



# TEXAS HIGHER EDUCATION COORDINATING BOARD

Request for Offers (RFO)

## **Texas Success Initiative Pre-Assessment Activity**

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

**RFO No. 781-1-25139**

NIGP Codes: 208-54, 209-54, 920-03

<b><u>Solicitation Post Date:</u></b>	July 27, 2021
<b><u>Written Questions Deadline:</u></b>	August 11, 2021, by 11:30 p.m. CT
<b><u>Proposal Deadline:</u></b>	August 27, 2021, by 11:30 p.m. CT

## Table of Contents

1.0	Introduction .....	1
2.0	Minimum Eligibility Requirements .....	2
2.01	Experience .....	2
2.02	Qualifications .....	2
2.02.1	<i>Company Profile</i> .....	2
2.02.2	<i>Key Staff and Qualifications of Key Staff</i> .....	2
3.0	Scope of Work .....	3
3.01	Technical Requirements .....	3
3.02	Deliverables .....	4
3.02.1	<i>Pre-Assessment Activity</i> .....	4
3.02.2	<i>Web Content Accessibility Guidelines Evaluation Report</i> .....	4
3.02.3	<i>Delivery Schedule</i> .....	4
3.02.4	<i>Project Work Plan</i> .....	4
3.03	Acceptance Criteria .....	4
4.0	Reports and Meetings .....	5
4.01	Reports .....	5
4.02	Meetings and Communication Plan between Meetings .....	5
5.0	Payment and Pricing Terms .....	5
5.01	Pricing .....	5
5.02	Payment Terms and Award Summary .....	6
5.03	Invoices .....	6
6.0	Contract Term and Termination .....	7
7.0	Terms and Conditions .....	7
8.0	Additional Terms and Conditions .....	7
8.01	Awarded Respondent Responsibilities .....	7
8.02	Intellectual Property Rights in Software .....	7
8.03	Confidentiality .....	8
8.04	FERPA Confidentiality and Data Governance Provisions .....	8
8.05	Technical Documents .....	9
9.0	Schedule of Events .....	9
9.01	Due Date for Proposals .....	9
9.02	Calendar of Events .....	9
9.03	Point of Contact .....	10

10.0	Proposal Format and Content (Required).....	10
10.01	Solicitation Attachments.....	10
10.02	Organization of the Proposal for Submission.....	11
10.03	Additional Considerations .....	15
11.0	Proposal Evaluation Criteria.....	15
12.0	Additional Instructions .....	16
12.01	Accuracy of the Proposal.....	16
12.02	Cost of Submitting the Proposal .....	16
12.03	Public Information Act Disclosures.....	16
12.04	Working Paper Access and Retention .....	17
12.05	Irrevocability of the Proposal.....	17
12.06	Affirmations and Required Clauses .....	17
12.07	Conflicting RFO Language.....	20

## 1.0 Introduction

The Texas Higher Education Coordinating Board (THECB) is a state agency that provides leadership and coordination for Texas higher education. One of the greatest challenges facing Texas colleges and universities is the need to improve the academic preparedness of students enrolling in Texas public institutions of higher education.

In January 2021, the Texas Success Initiative Assessment was updated to version 2.0 (TSIA2). The TSIA2 classifies student performance as college ready or in need of developmental education. In addition, the assessment includes a diagnostic component that helps clarify the student's specific strengths and weaknesses, enabling institutions to advise and enroll students into appropriate coursework or interventions designed to effectively help them become college-ready and meet their academic and workforce goals.

THECB is seeking a Respondent for the development and implementation of a web-based, statewide Texas Success Initiative Pre-Assessment Activity which will be provided free of charge to any public institution of higher education, school district, or other public entity that has been approved by THECB.

Per Texas Education Code §§ 51.331-.344, Texas public institutions of higher education must comply with the Texas Success Initiative (TSI). The law requires that all entering college students to be assessed for college readiness in reading, writing, and math unless the student qualifies for an exemption. Each non-exempt student who fails to meet the established college-readiness benchmark(s) of the TSIA2 must be provided with a plan for academic success which may include developmental education coursework. The TSIA2 is also used by high schools within approved school districts as a qualifier for college-level coursework through dual credit programs.

Title 19 Texas Administrative Code § 4.55 requires a student to participate in a pre-assessment activity before taking the TSIA2. The goal of this requirement is to provide information about the TSIA2 and avoid the student taking the TSIA2 without any prior knowledge of the process, its content, and how the results will be used. The activity also helps familiarize students with the features of the assessment and provides a variety of information relating to student options and campus resources.

