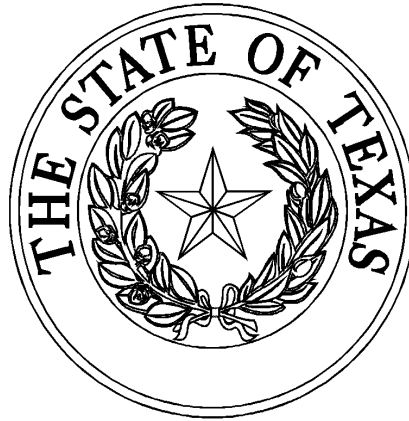


Texas Higher Education Coordinating Board

REQUEST FOR OFFER

Open Educational Resources State Repository Portal



Texas Higher Education Coordinating Board
1200 East Anderson Lane
Austin, TX 78752

RFO No. 781-0-22600

Proposal Due Date:

January 09, 2020

Time (Central Daylight Time):

3:00 p.m. CDT

PART A: OVERVIEW, CONTENT, AND INSTRUCTIONS

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A.1 DEFINITIONS

When capitalized, the following terms and acronyms have the meaning set forth below. All other terms have the meaning set forth in Webster's II New College Dictionary.

Contract	Any contract(s) resulting from this solicitation. Note: There is no guarantee that any contract will result from this solicitation.
Contractor or Awarded Contractor	The Respondent(s) awarded a Contract as a result of the RFO.
ESBD	The Electronic State Business Daily, which is available online at http://www.txsmartbuy.com/sp
Gov't Code	The Texas Government Code.
HUB	Historically Underutilized Business (HUB)
Open Educational Resource (OER)	A teaching, learning, or research resource that is in the public domain or has been released under an intellectual property license that permits the free use, adaptation, and redistribution of the resource by any person. The term may include full course curricula, course materials, modules, textbooks, media, assignments, software, and any other tools, materials, or techniques, whether digital or otherwise, used to support knowledge. (TEC, Section 51.451 (4-a))
Party / Parties	Either the THECB and Respondent separately or collectively
Software as a service (SaaS)	Is a software licensing and delivery model in which software is licensed on a subscription basis and is centrally hosted.
PIA	Texas Public Information Act, Chapter 552, Gov't Code is a series of legislative acts are intended to guarantee public access to governmental information in the interest of providing transparency in government. A link to the Act can be found: http://www.statutes.legis.state.tx.us/docs/GV/htm/GV.552.htm
Proposal	The response submitted by a Respondent to the THECB as a result of this solicitation
Respondent	Any person or contractor who submits a Proposal in response to this solicitation.
RFO	Request for Offer, which is the type of solicitation embodied in this document. The RFO consists of Part A, Overview, Content, and Instructions and Part B, the Anticipated Contract/Purchase Order and any exhibits or attachments thereto.
TAC	The Texas Administrative Code, which is the publication for administrative rules.
TEC	The Texas Education Code, which includes the statute that governs OER.

THECB/Agency	The Texas Higher Education Coordinating Board, the state agency issuing this solicitation.
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A.2 DESCRIPTION AND OVERVIEW

A.2.1 Description of Services

Texas Higher Education Coordinating Board is soliciting proposals from qualified respondents to enter into a contract, in accordance with the requirements contained in this Request for Offer (RFO).

The THECB is seeking a contractor who can develop and maintain a repository for Open Educational Resources that is customized to higher education in the state of Texas.

A.2.2 Eligibility Information

Respondents **must** have experience providing services similar to those described in the Statement of Work (SOW).

The THECB encourages Historically Underutilized Businesses (HUBs) to compete for this award.

A.2.3 Term of Contract

The Contract shall commence upon the execution of a Contract by the THECB with the Awarded Contractor and extending through **August 31, 2021** with option for 2 one-year renewals at THECB's sole discretion. The contract term may not be extended except by amendment signed by the parties.

Once a Contract is executed with the Contractor(s), this period will be referred to as the "Contract Term."

A.2.4 Description of Service Requirements

House Bill 3652, passed by the 86th Texas Legislature, Regular Session, and codified as TEC 61.0670, mandates the creation of a state repository for Open Educational Resources.

The deliverable for this project will be a web portal that links to existing repositories of OER, allows for upload and authoring of OER, and is searchable by course or learning outcome, program or field of study, marketable skills, college readiness, and other topics as determined by THECB.

Every Texas state agency and institution of higher education is required to provide access to electronic and information resources (EIR) for state employees and members of the public with or without disabilities. Agencies purchasing products or services are responsible for complying with Texas EIR Accessibility statute and rules, as defined in TGC 2054 Subchapter M, 1TAC 206, and 1 TAC 213. Additional information regarding EIR Accessibility can be found at: <http://dir.texas.gov/View-Resources/Pages/Content.aspx?id=36>

A.2.5 Statement of Work

The contractor shall provide services to complete this project from design to implementation and post go-live maintenance and support. The contractor shall utilize a series of on-site and/or remote envisioning sessions to gather information from THECB, to facilitate discussions around current and anticipated requirements, and to debate the merits of various configuration and deployment options available.

The contractor shall develop a site design that provides access to repositories maintaining a wide range of OER (including textbooks, full courses, course materials, modules, images, videos, assessment software, and any other tools, materials, or techniques used to support learning) and also allows users to upload and author OER. The site should be fully searchable by course or learning outcome, program or field of study, marketable skills, college readiness, and other topics as determined by THECB.

A.2.6 Deliverables

Contractor Responsibilities

1. Create a SaaS-based web portal consisting of a website, application and database that links to existing repositories of OER. Examples include the following:
 - a. Merlot - <https://www.merlot.org/merlot/index.htm>
 - b. OER Metafinder - <https://www.oer.deepwebaccess.com/oer/desktop/en/search.html>
 - c. Open Course Library – <https://www.openwa.org/open-course-library/>
 - d. OASIS – <https://www.oasis.geneseo.edu/>
 - e. OpenStax – <https://openstax.org>
 - f. Open Textbook Library – <https://www.open.umn.edu/opentextbooks/>
 - g. OER Commons - <https://www.oercommons.org/>
2. Provide website hosting in a private cloud infrastructure
 - a. Include multiple staging instances as backups
3. Provide storage for all data in private cloud infrastructure
4. Provide all maintenance and support services
5. Provide registration mechanism for users who want to upload/download/save OER
 - a. Registration should be openly available using an email address, but users should be asked for their title (faculty, student, etc.) and institution type (2-year, 4-year, public, independent, etc.) as applicable
 - i. Non-registered users should be able to view OER freely
6. Provide functionality for THECB administrators to manage accounts for program grantees
7. Provide comprehensive Student Data and FERPA Privacy and Terms of Use Policy that can be adapted to the unique needs of THECB and its users. Policy must cover, at a minimum, the following areas:
 - a. Scope and types of data collected
 - b. Prohibited subjects and types of data
 - c. Consent to Collection and Usage
 - d. Information Collection procedure
 - e. How data is used

- a. Removing or correcting collected information
- f. Other information collected
 - a. Log Files and Analytics
 - b. Cookies
 - c. Do Not Track
 - d. Information regarding children
- g. Disclosure policy to other entities
- h. Student data and FERPA compliance
- i. Compliance with GDPR and other similar data privacy standards
- 8. Ensure enforcement of Student Data and FERPA Privacy Policy
- 9. Provide a link to the THECB main website: <http://www.thecb.state.tx.us/>
 - a. Portal must meet THECB website linking policies: <http://www.thecb.state.tx.us/state-required-links/linking-policy/>
- 10. Ensure that website is fully functional within Mura Content Management System (CMS)
- 11. Incorporate THECB color and design requirements
- 12. Provide a complete project plan
- 13. Ensure validation against introduction of inappropriate/offensive content
- 14. Provide training on system usage for THECB administrators
- 15. Create wireframes for all page templates
- 16. Provide information architecture and site map

Contractor Functional Requirements

- 1. OER must contain metadata and tagging to make it easily searchable
- 2. OER types that will be available for upload download and search through the portal:
 - a. Full course curricula
 - b. Course materials
 - c. Modules
 - d. Textbooks
 - e. Media: Audio – MP3, etc., Video – MP4, etc., Data Files – CSV, etc., Image Files – JPEG, etc., Internet Files – HTML, etc., Presentation Files – PPT, etc., Spreadsheet Files – XLS, etc., Text Files - .Doc, etc.
 - f. Assignments
 - g. Software
 - h. Any other tools, materials, or techniques used to support knowledge
- 3. Portal must be searchable by:
 - a. Course
 - b. Learning outcome
 - c. Program or field of study
 - d. Marketable skills
 - e. College readiness
 - f. Other topics as determined by THECB
- 4. Portal should provide a simple process for registered users to author or upload OER and tag OER appropriately
 - a. Process should include tools for authoring OER within the portal, including saving and editing capabilities: Google Docs or similar

- b. Means for combining and remixing various types of media in multiple formats: audio, video, text and images (and others)
 - c. Option for publishing created OER to portal and making it freely available
 - d. Option for downloading created OER
- 5. Portal should provide ability for THECB Administrators to track content upload, download and course creation for program grantees
- 6. Portal should offer option for registered users to create groups and create/edit OER collaboratively through the authoring tools
- 7. Portal should provide analytics about user engagement and use of OER to administrators (members of THECB staff)
 - a. How often the site is accessed
 - b. Which materials are viewed
 - c. Which materials are downloaded
 - d. Which materials are uploaded
- 8. Portal will have a system for registered users to rate OER available and make comments
 - a. Portal should be accessible via PCs and mobile devices
 - b. Portal should support latest and n-1 versions of Chrome, Firefox, IE, and Safari

Contractor Accessibility and Security Requirements

- 1. Portal must be WCAG 2.0 AA accessibility-compliant, as measured using the tool SiteImprove: <https://siteimprove.com/>
- 2. Ensure that web application development is based on secure coding guidelines, such as the guidelines published by the Open Web Application Security Project (OWASP)
- 3. Ensure proper information security controls are in place to meet the THECB security policies and requirements, including:
 - a. Authentication and password management
 - b. Authorization and role management
 - i. Ensure OAuth (or similar) as authorization standard for protected access to portal
 - c. Audit logging and analysis
 - d. Network and data security
 - e. Code integrity and validation testing
 - f. Cryptography and key management
 - g. Data validation and sanitization

THECB Administrative and Security Requirements

- 1. THECB is responsible for the following:
 - a. Ensuring that link is correctly placed (vendor-created website) on THECB main website: www.thecb.state.tx.us
 - b. Checking for THECB admin count who will manage registrations for program grantees
 - c. Managing portal accounts for program grantees
 - d. Checking for HTTPS for the portal webpage
 - e. Verifying vendor compliance with Student Data and FERPA Privacy and Terms of Use policies. E.g. Portal does not collect or store student education records or student PII

- f. Verifying that vendor follows web application development based on secure coding guidelines, such as the guidelines published by the Open Web Application Security Project (OWASP)
- g. Verifying that the vendor has the following information security controls in place:
 - ii. Authentication and password management
 - iii. Authorization and role management
 - a. Ensure OAuth (or similar) as authorization standard for protected access to portal
 - iv. Audit logging and analysis
 - v. Network and data security
 - vi. Code integrity and validation testing
 - vii. Cryptography and key management
 - viii. Data validation and sanitization

Prior to billing for any of the deliverables, the contractor shall present the deliverable to THECB for review, feedback, and formal sign-off.

