

# Texas Higher Education Coordinating Board

## REQUEST FOR PROPOSALS

### Implementation Evaluation of House Bill (HB) 2223



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

**RFP No. 781-0-22731**

Proposal Due Date:

**March 13, 2020**

Time (Central Time):

**3:00 p.m. CT**

# PART A: OVERVIEW, CONTENT, AND INSTRUCTIONS

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## A.1 DEFINITIONS

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

Contract	Any contract(s) resulting from this solicitation. Note: There is no guarantee that any contract will result from this solicitation.
Contractor or Awarded Contractor	The Respondent(s) awarded a Contract as a result of the RFP.
ESBD	The Electronic State Business Daily, which is available online at <a href="http://www.txsmartbuy.com/sp">http://www.txsmartbuy.com/sp</a>
Gov't Code	The Texas Government Code.
HUB	Historically Underutilized Business (HUB)
Party / Parties	Either the THECB and Respondent separately or collectively
PIA	Texas Public Information Act, Chapter 552, Gov't Code is a series of legislative acts are intended to guarantee public access to governmental information in the interest of providing transparency in government. A link to the Act can be found: <a href="http://www.statutes.legis.state.tx.us/docs/GV/htm/GV.552.htm">http://www.statutes.legis.state.tx.us/docs/GV/htm/GV.552.htm</a>
Proposal	The response submitted by a Respondent to the THECB as a result of this solicitation
Respondent	Any person or contractor who submits a Proposal in response to this solicitation.
RFP	Request for Proposal, which is the type of solicitation embodied in this document. The RFP consists of Part A, Overview, Content, and Instructions and Part B, the Anticipated Contract/Purchase Order and any exhibits or attachments thereto.
TAC	The Texas Administrative Code, which is the publication for administrative rules.
THECB/Agency	The Texas Higher Education Coordinating Board, the state agency issuing this solicitation.
60x30TX	("60 by 30 Tex") The higher education strategic plan containing four broad goals. The aim of the 60x30TX higher education strategic plan is to help all students achieve their educational goals, which in turn, will help Texas remain globally competitive for years to come. The plan seeks to increase student success through the combined expertise and resources of many stakeholders. 60x30TX focuses on this common goal by striving for 60 percent of the 25- to 34-yearold Texas population to hold a certificate or degree by 2030.

Advising / Counseling	The ongoing and intentional process by which faculty and/or staff members assist students to navigate their choice of courses or majors, access campus and community services, develop career goals and short/long-term plans.
FERPA	The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education
Texas College and Career Readiness Standards (CCRS)	The standards adopted by the Coordinating Board in January 2008 which articulate the knowledge and skills that students must know and be able to do to succeed in entry-level college/university courses and in the skilled workforce. The Texas CCRS can be found at <a href="http://www.thecb.state.tx.us/collegereadiness/CRS.pdf">http://www.thecb.state.tx.us/collegereadiness/CRS.pdf</a> .

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## A.2 DESCRIPTION AND OVERVIEW

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### A.2.1 Description of Services

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

### A.2.2 Eligibility Information

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

Respondents **must** have demonstrated experience in evaluation research and in planning, implementing, and managing a statewide policy evaluation.

Respondents **must** demonstrate experience and proven success in the evaluation of developmental education models, including a corequisite models.

Respondents **must** either have personnel located in the state of Texas or be willing to travel frequently to Texas.

Respondents **must** be able to implement services with an anticipated start date immediately following execution of contract.

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

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

The Contract shall commence upon the execution of a Contract by the THECB with the Awarded Contractor and extending through **August 31, 2020** with option for renewal at THECB's sole discretion depending on satisfactory performance and availability of funding. The contract term may not be extended except by amendment signed by the parties.

Renewal Periods:

1st Renewal – September 1, 2020 through August 31, 2021

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**

The purpose of this RFP is to solicit Proposals from qualified public or private organizations, independent evaluators, or higher education institutions to conduct an external evaluation of the implementation by Texas public institutions of higher education of House Bill (HB) 2223, 85th Legislative Session. This legislation requires that a certain percentage of the institution's underprepared students be enrolled in corequisite model(s). A corequisite model is an instructional strategy whereby undergraduate students as defined in [TSI Rule 4.53\(24\)](#) are co-enrolled or concurrently enrolled in a developmental education course or non-course competency-based option (NCBO) as defined in [TSI Rule 4.53\(18\)](#) and the entry-level freshman course of the same subject matter within the same semester. The developmental component provides support aligned directly with the learning outcomes, instruction, and assessment of the entry-level freshman course, and makes necessary adjustments as needed in order to advance students' success in the entry-level freshman course. Such models are designed to accelerate students through milestones towards successful completions and transfers as outlined in the state's higher education strategic plan, [60x30TX](#).

Awarded Respondent(s) shall have demonstrated experience and understanding of higher education as delivered in Texas and developmental education metrics and processes; and experience and knowledge in both quantitative and qualitative methodologies including face-to-face and telephone interviews and focus groups. The successful Respondent(s) should also have experience in managing complex, statewide evaluation projects with multiple stakeholders.

The Awarded Respondent(s) –shall work collaboratively with THECB staff members to develop evaluation methods appropriate to program design. These methods may include site visits, as well as interview and focus groups of students, faculty, and other stakeholders, as identified by the THECB.

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

The Awarded Respondent shall conduct an evaluation of the implementation of HB 2223. To include:

**Quantitative analysis:**

- Access and use administrative and survey data collected by the THECB to analyze the following:
  1. Comparison of student success metrics in corequisite developmental education models with non-corequisite developmental education models.
  2. Comparison of student success metrics in various implementation options of corequisite developmental education (e.g. number of semester credit hours, mode of instruction, etc.).
- Use of administrative data will require analysis to be conducted at one of the designated Texas Education Research Centers (ERC), and/or at the THECB headquarters.

### **Cost Study:**

- Conduct a study and report findings on the cost effectiveness of the implementation of corequisite developmental education models as required by HB 2223.

