

# Texas Higher Education Coordinating Board

## REQUEST FOR QUALIFICATIONS

### Bond and Student Loan Program Counsel



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

**RFQ No. 781-0-22923**

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 RFQ.
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>
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.
RFQ	Request for Qualifications, which is the type of solicitation embodied in this document. The RFQ 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 requests for qualifications from qualified respondents to enter into a Contract for a Bond and Student Loan Program Counsel, in accordance with the requirements contained in this Request for Qualification (RFQ). THECB reserves the right to award more than one Contract under the terms of this RFQ.

THECB is issuing a Request for Qualifications (RFQ) to employ Bond and Program Counsel to assist the Board in the issuance of bonds and to provide general program assistance when needed. In accordance with guidance promulgated by the Attorney General of the State of Texas pursuant to Sections 402.0212 and 2254.154 of the Texas Government Code, and 1 TAC Chapter 57.

### **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 and approved by the Office of the Attorney General. 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**

#### **BACKGROUND:**

The THECB is a state agency with Board members appointed by the Governor. Bonds are issued to fund the THECB's Hinson Hazelwood student loan program. The enabling acts, Chapter 52 and Chapter 56, Texas Education Code, as amended, provide for the administration of the programs by the THECB. Historically, the student loan program has provided funding through the repayment of student loans and earnings in amounts sufficient to meet debt service and reserve requirements and to pay administrative costs of the student loan program without drawing on the State's General Revenue Fund. The THECB uses bond proceeds to fund the 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.

## **A.2.5 Additional Requirements**

The respondent shall:

- (1) Attend regular board meetings of the Agency and other meetings on general matters relating to the operations of the student loan program and consult with staff and outside consultants regarding all bond finance-related matters, to the extent requested.
- (2) Meet with and review reports prepared by the Agency's Financial Advisors and other employees and consultants, to the extent requested.
- (3) Advise the Agency and staff on the legal and tax related requirements and responsibilities regarding the administration of the student loan program, the issuance and management of debt Securities and arbitrage compliance.
- (4) Review related proposals for proposed financings, consult with underwriters and their counsel and other parties regarding those proposals, participate in the selection process for underwriters, trustees and other finance related professionals, to the extent requested.
- (5) Review legal issues relating to the structure of the Securities; issue, tax exemption, prepare and review the documents necessary or appropriate to the authorization, issuance and delivery of the Securities including, but not limited to, the Bond Resolution, Applications to Bond Review Board, Paying Agent/Registrar Agreement, Escrow Agreement, if applicable, Pricing Certificate and various closing and other certificates; and participate in the preparation and coordination of financing schedules for various, bond issues to avoid conflicts. Outside Counsel will also coordinate the authorization and execution of such documents.
- (6) Assist the Agency in seeking from other governmental authorities such approvals, permissions and exemptions as Outside Counsel determines are necessary or appropriate in connection with the authorization, issuance and delivery of the Securities.
- (7) Subject to the completion of proceedings to Outside Counsel's satisfaction, render Outside Counsel's legal opinion to the Agency (the "Approving Opinion") regarding the validity and binding effect of the Securities, the source of payment and security for the Securities, and, if the Securities are issued on such basis, the excludability of interest on the Securities from gross income for federal income tax purposes.
- (8) Assist the Agency in presenting information to bond rating organizations and providers of credit enhancement relating to legal issues affecting the issuance of Securities, to the extent required or requested, and review and negotiate on behalf of the Agency the terms of any credit enhancement agreements with respect to the Securities.
- (9) Attend informational meetings with prospective purchasers of Securities and meetings with bond rating agencies, to the extent required or requested.
- (10) Submit the transcript of legal proceedings pertaining to the authorization and issuance

of the Securities to the Attorney General of Texas for approval.

- (11) Supervise the execution, printing, Attorney General's approval, and Comptroller of Public Accounts' registration of the Securities, and delivery thereof to the purchaser.
- (12) Render an opinion to the Agency and to the purchasers of the Securities to the effect that the information in the disclosure document relating to the Securities, the Bond Resolution under which the Securities are issued, the security for the Securities, tax matters, investments and the Approving Opinion is a fair and accurate summary of the information purported to be shown or are correct as to matters of law, as applicable.
- (13) Advise the Agency and staff regarding the requirements of finance-related documents.
- (14) Prepare all forms that need to be filed with the IRS relating to any securities issued or to be issued by the Agency.

### **A.2.6 Deliverables**

See REQUIREMENTS

### **A.2.7 Contractor Responsibilities**

The THECB shall look solely to the Contractor(s) for compliance with all the requirements of this RFQ 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 RFQ 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 RFQ 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 RFQ will proceed according to the schedule below. The THECB reserves the right to revise this schedule or any portion of this RFQ by published Addendum on ESBD and the THECB's website.