A.2.7 Data Center Services

Data Center Services (DCS) Infrastructure Requirements

The Texas Legislature, by action of House Bill 1516, 79th Legislature (Regular Session), established the foundation of a shared technology infrastructure and directed DIR to coordinate a statewide program to consolidate infrastructure services. Section 2054.391 requires state agencies included in the Data Center Services (DCS) program to use such services, unless otherwise approved by the DIR Executive Director through a Data Center Services Exemption.

DIR currently has executed multi-vendor contracts to provide data center consolidation and operations for 27 designated state agencies required to participate by Statute.

The DCS program provides all server management functions including system administration, operating system management and patching, base security services, dedicated local area network connectivity, storage services, backup services and disaster recovery services.

All hosted solutions offered in response to this RFO (including custom developed application, COTS, and Portal or Website managed content) must include an offer to host the application or solution in a State Consolidated Data Center operating on DCS infrastructure.

Respondents should comprehensively list their infrastructure requirements for DCS infrastructure within a State Data Center for financial review by the requestor. The requestor will use the cost estimating tools available within the program to estimate the cost to host the solution within the DCS program.

As an alternative, DIR has determined that the use of Software as a Service (SaaS) as a managed service is consistent with the state strategic plan and DCS framework; however, if an agency is contemplating a SaaS solution outside the DCS program, an approved DCS Exemption is required. The solution must clearly meet the NIST standard definition of SaaS as interpreted by DIR. (*NIST Definition of Cloud Computing SP 800-145*) Note: All exemptions are temporary and will be periodically re-evaluated to determine if DCS Program services can be used.

More details about the DCS Vendor Contracts, MSAs and SOWs may be found at:
<https://dir.texas.gov/View-Contracts-And-Services/Pages/Content.aspx?id=45>

Alternatively, copies of the DCS Master Services Agreements can be obtained by contacting DIR's Public Information Office at PIO@dir.texas.gov.

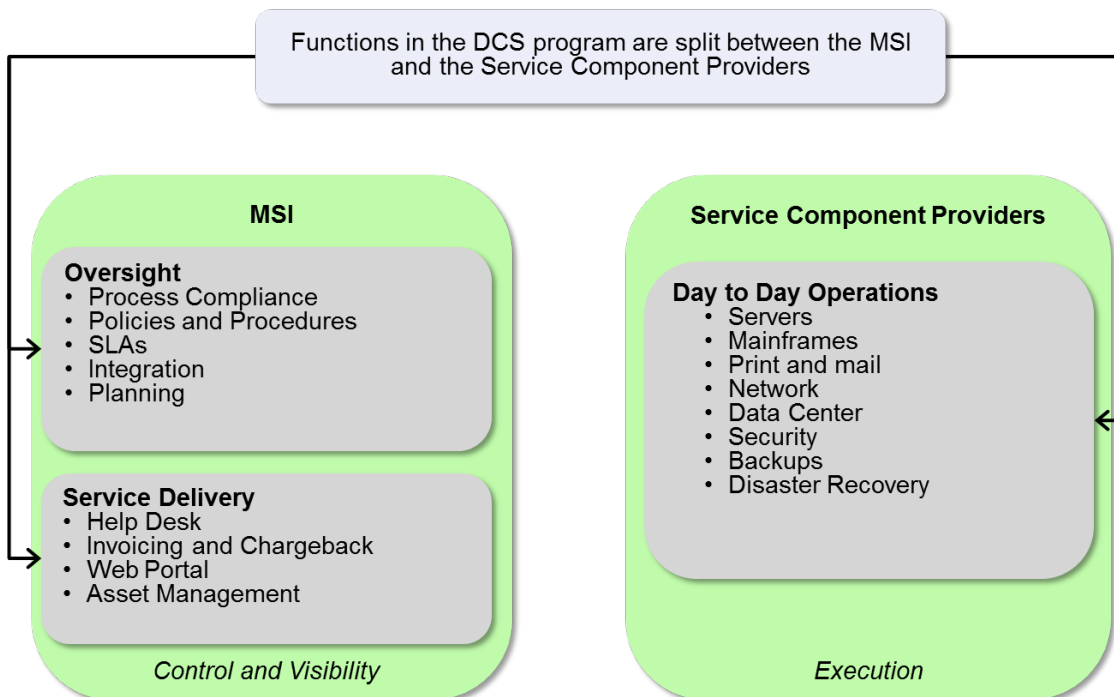
Respondents are encouraged to provide proposals for a SaaS solution, and if not, for a hosted solution. If your proposal is for a hosted solution, it will need to be hosted in the State of Texas Consolidated Data Center (locations in Austin or San Angelo) within the fully managed services program. This program provides all server management functions including system administration, operating system management and patching, base security services, dedicated local area network connectivity, storage services, backup services and disaster recovery services.

DCS Background Information

Collectively, the DCS contracts provide participating Customers mainframe and server operations, including hybrid public cloud services, disaster recovery, and bulk print and mail services in Customer data centers and two commercial-grade data center facilities: one located in San Angelo, Texas, and one located in Austin, Texas, with a goal to migrate all possible services to the two consolidated facilities.

DCS Service Provider Roles

There are two different service provider roles: multi-sourcing service integrator (MSI) and service component provider (SCP). Below is a high-level picture of how roles and responsibilities are divided within DCS.



Infrastructure

The Responding Vendor is required to work closely with the DCS Service Providers to establish the infrastructure for their hosted solution. Generally, all activities that require privileged access

(i.e., root access) are performed by the SCP, unless otherwise delegated to the Responding Vendor by the SCP through the DCS Change Management process.

The following is a high-level service description of fully managed services provided by DCS Service Providers through the DCS program. All server environments (private community cloud as well as public government cloud) including, but not limited to, production, test, and development are included and receive these services:

- Server hardware on standardized Intel, AIX, Solaris shared and dedicated platforms.
- Server hardware and operating system installation, support, and maintenance,
- Server software installation, upgrades, support, and maintenance for infrastructure, middleware, application utility, and database software,
- System administration for all in-scope server software,
- Server administration administered remotely from central location,
- Computer operations and monitoring,
- Production control (batch scheduling, job scheduling),
- Storage management (disk, tape),
- Disaster recovery backups and offsite tape storage,
- Physical database administration,
- Data center print services (printer operations; report staging for distribution; ordering paper, special forms, etc.; inserts; and bulk print mailings),
- Facility and environmental support within the State data centers,
- Capacity planning,
- Disaster recovery planning and testing for all data center services,
- Business continuity planning (service provider processes),
- Support Center (for in-scope data center services) using the MSI Service Now incident, problem tracking and resolution application,
- Hardware/software procurement for in-scope services,
- Support and maintenance for the LAN environment within the data center facility,
- Standard security controls managed at the enterprise,
- Vulnerability/threat/virus support,
- Security software installation and maintenance,
- Physical security within the State data centers,
- Process management,
- Incident management, problem management, change management, configuration management, release management, and
- Standard infrastructure DCS Service Level Agreements.
- Enterprise ADFS and Domain Controller Privileged ID services.
- Hardware and Software Currency Standards and Refresh.
- Enterprise technology standards and roadmap.

DCS Service Level Agreements

The THECB infrastructure will be subject to the standard infrastructure DCS Service Level Agreements (SLAs), which are described in the DCS Master Services Agreements, Exhibit 3. The goal of the DCS SLAs is quality performance from the DCS Service Providers through incentives for consistent quality behaviors that meet the State's expectations. The DCS SLAs

are constructed to incent the DCS Service Providers to perform and allow the parties to modify the DCS SLAs without a contract change.

There are critical service levels (tied to financial credits for the State for performance failures) and additional key measurements. Key measurements can be promoted to critical service levels, allowing flexibility to focus attention on a particular area.

In addition, the DCS Master Services Agreements embrace the concept of continuous improvement. Each year, the Expected Value of the DCS SLA automatically increases in accordance with the methodology described in Exhibit 3 of the DCS Master Services Agreements.

DCS Disaster Recovery Overview

The DCS approach to restoration uses a dual-site solution, where each data center uses the other as a backup in case of a disaster. Each data center maintains the ability to restore critical data and applications from its sister site. Both data centers have bandwidth capacity to support restoration while maintaining current operations. The dual-site solution can also be expanded to the Public Government Clouds offered in a hybrid model for additional backup sites to support recovery.

Applications covered by the DCS infrastructure are prioritized into one of several recovery time objective (RTO) classifications—Class P, Class 1, Class 2A, Class 2B, Class 3, Class 4, Class 5, Class 6, or Class 7 —based on criticality to business operations and other considerations. The RTO is the time in which systems, applications, or functions must be recovered after a disaster is declared and helps determine the recovery strategy.

The DCS Service Providers are required to conduct periodic simulation or tabletop exercises, according to the Disaster Recovery (DR) Class, to test the effectiveness of the disaster recovery response. Lessons learned from these exercises are incorporated into the disaster recovery planning. The DCS Master Services Agreements, exhibit 16 and Exhibit 2.1, describe IT service continuity management and disaster recovery requirements, including the RTO classifications and eligibility for DR exercises. The DCS Master Services Agreements, Attachment 4-E describes the available tiers of Servers, tiers of storage, and the Recovery Point Objectives (RPO).

The Vendor will be required to work closely with DCS Service Providers to develop and update disaster recovery plans, periodically complete DR exercises, and restore services in the event of a declared disaster.

DCS Hardware and Software Acquisition

As a participating entity in the DCS program, THECB is required to acquire all in-scope infrastructure hardware and software through the DCS program. The Vendor is required to participate in the procurement process, including submitting the request for service into the DCS Service Now Tool, participating in the requirements gathering sessions, and validating the acquisition proposals received. As much as technically possible, the DCS program uses virtualized server instances on standard hardware configurations. Proper long-range planning is required in order to ensure that hardware and software is received to meet project schedules.

DCS Intel Based Configurations

Virtualized Intel based server instances in the ADC and SDC are VCE vBlock construction for both Windows and Linux O/S platforms.

