum Kingdom Lake**

- b. Undeveloped Land. The Authority Land that is not within the Leased Tract, the Roads or the Undeveloped Strips is excluded from the definition of Property and is not being conveyed hereunder.
- c. Airport. The Possum Kingdom Airport and the land on which it is located is being retained by the Authority.
- d. Mineral Reservation. The Authority will retain ownership of all oil, gas, coal, lignite, sulphur and other mineral substances from which sulphur may be derived or produced, salt, potash, uranium, thorium, gypsum, mercury, zeolite, fluorspar, carbonaceous shale, bentonite and other varieties of clay, and all other minerals in and under the Property wherever located and by whatever method recovered, as well as the rights to lease and of ingress and egress to explore for and produce such minerals on the Property to the extent allowed by law.
- e. Groundwater Reservation. The Authority will retain ownership of the groundwater under the Property, and the right to develop groundwater as well as the right to lease groundwater, and the right of ingress and egress to explore for, produce, lease, and store groundwater and to place, construct, maintain, and operate any structures necessary and incident thereto at a site or sites as determined by the State, on the Property to the extent allowed by law.
- f. Access Easement. The Property will be sold subject to the Successful Bidder granting the Authority an Access Easement to permit access to and from the FERC Project Area and the Retained Land such that the Authority can conduct its operations and for public health, safety, and welfare purposes in a form similar to the form attached hereto as Exhibit "G".
- g. Declaration of Restrictive Covenants & Conditions. The Property will be sold subject to the restrictions described in the Declaration of Restrictive Covenants & Conditions, the form of which is attached hereto as Exhibit "H", to be filed in the property records of the counties in which the Property is located (the "Declaration").
- h. The Ranch. The portion of the Property which is part of the Ranch will be sold subject to the terms and conditions of the Ranch Agreement (a copy of which is attached as Exhibit "M"), as well as the restrictions described in the Ranch Declarations (a copy of which is attached hereto as Exhibit "N").
- i. Measurement Station, Easement and Right of Way. The Authority owns that certain dam measurement station and all related improvements and structures associated with such measurement station, which measurement station is located on a portion of the Property being offered for conveyance hereunder. The measurement station and related improvements are not part of the Property and will continue to be owned by the Authority. The Property will be sold subject to the Successful Bidder granting the Authority an Easement and Right of Way to permit the Authority to access its measurement station located on a portion of the Property for purposes of operating such station and performing any maintenance, repairs, construction, alterations, additions, or replacements thereto. The form of such easement is attached hereto as Exhibit "P".
- j. Flowage Easement. The Property will be sold subject to a Flowage Easement in favor of the Authority wherein the Authority will have the right to overflow, flood, and submerge that portion of the Property located at or below the elevation contour of 1015' above mean sea level in connection with the Authority's operation and maintenance of the Lake, and the Authority shall have no liability for any damages caused by such overflow.

**Request for Bid
Possum Kingdom Lake**

VI. **Issues to be Addressed in the Request for Bids.** A mixture of elements will impact the selection of the Successful Bidder, some of which are mandatory and others of which are value-added (i.e., voluntary). The elements listed below will be considered by the Board in its review of the bids received. Some elements are mandatory (i.e., items VI.a. – j. below), while others will be considered “value-added” or voluntary (i.e., items VI.k. – m. below). Mandatory elements that are not addressed or inadequately addressed in the Request for Bids submission, as determined by the Authority in its sole discretion, will lead to disqualification of the submission. Those submissions meeting or exceeding the mandatory elements will be presented to the Board for its consideration, and, subject to the Board’s right to reject any and all bids, the Board may select the bid, if any, that offers the best value to the Authority and the people and purposes it serves.