### **Implementation Study:**

- Conduct site visits to institutions throughout Texas to identify and report the mechanisms by which corequisite courses impact various student outcomes.

A final evaluation report will synthesize findings and information from the three evaluation components (quantitative analysis, cost study, and implementation study) and provide an overview of the impact of the legislation. Findings from the final evaluation report will be used for statewide policy and practice considerations by THECB staff, in collaboration with Texas public institutions of higher education. Findings will also be used by THECB staff to help identify best practices in program implementation and scale-up of student participation in corequisite models. These institutional collaborations and THECB analyses will also help inform the legislatively-mandated report on Developmental Education, per Rider 32 (85th Texas Legislature, Regular Session).

## **A.2.6 Deliverables**

The deliverables for this RFP shall contain written documents as follows:

- Develop a Comprehensive Evaluation Plan (which covers the entire Contract Term) and timeline including quantitative data analysis and cost study (i.e., travel to access data at an ERC or THECB headquarters), and implementation data collection (i.e., any site visits, surveys, interviews, etc.), and budget on or before March 30, 2020.
- Submit documents necessary to be granted access to student-level administrative data at the THECB headquarters, or show approval of analysis project at an ERC site on or before March 23, 2020.
- Develop an analysis plan for quantitative analysis including operationalization of corequisite models and students success, and submit to the THECB before March 30, 2020.
- Develop an analysis plan for the cost study, and submit to the THECB before April 7, 2020.
- Develop final evaluation instruments for the cost and/or implementation study (e.g. survey instruments, site-visit protocols, interview protocols, etc.) and submit to the THECB before site visits are conducted.
- Present at various conferences and meetings, as requested by THECB staff.
- Communicate evaluation progress and results, including:
  1. At a minimum, monthly progress meetings with THECB staff;

2. Quarterly progress reports to the THECB that synthesize evaluation work-to-date;
3. A draft of the final comprehensive evaluation report (with all three parts) no later than August 31, 2020.
4. The final comprehensive evaluation report due no later than November 15, 2020. The comprehensive report will pull together information from all of the evaluation components.

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

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

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

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## **A.3 FINANCIAL MATTERS**

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### **A.3.1 Payment Terms and Award Summary**

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

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

### **A.3.2 Adding New Services to the Contract after Award**

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

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

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

### **A.4.1 Due Date for Proposals**

Respondents shall submit Proposals to the THECB in time for the THECB to verify and confirm that each Proposal is received and documented with a date and time no later than the Proposal Due Date indicated in the Calendar of Events section below. Proposals submitted late will be rejected and will not be considered for evaluation.

### **A.4.2 Calendar of Events**

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

<b>Event</b>	<b>Date</b>
Publication of RFP on the ESBD	February 21, 2020
Notice of RFP published in Texas Register	February 21, 2020
Last day to submit written questions regarding the RFP	March 6, 2020
Proposal Due Date and Time	March 13, 2020 @ 3:00pm CT
Post-proposal interviews or presentations, if required	TBA
Expected Award of Contract	Upon Execution

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

Inquiries and comments must reference RFP No 781-0-22731

Direct written questions to:  
Theresa Lopez, CTPM, CTCM  
Director of Procurement  
Texas Higher Education Coordinating Board  
Office of General Counsel  
Theresa.lopez@thecb.state.tx.us

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



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

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

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

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

#### **A.4.4 Pre-Proposal Conference**

Not Applicable

#### **A.4.5 Notice of Intent Guidelines**

Not Applicable

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

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

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

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

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

Respondents shall submit:

1. Proposals shall be bound in a three-ring binder.
2. One (1) clearly marked "**Original**" of their proposal response with original signature and;
3. Three (3) identical copies of their proposal and;
4. One (1) electronic copy of the complete RFP response on a compact disk or memory stick (flash drive) in Microsoft Word.
5. Proposals shall be written only on 8 ½" x 11" white paper using double or 1.5 spacing, and 12-point or larger Times New Roman font.
6. Proposals shall be free of any extrinsic items.

**Proposals shall include all required attachments and certifications. The THECB will not accept attachments and certifications submitted after the deadline. Failure to**

**provide all required information shall make the proposal non-responsive and thus disqualified from consideration. The THECB may reject a proposal that fails to include required contents.**

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

<b><u>TAB 1</u></b>	<b>Statement of the Requirements</b> Each respondent shall state succinctly its understanding of this RFP's requirements and describe how it would perform the tasks in the Statement of Work. Each respondent must demonstrate the capability to provide the services. If a respondent believes there are additional tasks needed to accomplish the THECB's goals, identify them, explain why they are needed, and how the respondent would perform them.
<b><u>TAB 2:</u></b>	<b>Competence and Knowledge</b> Each respondent shall demonstrate the competence and knowledge to fulfill the requirements identified in the Statement of Work. The respondent shall also describe any prior experience in providing similar services or exact services, especially for other governmental organizations. The respondent shall describe the processes and procedures it intends to use to provide these services and an organizational chart identifying the functions and reporting relationships of the personnel who would be assigned to this work.
<b><u>TAB 3:</u></b>	<b>Qualifications</b> Respondents must have a minimum of five years' experience providing services similar to those described in the SOW. An entity or company in existence for fewer than five years is eligible to submit a proposal if key personnel on the proposal team have the minimum required experience.  For each person a respondent identifies to perform the work described in this RFP, provide a detailed resume that describes the services they would perform, their qualifications, and their experience.
<b><u>TAB 4</u></b>	<b>Compensation/Fee Structure</b> For services as described in the Statement of Work: Payment methodology: Firm fixed price. <b>Please note: The proposed compensation shall include all anticipated expenses. The THECB will not reimburse any out-of-pocket expenses not contemplated at the time of contract execution.</b>
<b><u>TAB 5</u></b>	<b>References</b> Each respondent shall provide at least three references, including contact information. The THECB prefers references from clients for whom the respondent has performed similar work, including other state agencies. Do not use the THECB or any individuals employed by the Board as a reference.
<b><u>TAB 6</u></b>	<b>Attachments</b>

**The Transmittal Letter:**

This letter is a **REQUIRED** document.