- Vblock consists of EMC storage coupled with VMware virtualization and Cisco Network and Compute equipment. Additionally, Vblock incorporates EMC's Unified Infrastructure Manager (UIM) which enables automation and single point of management for most of the infrastructure components
- VMware vSphere, virtualization platform private cloud infrastructure

Virtualized AIX based server instances in the ADC and SDC are IBM Flex Systems with an associated IBM System Storage SAN.

Virtualized Solaris based server instances in the ADC and SDC are Oracle T5-4 chassis with storage on the EMC SAN.

Process Management

Vendor will be required to participate in the defined DCS processes for incident management, problem management, change management, release management, configuration management, and request management. In the management plans described in this RFO Section A.2.6, the Vendor must describe its interactions with the DCS program. The DCS Services Management Manual is available upon request.

Database Administration

The Vendor will be responsible for logical database administration.

The Vendor is required to work closely with SCPs, as SCPs perform physical database administration activities, including

- Install database management software (DBMS),
- Configure DBMS parameters,
- Apply DBMS operating system patches,
- Capacity planning of database instances,
- Performance tuning of database instances,
- Reorganize the database as necessary,
- Create instances in all environments, and
- Add/change/delete database objects in production and pre-production.

Hardware and Software Currency

The DCS hardware infrastructure is refreshed on a 60-month refresh cycle. Operating software, database software, and application utility tools are required to be within n or n-1 of the currently supported versions of the software manufacturer. The Vendor is required to ensure the application software developed to support the Open Educational Resources State Repository Portal will support the DCS standard hardware and software platforms as described in the DCS Standard Configurations.

DCS Related Expenses

Programs that receive services through the DCS program are billed according to resources consumed. The DCS Resource Units are measured and billed on a monthly basis. Hardware Services Charges (HSC) and Software Services Charges (SSC) are charged based on hardware and software acquired to support application servers. Application servers are classified as Platinum, Gold, Silver, and Bronze, depending on the architecture and support requirements. The DCS Agreement, exhibit 4 describes the pricing structure.

Respondents should comprehensively list their infrastructure requirements for DCS infrastructure within a State Data Center for financial review by the requestor. The requestor will use the cost estimating tools available within the program to estimate the cost to host the solution within the DCS program.

Functions Retained by Agencies – Out of Scope for Data Center Services

To provide context, the following services are considered Customer retained services because they are out of scope of the DCS Master Services Agreement (not provided by DCS Service Providers). In developing your response, the Respondent should clearly understand that the requestor (agency) performs these functions as needed:

- End-user computing, including desktop, mobile, and LAN-attached multi-function devices;
- Network support, including WAN/LAN support outside of the State data centers, voice/phone support;
- Help desk (Level I – all services);
- Expert troubleshooting and support for all non-DCS services;
- Technology planning, strategies, and visioning;
- Project management;
- Disaster recovery planning and testing for all retained services;
- Business continuity planning for agency processes;
- Packaged imaging systems (scanners, servers, optical disks, etc.);
- Coordination of data center print services, including coordinating form changes with business units, volume trending;
- Data security, security design and policy development, systems access requests (directory/file, ID creation and removal, determination of access rights);
- Logical database administration;
- Application development, support, maintenance, and monitoring;
- Electronic payment processing services;
- Data import and export to the environment (FTP services); and
- Reporting services.

Level I Help Desk

If needed for the solution, the Vendor is required to maintain a Level I help desk to triage all calls prior to submitting an incident to the DCS Support Center. Once the Vendor has determined or suspects the cause of an incident is related to a DCS infrastructure component,

the Vendor will log into the DCS Support Center's system to report the incident in accordance with the DCS Services Management Manual.

A.2.8 Contractor Responsibilities

The THECB shall look solely to the Contractor(s) for compliance with all the requirements of this RFO and the resulting Contract(s). Contractor(s) shall be the sole point of Contract responsibility and shall not be relieved of non-compliance of any subcontractor.

Failure to meet service requirements and /or specifications authorizes the THECB to procure services of this RFO elsewhere and charge any increased costs for the services, including the cost of re-soliciting, to the Contractor.

A.3 FINANCIAL MATTERS

A.3.1 Payment Terms and Award Summary

To the extent the Awarded Contractor is not a Texas state agency, payment for services will be made by THECB in accordance with the State of Texas Prompt Payment Law; Chapter 2251 of the Texas Government Code. If the Awarded Contractor is a Texas state agency, payment for services will be made by THECB in accordance with the Interagency Cooperation Act; Chapter 771 of the Texas Government Code.

The awarded Contractor shall not begin or provide any services until issuance of a Contract by THECB. THECB does not guarantee a specific compensation to the Contractor throughout the term of the Contract. No minimum compensation to the Contractor is guaranteed.

A.3.2 Adding New Services to the Contract after Award

Following the Contract award, additional Services of the same general category that could have been encompassed in the award of this Contract, and that are not already on the Contract, may be added. A formal written request may be sent to Awarded Contractor(s) to provide a proposal on the additional services and Contractor(s) shall submit proposals to the THECB as instructed.

All prices are subject to negotiation with a Best and Final Offer (BAFO). THECB may accept or reject any or all proposals and may issue a separate RFO for the services after rejecting some or all of the proposals. The services covered under this provision shall conform to the terms, conditions, specifications, and requirements as outlined in the request. Any resulting contract may be amended only upon the issuance of a written amendment showing the revision(s) prior to the services being provided as agreed, approved, and signed by both parties.

A.4 ANTICIPATED SCHEDULE OF ACTIVITIES

A.4.1 Due Date for Proposals

Respondents shall submit Proposals to the THECB in time for the THECB to verify and confirm that each Proposal is received and documented with a date and time no later than

the Proposal Due Date indicated in the Calendar of Events section below. Proposals submitted late will be rejected and will not be considered for evaluation.

A.4.2 Calendar of Events

The solicitation process for this RFO will proceed according to the schedule below. The THECB reserves the right to revise this schedule or any portion of this RFO by published Addendum on ESBD and the THECB's website.

Event	Date
Publication of RFO on the ESBD	December 19, 2019
Last day to submit written questions regarding the RFO	January 6, 2020
Proposal Due Date and Time	January 09, 2020 @ 3:00pm CDT
Expected Award of Contract	Upon Execution
Work completed, site launch	September 1, 2020

The THECB will accept only written questions and requests for clarification e-mail to the attention of the personnel below.

Inquiries and comments must reference RFO No 781-0-22600

Direct written questions to:

Theresa Lopez, CTPM, CTCM
Director of Procurement
Texas Higher Education Coordinating Board
Office of General Counsel
Theresa.lopez@theeb.state.tx.us

Questions submitted to the THECB will be answered within two business days after receipt
The THECB will post additional information, responses to written questions, RFO modifications, and addenda on the THECB website and the Electronic State Business Daily (ESBD). It is the responsibility of interested parties to periodically check the ESBD and THECB's website for updates to the procurement prior to submitting a response. The Respondent's failure to periodically check the ESBD and the THECB's website will in no way release the selected contractor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFO.

A.4.3 Point of Contact Prior to Award

Respondents shall direct all inquiries and communications concerning this RFO to the Point of Contact listed below.

Theresa Lopez, CTPM, CTCM
Director of Procurement
Texas Higher Education Coordinating Board
Office of General Counsel

Please Note: Mrs. Lopez is the only permitted point of contact. Contact or attempted contact with other THECB employees, including Commissioners and their staffs, may result in a respondent's immediate disqualification.

A.4.4 Pre-Proposal Conference

Not Applicable

A.4.5 Notice of Intent Guidelines

Not Applicable

A.5 PROPOSAL CONTENTS (REQUIRED)

A.5.1 Attachments Included with this RFO

This RFO also includes the following Attachments, which are posted on the ESBD:

- A Execution of Proposal (Required)
- B HUB Subcontracting Plan (Required)
- C Respondent Information Form (Required)
- D Preferences (Required)
- E Anticipated Purchase Order (For Reference Only)

A.5.2 Organization of the Proposal for Submission

Respondents shall submit:

1. Proposals shall be bound in a three-ring binder.
2. One (1) clearly marked "**Original**" of their proposal response with original signature and;
3. Three (3) identical copies of their proposal and;
4. One (1) electronic copy of the complete RFO response on a compact disk or memory stick (flash drive) in Microsoft Word.
5. Proposals shall be written only on 8 1/2" x 11" white paper using double or 1.5 spacing, and 12-point or larger Times New Roman font.
6. Proposals shall be free of any extrinsic items.

Proposals shall include all required attachments and certifications. The THECB will not accept attachments and certifications submitted after the deadline. Failure to provide all required information shall make the proposal non-responsive and thus disqualified from consideration. The THECB may reject a proposal that fails to include required contents.

Proposals shall include the contents outlined below. Mark each section with an index tab.

<u>TAB 1</u>	Statement of the Requirements Each respondent shall state succinctly its understanding of this RFO's requirements and describe how it would perform the tasks in the Statement of Work. Each respondent must demonstrate the capability to provide the services. If a respondent believes there are additional tasks needed to accomplish the THECB's goals, identify them, explain why they are needed, and how the respondent would perform them.
<u>TAB 2:</u>	Competence and Knowledge Each respondent shall demonstrate the competence and knowledge to fulfill the requirements identified in the Statement of Work. The respondent shall also describe any prior experience in providing similar services or exact services, especially for other governmental organizations. The respondent shall describe the processes and procedures it intends to use to provide these services and an organizational chart identifying the functions and reporting relationships of the personnel who would be assigned to this work.
<u>TAB 3:</u>	Qualifications Respondents must have a minimum of five years' experience providing services similar to those described in the SOW. An entity or company in existence for fewer than five years is eligible to submit a proposal if key personnel on the proposal team have the minimum required experience. For each person a respondent identifies to perform the work described in this RFO, provide a detailed resume that describes the services they would perform, their qualifications, and their experience.
<u>TAB 4</u>	Compensation/Fee Structure For services as described in the Statement of Work: Respondents are responsible for the accuracy of the pricing information provided. Pricing information is required to support the reasonableness of the Proposal and to demonstrate that the Respondent will be able to provide all the services requested in this RFO. Respondents are cautioned to verify that the data provided are correctly calculated. After the Proposal is submitted, Respondents must not be permitted to correct typographical errors or transposed digits in their proposed costs. Therefore, Respondents must avoid such errors. Respondents should provide the cost of start-up as well as of annual maintenance over the contract term. Payment methodology: Firm fixed price.