- a. **Purchase Price.** Each bid must specify the purchase price for the Property.
- b. **Cash Bids Only.** Only cash bids will be accepted for this sale.
- c. **Deposit.** A deposit of One Percent (1%) of the Purchase Price set forth in the bid shall be delivered to the Authority with the bid, in the form of a cashier’s check, money order or bid bond payable to the Brazos River Authority. All such deposits shall be placed in a special non-interest bearing Authority account, pending the Board’s selection of a Successful Bidder, if any. If a Successful Bidder is selected, the deposit of the Successful Bidder shall become Earnest Money and shall be deposited with Heritage Title Company (the “Title Company”), in accordance with the terms and conditions of the Contract. Within seven (7) days after the Board’s decision to select a Successful Bidder or to reject all bids, the Authority will return the deposits to the bidders who are not the Successful Bidder in the form of a check payable to the bidder who made the deposit.
- d. **Lessee Protections.** The bids must include the following lessee protections which shall be offered to each residential and commercial lessee for any portion of the Leased Tract (subject to the terms and conditions of the Ranch Agreement, where applicable). These lessee protections do not apply to the FERC Buffer, unless and except to the extent the FERC Buffer is included in the Property. Any additional lessee protections offered will be considered value-added and not mandatory. As set forth in the Memorandum of Assignment, Assumption, and Ratification of Leases and Rents (the form of which is attached hereto as **Exhibit “L”**), these lessee protections shall run with the land and burden any successor-in-interest to the Successful Bidder for the time periods specified below.
 - i. Permit the lessee to purchase its leased lot in cash or through lender financing for 90% of land only assessed value without any exemptions (as determined by county appraisal district) (the “Assessed Value”) for the year 2008, such option to be available for a period of at least one year from Closing.
 - ii. Permit the lessee to purchase its leased lot via seller financing for 100% of Assessed Value for the year 2008, with a down payment of ten percent (10%) and an interest rate of six percent (6%), with a 30-year amortization, such option to be available for a period of at least one year from Closing.
 - iii. Offer a new 99-year lease at a rental rate of 6% of the Assessed Value for the year 2008, with annual CPI increases, such option to be available for a period of at least one year from Closing. The 99-year lease will include an option to purchase the leased lot at the Assessed Value at the time of purchase (but not less than the 2008 Assessed Value).

**Request for Bid
Possum Kingdom Lake**

- iv. For the “over-65” homestead lessees, offer a new 10-year lease with a rental rate of 6% of the 2008 Assessed Value, with annual CPI increases, and with such lessees having the option to defer all lease payments until the end of the 10-year term. This new 10-year lease option is to be available for a period of at least one year from Closing. The 10-year lease will include an option to purchase the leased lot at the Assessed Value at the time of purchase (but not less than the 2008 Assessed Value).
- v. As to any lessee who does not timely exercise one of the foregoing options, ratification of existing leases, with (a) adoption of the current Authority lease rate methodology or other lease rate structure as set forth in the lease, as applicable (and including increases and adjustments to such rates) for 8 years from Closing, (b) an option permitting lessees to purchase their leased lot for the greater of (1) the Assessed Value at the time of purchase or (2) the 2008 Assessed Value, for a period of 8 years from Closing, and (c) an agreement to extend leases as necessary to allow for this full 8-year purchase option period. The Board Resolution regarding the current lease rate methodology is attached hereto as Exhibit “I”.
- e. Determining Assessed Value if County Does Not Provide Such Value. In the event a county does not provide an assessed value for leased lot(s) at the time the lessee exercises its purchase or lease option described above, then the “Assessed Value” of the subject leased lot in 2008 or at the time the option is exercised, as applicable, for the purposes of the purchase option price or lease rental rate referenced in subsection VI.d.i – d.v. above, shall be calculated based on the assessed value per square foot of comparable lots in the applicable county or adjoining counties with similar physical characteristics.
- f. Financial Resources. In its bid, each bidder must show that it has adequate financial resources and access to sufficient capital to purchase the Property for its proposed purchase price, plus the payment of all closing costs and other expenses.
- g. Experience and Track Record. In its bid, each bidder must provide its relevant experience and track record, including its ability to purchase and manage the Leased Tract and maintain the Roads.
- h. Closing Costs. The Successful Bidder will be responsible for the payment of all closing costs, including the Owner’s Title Policy.
- i. Survey and Platting. The Successful Bidder will be responsible for the cost of the Updated Survey, as well as any platting obligations and additional survey costs incurred as a result thereof.
- j. Roads. The Successful Bidder will be responsible for the cost of maintaining the Roads, (or otherwise ensuring they are maintained) ensuring Authority and lessees’ access over and across such roads, and/or working with the appropriate governmental entities to plat and/or dedicate such Roads to the public.
- k. Incorporation/provision of services to residents. Bidders may set aside funding for municipal incorporation at the Lake to create a local governing body or bodies for future management.
- l. Development Plan. Bidders may include a development and/or management plan for the Property, including intended uses and how those uses relate to the Lake and existing uses.

**Request for Bid
Possum Kingdom Lake**

m. Charitable Uses/Contributions. Bidders may include provisions in their bids for charitable gifting of some of the Property and/or profits from the Property.