<b>Event</b>	<b>Date</b>
Publication of RFQ on the ESBD	February 28, 2020
Notice of RFQ published in Texas Register	February 28, 2020
Last day to submit written questions regarding the RFQ	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 RFQ No 781-0-22923

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

Questions submitted to the THECB will be answered within two business days after receipt

The THECB will post additional information, responses to written questions, RFQ 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 RFQ.

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

Respondents shall direct all inquiries and communications concerning this RFQ 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@theceb.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 RFQ**

This RFQ 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 OAG Outside Counsel Contract (For Reference Only)

## 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 RFQ 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. Additional Requirements 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 RFQ for Bond and Student Loan Program Counsel**. 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 RFQ 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 RFQ 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 RFQ or the Anticipated Contract. If any Respondent takes a "blanket exception" to this entire RFQ 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 RFQ 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 RFQ and the Anticipated Contract.

Respondents are strongly encouraged to submit written questions during the inquiry period regarding any terms and conditions of this RFQ 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 - Outside Counsel Contract (OAG) "Anticipated Contract"

In accordance with guidance promulgated by the Office of Attorney General (OAG) of the State of Texas pursuant to Sections 402.0212 and 2254.154 of the Texas Government Code, and 1 TAC Chapter 57.

9. Attachment F - 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 RFQ. The Respondent is solely responsible for thoroughly understanding the RFQ 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 RFQ.

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 RFQ does not guarantee that a Contract will ever be awarded. THECB reserves the right to withdraw the RFQ entirely for any reason solely at THECB's discretion. An individual Proposal may be rejected if it fails to meet any requirements of this RFQ. 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 RFQ, 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 RFQ 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 RFQ. 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 and Experience	65%
2	Fees and Costs	35%
	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.

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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 RFQ 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 "RFQ No. 781-0-22923 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 RFQ. 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 RFQ LANGUAGE**

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



**RFQ No. 781-0-22923**

**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# \_\_\_\_\_

Entity Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone Number (area code & number): \_\_\_\_\_

FAX Number (area code & number): \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

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.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
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 <b>do not</b> have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	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 <b>do not</b> have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	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)
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**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.



# HSP Good Faith Effort - Method B (Attachment B)

Rev. 2/17

Enter your company's name here: _____	Requisition #: _____
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**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/tpasscmbsearch/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 <small>(Do not enter Social Security Numbers.)</small>	Date Notice Sent <small>(mm/dd/yyyy)</small>	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 <small>(mm/dd/yyyy)</small>	Was the Notice Accepted?
		- Yes    - No
		- Yes    - No

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

Rev. 2/17

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





**RFQ No. 781-0-22923**

**ATTACHMENT C  
RESPONDENT INFORMATION FORM**

Complete and submit this form with the Proposal.

**EXECUTIVE REPRESENTATIVE**

<b>Name – First</b>	<b>Last</b>	<b>Title</b>
<b>Phone</b>	<b>E-mail</b>	

**POINT OF CONTACT FOR PROPOSAL**

<b>Name – First</b>	<b>Last</b>	<b>Title</b>
<b>Phone</b>	<b>E-mail</b>	

**POINT OF CONTACT FOR RECEIPT OF CONTRACT**

<b>Name – First</b>	<b>Last</b>	<b>Title</b>
<b>Phone</b>	<b>E-mail</b>	

**Complete this section with Website URL:**

--



**RFP No. 781-0-22923**

**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** \_\_\_\_\_

**OUTSIDE COUNSEL CONTRACT**  
**OCC No.**

**STATE OF TEXAS**           §  
  §

This contract is made and entered into by and between the [\_\_\_\_\_], hereinafter referred to as the “Agency,” and [\_\_\_\_\_], hereinafter referred to as “Outside Counsel.”

**RECITALS**

**WHEREAS**, the Agency requires the assistance of outside legal counsel in carrying out its responsibilities; and

**WHEREAS**, Counsel desires to act as outside legal counsel to the Agency, subject to the authority of the Attorney General of Texas. Tex. Gov’t Code, Section 402.0212.

**NOW, THEREFORE**, in consideration of the mutual covenants and terms and conditions herein contained, and of the execution hereof, the parties agree and bind themselves to the obligations and performance of the tasks as follows:

**SECTION 1. PURPOSE**

The Attorney General hereby approves Outside Counsel as legal counsel to Agency during the term of this Agreement and for the purposes expressed in this Agreement and in Addendum A, attached hereto and incorporated herein by reference for all purposes. The purpose of this Agreement is for the Agency to obtain Outside Counsel to advise and assist the Agency in the course and scope of the Agency’s performance of duties, or provision of services, as described in Addendum A. Nothing in this Agreement is intended to prevent the Agency and the Outside Counsel from amending this Agreement in the future to expand the scope of the Agreement.

**SECTION 2. CONTRACT PERIOD**

**2.1 Term.** This Agreement shall commence on [\_\_\_\_\_] and shall terminate on [\_\_\_\_\_] , unless terminated earlier pursuant to Section 6 of this Agreement.