	<p>Please note: The proposed compensation shall include all anticipated expenses. The THECB will not reimburse any out-of-pocket expenses not contemplated at the time of contract execution.</p>
<u>TAB 5</u>	<p>References</p> <p>Each respondent shall provide at least three references, including contact information. The THECB prefers references from clients for whom the respondent has performed similar work, including other state agencies. Do not use the THECB or any individuals employed by the Board as a reference.</p>
<u>TAB 6</u>	<p>Attachments</p> <p><u>The Transmittal Letter:</u></p> <p>This letter is a REQUIRED document.</p> <p>The Transmittal Letter must be signed by a person legally authorized to bind the Respondent.</p> <p>The letter must specifically identify that the Proposal is in reference to THECB's Open Educational Resources State Repository Portal RFO. The letter must state, <i>"The Proposal enclosed is binding and valid at the discretion of THECB."</i> Additionally, the Transmittal Letter shall indicate that the Proposal is good for 90 days.</p> <p>The letter must also include <i>"full acceptance of the terms and conditions described in this Request for Proposal, including as detailed in the Anticipated Contract."</i> Any exceptions to this RFO and the Anticipated Contract must be specifically noted in the letter. However, any exceptions may disqualify the Proposal from further consideration. If Respondent takes any exceptions to any provision of this RFO or the Anticipated Contract, these exceptions must be specifically and clearly identified by Section and Respondent's proposed alternative must also be provided. Respondent cannot take a "blanket exception" to the entire RFO or the Anticipated Contract. If any Respondent takes a "blanket exception" to this entire RFO or the Anticipated Contract or does not provide proposed alternative language, the Proposal may be disqualified from further consideration. Any terms and conditions attached to a Proposal will not be considered unless specifically referred to in this RFO and Respondent's attachment of such terms and conditions to a Proposal may disqualify the Proposal.</p> <p>The Respondent shall provide a Transmittal Letter addressed to the Point of Contact that identifies the person or entity submitting the Proposal and includes a commitment by that person or entity to provide the services required by THECB through this RFO and the Anticipated Contract.</p>

Respondents are strongly encouraged to submit written questions during the inquiry period regarding any terms and conditions of this RFO or the Anticipated Contract.

A. Attachment A: **The Execution of Proposal:**

All information on Attachment A is **REQUIRED** to be completed.

B. Attachment B: **HUB Subcontracting Plan:**

All information on Attachment B is **REQUIRED** to be completed.

It is the policy of the THECB to promote and encourage contract and subcontract opportunities for State of Texas certified Historically Underutilized Businesses (HUBs) in all contracts in compliance with Chapter 2161, Gov't Code. Eligible Respondents are encouraged to become HUB certified. State of Texas HUB applications may be found at: <https://comptroller.texas.gov/purchasing/vendor/hub/>

Definitions for State of Texas HUB certifiable businesses can be found in 34 TAC Part 1, Chapter 20, Subchapter D, which is available at:
[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=5&ti=34&pt=1&ch=20&sch=D](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=34&pt=1&ch=20&sch=D)

A HUB Subcontracting Plan Form must be filled out and returned with the Proposal to be considered responsive. If the Proposal does not include a HUB Subcontracting Plan, it shall be rejected as a material failure to comply with advertised specifications. Please see the attached HUB Subcontract Plan for further instructions which require vendors to identify the specific areas intended for subcontracting.

Search the State of Texas HUB Database for HUB vendors by the NIGP class and item at:
<https://mycpa.cpa.state.tx.us/tpasscmlsearch/tpasscmlsearch.do>

Additional minority and women owned business association resources are available for subcontracting notices at:
<https://comptroller.texas.gov/purchasing/vendor/hub/>
Additional information and training regarding how to complete a HUB Sub- Contracting Plan can be found at the following link:
<https://comptroller.texas.gov/purchasing/vendor/hub/>

Please note you must allow HUBs at least seven (7) working days to respond to your notice prior to your bid response submission to THECB.

C. Attachment C: **Respondent Information Form:**

All information on Attachment C is **REQUIRED** to be completed.

D. Attachment D: **Preferences:**

Respondents are encouraged to carefully review this attachment and complete as applicable. Attachment is **REQUIRED**.

E. Attachment E: **Anticipated Purchase Order:**

For reference only.

The **Conflict of Interest Disclosure Statement**

Statement is **REQUIRED** and **MUST** be **NOTARIZED**

Respondents shall be neutral and impartial, shall not advocate specific positions to the THECB. Respondents shall identify the extent, nature, and length of these relationships or engagements. Entities having a conflict of interest, as determined by the THECB, will not be eligible for contract award.

If a respondent does not have any known or potential conflict of interest, the proposal should include such a statement. Failure to provide either a statement on potential conflicts of interest or a statement that no potential conflicts exist shall automatically disqualify the respondent.

This statement shall be signed before a notary public by the highest-ranking officer of respondent's entity having responsibility for vetting corporate conflicts of interest, e.g. a corporate Executive Vice President rather than the head of an operating or regional unit of the firm.

The THECB will determine whether a conflict of interest or the perception of a conflict of interest exists from the perspective of a reasonable person uninvolved in the matters covered by the resulting contract. The THECB is the sole arbiter of whether a conflict or the appearance of a conflict of interests exists. The THECB encourages respondents to provide complete disclosure of matters that might be considered a conflict of interest. Completeness of disclosure may be a factor in evaluating proposals.

Each respondent also must address how the respondent intends to ensure that no interest arising or potentially arising as a result of its activities or those of its parent, affiliate, or other related entity shall conflict with respondent's duty should it be selected to provide these services.

The THECB may not enter into a contract with a person who has been employed by the THECB within the past 12 months. Persons who have

	been employed by the THECB or by another state agency in Texas more than 12 months but fewer than 24 months ago shall disclose in the proposal the nature of previous employment with the state agency and the date the employment ended.
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	NOTE: The THECB, as a state agency, is prevented by the Texas Constitution from indemnifying Respondents. The Respondent is discouraged from including a term in its Proposal that requires the THECB to indemnify it. Such a term may result in the Proposal being deemed non-responsive.
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The Proposal shall include all information required in this RFO. The Respondent is solely responsible for thoroughly understanding the RFO and its attachments, exhibits, and forms. Questions should be directed to the Point of Contact by the Deadline for Submitting Questions identified in Part A. The Respondent is cautioned to pay particular attention to the clarity and completeness of its Proposal. The Respondent is solely responsible for its Proposal and all documentation submitted.

The Respondent shall be as precise, accurate, and succinct as possible. The Respondent shall provide detailed descriptions of how they will fulfill each requirement. The clarity and completeness of a Proposal may be considered by the THECB evaluators.

A.6 EVALUATION OF THE PROPOSAL

A.6.1 Evaluation and Award of Contract

A Contract will be awarded by THECB to the Awarded Contractor(s) in response to this RFO.

The THECB reserves the right to award Contract(s) without any negotiations and reserves the right to not make awards. Submission of a Proposal confers no rights on Respondent to an award or to a subsequent Contract, if there is one. The issuance of this RFO does not guarantee that a Contract will ever be awarded. THECB reserves the right to withdraw the RFO entirely for any reason solely at THECB's discretion. An individual Proposal may be rejected if it fails to meet any requirements of this RFO. THECB may seek clarification from Respondent at any time during the evaluation period, and failure to respond may be cause for rejection of a Proposal.

Upon execution of a Contract resulting from this RFO, the term "Respondent" shall have the same meaning as "Contractor".

The Contractor shall not begin or provide services until issuance of a Contract by THECB.

The Respondent is strongly encouraged to provide its best price in its Proposal.

THECB shall award a Contract(s) to the Respondent(s) whose proposal is considered to be the best value to the state, as defined in §2155.074, Gov't Code. Part B of this RFO represents the Anticipated Contract (along with its incorporated exhibits) which will be entered into with the Contractor(s) and lists the additional terms and conditions governing

this RFO. The THECB may make its award to Respondent(s) based on any combination, including, but not limited to line item that provides best value to the State.

The State of Texas may consider, at its option, alternative services for award which may not meet the full specifications, however, represent a best value to the State of Texas within the listed service classification.

Each evaluated Proposal will be reviewed and scored according to the table set out below.

Evaluation Criteria for each of the Proposal Components:

1	Qualifications & Experience performing similar work	30%
2	Fees and Costs	30%
3	Feasibility of plan to provide deliverables	20%
4	Quality of site design	20%
	Total	100%

The THECB will assemble an evaluation team that will begin proposal evaluation as soon as practicable after the submission deadline. Evaluation team members will score each proposal individually using the criteria stated above. After individual scoring, the evaluation team will meet and discuss the proposals and will make a recommendation for selection or a recommendation to take further action.

After the evaluation team ranks each proposal based on individual scores, the evaluation team may pose clarifying questions of, or ask for best and final proposals from, the highest-ranking proposals. The evaluation team may also hold discussion sessions with the highest ranked respondents. The team may rate proposals again following questions, requests for best and final proposals, or oral presentations/discussion sessions.

The THECB will begin contract negotiations shortly after notification. The successful respondent may offer changes to these terms or additional terms in their proposal, but the THECB may reject them. The parties will negotiate a final schedule for performance that will be incorporated into the final contract.

The THECB will notify each respondent of the final action taken upon execution of contract with the selected respondent.

THECB reserves the right to conduct studies and other investigations as necessary to evaluate any Proposal. THECB reserves the right to waive any minor or immaterial Proposal requirements noted in the submission process. Submission of Proposals confers no legal rights upon any Respondent. The THECB will determine whether negotiations or Best and Final Offers (BAFOs) are necessary and may invite selected Respondents to provide oral presentations of their Proposals.

As THECB is awarding Contract(s) to Respondent(s) pursuant to Competitive Sealed Proposals as authorized by Government Code §2156.121, THECB may evaluate Respondent's Proposals on a variety of factors. As such, THECB is **not authorized** to conduct bid/proposal

openings or bid/proposal tabulations prior to award of Contract(s). Respondent(s) should be aware that such information cannot and will not be provided prior to award of Contract(s).

Past Performance: A Respondent's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of §2155.074, §2155.075, §2156.007, §2157.003, and §2157.125, Gov't Code. Respondents may fail this selection criterion for the following conditions:

- (1) Currently under a Corrective Action Plan through the THECB,
- (2) Having repeated negative Vendor Performance Reports for the same reason,
- (3) Having a record of repeated non-responsiveness to Vendor Performance issues
- (4) Having purchase orders or other contracts that have been cancelled in the previous 12 months for non-performance (i.e. late delivery, etc.).

THECB may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by 34 Texas Administrative Code §20.108), THECB may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of Contract. Such sources of vendor performance may include any governmental entity, whether an agency or political subdivision of the State of Texas, another state, or the Federal government. Further, THECB may initiate such examinations of vendor performance based upon media reports. Any such investigations shall be at the sole discretion of THECB, and any negative findings, as determined by THECB, may result in non-award to the Respondent.

A.6.2 Multiple Awards

The THECB may award multiple Contracts from this solicitation. The Respondent(s) providing the best value to the State may be chosen as the State's primary or "best value contractor". Additional Respondents may be awarded Contract at the sole discretion of THECB in order to provide alternate resources for meeting the requirements of the requested services.