VII. **Schedule.** The Authority intends to proceed using the following schedule. However, the Authority reserves the right to amend the schedule in its sole discretion.

a. Request for Bids Released. The Request for Bids will be made available on Thursday, **January 8, 2009.**

b. Pre-Bid Meeting and Inspection of Property. With respect to questions concerning this Request for Bids, the Authority will hold an optional, pre-bid meeting with potential bidders to address questions. The date, time and location of the meeting will be posted at least ten (10) business days prior to the date of such meeting on the Authority's website at www.brazos.org>Purchasing and Professional Services>Request for Bids. A tour of the Property for potential bidders will be offered on the same day as the Pre-Bid Meeting. The time and location of the starting point for such tour will also be posted on the Authority's website as set forth above. Those potential bidders who wish to participate in the tour of the Property should notify Lupe Diaz at ldiaz@brazos.org or faxed to Lupe Diaz at 254 761 3268 or mailed to: Brazos River Authority, Attn: Lupe Diaz, Administrative Services Manager, Brazos River Authority, 4600 Cobbs Drive, Waco, Texas 76710 on or before five (5) business days prior to the date of such meeting. Transportation from the commencement location of the tour will be provided to those potential bidders who timely notify the Authority of their interest in participating in the tour. Please note that the tour may not cover all portions of the Property, and may cover some portions of the Retained Land which is not part of the Property. It is the responsibility of each bidder to check the Authority's website for such postings.

c. Written Questions. The Authority will accept all requests for explanation or clarification through written questions from potential bidders submitted before close of business on **February 13, 2009.** Questions should be emailed to the attention of Lupe Diaz at ldiaz@brazos.org or faxed to Lupe Diaz at 254 761 3268 or mailed to: Brazos River Authority, Attn: Lupe Diaz, Administrative Services Manager, Brazos River Authority, 4600 Cobbs Drive, Waco, Texas 76710. The Authority intends to have responses posted via a written addendum to the solicitation by **February 23, 2009** at www.brazos.org>Purchasing and Professional Services>Request for Bids.

d. Amendments to Request for Bids. Any amendments to this Request for Bids will be posted on the Authority's website on or before close of business on **February 23, 2009.** It is the responsibility of each bidder to check the Authority's website for such amendments.

e. Deadline for Submission of Bid. All bids must be received in the Authority's offices no later than 3:00 p.m. central time, on **April 8, 2009.** It is the sole responsibility of the bidder to ensure timely receipt of the bid. The Authority will not be responsible for failure of service on the part of the U.S. Postal Service, courier companies, or any other form of delivery service chosen by the bidder. Telegraphic or facsimile submission of a bid will not be accepted. Submissions received after the deadline may not be considered or evaluated. Late submissions will be returned unopened. Bids will be opened publicly and the bidder's name and the amount of the bid will be read aloud at a date, time and location to be posted on the Authority's website at www.brazos.org/Purchasing and Professional Services/Request for Bids at least ten (10) business days prior to the public opening of such bids.

f. Presentation to Board and Selection of Successful Bidder. The Authority shall present the bids which meet or exceed the mandatory requirements to the Board at its regularly scheduled board meeting on **April 27, 2009,** or at a special meeting as soon thereafter as is

**Request for Bid
Possum Kingdom Lake**

reasonably practicable, in accordance with Section VIII below. The Board may select the Successful Bidder, if any, at such meeting or may defer a decision in order to obtain more information from one or more of the bidders.

g. **Contract.** Once selected by the Board, the Successful Bidder, if any, and the Authority will enter into a Contract for the purchase of the Property, in form and substance reasonably agreed to by the parties and which Contract will include, without limitation, the terms set forth herein and in the Successful Bidder's submission that are consistent with this Request for Bids. Unless extended by agreement, the Contract shall be executed by the Successful Bidder, on or before ninety (90) days after the Board selects the Successful Bidder, if any, subject to such contract being approved and ratified by the Board. Upon such execution, the Successful Bidder shall deposit with the Title Company the additional amount of four percent (4%) of the Purchase Price, which amount shall be added to the deposit made pursuant to Section VI.c. above and shall become Earnest Money in accordance with the terms and conditions of the Contract. The Earnest Money shall be non-refundable (except in the event of an Authority Default or failure to declare the Property as surplus) after a 60-day feasibility period, but shall be applicable to the Purchase Price.

h. **Closing.** The Closing on the Property will occur on or before one year after the Contract is ratified by the Board (subject to any terms which may be agreed to in the Contract).