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 Implementation Evaluation of House Bill (HB) 2223 RFP. 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 Anticipated Contract."* Any exceptions to this RFP 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 RFP 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 RFP or the Anticipated Contract. If any Respondent takes a "blanket exception" to this entire RFP or the Anticipated Contract or does not provide proposed alternative language, the Proposal may be disqualified from further consideration. Any terms and conditions attached to a Proposal will not be considered unless specifically referred to in this RFP and Respondent's attachment of such terms and conditions to a Proposal may disqualify the Proposal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Attachment D: **Preferences:**

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

E. Attachment E: **Anticipated Standard Service Contract:**

**The Conflict of Interest Disclosure Statement**

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

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

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

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

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

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

The THECB may not enter into a contract with a person who has been employed by the THECB within the past 12 months. Persons who have been employed by the THECB or by another state agency in Texas more than 12 months but fewer than 24 months ago shall disclose in the proposal the nature of previous employment with the state agency and the date the employment ended.

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

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

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

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

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

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

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

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

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

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

THECB shall award a Contract(s) to the Respondent(s) whose proposal is considered to be the best value to the state, as defined in §2155.074, Gov't Code. Part B of this RFP represents the Anticipated Contract (along with its incorporated exhibits) which will be entered into with the Contractor(s) and lists the additional terms and conditions governing this RFP. The THECB may make its award to Respondent(s) based on any combination, including, but not limited to line item that provides best value to the State.

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

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

**Evaluation Criteria for each of the Proposal Components:**

1	Qualifications & Experience	25%
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2	Fees and Costs	35%
3	Prior experience in performing similar work	40%
	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 RFP title and number. The information sheet is the first page before the sealed proposal submission. All parts of the proposal after the information sheet shall be submitted in an envelope or other sealed container that is marked with the respondent's name and "*RFP No. 781-0-22731 CONFIDENTIAL.*"

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

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

Texas Higher Education Coordinating Board  
Attn: Purchasing Department  
1200 East Anderson Lane  
Austin, TX 78752

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## **A.8 ADDITIONAL INSTRUCTIONS**

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### **A.8.1 Accuracy of the Proposal**

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



### **A.8.2 Cost of Submitting the Proposal**

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

### **A.8.3 Public Information Act Disclosures**

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

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

### **A.8.4 Irrevocability of the Proposal**

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

### **A.8.5 Affirmations and Required Clauses**

Pursuant to TGC, Section 2262.003, contractor understand that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, agency or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards.

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

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

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

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

### **CONFLICTING RFP LANGUAGE**

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



**RFP No. 781-0-22731**

**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 <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

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



Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

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

#### **SECTION 4: AFFIRMATION**

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date  
(mm/dd/yyyy)

#### **Reminder:**

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

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Page 1 of 1  
(Attachment A)

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

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Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

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

## SECTION B-1: SUBCONTRACTING OPPORTUNITY

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

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

## SECTION B-2: MENTOR PROTÉGÉ PROGRAM

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

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

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

## SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

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

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

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

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

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

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

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

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Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

## SECTION B-4: SUBCONTRACTOR SELECTION

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

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

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

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

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

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

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



# HUB Subcontracting Opportunity Notification Form

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

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

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

## SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name: \_\_\_\_\_

State of Texas VID #: \_\_\_\_\_

Point-of-Contact: \_\_\_\_\_

Phone #: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Fax #: \_\_\_\_\_

## SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: \_\_\_\_\_

Point-of-Contact: \_\_\_\_\_

Phone #: \_\_\_\_\_

Requisition #: \_\_\_\_\_

Bid Open Date: \_\_\_\_\_

(mm/dd/yyyy)

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

### 1. Potential Subcontractor's Bid Response Due Date:

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

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

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

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

### 2. Subcontracting Opportunity Scope of Work:

### 3. Required Qualifications:

- Not Applicable

### 4. Bonding/Insurance Requirements:

- Not Applicable

### 5. Location to review plans/specifications:

- Not Applicable



**RFP No. 781-0-22731**

**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. 781-0-22731**

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

{fedGrantTitle}  
{fedStatAuth}  
{cfda}, {fedAwardno}

## **STANDARD SERVICES CONTRACT**

### **Section 1.0 Parties**

This agreement ("Contract") is entered into by and between the TEXAS HIGHER EDUCATION COORDINATING BOARD, an agency of the State of Texas, hereinafter designated "THECB", "Board", or "Agency" and **{contracted\_party}**, hereinafter designated "Contractor" or "Contracted Party". At times, THECB or "Board" and Contractor are referred to singularly as "Party" and collectively as "Parties".

*Receiving Agency:*

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

*Contractor:*

**{contracted\_party}**  
**{contractedPartyAddress}**  
**{contractedPartyCity}, {contractedPartyState}**  
**{contractedPartyZip}**

### **Section 2.0 Term of Contract**

THECB shall pay Contractor in connection with the Contract project during the period beginning **upon execution** and ending **{period\_end}** ("Contract Term"). Contract may be extended for an additional [xxxxxx] period of time, provided both parties agree in writing to do so, prior to the expiration date. Any extensions shall be at the same terms and conditions, plus any approved changes. Subject to proper approvals pursuant to 19 Texas Administrative Code (TAC) Sec. § 1.16, the Parties may amend the Contract to extend the Contract Term.