A.7 SUBMITTING THE PROPOSAL TO THE THECB

Fax and Email Proposals are not allowed by THECB.

Hard Copy proposal submission shall include an information sheet that clearly states the name of the respondent; the name, address, and telephone number of the respondent's point of contact, and the RFO title and number. The information sheet is the first page before the sealed proposal submission. All parts of the proposal after the information sheet shall be submitted in an envelope or other sealed container that is marked with the respondent's name and "*RFO No. 781-0-22600 CONFIDENTIAL.*"

The Proposal must be sent to the THECB Purchasing Department at the following address:

By U.S. Mail, Courier, or Hand Delivery (8:00 a.m. – 3:00 p.m. CT):

Texas Higher Education Coordinating Board
Attn: Purchasing Department

A.8 ADDITIONAL INSTRUCTIONS

A.8.1 Accuracy of the Proposal

The Respondent's Proposal shall be true and correct and shall contain no cause for claim of omission or error. Proposals may be withdrawn in writing at any time prior to the submittal deadline.

A.8.2 Cost of Submitting the Proposal

The THECB will not reimburse the Respondent for any cost related to its Proposal. The Respondent is responsible for any expense related to the preparation and submission of its Proposal.

A.8.3 Public Information Act Disclosures

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

The Respondent, by submitting a Proposal, shall thereby be irrevocably deemed to have fully indemnified and agreed to defend the THECB from any claim of infringement in the intellectual rights of Respondent or any third party for any materials appearing in the Proposal.

A.8.4 Irrevocability of the Proposal

The Proposal is irrevocable for ninety (90) calendar days following the Proposal Opening Date and Time identified in this RFO. This period may be extended at the THECB's request with the Respondent's written agreement.

A.8.5 Affirmations and Required Clauses

Pursuant to TGC, Section 2262.003, contractor understand that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, agency or any

successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards.

Pursuant to Texas Government code, Title 10, Subtitle D, Section 2155.004(a), the bidder has not received compensation for participation in the preparation of specifications for this solicitation.

Pursuant to Texas family code, title 5, Subtitle D, Section 231.006(d), regarding child support, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any bidder subject to Section 231.006 must include names and Social security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award.

Bidder agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

Bidder agrees to comply with Texas government Code, Title 10, Subtitle D, Section 2155.4441, relating to use of service contracts for products produced in the State of Texas.

CONFLICTING RFO LANGUAGE

In the event that language contained in a particular Section of the RFO is found to be in conflict with language in another Section, the most stringent requirement(s) shall prevail.



RFO No. 781-0-22600

**ATTACHMENT A
EXECUTION OF PROPOSAL**

Under the Texas Government Code, Title 6, Subtitle B, §669.003 a state agency may not enter into a contract with a Respondent that employs a former executive head of the State Agency unless certain statutory conditions are met. By signing the below acknowledgment, the Respondent certifies that it is in compliance with §669.003. If §669.003 applies, the Respondent shall complete the following information in order for its Proposal to be evaluated:

Name of former Executive: _____

Name of State Agency: _____

Date of separation from State _____

Date of employment with _____

RESPONDENT ACKNOWLEDGMENT

The Respondent does hereby acknowledge that it can meet all requirements as stated and also acknowledges the receipt, review, and acceptance of the Request for Proposals identified in its Proposal. Any exceptions to the statement of work, terms, requirements, and conditions have been explicitly set forth in the Respondents Proposal. Failure to sign and submit this form with its Proposal may disqualify the Proposal.

By signing this Execution of Proposal, respondent certifies that if a Texas address is shown as the address of the respondent, the respondent qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part 1, Chapter 20.

Signature - Authorized Respondent Representative

Printed Name

Date

For Profit Companies and Institutions presenting proposals to this agency **shall provide** the following:

Federal Employer ID#	Texas Tax ID#
<hr/>	
Entity Name:	<hr/>
Street Address:	<hr/>
City/State/Zip:	<hr/>
Telephone Number (area code & number):	<hr/>
FAX Number (area code & number):	<hr/>
E-Mail Address:	<hr/>

Pursuant to TX. Family Code §231.006(c), respondents are required to include names and Social Security Numbers of each person with at least 25% ownership of the business entity submitting the response.

Respondents meeting the ownership criteria **shall provide names only** with their proposal response. Social Security Numbers will be required only from the Respondent selected for the award prior to the award of the resulting contract. Failure to provide the required information **will** result in disqualification of the proposal response and /or contract award.

<hr/>	Name
<hr/>	Name
<hr/>	Name



HUB Subcontracting Plan (HSP)

QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- **If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
 - Section 2 c. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - No
 - Section 4 - Affirmation
 - GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
 - Section 3 - Self Performing Justification
 - Section 4 - Affirmation

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

- - Agency Special Instructions/Additional Requirements - -

*In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: _____ State of Texas VID #: _____
Point of Contact: _____ Phone #: _____
E-mail Address: _____ Fax #: _____
- b. Is your company a State of Texas certified HUB? ☐ - Yes ☐ - No
- c. Requisition #: _____ Bid Open Date: _____
(mm/dd/yyyy)

Enter your company's name here: _____ Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- ☐ - *Yes*, I will be subcontracting portions of the contract. (If *Yes*, complete Item b of this SECTION and continue to Item c of this SECTION.)
- ☐ - *No*, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If *No*, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- *No* (If *No*, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- *No* (If *No*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____

Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____ Requisition #: _____

SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature

Printed Name

Title

Date
(mm/dd/yyyy)

Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

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IMPORTANT: If you responded “Yes” to **SECTION 2, Items c or d** of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method A (Attachment A)” for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-a.pdf>

Item Number: Description:

[illegible]

Page 1 of 1
(Attachment A)

HSP Good Faith Effort - Method B (Attachment B)

Rev. 2/17

Enter your company's name here: _____ Requisition #: _____

IMPORTANT: If you responded “No” to **SECTION 2, Items c and d** of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method B (Attachment B)” for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in **SECTION B-1**, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If Yes, continue to SECTION B-4.)
- No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be “day zero” and does not count as one of the seven (7) working days.

- a.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas’ Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbldsearch/index.jsp>. HUB status code “A” signifies that the company is a Texas certified HUB.
- b.** List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company’s Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID (Do not enter Social Security Numbers.)	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			- Yes - No
			- Yes - No
			- Yes - No

- c.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to **two (2)** or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program’s webpage at <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.
- d.** List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		- Yes - No
		- Yes - No

HSP Good Faith Effort - Method B (Attachment B) Cont.

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Enter your company's name here: _____ Requisition #: _____

SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: _____ Description: _____

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is not a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in Section B has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in Section C, Item 2, reply no later than the date and time identified in Section C, Item 1. Submit your response to the point-of-contact referenced in Section A.

SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name: _____

State of Texas VID #: _____

Point-of-Contact: _____

Phone #: _____

E-mail Address: _____

Fax #: _____

SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____

Point-of-Contact: _____

Phone #: _____

Requisition #: _____

Bid Open Date: _____

(mm/dd/yyyy)

SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,

we must receive your bid response no later than _____ on _____ .
Central Time Date (mm/dd/yyyy)

In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).

(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications:

- Not Applicable

4. Bonding/Insurance Requirements:

- Not Applicable

5. Location to review plans/specifications:

- Not Applicable



RFO No. 781-0-22600

**ATTACHMENT C
RESPONDENT INFORMATION FORM**

Complete and submit this form with the Proposal.

EXECUTIVE REPRESENTATIVE

Name – First	Last		Title
Phone		E-mail	

POINT OF CONTACT FOR PROPOSAL

Name – First	Last		Title
Phone		E-mail	

POINT OF CONTACT FOR RECEIPT OF CONTRACT

Name – First	Last		Title
Phone		E-mail	

Complete this section with Website URL:

--



RFO No. 781-0-22600

**ATTACHMENT D
PREFERENCES**

**See APPENDIX 21 Texas Procurement and Contract Management Guide
Version 1.2**

Identify the preferences for which you qualify:

- ☐ **PREFERENCE FOR PRODUCTS OF PERSONS WITH MENTAL RETARDATION OR PHYSICAL DISABILITIES. TEXAS GOVERNMENT CODE § 2155.441**
- ☐ **PREFERENCE FOR ENERGY EFFICIENT PRODUCTS. TEXAS GOVERNMENT CODE § 2155.442.**
- ☐ **PREFERENCE TO TEXAS AND UNITED STATES PRODUCTS AND TEXAS SERVICES. TEXAS GOVERNMENT CODE § 2155.444.**
- ☐ **PREFERENCE UNDER SERVICE CONTRACTS. TEXAS GOVERNMENT CODE § 2155.4441.**
- ☐ **PREFERENCE FOR RECYCLED, REMANUFACTURED, OR ENVIRONMENTALLY SENSITIVE PRODUCTS. TEXAS GOVERNMENT CODE § 2155.445.**
- ☐ **PURCHASE OF RECYCLED OIL. TEXAS GOVERNMENT CODE § 2155.447.**
- ☐ **PREFERENCE TO PRODUCTS AND SERVICES FROM ECONOMICALLY DEPRESSED OR BLIGHTED AREA. TEXAS GOVERNMENT CODE § 2155.449.**
- ☐ **PREFERENCE FOR PRODUCTS OF FACILITIES ON FORMERLY CONTAMINATED PROPERTY. TEXAS GOVERNMENT CODE § 2155.450.**
- ☐ **VENDORS THAT MEET OR EXCEED AIR QUALITY STANDARDS.**
- ☐ **TEXAS GOVERNMENT CODE § 2155.451.**
- ☐ **PREFERENCE FOR CONTRACTORS PROVIDING FOODS OF HIGHER NUTRITIONAL VALUE. TEXAS GOVERNMENT CODE § 2155.452**

SIGNATURE_____



TEXAS HIGHER EDUCATION COORDINATING BOARD

Purchase Order

TO:

ORDER NO.

DATE:

SHIP TO:

ATTN:

Texas Higher Education Coordinating Board

1200 E. Anderson Lane

Austin, TX 78752

Item No.	Class & Item Description	Quantity	UOM	Unit Price	Extension
0001					
Purchase Order Total					

Agency Contact:

- Phone No:
- Fax No:
- EMAIL: Est. Delivery: days

STATE SALES TAX EXEMPTION CERTIFICATE: The undersigned claims an exemption from taxes under Chapter 20, Title 122A. Revised Civil Statue of Texas, for purchase of tangible personal property described in this numbered order, purchased from contractor and/or shipper listed above, as this property is being secured for the exclusive use of the State of Texas.

THECB reserves the right to extend this Purchase Order for (90) ninety days.