**2.2 Extensions.** The Agency shall have the right to extend the term of this Agreement for an additional 12 month period beginning [\_\_\_\_\_] under the same terms and conditions set forth herein. There is only one 12 month period extension authorized. The Agency shall provide Outside Counsel and the Attorney General written notice of its intention to extend the term of the Agreement in writing at least thirty (30) days prior to the Agreement termination date. The initial term plus the optional extended term shall constitute the "Agreement Period."

### **SECTION 3. OBLIGATIONS OF OUTSIDE COUNSEL**

**3.1 Duties.** It is expressly understood that services provided to the Agency will be subject to the authority of the Attorney General, should the Attorney General, in his sole discretion, deem it necessary, expedient, or in the best interest of the State of Texas to assert such authority. Outside Counsel will advise and assist the Agency on legal issues as requested by the Agency. “Advise and assist” may include advice and assistance with respect to litigation, unless otherwise provided in Addendum A. It is understood that no litigation will be initiated by Outside Counsel without the prior approval of the Attorney General.

**Appeals.** Irrespective of any authorization to engage in litigation in this Agreement, in a subsequent amendment, or in a writing outside of this Agreement, Outside Counsel is not authorized to proceed on any appeal, in any capacity, whether interlocutory or otherwise, whether as appellant, appellee, respondent, applicant, or otherwise, without first obtaining the written permission of the Chief of the Solicitor General Section of the Office of the Attorney General.

**3.2 Staff.** The attorneys expected to perform substantial services for the Agency and the method and amount or rate of their compensation are specified in Addendum B, attached to and made a part hereof. If additional staff of Outside Counsel is to perform compensable services pursuant to this Agreement, the hourly rate(s), if applicable, for each assigned additional staff will be as shown in Addendum B. Outside Counsel agrees to comply with section 8.2 of this Agreement if Outside Counsel determines it is reasonable and necessary to subcontract for the services of local or other counsel to assist in the legal representation contemplated by this Agreement. If Outside Counsel subcontracts for legal services, then Outside Counsel will provide written notice of the name, address, hourly rate (if applicable) and reason for the subcontract to the Agency and Attorney General within ten (10) calendar days of entering into the subcontract.

**3.3 Reports.** The Outside Counsel acknowledges that documents generated in the course of representation of a governmental body may be subject to the Texas Public Information Act. The Outside Counsel will exercise professional judgment and care not to generate documents which are subject to public information requests that are intended to be confidential or confidential attorney-client communications. This is particularly important in the presentation of invoices where incidental notation may tend to reveal litigation strategies or confidential information. This subsection shall not be interpreted to limit Outside Counsel’s duty to provide full disclosure to the Agency and the Attorney General as necessary in Outside Counsel’s judgment to represent the Agency with due professional care or required by applicable law or disciplinary rules.

### **SECTION 4. SCHEDULE FOR PERFORMANCE OF SERVICES BY OUTSIDE COUNSEL**

**4.1 Schedule.** The parties agree to develop a schedule for the performances to be delivered by Outside Counsel when assignments are made.

### **SECTION 5. COMPENSATION**

**5.1 Maximum Liability.** The total liability for legal services and expenses under this Agreement shall not exceed [\_\_\_\_\_] for the duration of this Agreement. Any increase to this fee cap during the term of this Agreement and any subsequent renewals thereof must be in writing and approved by the Attorney General. The parties acknowledge and agree that nothing in this Agreement will be interpreted to create an obligation or liability in excess of the funds currently appropriated to the Agency during this biennium. Outside Counsel is not required to perform services that cannot be compensated due to the limitations of this section. Nothing herein shall prevent the parties from amending the total amount of this Agreement in accordance with Section 8.16 herein.

**5.2 Payments to Outside Counsel.** The Outside Counsel agrees to abide by the following payment structure and schedule:

**5.2.1 Compensation for Time.** Subject to the cap in paragraph 5.1, in consideration of full and satisfactory performance of the services hereunder, the Agency shall pay Outside Counsel for each hour of work performed pursuant to this Agreement according to the fee schedule attached hereto as Addendum B and incorporated herein by reference.

Compensation for time will be paid only for time actually spent working on Agency legal matters. Under no circumstances will Outside Counsel be compensated for off-duty hours while traveling.

**5.2.2 Reimbursement of Expenses.** Subject to the cap in paragraph 5.1, the Agency will reimburse Outside Counsel for reasonable actual expenses incurred in the performance of the services herein. The Agency will reimburse the Outside Counsel for travel expenses related to the services to be delivered under this Agreement, including reasonable mileage at the rate of \$0.445 per mile and a per diem at the rate of [\_\_\_\_\_] (**Not to exceed \$100**) for each attorney for each day requiring overnight travel. Outside Counsel must provide copies of original receipts as evidence of actual expenditures, if requested. Airfare will be reimbursed at the lesser amount of the actual expense or the regular published rates for coach fares for commercial airlines. Unless otherwise agreed upon by the parties in writing in advance, in-state lodging or overnight accommodations will be reimbursed at the lesser amount of the actual expense or \$200 per night. Unless otherwise agreed upon by the parties and approved by the Attorney General in writing in advance, out-of-state lodging or overnight accommodations will be reimbursed at the lesser amount of the actual expense or \$250 per night. All other expenses will be invoiced at actual cost. No mark-up will be allowed on reimbursable contracts, expenses or subcontract expenses.