### **Section 3.0 Purpose and Statement of Services to be Performed**

**3.01 {description}**

**3.02 {statement of Work}**

**Items to also include in the contract:**

- **Budget information: i.e. How can the funds be spent, limitations, procedures for budget changes?**
- **Payment requirements: How will the contractor be paid and when?**
- **Reporting requirements: Any reporting requirements? When are reports due?**
- **Monitoring language: How will you ensure deliverables have been received and funds are spent accordingly?**
- **The Contracted Party listed in BMS needs to match Contractor on contract document.**

### **Section 4.0 THECB Maximum Liability Under the Contract and Payment**



- 4.01** THECB total liability under the contractor shall not exceed the sum of \$ {total\_\$}, {total\_\$\_extended}. This maximum liability includes, any pre-authorized expenses incurred ("Contract Amount"). Any changes to the maximum liability are subject to proper approvals pursuant to 19 TAC Sec. §1.16.
- 4.02** Contractor shall provide invoices to THECB for Services performed. No payment shall be made under this Contract without the prior submission of detailed, correct invoices, accepted by THECB. All payments due to Contractor will be made pursuant to the Texas Prompt Payment Law, Texas Government Code, Subtitle F, Chapter 2251. The form of any invoice must comply with the specifications of THECB and must be submitted in the manner and with the documentation THECB may require. All invoices (which are to include reimbursement claims for expenses if authorized under this Contract) shall be submitted to THECB Program Manager, or THECB Program Manager's successor, who is listed in this contract. Payments under this Contract are subject to the availability of appropriated funds. Submission of an invoice shall constitute Contractor's certification that Services and other obligations under the Contract have been performed in accordance with this Contract.
- 4.03** {services\_for\_payment}
- 4.04** The Comptroller of the State of Texas uses an electronic funds transfer system to make payments to vendors who choose to receive payment through the electronic funds transfer system, rather than by state warrant. If not already established to receive direct deposit payments from the State of Texas, vendors who choose to receive payment by electronic funds transfer should complete and submit the Vendor Direct Deposit Authorization located on the Comptroller's website.

## **Section 5.0                      General and Special Provisions of Contract, Certain Certifications**

### **5.01** Contractor further certifies the following:

- 5.01.1 Former Agency Employees:** Contractor represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were former employees of the Agency during the twelve (12) month period immediately prior to the date of execution of the contract.
- 5.01.2 Prior Disaster Relief Contract Violation:** Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- 5.01.3** Pursuant to Section 2261.252 of the Texas Government Code, a state agency may not enter into a contract for the purchase of goods or services with a private vendor with whom any of the following agency employees or officials have a financial interest: (1) a member of the agency's governing body; (2) the governing official, executive director, general counsel, chief procurement officer, or procurement director of the agency; (3) a family member related to an employee or official described above in (1) or (2) within the second degree of affinity or consanguinity.
- 5.01.4** Pursuant to Section 2263 of the Texas Government Code, financial advisors or service providers must disclose in writing to the administrative head of the state governmental entity and the State Auditor's Office (SAO) the following. For this purpose, "financial advisor or service provider" includes a person or business entity who acts as a financial advisor, financial consultant, money or investment manager, or broker. Such disclosure shall be in compliance with the provisions of Texas Government Code 2263.005.

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

**5.01.6 HB1295:** Pursuant to Texas Government Code Section 2252.908, which was added by H.B. 1295, 84<sup>th</sup> Leg. Session, R.S. (2015), Contractor agrees to submit a disclosure of interested parties to the THECB at the time Contractor submits the signed contract to the THECB. This section applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million.

**5.01.7 Felony Criminal Convictions:** Contractor represents and warrants that Contractor has not and Contractor's employees who will be involved in the Contract Project have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised THECB as to the facts and circumstances surrounding the conviction(s) and has received THECB's prior written consent to proceed.

**5.01.8 Certification Concerning Restricted Employment for Former State Officers or Employees under Texas Government Code §572.069:** Contractor certifies that it has not employed and will not employ a former THECB or state officer who participated in a procurement or contract negotiation for THECB involving Contractor within two years after the state officer or employee left state agency employment or service.

This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.

**5.01.9 Franchise Tax Certification:** Contractor, certifies that it is exempt or not delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Texas Tax Code. If Contractor is a qualifying business entity type per Texas Comptroller of Public Accounts guidelines and is not set up in the Texas Franchise system, Contractor must do so prior to contracting with the State of Texas.

**5.01.10 Certification Concerning Dealing with Public Servants:** Contractor 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 this Contract.

**5.01.11 Certification Concerning Financial Participation:** Under Texas Government Code § 2155.004, Contractor certifies that the individual or business entity named in the 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. Section 2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitation or specification for the Contract.

**5.01.12 Signature Authority:** Contractor represents and warrants that the individual submitting this document, and any other documents made part of this Contract, is authorized to sign such documents on behalf of the Contractor.

## **Section 6.0     Terms and Conditions**

## **6.01 Termination:**

Notwithstanding the termination or expiration of this Contract, the provisions of this Contract regarding confidentiality, indemnification, transition, records, right to audit and independent audit, property rights, dispute resolution, invoice and fees verification, and default shall survive the termination or expiration dates of this Contract.

**6.01.1 Convenience of the State:** THECB, in its sole discretion, may terminate this Contract upon one (1) calendar day's written notice to Contractor. Such notice will be provided in accordance with section 6.28.2 of this Contract. In the event of such termination, the Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. THECB will be liable only for payments for any goods and/or services ordered from the Contractor before the termination date.

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

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

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

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

**6.01.5 Excess Obligations (Non-Appropriation):** The contract is subject to termination or cancellation, without penalty to Agency, either in whole or in part, subject to the availability of state funds.

**6.01.6 Effect of Termination:** Upon any termination, all indemnities, including without limitation those set forth in this Contract, as well as Contract provisions regarding confidentiality, records retention, right to audit, ownership, and dispute resolution, shall survive the termination of this Contract for any reason whatsoever and shall remain in full force and effect. In the event of any termination, Contractor shall, unless otherwise mutually agreed

upon in writing, cease all Services immediately upon the effective date of termination, except such Services that THECB deems are necessary to wind-up in a cost-effective manner. For any termination by THECB other than termination for non-appropriation, THECB shall be liable to Contractor for only that portion of the Services authorized by THECB and which have been completed prior to the effective date of termination, provided that THECB shall not be liable for any work performed that is not acceptable to THECB and/or does not meet Contract requirements, plus any necessary work deemed appropriate by THECB to cost-effectively wind-up.