Specifically, § 4.55(b) states:

[A] test administrator shall provide to the student a pre-assessment activity(ies) that addresses at a minimum the following components in an effective and efficient manner, such through workshops, orientations, and/or online modules:

- (1) Importance of assessment in students' academic career;
- (2) Assessment process and components, including practice with feedback of sample test questions in all disciplinary areas;
- (3) Developmental education options including corequisite, course-pairing, non-course-based, modular, and other non- conventional interventions;

- (4) Institutional and/or community student resources (e.g., supplemental instruction, tutoring, transportation, childcare, financial aid).

[19 Tex. Admin. Code § 4.55\(b\).](#)

## **2.0 Minimum Eligibility Requirements**

### **2.01 Experience**

Respondents must have a minimum of five years' experience providing services like those described in Section 3.0 Scope of Work. 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. Respondents who do not meet this requirement are not eligible for award.

THECB encourages Historically Underutilized Businesses to compete for this award.

### **2.02 Qualifications**

#### **2.02.1 *Company Profile***

A Respondent must demonstrate its knowledge and expertise of the environment (e.g., platforms, software, applications, security, network, tools, etc.) for which work is to be performed, and employees and/or subcontractors with appropriate background experience to perform the work required under this RFO. Respondent must submit a Company Profile that outlines Respondent's experience and expertise in the area of web development, including Respondent's capability to perform the required services.

The following shall be included with the Company Profile:

- Organization chart;
- Management team resumes; and
- Key personnel resumes, illustrating the qualifications of each to perform the services described in this RFO including expertise in Agile development methodology and processes.

#### **2.02.2 *Key Staff and Qualifications of Key Staff***

Respondents must provide staff who are fully knowledgeable of the work required under this RFO. Proposed key staff must have the appropriate background skills, knowledge, experience, and training. Evidence of qualifications must be included in the Company Profile.

## **3.0 Scope of Work**

### **3.01 Technical Requirements**

Respondent shall:

1. Develop a web-based pre-assessment activity (PAA) available free of charge to any Texas public institution of higher education, school district, or other public entity that has been approved by THECB which includes the components outlined in [Title 19 Texas Administrative Code § 4.55](#).
2. Provide and maintain necessary technological components (e.g., hardware and software) applicable to securely host the PAA and associated data.
3. Customize the PAA to the needs of the public institutions of higher education.
4. Customize the PAA to the needs of approved school districts as determined by THECB.
5. Provide a separate administrative site to each public institution of higher education, school district, or other public entity that has been approved by THECB.
6. Provide student completion certificates that are viewable online, downloadable, and able to be printed at time of PAA completion. Further, student completion certificates should be retrievable on-demand with the use of a combination of identifiers (e.g., email address and birthdate).
7. Provide on-demand reports accessible through the separate administrative sites of student completions to test administrators at any public institution of higher education, school district, or other public entity that has been approved by THECB.
8. Provide trainings (synchronous or asynchronous), as necessary, on the use of the PAA for the public institution of higher education, school district, or other public entity that has been approved by THECB.
9. Provide ongoing client and technical support for students who have questions about their certificates and any questions about preparing for the exam.
10. Provide ongoing client and technical support regarding access to an institution's administrative site for any public institution of higher education, school district, or other public entity that has been approved by THECB.
11. Ensure procedures and mechanisms adhere and comply with the Family Educational Rights and Privacy Act (FERPA), Children's Online Privacy Protection Act (COPPA), and Individuals with Disabilities Education Act (IDEA), as further set forth in the Terms and Conditions of the Contract. Such compliance extends to all contracts, agreements, and memorandums

of understanding entered into with institutions and end-users as well as any subcontractors as may be permitted under the Contract.

12. Ensure the PAA and website adhere to current Web Content Accessibility Guidelines.
13. Ensure the PAA can gain the necessary exemption if the website cannot be hosted with the Texas Data Center Services (DCS). DCS exemption information can found at <https://www.dir.texas.gov/View-Contracts-And-Services/Pages/Content.aspx?id=34>.
14. Provide appropriate safeguards to protect and prevent unauthorized physical and electronic access of data and ongoing monitoring, notification, and mitigation in the event of a breach.

### **3.02 Deliverables**

#### **3.02.1** *Pre-Assessment Activity*

Respondent shall develop a high-quality PAA approved TSI assessment test administrators may select to use to meet the TSI requirement outlined in [Title 19 Texas Administrative Code § 4.55](#).

