

# Texas Higher Education Coordinating Board

## REQUEST FOR PROPOSAL

### Financial Advisory Services for Student Loan Program



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

**RFP No. 781-0-22925**

Proposal Due Date EXTENDED:  
April 30, 2020

Time (Central Time):  
**3:00 p.m. CT**

# 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 RFP.
ESBD	The Electronic State Business Daily, which is available online at <a href="http://www.txsmartbuy.com/sp">http://www.txsmartbuy.com/sp</a> .
Gov't Code	The Texas Government Code.
HUB	Historically Underutilized Business (HUB)
Party / Parties	Either the THECB and Respondent separately or collectively
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: <a href="http://www.statutes.legis.state.tx.us/docs/GV/htm/GV.552.htm">http://www.statutes.legis.state.tx.us/docs/GV/htm/GV.552.htm</a>
FERPA	The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education
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.
RFP	Request for Proposals, which is the type of solicitation embodied in this document. The RFP 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.
THECB/Agency	The Texas Higher Education Coordinating Board, the state agency issuing this solicitation.

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## **A.2 DESCRIPTION AND OVERVIEW**

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### **A.2.1 Description of Services**

The Texas Higher Education Coordinating Board (THECB) is seeking Request for proposals from qualified respondents to establish a contract for Financial Advisory Services, in accordance with the requirements contained in this Request for Proposals (RFP). The Financial Advisory Services provide support for the student loan and related bond program.

### **A.2.2 Eligibility Information**

Proposers **must** have a minimum of five years' experience providing services similar to those described in the Statement of Work (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. Proposers who do not meet this requirement are not eligible for award.

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

### **A.2.3 Term of Contract**

The contract term shall be for the period beginning September 1, 2020 and extending through August 31, 2022. The contract term may not be extended except by amendment signed by the parties. The term of the Contract may not exceed two (2) years.

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**

Bonds are issued to fund the THECB's Hinson Hazelwood student loan program. The program provides low interest loans to eligible students seeking an undergraduate education and/or graduate or professional education through public and independent institutions of higher education in Texas.

At seven separate elections held between 1965 and 2011, the citizens of the State of Texas voted to approve seven separate amendments to the Article III of the State Constitution (i.e. Sections 50b, 50b- 1, 50b-2, 50b-3, 50b-4, 50b-5, 50b-6, 50b-7), which collectively authorized the Texas Higher Education Coordinating Board (Board) to issue up to \$1,860,000,000 in aggregate principal general obligation bonds of the State to be used to make loans to students attending higher education institutions within the State of Texas. The board currently has a total of \$1,020,215,000 in aggregate principal of "State of Texas College Student Loan Bonds" outstanding.

Bonds issued by the THECB are private activity bonds. It is anticipated that any such bonds will be tax-exempt, but subject to the Alternative Minimum Tax (AMT). The decision to use a negotiated or competitive sale will be determined by the Board based on prevailing market

conditions.

The student loan program's enabling act, Chapter 52, Texas Education Code, as amended provides for the administration of the loan programs of the Texas Higher Education Coordinating Board.

### **A.2.5 Statement of Work**

The financial advisor shall be responsible for all duties and services necessary to facilitate the issuance of bonds and other debt obligations by the Board. The financial advisor shall be responsible for all required calculations including a calculation of arbitrage yield, arbitrage liability and yield restriction liability requirements not less than annually for each issue of outstanding obligations to be listed on Attachment F – Mandatory Price Sheet. Bonds issued subsequent to this RFP may require computations and related services during the term of any contract issued. Such duties and services shall include, but are not limited to:

- (1) Devising and recommending a plan of financing for all bonds or other debt instruments to be issued by the Board, with terms and conditions that will result in the most advantageous terms for the Board.
- (2) Assisting Board staff in determining the timing and the sizing of each bond issue.
- (3) Assisting Board staff with the evaluation of proposals for underwriting services.
- (4) Assisting bond counsel in the preparation of bond offering documents including resolutions, preliminary official statements, final official statements, and other bond- related documents.
- (5) Preparing financial information for rating agencies and assisting with presentations to such agencies.
- (6) Provide cash flow modeling for the Hinson Hazelwood related portion of the student loan program portfolio. Reflecting cash flow both annually and program lifecycle cash flow outcomes.
- (7) Providing advice in regard to the need for credit enhancement and liquidity facilities, and assisting in the negotiations with providers of such services.
- (8) Assisting the Board in presentations to credit enhancers, or prospective bond purchasers.
- (9) Monitoring and assisting in the negotiation of all fees and expenses incurred in connection with the issuance of the bonds, including those proposed by the Board's underwriters.
- (10) Reviewing all documents that are customary and necessary in order to structure and issue bonds, and attending all document meetings and/or conference calls.
- (11) Assisting in closing details and post-closing duties, including the development of closing memorandum and preparation of the Bond Review Board final report with final costs of issuance.