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

**6.02 Amendment:** This Contract may be modified only by written amendment executed by the Parties hereto; however, any amendment of this Contract that conflicts with the laws of the State of Texas shall be void ab initio.

**6.03 Indemnification:**

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

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

**6.05 Assignment:** Contractor shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from the Agency. Any attempted assignment in violation of this provision is void and without effect.

**6.06 Delegation, or Subcontracting:** Unless as otherwise provided for in this Contract, no contractual rights, interest, or obligation shall be delegated or subcontracted by Contractor without prior written approval of THECB. No delegation or subcontract approved by THECB shall relieve Contractor of any obligation or responsibility under this Contract. It is the parties intent that to the extent subcontracting is approved by THECB, Contractor shall make a good faith effort to subcontract with Historically Underutilized Business(es) (HUB) as defined in Texas Government Code §2161.001(2)

during the performance of this Contract. The goal of the HUB program is to promote full and equal business opportunities for all businesses contracting with the State of Texas.

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

**6.07.1** Contractor shall maintain its records and accounts in a manner which shall assure a full accounting for all funds received and expended by Contractor in connection with the Contract Project. These records and accounts (which includes all receipts of expenses incurred by Contractor) shall be retained by Contractor and made available for inspecting, monitoring, programmatic or financial auditing, or evaluation by THECB and by others authorized by law or regulation to do so for a period of not less than seven (7) years from the date of completion of the Contract or the date of receipt by THECB of Contractor's final claim for payment or final expenditure report or until any litigation/billing issues are resolved, whichever is later. If an audit has been announced, the records shall be retained until such audit has been completed. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the Services provided in this Contract. Contractor and any subcontractors shall provide any Audit Entities with any information such entity deems relevant to any monitoring, investigation, evaluation, or audit.

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

**6.07.3** State Auditor's Right to Audit: The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. The acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

**6.08 Child Support Obligation Family Code Applicability:** By signing this Contract, Contractor certifies that under Section 231.006, Family Code, Contractor is not ineligible to receive payment under this Contract and acknowledges that this Contract may be terminated and payment may be withheld or recouped if this certification is inaccurate. If this certification is shown to be false, Contractor is liable to THECB for attorneys' fees, the costs necessary to complete the Contract, including the cost of advertising and awarding a second contract, and any other damages provided by law or Contract. Under Section 231.006 of the Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified

grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

- 6.09 Dispute Resolution:** If THECB determines that any work product is not acceptable, THECB shall notify Contractor of the specific deficiencies in writing. Contractor shall then undertake all steps necessary to correct any deficiencies at no additional cost to THECB. In the event any issues cannot be resolved, the dispute resolution process provided for in Texas Government Code, Chapter 2260 shall be used by THECB and Contractor to attempt to resolve any claim for breach of Contract. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the contract.
- 6.10 Public Disclosure:** Contractor understands and agrees that no public disclosures or news releases pertaining to this Contract, including any results, findings or reports conducted to fulfill requirements of this Contract, shall be made without prior written approval of THECB.
- 6.11 Confidentiality, Public Information Act, and FERPA:** Notwithstanding any provisions of this Contract to the contrary, Contractor understands that as a Texas state agency, THECB is subject to and will comply with the Texas Public Information Act, Government Code, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. Contractor will cooperate with THECB in the production of documents responsive to any such requests under the Public Information Act at no additional charge to THECB.
- 6.11.1** THECB will make a determination whether to submit a Public Information Act request to the Attorney General. This Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. Contractor will notify THECB's contact within 24 hours of receipt of any third party requests for information it receives relating to this Contract. In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State and shall cooperate with THECB in doing so. Contractor agrees to maintain the confidentiality of information received from THECB and the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers. Contractor will not disclose any information to which it is privy under this Contract without the prior written consent of THECB. Contractor will indemnify and hold harmless the State of Texas, its officers and employees, and THECB, its officers and employees for any claims for damages that arise from the disclosure by Contractor of information also held by the State of Texas or THECB to which Contractor is privy under this Contract.
- 6.11.2** Contractor agrees to comply with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g, and the implementing federal regulations, 34 CFR Part 99.
- 6.11.3 Protection of Confidential Data (Covered Data and Information)**  
Contractor agrees to abide by the limitations on re-disclosure of personally identifiable information from education records set forth in the Family Educational Rights and Privacy Act (34 CFR § 99.33 (a)(2)) and with the terms set forth below in 6.11.4 – 6.11.9. 34 CFR 99.33 (a)(2) states that the officers, employees, and agents of a party that receive education record information from THECB may use the information, but only for the purposes for which the disclosure was made.
- 6.11.4 Acknowledgment of Access to Covered Data and Information (CDI)**  
Contractor acknowledges that the Contract allows the Contractor access to CDI.
- 6.11.5 Prohibition on Unauthorized Use or Disclosure of CDI**

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

**6.11.6 Return or Destruction of CDI**

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

**6.11.7 Breach**

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

**6.11.8 Maintenance of the Security of Electronic Information**

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

**6.11.9 Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information**

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

**6.12 Infringements**

CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, THECB AND THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, OTHER CONTRACTORS, ASSIGNEES, OFFICERS, AND DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND THECB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS IF THECB AND/OR THE STATE OF TEXAS AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, OTHER CONTRACTORS, ASSIGNEES, AND DESIGNEES ARE A NAMED DEFENDANT IN ANY LAWSUIT AND THE CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE OF THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THECB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- 6.12.1** Contractor shall have no liability under this section if the alleged infringement is caused in whole or in significant part by: (i) THECB's use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product by THECB without Contractor's approval, (iii) any modifications made to the product by the

Contractor pursuant to THECB's specific instructions, (iv) any intellectual property right owned by or licensed to THECB by a person or entity other than the Contractor, or (v) any use of the product or service by THECB that is not in substantial conformity with the terms of any applicable license agreement.