Approved: _____

Authorized Signature

PCC:

Program:

PURCHASE ORDER INCORPORATED TERMS AND CONDITIONS

The Texas Higher Education Coordinating Board ("THECB") and the vendor named on the attached Purchase Order (the "Vendor") (collectively, the "Parties") desire to enter into a contract. The Vendor's bid (the "Vendor's Bid Form") represents the offer, which THECB accepts per its issuance of the attached Purchase Order. The Vendor's Bid and the Purchase Order (along with all the terms and conditions listed herein, which are incorporated into the Purchase Order) comprise the Parties' agreement (the "Contract").

A. **Termination:**

Convenience of the State: THECB, in its sole discretion, has the right to terminate this Contract, in whole or in part, by notifying Contractor in writing of such termination. Notification of the termination shall state the effective date of the termination.

Termination for Cause: THECB may, by written notice to Contractor, immediately terminate this Contract for cause if: (a) THECB is not reasonably satisfied with Contractor's Services; (b) default or abandonment by Contractor occurs; or (c) Contractor fails to comply fully with any term or condition of this Contract, through no material fault of THECB. If THECB deems it appropriate under the circumstances, THECB will provide a three (3) day advance written notice of intent to terminate to Contractor, and THECB will provide Contractor with an opportunity for consultation with THECB prior to termination during that three (3) day period.

If Contractor fails or refuses to perform its obligations under this Contract, THECB may exercise any and all rights as may be available to it by law or in equity. In the event THECB exercises its right to terminate for cause, Contractor is responsible for paying damages to THECB including but not limited to re-procurement costs (if applicable), and any other consequential damages to the State of Texas and THECB resulting from Contractor's non-performance.

Abandonment or Default: If the Contractor Abandons or Defaults on the Contract, THECB reserves the right to terminate the Contract without notice and either re-solicit or re-award the Contract to the next best responsive and responsible respondent. In such event, the Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by THECB based on the seriousness of the default.

Interpretation: THECB may terminate this Contract immediately upon notice to Contractor in the event federal or state law is enacted, amended, or judicially interpreted so as to render continued fulfillment of the Contract, on the part of THECB, wholly unreasonable or impossible. THECB reserves the right, at its sole discretion, to unilaterally amend this Contract throughout the Contract Term to incorporate any modifications necessary for THECB's compliance, as an agency of the state of Texas, with all applicable state and federal laws, rules, regulations, requirements, and guidelines.

Non-Appropriation: This Contract is subject to termination by THECB, either in whole or in part, if state funds become unavailable. The THECB is a state agency whose authority and appropriations are subject to actions of the Texas Legislature and whose availability of funds may be subject to governmental action. If THECB becomes subject to a legislative change, revocation of statutory authority, lack of appropriated funds, or unavailability of funds which would render Contractor's delivery or performance under this Contract impossible or unnecessary, this Contract will be terminated, either in whole or in part. In the event of a termination under this Section, THECB will not be liable to Contractor or any other person or entity for any payments, damages or any other amounts which were otherwise due or which may be caused or associated with such termination and THECB is not required to give prior notice of such termination.

Effect of Termination: Upon any termination, all indemnities, including without limitation those set forth in this Contract, as well as Contract provisions regarding confidentiality, records retention, right to audit, ownership, and dispute resolution, shall survive the termination of this Contract for any reason whatsoever and shall remain in full force and effect. In the event of any termination, Contractor shall, unless otherwise mutually agreed upon in writing, cease all Services immediately upon the effective date of termination, except such Services that THECB deems are necessary to wind-up in a cost-effective manner. For any termination by THECB other than termination for non-appropriation, THECB shall be liable to Contractor for only that portion of the Services authorized by THECB and which have been completed prior to the effective date of termination, provided that THECB shall not be liable for any work performed that is not acceptable to THECB and/or does not meet Contract requirements, plus any necessary work deemed appropriate by THECB to cost-effectively wind-up.

Transfer of Duties: In the event of termination, Contractor will provide reasonable cooperation to transfer its duties under the Contract to another entity without disruption.

- B. **Amendment:** This Contract may be modified only by written amendment executed by the Parties hereto. Fees and expenses included as part of an amendment must be pre-approved by THECB to be eligible for payment and reimbursement.
- C. **Entire Agreement and Order of Precedence:** This Contract consists of the following documents: the final executed Contract (including its Exhibits and any Amendments), THECB's Request for Offers, and the Contractor's response to the Request for Offers.

In the event of conflicts, contradictions, or inconsistencies between or among these documents, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of precedence: 1) the final executed Contract (including its Exhibits and any Amendments); (2) THECB's Request for Offers; and (3) Contractor's response to the Request for Offers

This Contract (including its Exhibits and any Amendments) contains the final, complete and exclusive understanding of the Parties, and supersedes all prior contemporaneous, oral or written understandings, representations, and negotiations between Parties relating to the subject matter of this Contract. The Parties further agree that this Contract may not in any

way be explained or supplemented by a prior or existing course of dealings between the Parties, by usage of trade or custom, or by any prior performance between the Parties pursuant to this Contract or otherwise.

D. Substitutions: Substitutions are not permitted without the written approval of THECB.

E. Indemnification:

Acts or Omissions

CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THECB AND THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, OTHER CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM, ANY ACTS OR OMISSIONS OF THE CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS IF THECB AND/OR THE STATE OF TEXAS AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, OTHER CONTRACTORS, ASSIGNEES, AND DESIGNEES ARE A NAMED DEFENDANT IN ANY LAWSUIT AND THE CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE OF THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THECB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

Infringements

- a) CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, THECB AND THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, OTHER CONTRACTORS, ASSIGNEES, OFFICERS, AND DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND THECB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS IF THECB AND/OR THE STATE OF TEXAS AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, OTHER CONTRACTORS, ASSIGNEES, AND DESIGNEES ARE A NAMED DEFENDANT IN ANY LAWSUIT AND THE CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE OF THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THECB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.
- b) Contractor shall have no liability under this section if the alleged infringement is caused in whole or in significant part by: (i) THECB use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product by THECB without Contractor's approval, (iii) any modifications made to the product by the Contractor pursuant to THECB's specific instructions, (iv) any intellectual property right owned by or licensed to THECB by a person or entity other than the Contractor, or (v) any use of the product or service by THECB that is not

- in substantial conformity with the terms of any applicable license agreement.
- c) If Contractor becomes aware of an actual or potential claim, or THECB provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against THECB, shall), at Contractor's sole option and expense; (i) procure for THECB the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that THECB's use is non-infringing.

Taxes/ Workers' Compensation/Unemployment Insurance – Including Indemnity

- 1) CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCE OF THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THECB AND/OR THE STATE OF TEXAS SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY.

- 2) CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THECB, THE STATE OF TEXAS AND THEIR OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES AND DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE THE ATTORNEY GENERAL OF THE STATE OF TEXAS IF THECB AND/OR THE STATE OF TEXAS AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, OTHER CONTRACTORS, ASSIGNEES, AND DESIGNEES ARE A NAMED DEFENDANT IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE OF THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THECB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- F. Sovereign Immunity:** The Parties stipulate and agree that no provision of, or any part of this Contract between THECB and Contractor, or any subsequent amendment shall be construed: (1) as a waiver of the doctrine of sovereign immunity or immunity from suit as provided for in the Texas Constitution and the Laws of the State of Texas; (2) to extend liability to THECB beyond such liability provided for in the Texas Constitution and the Laws of the State of Texas; or (3) as a waiver of any immunity provided by the 11th Amendment or any other provision of the United States Constitution or any immunity recognized by the Courts and the laws of the State of Texas and the United States. The State of Texas and THECB do not waive sovereign immunity by entering into this Contract and specifically retain such immunity and all defenses available to them under the laws of the State of Texas or the common law.
- G. Assignment, Delegation, or Subcontracting:** Unless as otherwise provided for in this Contract, no contractual rights, interest, or obligation shall be assigned, delegated, or subcontracted by

Contractor without prior written approval of THECB. No assignment, delegation, or subcontract approved by THECB shall relieve Contractor of any obligation or responsibility under this Contract. It is THECB's intent that to the extent subcontracting is approved by THECB, Contractor make a good faith effort to subcontract with Historically Underutilized Business(es) (HUB) as defined in Texas Government Code §2161.001(2) during the performance of this Contract. The goal of the HUB program is to promote full and equal business opportunities for all businesses contracting with the State of Texas.

- H. Right to Audit; Records Retention:** Contractor understands that acceptance of funds under this Contract, or indirectly through a subcontract under this Contract, acts as acceptance of the authority of the State Auditor's office, THECB or any successor agency, as well as any external auditors selected by the State Auditor's office, THECB or, in contracts involving federal funds, any auditors selected by the United States, including, but not limited to the cognizant federal agencies and/or federal Offices of the Inspector General (collectively referred to as "Audit Entities"), to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including promptly providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirements to cooperate is included in any subcontract it awards.

Contractor shall maintain its records and accounts in a manner which shall assure a full accounting for all funds received and expended by Contractor in connection with the Contract Project. These records and accounts (which includes all receipts of expenses incurred by Contractor) shall be retained by Contractor and made available for inspecting, monitoring, programmatic or financial auditing, or evaluation by THECB and by others authorized by law or regulation to do so for a period of not less than five (5) years from the date of completion of the Contract Project or the date of the receipt by THECB of Contractor's final claim for payment or final expenditure report or until a resolution of all billing questions in connection with this Contract, whichever is later. If an audit has been announced, the records shall be retained until such audit has been completed. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the Services provided in this Contract. Contractor and any subcontractors shall provide any Audit Entities with any information such entity deems relevant to any monitoring, investigation, evaluation, or audit.

Contractor's failure to comply with this subsection (Right to Audit; Records Retention) shall constitute a material breach of this Contract and shall authorize THECB and the State of Texas to immediately assess appropriate damages for such failure. THECB reserves the right to require the reimbursement of any over-payments determined as a result of any audit or inspection of records on work performed under this Contract. Contractor shall reimburse THECB for any over-payments within thirty (30) calendar days of receipt of THECB's written notice.

- I. Family Code Applicability:** By signing this Contract, Contractor certifies that under Section 231.006, Family Code, Contractor is not ineligible to receive payment under this Contract and acknowledges that this Contract may be terminated and payment may be withheld or recouped if this certification is inaccurate. If this certification is shown to be false, Contractor is liable to THECB for attorneys' fees, the costs necessary to complete the Contract, including the cost of advertising and awarding a second contract, and any other damages provided by law or Contract.