#### **3.02.2** *Web Content Accessibility Guidelines Evaluation Report*

Respondent shall provide a Web Content Accessibility Guidelines Evaluation Report of the final version of the PAA no later than ten (10) business days prior to implementation.

#### **3.02.3** *Delivery Schedule*

Proposals shall include a Delivery Schedule that sets deadlines for necessary milestones to have the PAA ready for full launch no later than forty-five (45) days after Contract execution. Respondents must consider any known risks and any assumptions and constraints in development of the Delivery Schedule.

#### **3.02.4** *Project Work Plan*

Respondents must submit a Project Management Plan that addresses the deliverables specified herein. Although this document is requested as part of the Respondent's Proposal, it will be a deliverable for this Project.

### **3.03 Acceptance Criteria**

Awarded Respondent shall comply with the following acceptance criteria:

Actionable Deliverables which successfully meet all requirements outlined in the RFO shall be provided by the specified dates. Any changes to delivery dates must have prior approval (in writing) by THECB.

All Deliverables must be submitted in a format approved by THECB. THECB has the sole responsibility in determining the completeness of Respondent's work. THECB will complete a review of each submitted deliverable within seven (7) business days from the date of receipt.

In the event THECB does not approve a Deliverable, Awarded Respondent will be notified in writing with the specific reasons. Awarded Respondent will have seven (7) business days to correct the unaccepted Deliverable.

Awarded Respondent shall correct any latent defects identified after the acceptance of a Deliverable (where appropriate) at no additional charge to THECB.

## **4.0 Reports and Meetings**

### **4.01 Reports**

Awarded Respondent is required to provide reports in the format and manner prescribed by THECB throughout the life of the project including:

- Web Content Accessibility Guidelines Evaluation Report;
- Monthly Usage Reports;
- Quarterly Update Reports on the status of the Project; and
- Other Reports upon request by THECB.

### **4.02 Meetings and Communication Plan between Meetings**

Meetings may be scheduled via teleconference/videoconference or in-person as mutually agreed upon between THECB and Awarded Respondent. Ad hoc meetings may occur, as necessary. Awarded Respondent must maintain communications to address issues that arise between meetings or progress reports.

## **5.0 Payment and Pricing Terms**

### **5.01 Pricing**

Respondent's pricing must be all-inclusive, covering all services required to provide all deliverables as described in this RFO, including travel expenses, personnel costs, and all other necessary expenses required in the performance of the Contract. The pricing sheet shall include options for annual renewals.

Respondent shall propose pricing based on key deliverables/milestones to adequately describe deliverables and pricing structure. Submit this information on an EXCEL document in the format below.



Respondent Pricing Sheet		
Deliverable No.	Deliverable Name/Description	Price

## 5.02 Payment Terms and Award Summary

Awarded Respondent will be reimbursed for deliverables completed and approved by THECB. Awarded Respondent will submit invoices to THECB that detail the itemized associated costs of the services rendered or deliverables completed.

To the extent Awarded Respondent is not a Texas state agency, THECB will make payments for services in accordance with the Texas Prompt Payment Laws, Texas Government Code §§ 2251.001-.055. If Awarded Respondent is a Texas state agency, THECB will make payments for services in accordance with the Interagency Cooperation Act, Texas Government Code §§ 771.001-.010.

Awarded Respondent agrees not to begin or provide any services until issuance of a Contract by THECB. THECB does not guarantee a specific compensation to Awarded Respondent throughout the term of the Contract. Awarded Respondent is not guaranteed minimum compensation.

THECB will not apply for credit nor will THECB prepay. THECB shall pay upon the receipt of a properly submitted invoice after all goods and services have been received.

THECB shall award the Contract to the most qualified Respondent(s) successfully meeting the criteria and conditions as outlined in this RFO.

## 5.03 Invoices

Upon completion of a deliverable and acceptance by THECB based on the requirements and acceptance criteria set forth in this RFO, Awarded Respondent may submit an invoice to THECB setting forth amounts due in accordance with the Terms and Conditions.

Each invoice submitted must include the purchase order number and deliverable for which the invoice relates. All invoices must be sent to [accountspayable@highered.texas.gov](mailto:accountspayable@highered.texas.gov) and the designated THECB contract manager(s).

Prior to any payment being made, THECB shall certify that the goods and services being invoiced have been received and approved for payment by THECB. Payments will be made in accordance with Section 5.02 above.

