



# TEXAS HIGHER EDUCATION COORDINATING BOARD

Request for Qualifications (RFQ)

## **Bond Counsel Services to Support the Student Loan Program**

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

**RFQ No. 781-1-24358**

NIGP: 961-49

<b><u>Solicitation Post Date:</u></b>	March 16, 2021
<b><u>Written Questions Deadline:</u></b>	April 15, 2021, by 11:30 p.m. CST/CDT
<b><u>Proposal Deadline:</u></b>	April 26, 2021, by 11:30 p.m. CST/CDT

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## **1.0 Overview**

The Texas Higher Education Coordinating Board (THECB) is a state agency with Board members appointed by the Governor. Bonds are issued to fund the THECB's Hinson Hazelwood student loan program. Texas Education Code Chapters 52 and 56, as amended, provide for the administration of the programs by THECB. Historically, the student loan program has provided funding through the repayment of student loans and earnings in amounts sufficient to meet debt service and reserve requirements and to pay administrative costs of the student loan program without drawing on the State's General Revenue Fund. THECB uses bond proceeds to fund the loan program. The program provides low interest loans to eligible students seeking an undergraduate education and/or graduate or professional education through public and independent institutions of higher education in Texas.

THECB seeks to enter a Contract for Bond Counsel in support of THECB's Student Loan Program in accordance with the requirements contained in this Request for Qualifications (RFQ). THECB reserves the right to award more than one Contract under the terms of this RFQ.

The Bond Counsel will assist THECB in the issuance of bonds and provide general program legal assistance when needed in accordance with OAG guidance pursuant Texas Government Code §§ 402.0212 and 2254.154 and Outside Counsel Contracts Rules (Title 1 Texas Administrative Code §§ 57.1-.9).

### **1.1 Eligibility Information**

Respondents must have a minimum of five years' experience providing services like those described in the Statement of Work (SOW). An entity or company in existence for fewer than five years is eligible to submit a Proposal if key personnel on the proposal team have the minimum required experience. Respondents who do not meet this requirement are not eligible for award.

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

### **1.2 Term of Contract**

The contract term shall be for the period beginning September 1, 2021, and extending through August 31, 2023, subject to final approval by the Office of the Attorney General of Texas (OAG).

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

### **1.3 Statement of Work**

Bond Counsel is required to provide support for the issuance of bonds, refunding of bonds, and student loan program compliance.

The Bond Counsel shall:

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

Securities, to the extent required or requested, and review and negotiate on behalf of THECB the terms of any credit enhancement agreements with respect to the Securities;

- (9) Attend informational meetings with prospective purchasers of Securities and meetings with bond rating agencies, to the extent required or requested;
- (10) Submit the transcript of legal proceedings pertaining to the authorization and issuance of the Securities to the OAG for approval;
- (11) Supervise the execution, printing, OAG approval, and Comptroller of Public Accounts' registration of the Securities, and delivery thereof to the purchaser;
- (12) Render an opinion to THECB and to the purchasers of the Securities to the effect that the information in the disclosure document relating to the Securities, the Bond Resolution under which the Securities are issued, the security for the Securities, tax matters, investments, and the Approving Opinion is a fair and accurate summary of the information purported to be shown or is correct as to matters of law, as applicable;
- (13) Advise THECB and THECB staff regarding the requirements of finance-related documents; and
- (14) Prepare all forms that need to be filed with the Internal Revenue Service relating to any securities issued or to be issued by THECB.

#### **1.4 Mandatory Criteria**

Proposals shall not be considered for further evaluation unless they are in compliance with all the following criteria:

- All attachments required by Section 4.1 below are received;
- The Management Component response required in Section 1.5 has been completed, including a complete discussion of the required qualifications and experience related to each item in the Statement of Work; and
- The proposed hourly or fixed fee has been included.

#### **1.5 Management Component**

Each Respondent shall demonstrate the competence and knowledge to fulfill the requirements identified in the Statement of Work. Respondent should also describe any prior experience in providing similar services or exact services, especially other governmental organizations. 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.

## **1.6 Reporting Requirements**

The Bond Counsel shall provide any reporting as required by the Bond Review Board or the OAG.

## **1.7 Contractor Responsibilities**

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

Failure to meet service requirements and/or specifications authorizes THECB to procure services of this RFQ elsewhere, charge any increased costs for the services, including the cost of re-soliciting, to the Contractor and terminate the contract. Failure to pay a damage assessment is cause for Contract termination.

## **2.0 Financial Matters**

### **2.1 Payment Terms and Award Summary**

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

The Awarded Contractor shall not begin or provide any services until on or after September 1, 2021, or until the Contract is executed and approved by the OAG if execution and approval occur after September 1, 2021. THECB does not guarantee a specific compensation to the Awarded Contractor throughout the term of the Contract. The Awarded Contractor is not guaranteed minimum compensation.

THECB will not apply for credit nor will THECB prepay. THECB shall pay, subject to the terms of the Texas Prompt Payment Laws and subject to approval by the OAG, upon the receipt of a properly submitted invoice after all goods and services have been received. Awarded Contractor shall follow the guidelines in Title 1 Texas Administrative Code § 57.6 for submitting invoices to THECB.

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

### **2.2 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 the Awarded Contractor(s) shall submit Proposals to THECB as instructed.

THECB may accept or reject any or all Proposals and may issue a separate RFQ for the services after rejecting some or all the Proposals. The services covered under this provision shall conform to the terms, conditions, specifications, and requirements as outlined in the request. Any resulting contract may be amended only upon the issuance of a written amendment showing the revision(s) prior to the services being provided as agreed, approved, and signed by both parties. Any amendment to the contract will be subject to OAG approval.