- J. Dispute Resolution:** The dispute resolution process provided for in Texas Government Code, Chapter 2260 and 19 Texas Administrative Code, Part 1, Chapter 1, Subchapter B shall be used by Contractor to attempt to resolve any claim for breach of this Contract.
- K. Public Disclosure:** Contractor understands and agrees that no public disclosures or news releases pertaining to this Contract, including any results, findings or reports conducted to fulfill requirements of this Contract, shall be made without prior written approval of THECB.
- L. Insurance:** Contractor agrees to maintain at its expense insurance as required for the work being performed under this Contract. Such insurance will protect THECB from all claims for bodily injury, death, or property damage which may arise out of or result from the performance of the Contractor's obligations under the Contract. Contractor represents and warrants that it will, within ten (10) business days of award of contract, provide THECB with current certificates of insurance or other proof acceptable to THECB of the following insurance coverage:

Standard Workers Compensation Insurance in accordance with the following statutory limits covering all personnel who will provide services under this Contract: Employers Liability: Each Accident \$1,000,000, Disease- Each Employee \$1,000,000, Disease-Policy Limit \$1,000,000.

Automobile liability coverage for vehicles driven by Contractor's employees (\$500,000 per occurrence).

Commercial General Liability:

Occurrence based: Bodily Injury and Property Damage, Each occurrence limit: \$1,000,000; Aggregate limit: \$2,000,000; Medical Expense each person: \$5,000; Personal Injury and Advertising Liability: \$1,000,000; Products /Completed Operations Aggregate Limit: \$2,000,000; Damage to Premises Rented to You: \$50,000

Contractor represents and warrants that all of the above coverage is with companies licensed in the state of Texas with at least an "A" rating from A. M. Best Company, and authorized to provide the requisite coverage. Contractor also represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least thirty (30) days prior written notice to THECB. Contractor represents and warrants that it shall maintain the above insurance coverage during the term of this Contract. Contractor is not relieved of any liability or any other obligations assumed under this Contract by reason of its failure to obtain or maintain insurance in the aforementioned amounts, duration, or types.

- M. Confidentiality, Public Information Act, and FERPA:** Notwithstanding any provisions of this Contract to the contrary, Contractor understands that as a Texas state agency, THECB is subject to and will comply with the Texas Public Information Act, Government Code, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. Contractor will cooperate with THECB in the production of documents responsive to any such requests under the Public Information Act at no additional charge to THECB.

THECB will make a determination whether to submit a Public Information Act request to the Attorney General. This Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. Contractor

will notify THECB's contact within 24 hours of receipt of any third party requests for information it receives relating to this Contract. Contractor is required to make any information created or exchanged with the State pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State and shall cooperate with THECB in doing so.

Contractor agrees to maintain the confidentiality of information received from THECB and the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers. Contractor will not disclose any information to which it is privy under this Contract without the prior written consent of THECB. Contractor will indemnify and hold harmless the State of Texas, its officers and employees, and THECB, its officers and employees for any claims for damages that arise from the disclosure by Contractor of information also held by the State of Texas or THECB to which Contractor is privy under this Contract.

Contractor agrees to comply with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g, and the implementing federal regulations, 34 CFR Part 99.

Protection of Confidential Data

Contractor agrees to abide by the limitations on re-disclosure of personally identifiable information from education records set forth in The Family Educational Rights and Privacy Act (34 CFR § 99.33 (a)(2)) and with the terms set forth below. 34 CFR 99.33 (a)(2) states that the officers, employees, and agents of a party that receive education record information from the THECB may use the information, but only for the purposes for which the disclosure was made.

Acknowledgment of Access to CDI

Contractor acknowledges that the Contract allows the Contractor access to CDI.

Prohibition on Unauthorized Use or Disclosure of CDI

Contractor agrees to hold CDI in strict confidence. Contractor shall not use or disclose CDI received from or on behalf of the THECB except as permitted or required by the Contract, as required by law, or as otherwise authorized in writing by The THECB. Contractor agrees not to use CDI for any purpose other than the purpose for which the disclosure was made.

Return or Destruction of CDI

Upon termination, cancellation, expiration or other conclusion of the Contract, Contractor shall return all CDI to the THECB or, if return is not feasible, destroy any and all CDI. If the Contractor destroys the information, the Contractor shall provide the THECB with a certificate confirming the date of destruction of the data.

Breach

Any violation of these FERPA provisions by Contractor shall be deemed a material breach of

the Contract.

Maintenance of the Security of Electronic Information

Contractor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted CDI received from, or on behalf of the THECB. These measures will be extended by contract to all subcontractors used by Contractor.

Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information

Contractor shall, within one hour of discovery, report to the THECB any use or disclosure of CDI not authorized by this Contract or in writing by the THECB. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the CDI used or disclosed, (iii) who made the unauthorized use and who received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as requested by the THECB.

- N. Felony Criminal Convictions:** Contractor represents and warrants that Contractor has not and Contractor's employees who will be involved in the Contract Project have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised THECB as to the facts and circumstances surrounding the conviction(s) and has received THECB's prior written consent to proceed.
- O. Ownership/Work Made for Hire:** All work product generated as a result of this Contract Project, including but not limited to all information, materials, products, research, reports, studies, statistical analyses, work papers, approaches, designs, deliverables, systems, documentation, methodologies, concepts, research materials, data, photos, software, intellectual property or other property produced or generated in connection with this Contract that had not previously been produced or generated by Contractor, either completed or partially completed, shall be the sole property of THECB and all rights, title, and interest in and to the work product shall vest in THECB upon payment for the Services.

All such work product shall be delivered to THECB by Contractor upon completion, termination, or cancellation of this Contract. All property rights, including publication rights, hereunder shall be retained by THECB, and Contractor shall assert no right in law or equity to such work product. THECB shall have the right to obtain and to hold in its own name any and all patents, copyrights, marks, or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof.

Contractor shall ensure that this provision, "Ownership/Work Made for Hire," is contained in any subcontract Contractor is authorized by THECB to award. Contractor may, at its own expense, keep copies of all its materials for its personal files. Contractor shall not use,

willingly allow, or cause to have such work product used for any purpose other than the performance of Contractor's obligations under this Contract without the prior written consent of THECB; provided, however, that Contractor shall be allowed to use non-confidential materials for writing samples in pursuit of work.

- P. Applicable Law and Venue:** This Contract and any incorporated documents shall be governed by and construed in accordance with the laws of the State of Texas. The exclusive venue of any suit brought concerning the Contract and any incorporated documents, including all Exhibits, is fixed in any Court of competent jurisdiction in Travis County, Texas, and all payments under the Contract shall be due and payable in Travis County, Texas.
- Q. Additional Contractor Responsibilities:** Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of this Contract, including applicable workers compensation laws, compensation statutes and regulations, and licensing laws and regulations. When requested to do so by THECB, Contractor shall furnish THECB with satisfactory proof of its compliance. Contractor shall be responsible for damage to THECB's equipment, and/or the workplace and its contents, by its, or its subcontractors' work, negligence in work, personnel, and equipment. Contractor shall be responsible and liable for the safety and health of its employees and contractors while they are performing work for THECB under this Contract. Contractor shall provide all labor and equipment necessary to furnish the goods or perform the Services. All employees of Contractor shall be a minimum of 18 years of age and experienced in the type of work to be performed. Contractor shall permit no visitors or relatives of Contractor's employees and contractors on THECB's property unless they also are bona fide employees or subcontractors of Contractor.
- R. Key Personnel:** Contractor shall assign only qualified personnel to this Contract. Contractor, in its reasonable discretion, reserves the right to substitute appropriate key personnel to accomplish its duties so long as the substituted personnel are equally qualified to accomplish the required Services. Contractor shall provide to THECB prior written notice and obtain written approval from THECB prior to any change in key personnel involved in providing Services under this Contract. Subcontractors providing services under the Contract shall meet the same requirements and level of experience as required of Contractor (see "Assignment, Delegation, or Subcontracting" provision for additional conditions regarding subcontracts). No subcontract under this Contract shall relieve Contractor of responsibility for ensuring the required Services are provided. THECB, in its sole discretion, may require Contractor to remove any employee, contractor, subcontractor, or vendor of the Contractor from providing work or services under the Contract. Contractor shall replace such removed personnel expeditiously so that its services are performed on a timely basis.
- S. Debts and Delinquencies to the State:** The Comptroller of the State of Texas is prohibited from issuing any payment to a person or entity that has been reported as having an indebtedness or delinquency to the State. Contractor agrees that, to the extent Contractor owes any debt or delinquent taxes to the State of Texas, any payments or other amounts Contractor is otherwise owed under this Contract shall be applied toward the debt or delinquent taxes until the debt or delinquent taxes are paid in full. Contractor agrees to comply with all applicable laws regarding satisfaction of debts or delinquencies to the State of Texas.

Contractor may verify its account status by accessing the Comptroller's website at:

<http://ourcpa.cpa.state.tx.us/coa/Index.html>. If the account status message is “on vendor hold,” the Contractor is advised to contact the Comptroller’s Warrant Hold Section in the Division of Revenue Accounting at 1-800-531-5441.

- T. **Conflict of Interest:** Contractor represents and warrants that Contractor, its principals, employees, or subcontractors have no potential conflict of interest in providing Services to THECB under this Contract, and that the provision of Services under this Contract does not create an appearance of impropriety. Failure to disclose a conflict of interest, at any time during the duration of this Contract, shall be cause for termination of this Contract.

- U. **Financial Interests; Gifts:** Contractor represents and warrants that neither Contractor nor any person or entity that will participate financially in this Contract has received compensation from THECB or any agency of the State of Texas for participation in preparation of specifications for this Contract. Contractor represents and warrants that it has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, travel, favor or service to any public servant or employee in connection with this Contract

- V. **Additional Contractor’s Representations:** Contractor hereby covenants, represents and warrants that Contractor (including, for purposes of this section, its employees, consultants, subcontractors, and agents) (1) has the technical expertise and general skills necessary to perform competently and professionally the Services in accordance with this Contract, (2) is not a party to or bound by any agreement, obligation, or understanding which restricts or limits in any way Contractor’s right to enter into this Contract or Contractor’s right or ability to perform Contractor’s obligations under this Contract, (3) shall not use the trade secrets, intellectual property rights, copyrights, or other proprietary rights of any third party in the performance of Contractor’s obligations under this Contract without having first lawfully obtained the right, in writing, to do so, and (4) has the necessary equipment, facilities and workers to perform Contractor’s obligations under this Contract.

- W. **Antitrust:** Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by or affiliated with Contractor, or anyone acting for such firm, corporation, partnership, or institution has violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws.

- X. **Deceptive Trade Practices; Unfair Business Practices:** Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com. Code, Chapter 17, or allegations of any unfair business practice, in any administrative hearing or court suit, and further, that if it has been the subject of either or both such allegations, that Contractor has not been found to be liable for any such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities which have been the subject of allegations of Deceptive Trade Practices Act conduct, violations thereof, or allegations of any unfair business practices, in an administrative hearing or court suit and further, that if such officer(s) has been the subject of either or both such allegations, that such officers have not been found to be liable for any such practices in such proceedings

- Y. **Equal Opportunity:** Contractor represents and warrants that it shall not discriminate against

any person on the basis of race, color, national origin, religion, political belief, sex, age, or disability in the performance of this Contract.