- (12) Assisting in making presentations, required submissions, and obtaining approval of the Bond Review Board, the Legislative Budget Board, and any other State entity with supervisory powers over the issuance of bonds by the Board.
- (13) Attending meetings of the Board, Bond Review Board, legislative committees, or other meetings to the extent required and/or requested.
- (14) Providing advice on continuing disclosure requirements in relation to the bonds. Reviewing continuing disclosure annual reports required by Rule 15c2-12 of the Securities and Exchange Commission (SEC).
- (15) Advising staff of new developments in the municipal bond industry.
- (16) Monitoring and advising Board staff on refunding opportunities, cash redemptions, debt defeasance, and other financial products that would help lower the Board's cost of borrowing money.
- (17) Providing financial advisory support for all other matters necessary or incidental to the issuance of the bonds or administering the Board's loan programs.
- (18) Providing information on questions and issues posed by Board and Board staff on an ongoing basis.
- (19) Create and maintain records necessary to determine rebate arbitrage and yield restriction liabilities, if any, on outstanding debt obligations of the THECB.
- (20) Review reports of investment and expenditure of bond proceeds, within the meaning of Section 148, as necessary to ensure compliance with Section 148.
- (21) Assist the THECB in preparing any schedules, reports, or records necessary to perform or support a calculation of arbitrage and yield restriction liabilities.
- (22) Provide the THECB a report of the calculations (including supporting documentation) of arbitrage and yield restriction liabilities within 60 days after the end of each State's fiscal year. (The State's Fiscal year-end is August 31)
- (23) Prepare transmittals and forms necessary to report and pay arbitrage liability on time.
- (24) Assist the THECB by providing information and guidance to the THECB as may be necessary from time to time to improve record-keeping and monitoring required for compliance with Section 148.
- (25) Provide advice and recommendation as the THECB may request concerning unique or extraordinary compliance issues that may arise from time to time.
- (26) Review opportunities and recommend options to minimize existing liabilities or increase retainable earnings.
- (27) Assist the THECB in the event of an audit, examination, or inquiry made by the Internal Revenue Service, or any other federal or state government or regulatory bodies regarding the calculation of the rebate amount.

## **A.2.6 Deliverables**

See SOW

## **A.2.7 Contractor Responsibilities**

The THECB shall look solely to the Contractor(s) for compliance with all the requirements of this RFP 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 RFP elsewhere and charge any increased costs for the services, including the cost of re-soliciting, to the Contractor.

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## **A.3 FINANCIAL MATTERS**

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### **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.

**THECB will not apply for credit nor will THECB prepay.** THECB shall pay, subject to the terms of the Texas Prompt Payment Act (Texas Government Code 2251) upon the receipt of a properly submitted invoice after all goods and services have been received.

### **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 RFP for the services after rejecting some or all 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.

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## **A.4 ANTICIPATED SCHEDULE OF ACTIVITIES**

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### **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 RFP will proceed according to the schedule below. The THECB reserves the right to revise this schedule or any portion of this RFP by published Addendum on ESBD and the THECB's website.

<b>Event</b>	<b>Date</b>
Publication of RFP on the ESBD	February 28, 2020
Notice of RFP published in Texas Register	February 28, 2020
Last day to submit written questions regarding the RFP	March 23, 2020
Proposal Due Date EXTENDED and Time	April 30, 2020 @ 3:00pm CT
Post-proposal interviews or presentations, if required	TBD
Expected Award of Contract	Upon Execution

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 RFP No 781-0-22925

Direct written questions to:  
Theresa Lopez, CTPM, CTCM  
Director of Procurement and HUB Coordinator  
Texas Higher Education Coordinating Board  
Office of General Counsel  
Theresa.lopez@thech.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, RFP 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 RFP.