**5.3 Invoice for Payment.** Unless otherwise specified in Addendum A, all statements for legal services and expenses incurred shall be submitted to the Agency on a monthly basis, and, within two weeks of receipt by the Agency, the Agency shall submit the statement to the Attorney General, for approval prior to payment. On submission of the statements, Outside Counsel is certifying to the following: that invoices accurately describe the services performed, that the legal services have been performed in compliance with the Agreement, that the amount of the invoice and all previous invoices together do not exceed the contractual cap of the Agreement, and that the charges and expenses shown on the invoice are reasonable, and either necessary, or advisable and have been approved by the agency, and do not exceed any limitation provided for in this Agreement. Invoices for work performed at hourly rates shall provide a detailed accounting of the time charged and the respective charge for each increment of time.

On each invoice, Outside Counsel will identify: (a) the total due and payable; and, (b) if applicable, a discounted amount due and payable for payments made to Outside Counsel sooner than the 30 day time period identified in Section 5.4 for Prompt Payment.

Each invoice presented must include the Outside Counsel Contract (OCC) number. The invoice must specify the Texas Comptroller issued vendor identification number or social security number, a description of the services provided, and the name and division of the Agency Contract manager. The invoices from the Outside Counsel to the Agency must be submitted to:

Name/Agency  
Address  
City, State, Zip Code  
Phone

The copies of the invoices from the Outside Counsel must be submitted by the Agency to the Attorney General by sending to:

Attn.: Outside Counsel Billing Liaison  
Office of the Attorney General  
General Counsel Division, Mail Code 074  
Post Office Box 12548  
Austin, Texas 78711-2548

Within ninety (90) business days after incurring any expenses (other than hourly compensation for Outside Counsel's time and except as provided in addendum "B"), including travel expenses related to this Agreement, Outside Counsel shall submit a request for reimbursement and provide such information, copies of original receipts or other documentation as requested by the Agency or the Attorney General.

**5.4 Prompt Payment.** Upon Outside Counsel's performance and receipt of an acceptable invoice required to be submitted under this section, the Agency shall pay the Outside Counsel said amount in accordance with Chapter 2251 of the Texas Government Code. It is the policy of the State of Texas to make payment on a properly prepared and submitted invoice within thirty (30) days of the latter, of any final acceptance of performance or the receipt of a properly submitted invoice. Generally, payment will be made on the 30<sup>th</sup> day unless a discount has been arranged for more immediate payment. Notwithstanding the above, Outside Counsel acknowledges that all obligations of the Agency under this Agreement are subject to the availability of legislative appropriations.

## **SECTION 6. TERMINATION**

**6.1 Convenience of the State.** The Attorney General or Agency reserve the right, in their sole discretion and at their sole option, to terminate this Agreement, in whole or in part, without penalty, by notifying Outside Counsel in writing of such termination prior to the effective date of such termination. In the event of such termination, Outside Counsel shall, unless otherwise mutually agreed upon in writing, cease all services immediately, except such services which are necessary to wind-up, in a cost effective manner, all services being provided. The Agency shall be liable for payments for all services performed to the effective date of termination, plus any

necessary services to cost effectively wind-up. Such notification of termination shall state the effective date of such termination.

**6.2 Cause/Default.** In the event that Outside Counsel fails to provide the agreed upon services according to the provisions of this Agreement, or fails to comply with any of the terms or conditions of this Agreement, the Agency may, upon written notice of default to Outside Counsel, immediately terminate all or any part of this Agreement. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law, or under this Agreement.

**6.3 Rights Upon Termination or Expiration.** Upon expiration or termination of the Agreement for any reason, Outside Counsel shall immediately transfer to the Agency all information and associated work products prepared by the Outside Counsel or, otherwise prepared for the Agency pursuant to this Agreement, in whatever form such information and work products may exist, to the extent requested by the Agency. The Agency is granted the unrestricted right to use, copy, modify, prepare derivative works from, publish and distribute, at no additional cost to the Agency, in any manner the Agency deems appropriate in its sole discretion, any component of the information, work products, or other deliverable made the subject of this Agreement.

**6.4 Remedies.** Notwithstanding any exercise by the Agency of its rights of early termination pursuant to this section, Outside Counsel shall not be relieved of any liability to the Agency for damages due to the Agency by virtue of any breach of this Agreement by Outside Counsel or for amounts otherwise due the Agency by Outside Counsel.