VIII. **Review and Evaluation Process.** The Authority will evaluate the bids received to determine which bids, if any, conform to the mandatory requirements of this Request for Bids (the "Conforming Bids"). Any bid that does not conform to the mandatory requirements of this Request for Bids will be rejected and will not be presented to the Board for its consideration. The Authority may reject any Conforming Bid if the Authority determines in its discretion that such bid does not provide fair market value for the Property. Conforming Bids may be further evaluated to determine which bid(s) provide the best value to the Authority. Such bid or bids will be presented to the Board for its consideration. In order to obtain the best value for the Authority, the Authority or the Board in its discretion may choose to request one or more bidders to make additional submissions to better define the value of the bid to the Authority, before or after the bids are presented to the Board.

The Board reserves the right to reject any or all bids received prior to the award. The Board also reserves the right to waive minor informalities and irregularities in any bid received. This Request for Bids is in no way an agreement, obligation, or contract of the Authority. The Authority is not responsible for the cost of preparing the bid.

IX. **Surplus Determination.** At or before the meeting at which the Board selects a Successful Bidder and authorizes the Contract, as a prerequisite for sale of the Property, the Board, by an affirmative vote of 11 members, must determine that the Property is "surplus" and not necessary for the Authority's business or operations. In addition, the Board must approve by an affirmative vote of 11 members the proposed terms of the sale. Tex. Spec. Dist. Code § 8502.013(b); Tex. Water Code § 49.226(a).

X. **Submission Requirements.** To submit a bid, please follow these instructions:

a. Complete and enclose the conflict of interest questionnaire and otherwise comply with the Solicitation Instructions for this Request for Bid on the Authority's website. The conflict of interest questionnaire is available online at [www.brazos.org/About Us/Purchasing and Professional Services](http://www.brazos.org/About_Us/Purchasing_and_Professional_Services).

**Request for Bid
Possum Kingdom Lake**

- b. Enclose a bid bond or a cashier's check or money order drawn on a United States banking institution and made payable to the Brazos River Authority in the amount of One Percent (1%) of the Purchase Price set forth in the bid.
- c. Mail to: Brazos River Authority
Administrative Services
4600 Cobbs Drive
Waco, Texas 76710
- d. **Bid Deadline.** All bids must be received no later than 3:00 p.m., central time, on **April 8, 2009.**
- e. **Bid Restrictions.** All bidders must be 18 years old or older. No oral, telephone, email, or fax bids will be accepted. Only cashier's checks or money orders drawn on a United States banking institution will be accepted. No employees of the Brazos River Authority or their relatives may submit a bid.
- f. **Accepted and Rejected Bids.** If the Board selects a Successful Bidder, the Authority will promptly issue a notice of acceptance to the Successful Bidder. One copy of each submitted bid will be retained for the Authority's official files and becomes a public record.

XI. Transfer Information.

- a. **Special Warranty Deed.** At Closing, the Property will be conveyed by Special Warranty Deed, "as is, where is, with any and all faults," in a form similar to the form attached hereto as Exhibit "J". The Successful Bidder must accept the Property with any and all defects. Neither the Authority nor the Board will make any warranty of any kind, express or implied with respect to the Property, except for the warranty of title set forth in the Special Warranty Deed. Without limiting the generality of the foregoing, neither the Authority nor the Board will make any warranty as to habitability; fitness; suitability for a particular purpose; the condition of the soil or water; geology; presence or absence of any toxic or otherwise hazardous substances, materials, or wastes; or the presence of known or unknown faults. The Property being conveyed pursuant to the Special Warranty Deed will be described in part by a meander line, which meander line is an elevation contour line that is subject to change over time.
- b. **Title Commitment.** The Authority will secure a title commitment covering the Property binding the Title Company to issue a Texas Owner's Policy of Title Insurance on the standard form of policy prescribed by the Texas State Board of Insurance for the Property.
- c. **Assignment, Assumption and Ratification of Leases and Rents.** At Closing, the Authority will assign, and the Successful Bidder will assume and ratify, the leases to the extent they cover the Property, as of the date of the Closing. The Successful Bidder will agree to enforce the terms of the leases, the Shoreline Management Plan, and the Declaration to the extent they cover the Property and to cooperate with the Authority in enforcing the same to the extent they cover or affect the FERC Buffer. The Assignment will be in a form similar to the form attached hereto as Exhibit "K".
- d. **Assignment and Assumption of Contracts.** To the extent there are any service contracts affecting the Property which cannot or will not be terminated as of the date of Closing, the Authority and Successful Bidder will enter into an Assignment and Assumption of Contracts wherein the Successful Bidder will assume such service contracts to the extent they cover the Property.