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

**6.13 Ownership/Work Made for Hire:** All work product generated as a result of this Contract Project, including but not limited to all information, materials, products, research, reports, studies, statistical analyses, work papers, approaches, designs, deliverables, systems, documentation, methodologies, concepts, research materials, data, photos, software, intellectual property or other property produced or generated in connection with this Contract that had not previously been produced or generated by Contractor, either completed or partially completed, shall be the sole property of THECB and all rights, title, and interest in and to the work product shall vest in THECB upon payment for the Services.

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

**6.13.2** Contractor shall ensure that this provision, "Ownership/Work Made for Hire," is contained in any subcontract Contractor is authorized by THECB to award. Contractor may, at its own expense, keep copies of all its materials for its personal files. Contractor shall not use, willingly allow, or cause to have such work product used for any purpose other than the performance of Contractor's obligations under this Contract without the prior written consent of THECB; provided, however, that Contractor shall be allowed to use non-confidential materials for writing samples in pursuit of work.

**6.14 Governing Law and Venue:** The contract 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 the contracting Agency.

**6.15 Additional Contractor Responsibilities:** Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of this Contract, including applicable workers compensation laws, compensation statutes and regulations, and licensing laws and regulations. When requested to do so by THECB, Contractor shall furnish THECB with satisfactory proof of its compliance. Contractor shall be responsible for damage to THECB's equipment, and/or the workplace and its contents, by its, or its subcontractors' work, negligence in work, personnel, and equipment. Contractor shall be responsible and liable for the safety and health of its employees and contractors while they are performing work for THECB under this Contract. Contractor shall provide all labor and equipment necessary to furnish the goods or perform the Services. All employees of Contractor shall be a minimum of 18 years of age and experienced in the type of work to be performed. Contractor shall permit no visitors or relatives of Contractor's



employees and contractors on THECB's property unless they also are bona fide employees or subcontractors of Contractor.

- 6.16 Conflict of Interest:** Contractor represents and warrants that Contractor, its principals, employees, or subcontractors have no potential conflict of interest in providing Services to THECB under this Contract, and that the provision of Services under this Contract does not create an appearance of impropriety. Failure to disclose a conflict of interest, at any time during the duration of this Contract, shall be cause for termination of this Contract. Contractor represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
- 6.17 Financial Interests; Gifts:** Contractor represents and warrants that neither Contractor nor any person or entity that will participate financially in this Contract has received compensation from THECB or any agency of the State of Texas for participation in preparation of specifications for this Contract.
- 6.18 Additional Contractor's Representations:** Contractor hereby covenants, represents and warrants that Contractor (including, for purposes of this section, its employees, consultants, subcontractors, and agents) (1) has the technical expertise and general skills necessary to perform competently and professionally the Services in accordance with this Contract, (2) is not a party to or bound by any agreement, obligation, or understanding which restricts or limits in any way Contractor's right to enter into this Contract or Contractor's right or ability to perform Contractor's obligations under this Contract, (3) shall not use the trade secrets, intellectual property rights, copyrights, or other proprietary rights of any third party in the performance of Contractor's obligations under this Contract without having first lawfully obtained the right, in writing, to do so, and (4) has the necessary equipment, facilities and workers to perform Contractor's obligations under this Contract.
- 6.19 Antitrust:** The undersigned affirms under penalty of perjury of the laws of the State of Texas that: "(1) in connection with this Contract, neither I nor any representative of the Contracted Party have violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (2) in connection with this Contract, neither I nor any representative of the Contracted Party have violated any federal antitrust law; and (3) neither I nor any representative of the Contracted Party have directly or indirectly communicated any of the contents of this Contract to a competitor of the Contracted Party or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Contracted Party."
- 6.20 Equal Opportunity:** Contractor represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, religion, political belief, sex, age, or disability in the performance of this Contract.
- 6.21 Independent Contractor:** Contractor shall be an independent contractor in all matters relating to this Contract. Contractor and its employees, agents, and subcontractors shall not be deemed or construed to be the employees or agents of THECB for any purposes whatsoever. Contractor agrees and acknowledges that Contractor, its employees and agents, and Contractor's subcontractors are independent contractors of THECB and/or the State of Texas and are not employees of THECB or the State of Texas, and Contractor agrees that it shall have complete responsibility in the area of employment law and relations regarding its own employees, contractors, and agents, including but not limited to: wrongful discharge lawsuits, unemployment issues, workers' compensation, employment taxes, any other benefits and reimbursement due to losses in these areas. Consistent therewith, Contractor agrees that it shall make its own arrangements to provide its employees with all necessary employee benefits, including unemployment and workers' compensation benefits, and THECB is, in no way, a party to such arrangements. Regarding its employees, Contractor shall have the sole authority to hire, fire, transfer, train, evaluate, discipline, pay and assign work.

- 6.21.1** Contractor agrees and acknowledges that Contractor and Contractor's employees or assistants shall not be entitled to any State of Texas benefit on account of the services provided hereunder. If THECB or the State of Texas shall nonetheless become liable for such payments or obligations, Contractor shall promptly pay or reimburse THECB or the State of Texas for such liability or obligation.
- 6.22 Eligibility/Authorization to Work in the United States:** Contractor shall ensure that all personnel provided to perform work under this Contract possess proof of eligibility/authorization to work in the United States in compliance with the Immigration Reform and Control Act of 1986, the Immigration Act of 1990 including any amendments already adopted or as may be adopted hereafter, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 including any amendments already adopted or as may be adopted hereafter. Contractor shall maintain written records on all personnel provided under the Contract and shall provide such records to THECB upon request. Failure to maintain and provide records upon request shall represent a material breach of this Contract and THECB shall have the right to terminate the Contract for cause. Contractor shall ensure this section is included in all subcontracts it is authorized by THECB to enter.
- 6.23 Taxes/ Workers' Compensation/Unemployment Insurance – Including Indemnity**
- 6.23.1** CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCE OF THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THECB AND/OR THE STATE OF TEXAS SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY.
- 6.23.2** CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THECB, THE STATE OF TEXAS AND THEIR OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES AND DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE THE ATTORNEY GENERAL OF THE STATE OF TEXAS IF THECB AND/OR THE STATE OF TEXAS AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, OTHER CONTRACTORS, ASSIGNEES, AND DESIGNEES ARE A NAMED DEFENDANT IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE OF THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THECB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.
- 6.24 Prohibition on Use of Funds for Lobbying:** Contractor represents and warrants that THECB's payments and Contractor's receipt of appropriated or other funds under this Contract are not prohibited by Texas Government Code, Sections 556.005 or 556.008.
- 6.25 Buy Texas:** In accordance with Section 2155.4441 of the Texas Government Code, Contractor 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.