**6.5 Termination by Outside Counsel.** Outside counsel may terminate upon reasonable notice for substantial breach by the state.

## **SECTION 7. CERTIFICATIONS OF OUTSIDE COUNSEL**

By agreeing to and signing this Agreement, the Outside Counsel hereby makes the following certifications and warranties required by statute:

**7.1 Delinquent Child Support Obligations.** Under Section 231.006 of the Texas Family Code, Outside Counsel certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**7.2 Prohibited Bids and Agreements.** Under Section 2155.004 of the Texas Government Code (relating to prohibited bids and agreements), Outside Counsel, by signing this Agreement, certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

**7.3 Previous Employment with the Agency.** Outside Counsel acknowledges and understands that Section 2252.901 (as amended) of the Texas Government Code prohibits the Agency from using state appropriated funds to enter into any employment, consulting, or Outside Counsel Agreement with any individual who has been previously employed, as an employee, by

the agency within the past twelve (12) months. If Outside Counsel is an individual, by signing this Agreement, the Outside Counsel certifies that Section 2252.901 (as amended) of the Texas Government Code does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.

**7.4 Buy Texas.** With respect to all services, if any, purchased pursuant to this Agreement, Outside Counsel represents and warrants that it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and within a comparable period of time when compared to non-Texas products and materials.

**7.5 Gift to Public Servant.** Outside Counsel warrants that it has not given, nor does it intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the award of this Agreement.

**7.6 Corporate Franchise Tax.** By signing this Agreement, Outside Counsel certifies that its Texas franchise tax payments are current, or that it is exempt from, or not subject to, such tax.

**7.7 Outside Counsel License/Conduct.** Each attorney listed in Addendum B is an attorney in good standing under the laws of the State of Texas or jurisdiction where the representation occurs. Outside Counsel will notify the Agency and the Attorney General in writing within one (1) business day of any lapse in his/her licensed status. Outside Counsel acknowledges that, in performing services under this Agreement, Outside Counsel and its attorneys must adhere to the Texas Disciplinary Rules of Professional Conduct or to the professional conduct code of the jurisdiction where the representation occurs.

**7.8 Debt to State.** Outside Counsel acknowledges and agrees that, to the extent Outside Counsel owes any debt or delinquent taxes to the State of Texas, any payments Outside Counsel are owed under this Agreement may be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes Outside Counsel owes the State of Texas until the debt or delinquent taxes are paid in full.

## **SECTION 8. GENERAL TERMS AND CONDITIONS**

**8.1 Independent Contractor.** Outside Counsel agrees and acknowledges that during the existence of this Agreement, it acts in the capacity of an independent contractor and that Outside Counsel is not an employee of the Agency.

**8.1.1** Outside Counsel will be solely and entirely responsible for its acts and the acts of its agents, employees, subcontractors, and representatives in the performance of this Agreement.

**8.1.2** Outside Counsel agrees and acknowledges that during the existence of this Agreement, Outside Counsel shall be entirely responsible for the liability and payment for Outside Counsel or Outside Counsel's employees or assistants, of all taxes of whatever kind, arising out of the performances in this Agreement. Other than the payments described in this Agreement, Outside Counsel agrees and acknowledges that Outside Counsel or Outside Counsel's employees or assistants shall not be entitled to any state benefit on account of the services provided hereunder.

THE AGENCY SHALL NOT BE LIABLE TO THE OUTSIDE COUNSEL, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION, OR ANY BENEFIT DUE TO A STATE EMPLOYEE. If Agency or the State of Texas shall nonetheless become liable for the payment of taxes, unemployment insurance premiums, or workers compensation benefits owed by Outside Counsel or any of its members, shareholders, or employees as a result of performance by Outside Counsel of its obligations under this Agreement, Outside Counsel shall promptly pay or reimburse Agency or the State of Texas for such liability.

**8.2 Subcontracting.** In the event that the Outside Counsel should determine that it is necessary or expedient to subcontract for any of the performances, or in support of any of the performances herein, Outside Counsel may enter into such subcontracts. If Outside Counsel elects to enter into a subcontract for any legal services, then the parties agree that the Agency shall not be liable to Outside Counsel for hourly rates greater than the highest hourly rate specified in Addendum B, for a greater amount than the total liability for legal services specified in Section 5.1, or for expenses greater than the expenses specified in Section 5.2.2, unless prior written approval from the Agency and the Attorney General is obtained. Outside Counsel, in subcontracting for any performances or in support of any of the performances specified herein, expressly understands and agrees that the Agency shall not be directly liable in any manner to the Outside Counsel's subcontractor(s). In the event Outside Counsel subcontracts for any performances hereunder, the subcontractor shall directly invoice Outside Counsel and Outside Counsel shall then invoice the Agency for the work performed. The actual work performed by subcontractor shall be specifically identified in the invoice. In no event shall this section or any other provision of this Agreement be construed as relieving Outside Counsel of the responsibility for ensuring that all performances rendered under this Agreement, and any subcontracts thereto, are rendered in compliance with all of the terms of this Agreement.