## **6.0 Contract Term and Termination**

The Contract shall commence upon execution of a Contract by THECB with Awarded Respondent. The initial term of the Contract shall be for one (1) year with the option for two one-year renewal periods. The term of the Contract including the optional renewal periods may not exceed three (3) years. Awarded Respondent must launch the PAA no later than forty-five (45) days after Contract execution and continue to meet deliverables through the contract term.

To exercise the option to extend the term, THECB will notify the Awarded Respondent in writing.

## **7.0 Terms and Conditions**

See Attachment C, Anticipated Contract.

## **8.0 Additional Terms and Conditions**

### **8.01 Awarded Respondent Responsibilities**

THECB shall look solely to Awarded Respondent for compliance with all the requirements of this RFO and the resulting Contract. Awarded Respondent 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 THECB to procure services of this RFO elsewhere and charge any increased costs for the services, including the cost of re-soliciting, to Awarded Respondent.

Awarded Respondent must include in its agreements with entities that have opted to receive the PAA details regarding Awarded Respondent's maintenance schedule, including anticipated down times, according to industry standards. Peak times should be considered when determining the maintenance schedule. The agreements must also include information on how to report outages and how/when outages and related anticipated timeframes for down times will be communicated to entities.

### **8.02 Intellectual Property Rights in Software**

THECB and Awarded Respondent acknowledge and agree that intellectual property or other property produced, generated, or created in connection with the Contract that Awarded Respondent had not previously produced, generated, or created, either completed or partially completed, shall be THECB's sole property and all rights, title, and interest in and to the work product shall vest in THECB upon payment for the Services.

### **8.03 Confidentiality**

Except as required by applicable law, including but not limited to Texas Government Code Chapter 552, Awarded Respondent, including its employees, agents, board members, and subcontractors, shall not: 1) disclose to any third-party the business of THECB, details regarding the website or application, including, without limitation any information regarding the website and application code, the Specifications, or THECB's business (the "Confidential Information"); (2) make copies of any Confidential Information or any content based on the concepts contained within the Confidential Information for personal use or for distribution unless requested to do so by THECB; or (3) use Confidential Information other than solely for the benefit of THECB.

### **8.04 FERPA Confidentiality and Data Governance Provisions**

Awarded Respondent agrees to comply with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and the implementing federal regulations, 34 C.F.R. Part 99, 1; the Children's Online Privacy Protection Act (COPPA); and Individuals with Disabilities Education Act (IDEA). Awarded Respondent agrees to protect with reasonable data security procedures any confidential student information it receives or accesses that could make a student's identity traceable.

Awarded Respondent in performing the duties provided in the Contract, is acting as an authorized representative of a school official and performing a service or function that the school official would otherwise perform and which requires access to student personally identifiable information (PII) in education records. Except as expressly set out in the Contract, Awarded Respondent does not own any education record or personally identifiable student information contained therein and is authorized to use the record only as set out in the Contract.

Notwithstanding any other term of the Contract THECB retains the right to audit and/or terminate Awarded Respondent's access to and use of education records or derivative PII without advance notice as necessary to ensure the security of education records and disclosure of data in compliance with the Contract. Awarded Respondent must return all education records and PII obtained under the Contract not later than thirty (30) days after completion of the Contract or upon direction of THECB, in the case of written termination of the Contract, to the educational institution who is the rightful owner of the education records and PII. Awarded Respondent must destroy or obliterate all copies of education records and PII obtained under the Contract not later than thirty (30) days after completion of the Contract or upon direction of THECB, in the case of written termination of the Contract. This term may be amended only by a written agreement that otherwise complies with 20 U.S.C. § 1232g and its implementing regulations in 34 C.F.R. § 99.31(a)(1)(i)(B). Upon completion of the return, destruction, or obliteration of the applicable education records and PII, Awarded Respondent shall provide to THECB a written, sworn verification of the return, destruction, or obliteration of the data.

Awarded Respondent agrees that it and its employees and authorized representatives who access information pursuant to the Contract will use the information only for the

purpose(s) expressly authorized under the Contract and shall not use or disclose the information for any other purpose except by written amendment to the Contract. The Contract further expressly prohibits “unauthorized look-ups.” Awarded Respondent represents that it will ensure that each individual who is able to access education records is expressly informed of the limitations on the right to access and use the records and PII. Awarded Respondent represents that it will not redisclose any data or PII governed by the Contract without express permission from THECB.