**Request for Bid
Possum Kingdom Lake**

- e. Assignment and Assumption of Ranch Agreement. At Closing, the Authority will assign, and the Successful Bidder will assume and ratify, the Ranch Agreement (and leases contained therein) to the extent they cover the Property, as of the date of the Closing. The Successful Bidder will agree to enforce the terms of the Ranch Agreement to the extent it covers the Property and to cooperate with the Authority in enforcing the same to the extent it covers or affects the Retained Land, FERC Buffer or FERC Project Area. Such Ranch Assignment will be in the form similar to the form attached hereto as Exhibit "O".
- f. Access Easement. The Successful Bidder and the Authority will execute an Access Easement as described in Section II.b above, and in the form attached hereto as Exhibit "G".
- g. Measurement Station Easement and Right of Way. The Successful Bidder and the Authority will execute an Easement and Right of Way for the Measurement Station as described in Section V.i above, and in the form attached hereto as Exhibit "P".
- h. Other. The Successful Bidder will execute any other documents as reasonably required by the Authority and/or Title Company to convey the Property and/or protect the Authority's rights and interests in the Retained Land, the FERC Project Area and the Lake.

**Request for Bid
Purchase of Property at Possum Kingdom Lake
RFB No. 09-04-391
SEALED BID SALE VERIFICATION**

As the bidder, I hereby verify the following:

- 1. That the information submitted on the accompanying Bid Submittal is true and correct.
- 2. That I am relying on my own examination and investigation of the property and will accept title to the property "as is", in its existing physical and topographical condition, and without warranties of any kind whatsoever, expressed or implied.
- 3. That the foregoing representations and all material terms and conditions of this solicitation of bids shall survive conveyance of property to this bidder.
- 4. That if this bid is made in the name of or on behalf of another person or entity, that I am legally authorized to execute the bid form on that person's or entity's behalf or in the person's or entity's name.
- 5. That I have read and understand the bidding instructions related to this sale and the information sheet for the property on which I am submitting a bid.
- 6. That I am not an employee of nor a relative of an employee of the Brazos River Authority.
- 7. That I am eighteen (18) years old or older.

Signature of Applicant or Authorized Agent

Print Name of Applicant or Authorized Agent

The foregoing was sworn and subscribed before me on this _____ day
Of _____, 20_____.

Notary Public, State of _____

**Bid Form for
Purchase of Property at Possum Kingdom Lake
RFB No. 09-04-391**

By signing this Bid, the undersigned hereby affirms that he or she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discounts, trip, favor or service to a public servant in connection with this Bid. Failure to sign this Bid, or signing it with false statement, shall void the submitted Bid or any resulting purchase agreement, and the Bidder shall not be considered for future Bids.

ADDENDA: The undersigned acknowledges receipt of Addenda No. _____ thru _____ issued during the time of Bid and the Bid prices include the changes. Addendums will be posted on the AUTHORITY website at www.brazos.org.

The undersigned, having carefully examined the Brazos River Authority's Request for Bid No. 09-04-391 for Purchase of Property at Possum Kingdom Lake and any other instructions to Bidders re same, affirms that he/she is authorized to execute this Bid and hereby offers to purchase the property for the sum of:

\$ _____
_____ DOLLARS
Written Amount

Bid must be accompanied by Bid security deposit made payable to OWNER in an amount not less than one percent (1%) of BIDDER's Bid price and must be in the form of either a:

- Cashier's Check or Money Order _____ (Amount)
- Bid Bond.

TO BE VALID, BID FORM MUST BE COMPLETED AND SIGNED

Submitted by: _____ Title: _____
Signature: _____
Address: _____
Telephone No. _____ Fax No. _____
Date: _____ Email Address: _____

**Request for Bid
Possum Kingdom Lake**

Exhibit List:

- Exhibit "A": Board Resolution dated October 27, 2008
- Exhibit "B": Graphic Depiction of Property
- Exhibit "C": Lease Forms
- Exhibit "D": Lease Summary
- Exhibit "E": FERC License (and 1980 Amendment to Prior FERC License)
- Exhibit "F": Shoreline Management Plan
- Exhibit "G": Form for Non-Exclusive Access Easement Agreement
- Exhibit "H": Form of Declaration of Restrictive Covenants & Conditions
- Exhibit "I": Board Resolution dated July 30, 2007 regarding Lease Rate Methodology
- Exhibit "J": Form for Special Warranty Deed
- Exhibit "K": Form for Assignment, Assumption and Ratification of Leases and Rents
- Exhibit "L": Form for Memorandum of Assignment, Assumption, and Ratification of Leases and Rents
- Exhibit "M": Ranch Agreement
- Exhibit "N": Ranch Declarations
- Exhibit "O": Form for Assignment and Assumption of Ranch Agreement
- Exhibit "P": Form for Easement and Right of Way for Measurement Station