- Z. Independent Contractor:** Contractor shall be an independent contractor in all matters relating to this Contract. Contractor and its employees, agents, and subcontractors shall not be deemed or construed to be the employees or agents of THECB for any purposes whatsoever. Contractor agrees and acknowledges that Contractor, its employees and agents, and Contractor's subcontractors are independent contractors of THECB and/or the State of Texas and are not employees of the THECB or the State of Texas, and Contractor agrees that it shall have complete responsibility in the area of employment law and relations regarding its own employees, contractors, and agents, including but not limited to: wrongful discharge lawsuits, unemployment issues, workers' compensation, employment taxes, any other benefits and reimbursement due to losses in these areas. Consistent therewith, Contractor agrees that it shall make its own arrangements to provide its employees with all necessary employee benefits, including unemployment and workers' compensation benefits, and THECB is, in no way, a party to such arrangements. Regarding its employees, Contractor shall have the sole authority to hire, fire, transfer, train, evaluate, discipline, pay and assign work.

Contractor agrees and acknowledges that Contractor and Contractor's employees or assistants shall not be entitled to any State of Texas benefit on account of the services provided hereunder. If THECB or the State of Texas shall nonetheless become liable for such payments or obligations, Contractor shall promptly pay or reimburse THECB or the State of Texas for such liability or obligation.

- AA. System for Award Management:** The THECB is federally mandated to adhere to the directions provided in the President's Executive Order 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism and any subsequent changes made to it. Contractor certifies that Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent 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.sam.gov>.

- BB. Suspension and Debarment:** Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal, state or local government entity. If Contractor is unable to certify to any of the statements in this certification, it shall provide a written explanation to the THECB for its review prior to execution of this Contract by either Party.

CC. E-Verify: U.S. Department of Homeland Security's E-Verify System

By entering into this Contract, the Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

1. All persons employed to perform duties within Texas, during the term of the Contract;
and

2. All persons (including subcontractors) assigned by the Contractor to perform work pursuant to the Contract, within the United States of America.

The Contractor shall provide, upon request of THECB, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.

If this certification is falsely made, the Contract may be immediately terminated, at the discretion of THECB or the State of Texas and at no fault to THECB or the State, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that THECB or the State of Texas must undertake to replace the terminated Contract.

- DD. Eligibility/Authorization to Work in the United States:** Contractor shall ensure that all personnel provided to perform work under this Contract possess proof of eligibility/authorization to work in the United States in compliance with the Immigration Reform and Control Act of 1986, the Immigration Act of 1990 including any amendments already adopted or as may be adopted hereafter, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 including any amendments already adopted or as may be adopted hereafter. Contractor shall maintain written records on all personnel provided under the Contract and shall provide such records to THECB upon request. Failure to maintain and provide records upon request shall represent a material breach of this Contract and THECB shall have the right to terminate the Contract for cause. Contractor shall ensure this section is included in all subcontracts it is authorized by THECB to enter.
- EE. Buy Texas:** In accordance with Government Code, Section 2155.4441, the State of Texas requires that in the performance of this contract for services, Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside the state. Contractor agrees to act in accordance with Section 2155.4441 during the performance of this Contract.
- FF. Drug Free Work Place:** The Contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the Contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.
- GG. No Commissions:** THECB shall not pay any commissions to Contractor under this Contract.
- HH. Applicable Taxes:** This Contract shall not be construed so as to supersede the laws of the United States or the State of Texas that accord the State of Texas, THECB, and all departments, agencies, and instrumentalities of the State of Texas exemptions from payment(s) of all taxes of whatever kind. More specifically, to the extent permitted by applicable law, THECB shall not directly or indirectly be liable for taxes of any kind. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. To the extent permitted by applicable law,

THECB shall provide all applicable tax exemption certificates upon the Contractor's request.

- II. **Prohibition on Use of Funds for Lobbying:** Contractor represents and warrants that THECB's payments and Contractor's receipt of appropriated or other funds under this Contract are not prohibited by Texas Government Code, Sections 556.005 or 556.008.

- JJ. **Eligibility:** Under Section 2155.004, Texas Government Code, Contractor certifies that it is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

- KK. **Provision of Services:** Upon any request by THECB for the remittance of any Services for which THECB has made payment, Contractor shall immediately remit such Services to THECB. Any failure to remit such Services immediately shall be considered a material breach of this Contract.

- LL. **Force Majeure:** THECB may grant relief from performance of this Contract if Contractor is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the Contractor. The burden of proof for the need of such relief shall rest upon the Contractor. Contractor shall notify THECB in writing if it believes that a force majeure may have occurred and THECB shall, in its sole discretion, determine if Force Majeure has occurred.

- MM. **Electronic and Information Resources Accessibility Standards, As Applicable per 1 TAC Chapter 213:**
 - a. State of Texas agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
 - b. Contractor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for DIR review of compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov/>). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.
 - c. Contractor shall implement these requirements as exhibited in Exhibit A(1).

- NN. Smoking Policy:** THECB has a policy of being a smoke-free agency. The policy reflects THECB's commitment to providing a healthy environment for all THECB employees and visitors. This policy prohibits smoking within any state building or on the grounds. The Contractor, by acceptance of this Contract, agrees to abide by this policy when on the property of THECB.
- OO. False Statements; Breach of Representations:** By signature to this Contract, Contractor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Contractor signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Contractor shall be in default under this Contract and THECB may terminate or void this Contract for cause and pursue other remedies available to THECB under this Contract and applicable law.
- PP. Severability and Waiver:** The invalidity, illegality, or unenforceability of any provision of this Contract shall in no way affect the validity, legality, or enforceability of any other provisions.

Each and every right granted to the Parties hereunder or under any other document delivered hereunder or in connection herewith, or allowed them by law or equity, shall be cumulative and may be exercised from time to time. Failure by THECB or Contractor at any time to require strict performance of any contractual provision or obligation contained herein shall not constitute a waiver or diminish the rights of either party thereafter to demand strict compliance. Neither THECB's review, approval, acceptance of, nor payment for any of the Services provided in this Contract shall be construed to operate as a waiver of any rights under the Contract, or of any cause of action arising out of the performance of the Services required by the Contract.

- QQ. Prohibited Bids and Contracts:** Per Tex. Gov. Code 2155.004, Vendor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- RR. Child Support Certification:** The Vendor certifies is compliant with Family Code 231.006 and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
- SS. Withholding of Payment:** Vendor agrees that if Vendor owes any debt or delinquent taxes to the State of Texas, any payment due under the Contract will be applied towards that debt or delinquent taxes until the debt or delinquent taxes are paid in full.
- TT. Certifications:**
Former THECB Employees/Retirees: Per Tex. Gov. Code 2252.901, Vendor certifies that it is not a former employee of THECB or that Vendor has not been an employee of THECB for 12 months prior to the beginning date of this Contract. Per Tex. Gov. Code 572.054(b), a former employee/retiree shall not perform services on a particular matter that the former employee/retiree participated on (either through personal involvement or because the

matter was within the employee's official responsibility) while employed at THECB. A violation of Tex. Gov. Code 572.054(b) is considered a criminal offense. Vendor must make full disclosure to THECB prior to entering into this Contract if it is a former employee/retiree of the THECB or if it currently employs or subcontracts with a former employee/retiree of the THECB. Vendor must make full disclosure of its intent to employ or subcontract with an individual who is a former employee/retiree of THECB. A former employee/retiree selected by the Vendor for employment or subcontracting shall not perform services on a project or fill a position that the former employee/retiree worked on while employed at THECB.

Hurricane Disaster Certification: Per Tex. Gov. Code 2155.006(b), Vendor certifies that it has not been, during the 5-year period preceding the date of this Contract: (1) convicted of violating a federal law in connection with a federal contract for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Utilities Code 39.459, Hurricane Katrina, or any other disaster occurring after Sept. 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a federal contract for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section Utilities Code 39.459, Hurricane Katrina, or any other disaster occurring after Sept. 24, 2005 and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

- UU. Technology Access:** Vendor expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Vendor represents and warrants to THECB that any technology provided to THECB for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of (1) providing equivalent access for effective use by both visual and non-visual means; (2) presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this paragraph, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Federal Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.
- VV. Material Safety Data Sheets:** Vendor must provide, at no cost, at least one copy of any applicable Manufacturer's Material Safety Data Sheet(s) (MSDS) with each shipment during the term of the Contract. If OSHA or Federal or State law provide for additional requirements, those requirements are in addition to the MSDS requirement.
- WW. OSHA:** All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.
- XX. Severability:** If any court of competent jurisdiction finds any provision of the Contract or these Terms and Conditions unenforceable or beyond the contractual authority of either Party, the unenforceable provision shall be stricken, and the remainder of the Contract between the Parties shall remain in effect.
- YY. Authority to Act:** The signatories to the Vendor's Bid Form and this Purchase Order

represent and warrant that they are duly authorized representatives of the Parties and are authorized to bind the Parties to this Contract.

INVOICING INSTRUCTIONS

THE INVOICE SHOULD INCLUDE BUT IS NOT LIMITED TO INCLUDING:

1. Invoice must be e-mailed to accountspayable@theeb.state.tx.us or mailed to Business Services Accounts Payable, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, TX 78711;
2. Vendor's name, mailing and e-mail address (if applicable) must be in the same order as stated on the Purchase Order;
3. The name and telephone number of a person designated by the vendor to answer questions regarding the invoice;
4. THECB's name and delivery address;
5. THECB's Purchase Order number;
6. The contract number or other reference number, if applicable;
7. A valid Texas Identification Number (TIN) issued by the Comptroller of Public Accounts
8. A description of each item for the goods or services listed on the purchase order in sufficient detail to identify the order that relates to the invoice. Item numbers must be shown to correspond with the item numbers of the Purchase Order;
9. Quantity delivered, unit and total price of each item must be shown and all prices extended on the invoice. All extensions on the invoice must be totaled and grand total shown;
10. Discounts, if applicable must be stated, extended and deducted to arrive at a net total for the invoice;
11. Shipment date of merchandise must be shown on invoice;
12. Date of purchase order must be shown on invoice;
13. Other relevant information supporting and explaining the payment requested or identifying a successor organization to an original vendor, if necessary.

PAYMENT – Vendor shall submit an itemized invoice according to the above invoicing instructions. THECB will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods or services and an uncontested invoice, in accordance with Texas Government Code, Chapter 2251 Payment for Goods and Services.