Awarded Respondent warrants that it has a sound data security program, that, at a minimum, meets industry standards, that protects both data at rest and data in transmission. Awarded Respondent shall notify THECB of any data breach involving education records, PII, or any other confidential or sensitive information not later than twenty-four (24) hours after discovery of a security incident that may constitute a data breach. Awarded Respondent shall immediately mitigate any such breach and ensure that any disrupted services are timely and without delay, brought back into service. Awarded Respondent shall be responsible for any data breach notifications and damages that are required by state or federal law and shall coordinate such notification with THECB. This section shall survive termination of the Contract.

Any and all contracts, agreements, memoranda of understanding, and end-user agreements that originate from the Contract must comply with the terms set forth in this section and comply with all applicable privacy laws, including, but not limited to FERPA and COPPA. The Contract supersedes any end-user agreement. Any commercial use or other use of education records and PII not provided for in the Contract is strictly prohibited.

## **8.05 Technical Documents**

All technical documents developed or procured by Awarded Respondent shall not be proprietary in nature, such that THECB is limited in the use of such documents. If any such documents are proprietary, including training materials, Awarded Respondent must identify such documents and provide THECB with any technical support and training for use of such documents, prior to the transfer of such documents to THECB.

## **9.0 Schedule of Events**

### **9.01 Due Date for Proposals**

Respondents shall submit Proposals to THECB no later than the Proposal Due Date indicated in the Calendar of Events section below. Proposals received after the Proposal Due Date will be rejected for being late and will not be considered for evaluation.

### **9.02 Calendar of Events**

The solicitation process for this RFO will proceed according to the schedule below. THECB reserves the right to revise this schedule or any portion of this RFO by

published addendum on the Electronic State Business Daily (ESBD) and THECB's website.

EVENT	DEADLINE
Publication of RFO on ESBD and THECB's Website	July 27, 2021
Last Day to Submit Written Questions	August 11, 2021, by 11:30 p.m. CT
THECB's Response to Written Questions	August 13, 2021
Proposal Due Date and Time	August 27, 2021, by 11:30 p.m. CT
Post-Proposal Interviews/Presentations, if required	September 1-3, 2021
Anticipated Award	October 1, 2021

THECB will only accept written questions and requests for clarification via email to the Point of Contact listed below. THECB will post responses to written questions on its website.

### **9.03 Point of Contact**

Respondents shall direct all inquiries, written questions, requests for clarification, and communications concerning this RFO to the Point of Contact listed below. Inquiries and comments must reference RFO No. 781-1-25139.

Jacqueline Boilard, CTCD  
Office of General Counsel  
Texas Higher Education Coordinating Board  
[eBids@highered.texas.gov](mailto:eBids@highered.texas.gov)

Please Note: Ms. Boilard is the only permitted point of contact. Contact or attempted contact with other THECB employees, including Commissioners and their staff, may result in a Respondent's immediate disqualification.

All THECB responses must be in writing to be binding. Any information THECB deems to be important and of general interest or which modifies requirements of the RFO shall be provided in the form of an addendum to the RFO on the ESBD and THECB's website.

## **10.0 Proposal Format and Content (Required)**

### **10.01 Solicitation Attachments**

This RFO also includes the following attachments, which are posted on the ESBD and THECB's website:

Attachment A: Execution of Proposal (Required), including the following:

1. Respondent Information

2. Texas Family Code § 231.006(c)
3. Texas Government Code § 669.003
4. Preferences
5. Exceptions to Terms and Conditions
6. Respondent Acknowledgement
7. Signature

Attachment B: HUB Subcontracting Plan (Required)

Attachment C: Copy of Anticipated Contract (for reference only)

Attachment D: Conflict of Interest Disclosure Statement (Required)

## **10.02 Organization of the Proposal for Submission**

Proposals shall include all required attachments and certifications in the order outlined below and be in the format described herein. THECB will not accept attachments and certifications submitted after the proposal deadline. Failure to submit all required information shall make the Proposal nonresponsive and thus disqualified from consideration. Respondents are solely responsible for thoroughly understanding this RFO and its attachments. Any questions concerning this RFO should be directed to the Point of Contact by the Deadline for Submitting Written Questions identified in Section 9.02. Respondent is cautioned to pay particular attention to the clarity and completeness of its Proposal. Respondent is solely responsible for its Proposal and all documentation submitted.

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

Respondents shall submit three files, one Excel and two files in Portable Document Format (PDF) as noted below. No mailed, hand-delivered, or faxed Proposals will be accepted.