- 6.26 Provision of Services:** Upon any request by THECB for the remittance of any Services for which THECB has made payment, Contractor shall immediately remit such Services to THECB. Any failure to remit such Services immediately shall be considered a material breach of this Contract.
- 6.27 Force Majeure:** THECB may grant relief from performance of this Contract if Contractor is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the Contractor. The burden of proof for the need of such relief shall rest upon the Contractor. Contractor shall notify THECB in writing if it believes that a force majeure may have occurred and THECB shall, in its sole discretion, determine if Force Majeure has occurred.

**6.28 Notice:**

- 6.28.1 Form of Notice.** All notices and other communications in connection with this Agreement shall be in writing.
- 6.28.2 Method of Notice.** All notices must be given (i) by personal delivery, (ii) by an express courier (with confirmation), (iii) mailed by registered or certified mail (return receipt requested), (iv) facsimile, or (v) electronic mail to the parties at the address specified in this Agreement, or to the address that a party has notified to be that party's address for the purposes of this section.
- 6.28.3 Receipt of Notice.** A notice in accordance with this Agreement will be effective upon receipt by the party to which it is given or, if mailed by registered or certified mail, upon the earlier of receipt or the third business day following mailing.

THECB NOTICE ADDRESS	CONTRACTOR'S NOTICE ADDRESS
Program Manager: {division contact}	{contracted_party} {vendorContact} [email address]

- 6.29 False Statements; Breach of Representations:** Contractors represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the Contract.
- 6.30 Severability and Waiver:** The invalidity, illegality, or unenforceability of any provision of this Contract shall in no way affect the validity, legality, or enforceability of any other provisions.
- 6.30.1** Each and every right granted to the Parties hereunder or under any other document delivered hereunder or in connection herewith, or allowed them by law or equity, shall be cumulative and may be exercised from time to time. Failure by THECB or Contractor at any time to require strict performance of any contractual provision or obligation contained herein shall not constitute a waiver or diminish the rights of either party thereafter to demand strict compliance. Neither THECB's review, approval, acceptance of, nor payment for any of the Services provided in this Contract shall be construed to operate as a waiver of any rights under the Contract, or of any cause of action arising out of the performance of the Services required by the Contract.
- 6.31 Boycotting Israel:** *(Only applicable to contracts with companies with ten or more full-time employees) that are valued at \$100,000 and above). If applicable:* Pursuant to Sections 2271.001

and 2271.002 of the Texas Government Code, Contractor certifies that it does not boycott Israel and will not boycott Israel during the Contract Term.

- 6.32 Human Trafficking Prohibition:** Under Section 2155.0061 of the Texas Government Code, the Contractor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate
- 6.33 Foreign Terrorist Organizations:** Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
- 6.34 System for Award Management:** THECB is federally mandated to adhere to the directions provided in the President's Executive Order 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism and any subsequent changes made to it. Contractor certifies that Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.sam.gov>.
- 6.35 Notification of Contract:**  
(Only applies to Employees of a Texas state agency or any public or private institution of higher education.)  
THECB will send notification to the contractor's employer, if Contractor is otherwise employed outside of their contracted work with THECB.
- 6.36 Insurance:** Contractor agrees to maintain at its expense insurance as required for the work being performed under this Contract. Such insurance will protect THECB from all claims for bodily injury, death, or property damage which may arise out of or result from the performance of the Contractor's obligations under the Contract. Contractor represents and warrants that it will, within ten (10) business days of award of contract, provide THECB with current certificates of insurance or other proof acceptable to THECB of the following insurance coverage:

- 6.36.1** Contractor must maintain Workers' Compensation insurance coverage in accordance with statutory limits.

Minimum Required Amounts of Insurance Coverage	
Type of Insurance	Each Occurrence/Aggregate
Workers' Compensation	Statutory Limits
Employer's Liability	
Bodily Injury by Accident	\$1,000,000 Each Accident
Bodily Injury by Disease	\$1,000,000 Each Employee
Bodily Injury by Disease	\$1,000,000 Policy Limit
Commercial General Liability (occurrence based)	Bodily Injury and Property Damage \$1,000,000 Each Occurrence Limit \$2,000,000 Aggregate Limit \$5,000 Medical Expense each person \$2,000,000 Products/Completed Operations Aggregate Limit \$1,000,000 Personal Injury and Advertising Liability \$50,000 Damage to Premises Rented
Automobile Liability All Owned, Hired and Non-Owned Vehicles	\$500,000 Combined Single Limit (for each accident)
Umbrella/Excess Liability	\$1,000,000 Per Occurrence

Note: The required insurance coverage must issue from a company or companies that:

- (1) Have both a Financial Strength Rating of "A" or better from A.M. Best Company, Inc.; and
- (2) Have a Financial Size Category Class of "VII" or better from A.M. Best Company, Inc.

**6.36.2** All insurance policies for required coverage must be issued by companies authorized to do business under the laws of the State of Texas and in a form satisfactory to THECB. All required insurance contracts must:

- 1) Be written on a primary and non-contributory basis with any other insurance coverages Contractor currently has in place; and
- 2) Include a Waiver of Subrogation Clause.

All certificates of insurance for required coverage other than workers compensation and professional liability must name the State of Texas and its Officers, Directors, and Employees as additional insureds.