**8.3 Assistants.** The Outside Counsel agrees that any person employed or engaged by Outside Counsel and who assists in performing the services agreed to herein shall not be considered employees or agents of the Agency or the State of Texas. Outside Counsel shall be responsible for any payments and other claims due such persons for work performed under this Agreement. Further, the Outside Counsel agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. The Agency shall not be liable to Outside Counsel, its employees, agents, or others for the provision of unemployment insurance and/or workers' compensation.

**8.4 Assignment of Agreement.** Outside Counsel may not assign this Agreement, or assign or delegate any right or duty under this Agreement, without prior written approval from the Agency and the Attorney General.

**8.5 Records Retention.** Unless otherwise directed by the Agency, Outside Counsel shall retain all records relating to the provision of services herein for a period of five (5) years following the termination of this Agreement. Upon the request of the Agency, Outside Counsel shall allow representatives or designees of the Attorney General or Agency to review and/or audit said records at all reasonable times. Upon the request of the Agency, after the expiration of the records retention period, Outside Counsel shall return all files and records to the Agency.

Outside Counsel may destroy all records in whatever media that are not returned at the expiration of the record retention period.

**8.6 Survival.** The obligations of Outside Counsel under Section 8. shall survive this Agreement.

**8.7 Copyright/Intellectual Property.** Outside Counsel shall take reasonable measures to protect Agency from material risks of Agency liability known to Outside Counsel for copyright or patent infringement or disclosure of trade secrets resulting from the use of any equipment, materials, information, or ideas furnished by Outside Counsel pursuant to this Agreement, other than equipment, materials, information, or ideas specified by Agency or its employees or other agents. Outside Counsel and the Agency agree to furnish timely written notice to each other, and the Attorney General, of any claim of copyright, patent, trade secret, or other intellectual property infringement arising out of services under this Agreement.

**8.8 Media Releases or Pronouncements.** Outside Counsel understands that the Attorney General and Agency do not endorse any vendor, commodity, or service. Outside Counsel, its employees, representatives, other agents or subcontractors may not issue any media release, advertisement, publication, or public pronouncement which pertains to this Agreement or the services or project to which this Agreement relates or which mentions the Attorney General or Agency without the prior written approval of the Attorney General and Agency.

**8.9 Written Notice Delivery.** Any notice required or permitted to be given under this Agreement by one party to the other party shall be in writing and shall be given and deemed to have been given immediately if delivered in person to the recipient's address set forth in this section, or on the date shown on the certificate of receipt if placed in the United States mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the receiving party at the address hereinafter specified.

**8.10.1 Outside Counsel's Address.** The address for the Outside Counsel for all purposes under this Agreement and for all notices hereunder shall be:

Firm Name:  
c/o:  
Address:  
City, State, Zip Code:

**8.10.2 Attorney General and Agency's Address.** The address for the Attorney General and the Agency for all purposes under this Agreement and for all notices hereunder shall be:

Outside Counsel Contract Coordinator  
Office of the Attorney General  
General Counsel Division, Mail Code 074  
Post Office Box 12548  
Austin, Texas 78711-2548

Contact person/Agency:  
Address:

City, State, Zip Code:

## **8.11 Dispute Resolution.**

**8.11.1** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used, as further described herein, by the Agency and by Outside Counsel to attempt to resolve any claim for breach of Agreement made by the Outside Counsel.

**8.11.1.1** Outside Counsel's claims for breach of this Agreement that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Government Code. To initiate the process, Outside Counsel shall submit written notice, as required by subchapter B, to the First Assistant Attorney General, his successor, or his designee and [**Contact person/Agency**]. Said notice shall specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of Outside Counsel and the Agency otherwise entitled to notice under the parties' Agreement. Compliance by Outside Counsel with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Government Code.

**8.11.1.2** The contested case process provided in Chapter 2260, subchapter C, of the Government Code is Outside Counsel's sole and exclusive process for seeking a remedy for any and all alleged breaches of Agreement by Agency or the State of Texas if the parties are unable to resolve their disputes under Section 8.11.1.

**8.11.1.3** Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this Agreement by Agency nor any other conduct of any representative of Agency relating to the Agreement shall be considered a waiver of sovereign immunity to suit.

**8.11.2** The submission, processing, and resolution of Outside Counsel's claim is governed by the published rules (1 TAC § 68) adopted by the Office of the Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.

**8.12 CONFLICT OF INTEREST.** If the legal services to be performed by an attorney pursuant to this Agreement involve representation of Agency in a contested matter, Outside Counsel represents that Outside Counsel, and such attorney, does not, and shall not during the term hereof, represent a plaintiff in a proceeding seeking monetary damages from the State of Texas or any of its agencies.