The Excel document shall contain the pricing as described in Section 5.01.

The first PDF shall contain responses to the following:

1. Minimum Eligibility Requirements under Section 2.0 and all subsections of Section 2.0.
2. Statement of Work under Section 3.0 and all subsections of Section 3.0 (Respondent's Project Work Plan). Related to Subsection 3.01, the Proposal should at a minimum address and include a narrative overview of the PAA design and components including the types of media (e.g., videos, slides) to be used for delivery, the content that will be addressed, a visual diagram mapping the student user experience and duration of time to completion, a

visual diagram mapping the administrator user experience, and ten (10) sample practice questions developed by Respondent for each area of the TSIA2.

3. Each Respondent shall provide at least three references, including contact information. THECB prefers references from clients for whom Respondent has performed similar work, including other state agencies. Do not use THECB or any individuals employed by THECB as a reference.

The second PDF shall contain the following:

1. Execution of Proposal (Attachment A) – All information on Attachment A is required to be completed.
2. HUB Subcontracting Plan (Attachment B) – All information on Attachment B is required to be completed. The form can also be found [here](#).

In compliance with Texas Government Code §§ 2161.001-.253, it is THECB's policy to promote and encourage contract and subcontract opportunities for state of Texas certified Historically Underutilized Businesses in all contracts. Eligible Respondents are encouraged to become state of Texas HUB certified. Applications may be found at:

<https://comptroller.texas.gov/purchasing/vendor/hub/>.

Definitions for state of Texas HUB certifiable businesses can be found in the Texas Administrative Code. [34 Tex. Admin. Code § 20.282](#).

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 Subcontracting Plan for further instructions which requires 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 [here](#). Additional minority and women owned business association resources are available for subcontracting notices are available on the Texas Comptroller's [website](#). Additional information and training regarding how to complete a HUB Subcontracting Plan can be found [here](#).

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.

3. Conflict of Interest Disclosure Statement (Attachment D)

The Conflict of Interest Disclosure Statement is required and must be attested to by an unsworn declaration. Respondents shall be neutral and impartial,

shall not advocate specific positions to THECB. Respondents shall identify the extent, nature, and length of these relationships or engagements. Entities having a conflict of interest, as determined by 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 Respondent.

This Conflict of Interest Disclosure Statement shall be signed 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.

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. THECB is the sole arbiter of whether a conflict or the appearance of a conflict of interest exists.

THECB encourages Respondents to provide complete disclosure of matters that might be considered a conflict of interest. Completeness of disclosure may be a factor in evaluating Proposals.

Each Respondent must also address how 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.

THECB may not enter a contract with a person it has been employed within the past twelve (12) months. Persons who have been employed by THECB or by another state agency in Texas more than twelve (12) months but fewer than twenty-four (24) months ago shall disclose in the Proposal the nature of previous employment with the state agency and the date the employment ended.

NOTE: THECB, as a state agency, is prevented by the Texas Constitution from indemnifying a Respondent. Respondent is discouraged from including a term in its Proposal that requires THECB to indemnify it. Such a term may result in the Proposal being deemed nonresponsive.

4. Transmittal Letter: Respondent shall provide a Transmittal Letter addressed to the Point of Contact that identifies the person or entity submitting the Proposal and includes a commitment by that person or entity to provide the services required by THECB through this RFO and the Anticipated Contract.



The Transmittal Letter must be signed by a person legally authorized to bind Respondent. The letter must specifically identify that the Proposal is in reference to THECB's RFO for Texas Success Initiative Pre-Assessment Activity. 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 ninety (90) days. The letter must also include "full acceptance of the terms and conditions described in this Request for Offers, including as detailed in the Anticipated Contract."

Any exceptions to this RFO and the Anticipated Contract must be specifically noted in the letter. However, any exceptions may disqualify the Proposal from further consideration. If Respondent takes any exceptions to any provision of this RFO or the Anticipated Contract, these exceptions must be specifically and clearly identified by Section and Respondent's proposed alternative must also be provided. Respondent cannot take a "blanket exception" to the entire RFO or the Anticipated Contract. If any Respondent takes a "blanket exception" to this entire RFO or the Anticipated Contract or does not provide proposed alternative language, the Proposal may be disqualified from further consideration.

Any terms and conditions attached to a Proposal will not be considered unless specifically referred to in this RFO and Respondent's attachment of such terms and conditions to a Proposal may disqualify the Proposal.