Contractor shall:

- 1) Provide written notice to THECB by e-mail at [Contracts@theeb.state.tx.us](mailto:Contracts@theeb.state.tx.us) and by U.S. First Class Mail to 1200 E. Anderson Lane, Austin TX 78752 at least 30 calendar days prior to any cancellation, non-renewal, or material change of a required policy;
- 2) Ensure all insurance policies and certificates of insurance for required coverage are written to include all products, services, and locations related to Contractor's performance under the Contract; and
- 3) Deliver to THECB by e-mail at Contracts and by U.S. First Class Mail to 1200 E. Anderson Lane, Austin TX 78752 all renewal policies at least ten calendar days prior to any expiration of a required policy. All renewal policies and corresponding certificates of insurance must meet all terms set forth in the Contract.

Contractor must ensure that all provisions of the Contract concerning liability, duty, and standard of care, together with the indemnification provision, are underwritten by contractual liability coverage sufficient to include such Contractor's obligations under the Contract.

**6.37 Key Personnel:** Contractor shall assign only qualified personnel to this Contract. Contractor, in its reasonable discretion, reserves the right to substitute appropriate key personnel to accomplish its duties so long as the substituted personnel are equally qualified to accomplish the required Services. Contractor shall provide to THECB prior written notice and obtain written approval from THECB prior to any change in key personnel involved in providing Services under this Contract. Subcontractors providing services under the Contract shall meet the same requirements and level of experience as required of Contractor (see "Assignment, Delegation, or Subcontracting" provision for additional conditions regarding subcontracts). No subcontract under this Contract shall relieve Contractor of responsibility for ensuring the required Services are provided. THECB, in its sole discretion, may require Contractor to remove any employee, contractor, subcontractor, or vendor of the Contractor from providing work or services under the Contract. Contractor shall replace such removed personnel expeditiously so that its services are performed on a timely basis.

**6.38 Debts and Delinquencies to the State:** Contractor agrees that any payments due under the contract shall be applied towards any debt or delinquency that is owed to the State of Texas.

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

any unfair business practices, in an administrative hearing or court suit and further, that if such officer(s) has been the subject of either or both such allegations, that such officers have not been found to be liable for any such practices in such proceedings.

**6.40 Suspension and Debarment:** Contractor 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.

**6.41 Excluded Parties:** Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.

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

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

All persons employed to perform duties within Texas, during the term of the Contract; and  
All persons (including subcontractors) assigned by the Contractor to perform work pursuant to the Contract, within the United States of America.

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

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

**6.43 Drug Free Work Place:** The Contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the Contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

**6.44 No Commissions:** THECB shall not pay any commissions to Contractor under this Contract.

**6.45 Contacts:** Unless otherwise agreed to in writing by the Parties, primary contacts for routine communications related to the performance of Services under this Contract are as follows:

THECB STAFF (Or successor in office)	CONTRACTOR STAFF (Or successor in office)
{division contact}	{contracted_party} {vendorContact}

- 6.46 Applicable Taxes:** This Contract shall not be construed so as to supersede the laws of the United States or the State of Texas that accord the State of Texas, THECB, and all departments, agencies, and instrumentalities of the State of Texas exemptions from payment(s) of all taxes of whatever kind. More specifically, to the extent permitted by applicable law, THECB shall not directly or indirectly be liable for taxes of any kind. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. To the extent permitted by applicable law, THECB shall provide all applicable tax exemption certificates upon the Contractor's request.
- 6.47 Electronic and Information Resources Accessibility Standards, As Applicable per 1 TAC Chapter 213:**
- 6.47.1** Effective September 1, 2006, state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
- 6.47.2** Vendor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.
- 6.48 Smoking Policy:** THECB has a policy of being a smoke-free agency. The policy reflects THECB's commitment to providing a healthy environment for all THECB employees and visitors. This policy prohibits smoking within any state building. The Contractor, by acceptance of this Contract, agrees to abide by this policy when on the property of THECB.
- 6.49 Substitutions:** Substitutions are not permitted without the written approval of THECB.
- 6.50 Contracting Information Responsibilities (Applicable for Contracts \$1 million and Above) :** Contractor represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552 of the Government Code, may apply to the contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
- 6.51 Cybersecurity Training:** Contractor represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.
- 6.52 Disaster Recovery Plan:** Upon request of Agency, Contractor shall provide the descriptions of its business continuity and disaster recovery plans.
- 6.53 Entire Agreement and Order of Precedence:** This Contract consists of the following documents: the final executed Contract (including its Exhibits and any Amendments), THECB's Invitation for Bid, and the Contractor's response to the Invitation for Bid.

- 6.53.1** In the event of conflicts, contradictions, or inconsistencies between or among these documents, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of precedence:
- (1) Any duly executed amendments to the final executed contract;
  - (2) The final executed contract, including its exhibits;
  - (3) THECB's Request for Best and Final Offer (BAFO);
  - (4) Contractor's response to the Invitation for Bid.
- 6.53.2** This Contract (including its Exhibits and any Amendments) contains the final, complete and exclusive understanding of the Parties, and supersedes all prior contemporaneous, oral or written understandings, representations, and negotiations between Parties relating to the subject matter of this Contract. The Parties further agree that this Contract may not in any way be explained or supplemented by a prior or existing course of dealings between the Parties, by usage of trade or custom, or by any prior performance between the Parties pursuant to this Contract or otherwise.



**Full Disclosure:**

Section 7.0      Signatures:

This contract constitutes the entire agreement and understanding between the parties with regard to its subject matter and supersedes and merges all prior discussions, writings, negotiations, understanding, and agreements concerning the provision of these services.

By signature hereon, the individual(s) below represent and warrant that they are duly authorized representative(s) of Contractor and have the authority to bind Contractor in this Contract.

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{contracted\_party}

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Date

I, an authorized official of the THECB, hereby certify that this Contract is in compliance with applicable statutes and regulations and authorize the Services to be performed as written above.

AGREED and accepted on behalf of the THECB this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

---

{signContact}  
{signContacttitle}  
{party\_1}