### **A.4.3 Point of Contact Prior to Award**

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

Theresa Lopez, CTPM, CTCM



Director of Procurement and HUB  
Coordinator Texas Higher Education  
Coordinating Board  
Office of General Counsel  
Theresa.lopez@theccb.state.tx.us

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

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### **A.5 PROPOSAL CONTENTS (REQUIRED)**

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#### **A.5.1 Attachments Included with this RFP**

This RFP 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 Standard Service Contract (For Reference Only)
- F Mandatory Price Sheet (Required)

#### **A.5.2 Organization of the Proposal for Submission**

**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.**

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 RFP response on a compact disk or memory stick (flash drive) in Microsoft Word.

5. Proposals shall be written only on 8 ½" 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.

Responses should include the following:

1. Description of Service Requirements Under A.2.4
2. Statement of Work A.2.5
3. Transmittal Letter

The Transmittal Letter must be signed by a person legally authorized to bind the Respondent. The letter must specifically identify that the Proposal is in reference to **THECB's RFP for Financial Advisory Services for Student Loan Program**. The letter must state, "The Proposal enclosed is binding and valid at the discretion of THECB."

Additionally, the Transmittal Letter shall indicate that the Proposal is good for 90 days. The letter must also include "full acceptance of the terms and conditions described in this Request for Proposal, including as detailed in the Anticipate Contract."

Any exceptions to this RFP and the THECB Vendor's Addendum, or any of the items listed under A.3.2. Contracting process 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 RFP or the THECB Vendor's Addendum, 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 RFP or the Anticipated Contract. If any Respondent takes a "blanket exception" to this entire RFP 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 RFP and Respondent's attachment of such terms and conditions to a Proposal may disqualify the Proposal.

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 RFP and the Anticipated Contract.

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

4. Attachment A - Execution of Proposal

All information on Attachment A is **required** to be completed

5. 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:

[https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=34&pt=1&ch=20&sch=D](https://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/tpasscdblsearch/tpasscdblsearch.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 Subcontracting 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.

6. Attachment C - Respondent Information Form

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

7. Attachment D - Preferences

All information on Attachment D is **required** to be completed.

8. Attachment E - Anticipated Standard Service Contract:

For reference only.

9. Attachment F: Mandatory Price Sheet:

Attachment F is **required** to be completed

The Respondent shall create a Pricing Sheet and return with response in the format requested.

10. 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.

Respondents shall be neutral and impartial, shall not advocate specific positions to the THECB. Respondents

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.

**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.

The Proposal shall include all information required in this RFP. The Respondent is solely responsible for thoroughly understanding the RFP 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.

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## **A.6 EVALUATION OF THE PROPOSAL**

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### **A.6.1 Evaluation and Award of Contract**

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

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 RFP does not guarantee that a Contract will ever be awarded. THECB reserves the right to withdraw the RFP entirely for any reason solely at THECB's discretion. An individual Proposal may be rejected if it fails to meet any requirements of this RFP. 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 RFP, 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. Part B of this RFP 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 RFP. 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 of Firm and Individuals Assigned to THECB	50%
2	Fees and Costs	40%
3	Other Relevant Factors	10%
	Total	100

In determining the best value, the THECB shall consider the following, as well as, other best value factors:

1. Qualifications and experience of firm and staff assigned to THECB. Criteria will be as follows:
  - a. Number of years supporting public financing
  - b. Municipal finance expertise
  - c. Clients served and par amount of deals completed
  - d. Student lending support experience
  - e. Regulatory compliance history
  - f. Past experience in providing similar services
2. Fees and Costs criteria:
  - a. Clear identification of all proposed fees and costs
  - b. Competitiveness of all such fees and costs
3. Other relevant factors criteria may include, but not limited to:
  - a. The vendor's anticipated economic impact to the state or a subdivision of the state, including potential tax revenue and employment
  - b. Financial stability
  - c. Indicators of probable vendor performance under the contract such as past vendor performance

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.

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## **A.7 SUBMITTING THE PROPOSAL TO THE THECB**

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**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 RFP 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 "RFP No. 781-0-22925 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  
1200 East Anderson Lane  
Austin, TX 78752

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## **A.8 ADDITIONAL INSTRUCTIONS**

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### **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 RFP. 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 RFP LANGUAGE**

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