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

The Proposal shall include all information required in this RFO. Respondent is solely responsible for thoroughly understanding the RFO and its attachments, exhibits, and forms. Questions should be directed to the Point of Contact by the Deadline for Submitting Written Questions. Respondent is cautioned to pay particular attention to the clarity and completeness of its Proposal. Respondent is solely responsible for its Proposal and all documentation submitted.

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

### 10.03 Additional Considerations

- All written deliverables must be phrased in terms and language that can be easily understood by non-technical personnel (e.g., laypersons without subject matter expertise).
- All items of this agreement shall be done in accordance with Awarded Respondent Responsibilities.
- THECB may request oral presentations.

### 11.0 Proposal Evaluation Criteria

THECB will review and score Proposals according to the Evaluation Criteria outlined in the table below. The relative weight of each criterion is indicated by the maximum possible number of points indicated in the right-hand column. Proposals considered responsive will be evaluated by THECB according to the Evaluation Criteria outlined in the table below. The relative weight of each criterion is indicated by the maximum possible number of points indicated in the right-hand column.

Evaluation Criteria Table	
Criterion	Maximum Possible Value
Respondent's Experience Developing and Administering a Similar Product	20
Qualifications of Key Staff	10
Quality of Respondent's Response to Technical Requirements	20
Quality of Project Delivery Schedule	20
Cost	30
Total Points	<b>100</b>

THECB will consider best value for the state, as directed by Texas Government Code § 2155.003, when selecting a Respondent, in addition to the Evaluation Criteria above. THECB will be the sole judge of best value. Best Value criteria may include, but is not limited to:

- a) The Proposal that best meets the goals and objective as stated in this RFO;
- b) The Proposal that indicates Respondent's ability to reliably perform the required tasks/deliverables described in this RFO;
- c) Respondent's ability to adhere to the schedule and delivery terms (if applicable);
- d) Respondent's experience in providing services in this RFO;
- e) Past Vendor Performance: In accordance with Texas Government Code §§ 2155.074 and 2262.055, vendor performance may be used as a factor in the award (if applicable); and

- f) Other factors relevant to determining the best value for the state in context of this particular purchase (i.e. certifications/licensure, reference checks, pricing, etc.).

## **12.0 Additional Instructions**

### **12.01 Accuracy of the Proposal**

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.

### **12.02 Cost of Submitting the Proposal**

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

### **12.03 Public Information Act Disclosures**

THECB is a government agency subject to the Texas Public Information Act (PIA), Texas Government Code §§ 552.001-.376. The Proposal and other information submitted to THECB by 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 applies to disclosure under the PIA. If it is necessary for Respondent to include proprietary or otherwise confidential information in its Proposal or other submitted information, Respondent must clearly label that proprietary or confidential information and identify the specific PIA exception that applies to disclosure. 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 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. Respondent is required to make any information created or exchanged with the state pursuant to the solicitation or contract, and not otherwise excepted from disclosure under the PIA, available in a format that is accessible by the public at no additional charge to the state.

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

#### **12.04 Working Paper Access and Retention**

Respondent shall, upon request, provide the internal auditor and the State Auditor's Office access to all relevant data relating to the cost incurred under this agreement. Respondent understands that acceptance of state funds under this agreement acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to audit or investigate the expenditure of state funds under this agreement. Respondent further agrees to cooperate fully with the State Auditor's Office or its successor, including providing all records requested. Respondent will ensure that this clause concerning authority to audit state funds received indirectly by subcontracts through Respondent and the requirement to cooperate is included in any subcontract it awards. The State Auditor's Office shall receive a copy of the executed contract.

All working papers and reports must be retained at the auditor's expense, in accordance with Government Auditing Standards, unless the auditor is notified in writing by THECB of the need to extend the retention period. The auditor is required to make working papers available, upon request, to THECB and all parties designated by the federal and state government or by THECB as part of an audit quality review process. Specifically, the State Auditor's Office shall have access to all working papers related to audits conducted. And, the State Auditor's Office shall have access to all draft and final reports and memoranda of discussions with agency management.

In addition, the auditor shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

#### **12.05 Irrevocability of the Proposal**

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

#### **12.06 Affirmations and Required Clauses**

**Anti-trust Affirmation.** Respondent represents and warrants that, in accordance with Texas Government Code § 2155.005, neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Texas Business and Commerce Code Chapter 15, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of its Response to any competitor or any other person engaged in the same line of business as Respondent.