Outside Counsel represents that it does not now represent, and has not for a six-month period preceding this Agreement represented, a client before Agency; furthermore, Outside Counsel represents that it will not for a six-month period following the termination of this Agreement represent a client before Agency.

**8.13 Taxes.** This Agreement shall not be construed so as to supersede the laws of the United States or the State of Texas which accord the State of Texas, the Agency, and all departments, agencies, and instrumentalities of the State of Texas exemptions from the payment(s) of all taxes

of whatever kind. More specifically, the Agency shall not directly or indirectly be liable for taxes of any kind. To the extent allowed by law, the Agency will provide, upon the request of Outside Counsel, all applicable tax exemption certificates.

**8.14 Signatories.** Having agreed to the terms herein, the undersigned signatories hereby represent and warrant that they have authority to enter into this Agreement.

**8.15 Applicable Law and Venue.** This Agreement and its incorporated documents shall be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit brought concerning this Agreement or its incorporated documents is fixed in any court of competent jurisdiction in Travis County, Texas, and all payments shall be due and payable in Travis County, Texas.

**8.16 Amendments.** This Agreement may be amended only upon written Agreement signed by the parties and approved by the Attorney General.

**8.17 Severability/Interpretation.** The fact that a particular provision in this Agreement is held under any applicable law to be void or unenforceable in no way affects the validity of other provisions and the Agreement will continue to be binding on both parties. Any provision that is held to be void or unenforceable will be interpreted by the parties or the courts to be replaced with language that is as close as possible to the intent of the original provision so as to effectuate the purpose of this Agreement. Any ambiguous or conflicting terms shall be interpreted and construed in such a manner as to accomplish the purpose of the Agreement.

**8.18 Insurance Required.** Counsel presently maintains malpractice insurance in an amount of not less than [\_\_\_\_\_] and agrees to maintain at least this amount of insurance coverage during the term of this Agreement. Further, Counsel agrees to give notice to the Agency and to the Attorney General in the event the amount of malpractice insurance is canceled. Counsel also agrees to furnish to Agency or the Attorney General certified copies of such insurance policies when requested. Counsel agrees that no claim by the Agency and the State of Texas for damages resulting from breach of Counsel's duties to the Agency in connection with the representation shall be limited to the amount of malpractice insurance maintained by Counsel.

**IN WITNESS THEREOF, THE PARTIES HAVE SIGNED AND EXECUTED THIS CONTRACT IN MULTIPLE COUNTERPARTS.**

<b>Outside Counsel:</b>  Signature:  Name Address City, State, Zip Phone Fax E-mail Tax Id #	<b>Approved:</b>  <b>By the Office of the Attorney General of Texas</b>  by Attorney General/Designee
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<b>Agency:</b>	
----------------	--

Name	
------	--

Title	
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**Addendum A**  
**Services**

(Pursuant to paragraph 3.1 above, it is understood that no litigation will be initiated by Outside Counsel without the prior approval of the Attorney General.)

Description of Legal Services to be provided:

**[Description]**

**Addendum B**  
(Alternative 1)  
**Hourly Rate Ranges**

Disclosure of hourly rates for legal and approved associated services to be rendered:

<b><u>Individual Attorney or Billing Classification</u></b>	<b><u>Hourly Rate or Rate Range</u></b>
---	---

Attorney  
or  
Partners  
Of Counsel  
Associates  
Paralegals  
Other (describe below)

For the lead attorney, provide documentation of good standing in the State Bar or licensing authority of the state in which the lead attorney resides and is licensed.

**Addendum B**  
(Alternative 2)

**Individual Hourly Rates**

Disclosure of hourly rates for specific person providing legal services and services directly associated to legal services to be rendered:

Partners/Shareholders:

Attorney Name: _____ Other	Hourly Rate: _____ Hourly Rate Range: _____
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Non-Partner/Shareholder Attorneys:

Attorney Name: _____ Other	Hourly Rate: _____ Hourly Rate Range: _____
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Paralegal Name: _____ Other Name: _____	Hourly Rate: _____ Hourly Rate Range: _____
--	--

Technical Specialist: Name: _____ Other	Hourly Rate: _____ Hourly Rate Range: _____
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[Alternative fee arrangement: Describe]

## **Addendum C**

### **Outside Counsel Billing Guidelines**

These guidelines are intended to give structure and predictability to Agency's relationship with Outside Counsel. From Agency's perspective, teamwork is the key to quality and cost-effective legal representation. Agency expects to be billed in accordance with the following Outside Counsel Billing Guidelines:

1. **Hourly Rates.** The hourly rates for each partner, of counsel, associate, and paralegal working on Agency matters will be in accordance with the hourly rates or ranges as agreed between Agency and Outside Counsel (not to exceed \$500 per hour). The hourly rate or rate range will remain unchanged during the Agreement Period. If a rate range is specified, an attorney may be moved within the range or reclassified no more often than once in each 12-month period, with the approval of Agency.
2. **Billable Time.**
  - A. Agency will only pay for the services of attorneys, paralegals, patent agents, and technical specialists. All time must be billed in no more than one-tenth hour increments, and must reflect only actual time spent. Block billing (where the description of legal services rendered is given without dates, attorney's time spent, etc.) will not be reimbursed. Formula or value billing (where billing is based on the result or value to the client rather than actual time spent) will not be reimbursed. Time entries must note the date performed, identify the legal professional performing the task, describe the task(s) completed, show the time taken to complete each task, and state the applicable hourly rate. Tasks referencing correspondence and filings must describe the document received or authored. Agency expects to be billed for the actual time it takes to modify standardized forms, filings, and/or correspondence for use on the matter being billed. Agency will not reimburse Outside Counsel for the time it originally took to prepare any such standardized documents. Agency will not pay for review, execution, and processing of the standard Outside Counsel Contract.
  - B. Agency will not pay for the education or training of attorneys, law clerks, interns or paralegals of Outside Counsel, including assigning such staff on a transient basis to an Agency matter. Each designated professional is expected to perform work of a type commensurate with his/her professional title. Without prior approval, Agency will not pay for more than one attorney or legal professional to perform any task. Agency will also not pay for duplicate review, analysis, or legal research of or on documents unless prior approval is obtained. Agency's view is that the most efficient use of attorney time is to maintain continuous contact with the file so that it is not necessary to review the file to become reacquainted with it. Thus, repeated time spent reviewing the file should not be necessary and will not be reimbursed.
  - C. Extensive legal research must be pre-approved by Agency. A request to undertake legal research should provide Agency with an estimate of either time or dollar amount to be expended. The need for legal research will be addressed on a case-by-case basis. In general, Agency should be paying Outside Counsel to apply their knowledge and expertise for which it was hired, not paying them to obtain that knowledge. However,

Agency understands that situations arise that justify research on how best to proceed in order to achieve a desired result.

D. All conferences must describe the attendees and purpose of the meeting and, if more than one Outside Counsel member is in attendance, a justification for multiple attendees from Outside Counsel.

E. Agency will not pay for law clerks, law interns, summer interns, or administrative staff, such as secretarial support, librarians, case clerks, and accounting and billing clerks, including but not limited to the following: overtime, file opening, file organization, docketing, and other administrative tasks; and preparation of billing, invoice review, budget preparation, and communications regarding same or any other accounting matter.

3. Expenses. Agency expects Outside Counsel to anticipate and include expenses and disbursements as part of overhead and, therefore, part of a basic hourly rate. Accordingly, Agency will not reimburse Outside Counsel for:

- A. Copying charges (routine, day-to-day);
- B. Fax charges;
- C. Routine postage;
- D. Office supplies;
- E. Local, long distance or cellular telephone charges;
- F. Local travel (within 20-mile radius of office), including mileage, parking, and tolls;
- G. All delivery services incurred by internal staff;
- H. Air-conditioning;
- I. Electricity or other utilities; and
- J. Internet charges.

Agency will reimburse the actual cost for the following expenses:

- A. Pre-approved volume copying;
- B. Overnight courier charges and third party courier services, with an explanation of the nature and purpose of the charge (i.e., why the task was not completed in a timely manner to permit reduced rates); and
- C. Travel expenses as stated in Outside Counsel Contract.

All other expenses are considered included within the hourly rates of Outside Counsel unless they are truly extraordinary and Agency's advance approval has been obtained prior to incurring the expense.

4. Invoices. Agency expects Outside Counsel's invoices to show the same high quality and care it takes with its legal work. Professional time and disbursements should be reviewed by the billing partner, and those portions that are not necessary for the legal task(s) described should be deleted before the bill is submitted for payment.
  - A. Invoices for legal services shall be submitted to the person designated in Outside Counsel Contract within 10 business days of the end of the month in which legal services are rendered.
  - B. Each statement should indicate the matter for which the legal services were performed and the Outside Counsel Contract number under which the legal services were performed.
  - C. Allowable costs and expenses should be billed in accordance with the guidelines set forth in paragraph 3 above and supported by attached copies of invoices for amounts in excess of \$50.00.
  - D. A summary sheet should be included indicating the total legal fees and expenses, the amount of the contract, and the total legal fees and expenses invoiced to date.

It is the responsibility of Outside Counsel to monitor the total amount of fees and expenses invoiced under the Agreement. Once the billable hours exceed 75% of the limitation of liability and the remaining 25% will not cover the estimated legal fees and expenses for the remaining term of the Agreement Period, the firm should advise Agency in writing requesting an increase in the Agreement amount and stating the reason for the additional legal fees and expenses. Legal services rendered exceeding the Agreement amount are not allowed and will not be paid. It is Outside Counsel's responsibility to advise Agency prior to exceeding the Agreement limit.

If you have questions regarding these guidelines or any outside counsel matters, please contact Agency.