**Assignment.** Respondent shall not assign its rights under any contract awarded as a result of this Request for Offers or delegate the performance of its duties under

the contract without prior written approval from THECB. Any attempted assignment in violation of this provision is void and without effect.

**Buy Texas.** To the extent applicable, in accordance with Texas Government Code § 2155.4441, Respondent agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

**Texas Bidder Affirmation.** Respondent certifies that if a Texas address is shown as the address of the Respondent on this Response, Respondent qualifies as a Texas Bidder as defined in Texas Government Code § 2155.444(c)(2).

**Excess Obligations Prohibited.** Any contract awarded as a result of this Request for Offers is subject to termination or cancellation, without penalty to THECB, either in whole or in part, subject to the availability of state funds.

**Executive Head of a State Agency.** In accordance with Texas Government Code § 669.003, relating to contracting with the executive head of a state agency, Respondent certifies that it is not (1) the executive head of THECB, (2) a person who at any time during the four years before the date of the contract was the executive head of THECB, or (3) a person who employs a current or former executive head of THECB.

**Financial Participation Prohibited.** Pursuant to Texas Government Code § 2155.004(a), Respondent certifies that neither Respondent nor any person or entity represented by Respondent has received compensation from THECB for participating in the preparation of the specifications for this solicitation. Respondent certifies that the individual or business entity named in the Response or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated, and payment withheld if this certification is inaccurate.

**Dealings with Public Servants Affirmation.** Respondent has not given, offered to give, nor intends 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 submitted Proposal.

**Excluded Parties.** Respondent certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

**Foreign Terrorist Organizations.** Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization as prohibited by Texas Government Code § 2252.152.

**False Statements.** Respondent represents and warrants that all statements and information prepared and submitted in its Proposal are current, complete, true,

and accurate. Submitting a Proposal with a false statement or material misrepresentation made during the performance of a contract is a material breach of contract and may void the submitted Proposal and any resulting contract.

**Suspension and Debarment.** Respondent certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.

**Child Support.** Pursuant to Texas Family Code § 231.006(d) regarding child support, Respondent certifies that the individual or business entity named in this Proposal 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 Texas Family Code § 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.

**Debts and Delinquencies.** Respondent agrees that any payments due under this contract will be applied towards any debt or delinquency, including but not limited to delinquent taxes and child support, that is owed to the state of Texas.

**Dispute Resolution.** The dispute resolution process provided for in Texas Government Code Chapter 2260 must be used to attempt to resolve any dispute arising under a contract awarded pursuant to this Request for Offers.

**Governing Law and Venue.** Any contract awarded as a result of this Request for Offers shall be governed by and construed in accordance with the laws of the state of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to THECB.

**Human Trafficking Prohibition.** Under Texas Government Code § 2155.0061, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate

**Indemnification.** RESPONDENT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND THECB, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF RESPONDENT OR ITS AGENTS, EMPLOYEES,

SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS. RESPONDENT AND THECB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

**Prior Disaster Relief Contract Violation.** Under Texas Government Code §§ 2155.006 and 2261.053, Respondent certifies that the individual or business entity named in its Proposal is not ineligible to receive the specified Contract and acknowledges that any resulting Contract may be terminated and payment withheld if this certification is inaccurate.

**Signature Authority.** By submitting the Proposal, Respondent represents and warrants that the individual submitting this document and the documents made part of its Proposal is authorized to sign such documents on behalf of Respondent and to bind Respondent under any Contract that may result from the submission of its Proposal.

**Contracting Information Responsibilities.** Respondent represents and warrants that it will comply with the requirements of Texas Government Code § 552.372(a). Except as provided by Texas Government Code § 552.374(c), the requirements of Texas Government Code §§ 552.371-.376 may apply to the Contract and Respondent agrees that the contract can be terminated if Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.

**Cybersecurity Training.** Respondent represents and warrants that it will comply with the requirements of Texas Government Code § 2054.5192 relating to cybersecurity training and required verification of completion of the training program.

**Entities that Boycott Israel.** Respondent represents and warrants that (1) it does not, and shall not for the duration of the contract, boycott Israel or (2) the verification required by Texas Government Code § 2271.002 does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Respondent shall promptly notify THECB.

## **12.07 Conflicting RFO Language**

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

**Award Notice.** If the RFO is awarded, THECB will post a Notice of Award on the ESD. However, there is no guarantee that an award or any Contract will result from this RFO.