### **3.0 Anticipated Schedule of Activities**

#### **3.1 Due Date for Proposals**

Respondents shall submit Proposals to THECB in time for 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.

#### **3.2 Calendar of Events**

The solicitation process for this RFQ will proceed according to the schedule below. THECB reserves the right to revise this schedule or any portion of this RFQ by published Addendum on the Electronic State Business Daily (ESBD) and the THECB's website.

<b>EVENT</b>	<b>DEADLINE</b>
Publication of RFQ on the ESBD	March 16, 2021
Last Day to Submit Written Questions	April 15, 2021, by 11:30 p.m. CST/CDT
Response to Written Questions	April 20, 2021
Proposal Due Date and Time	April 26, 2021, by 11:30 p.m. CST/CDT
Post-Proposal interviews/presentations, if required	May 14, 2021
Anticipated Contract Start Date and End Date	September 1, 2021 to August 31, 2023

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

#### **3.3 Point of Contact**

Respondents shall direct all inquiries, written questions, requests for clarification, and communications concerning this RFQ to the Point of Contact listed below.

Inquiries and comments must reference RFQ No 781-1-24358.

Contact:  
Michelle Tafoya-Salazar  
Purchaser III  
Texas Higher Education Coordinating Board  
Office of General Counsel  
[eBids@highered.texas.gov](mailto:eBids@highered.texas.gov)

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

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

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

### **4.1 Solicitation Attachments**

This RFQ includes the following attachments, which are posted on ESBD:

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

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

Attachment B: HUB Subcontracting Plan (Required)

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

Attachment D: Conflict of Interest Disclosure Statement (Required)

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

Proposals shall include all required attachments and certifications. THECB will not accept attachments and certifications submitted after the Proposal deadline. Failure to submit all required information shall make the Proposal nonresponsive and thus disqualified



from consideration. THECB may reject a Proposal that fails to include the required contents.

**Respondents shall submit two files in PDF as noted below.** No mailed, hand-delivered, or faxed Proposals will be accepted.

The first PDF shall contain responses to the following:

1. Statement of Work Under Section 1.3;
2. Address Meeting the Mandatory Criteria;
3. Management Component;
4. Qualifications;
5. Fees; and
6. References.

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

**The second PDF shall contain the following:**

1. Attachment A: Execution of Proposal – All information on Attachment A is required to be completed
2. Attachment B: HUB Subcontracting Plan – All information on Attachment B is required to be completed.

In compliance with Texas Government Code §§ 2161.001-.253, it is THECB's policy to promote and encourage contract and subcontract opportunities for State of Texas certified Historically Underutilized Businesses in all contracts. Eligible Respondents are encouraged to become State of Texas HUB certified, applications may be found at: <https://comptroller.texas.gov/purchasing/vendor/hub/>.

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

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

Search the State of Texas HUB Database for HUB vendors by the NIGP class and item [here](#).

Additional minority and women owned business association resources are available for subcontracting notices are available on the Texas Comptroller's [website](#).

Additional information and training regarding how to complete a HUB Subcontracting Plan can be found [here](#).

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

### 3. Attachment D: Conflict of Interest Disclosure Statement

The Conflict of Interest Disclosure Statement is required and must be attested to by an unsworn declaration. Respondents shall be neutral and impartial, shall not advocate specific positions to THECB. Respondents shall identify the extent, nature, and length of these relationships or engagements. Entities having a conflict of interest, as determined by THECB, will not be eligible for contract award.

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

This Conflict of Interest Disclosure Statement shall be signed by the highest-ranking officer of Respondent's entity having responsibility for vetting corporate conflicts of interest, e.g. a corporate Executive Vice President rather than the head of an operating or regional unit of the firm.

THECB will determine whether a conflict of interest or the perception of a conflict of interest exists from the perspective of a reasonable person uninvolved in the matters covered by the resulting contract. THECB is the sole arbiter of whether a conflict or the appearance of a conflict of interest exists.

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

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

THECB may not enter a contract with a person it has been employed within the past twelve (12) months. Persons who have been employed by THECB or by another state agency in Texas more than twelve (12) months but fewer than twenty-

four (24) months ago shall disclose in the Proposal the nature of previous employment with the state agency and the date the employment ended.

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

#### 4. Transmittal Letter

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

Additionally, the Transmittal Letter shall indicate that the Proposal is good for ninety (90) days. The letter must also include "full acceptance of the terms and conditions described in this Request for Qualifications, including as detailed in the Anticipated OAG Outside Counsel Contract."

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

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

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

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

The Proposal shall include all information required in this RFQ. Respondent is solely responsible for thoroughly understanding the RFQ and its attachments, exhibits, and

forms. Questions should be directed to the Point of Contact by the Deadline for Submitting Questions. Respondent is cautioned to pay particular attention to the clarity and completeness of its Proposal. Respondent is solely responsible for its Proposal and all documentation submitted.

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

## **5.0 Proposal Submission**

Proposals must be submitted to the Point of Contact by an authorized representative via email to [eBids@highered.texas.gov](mailto:eBids@highered.texas.gov) prior to the deadline. No mailed, hand-delivered, or faxed Proposals will be accepted.

THECB will not accept a Proposal submitted after the deadline. Failure to provide all required information shall make the Proposal nonresponsive and thus disqualified from consideration. THECB may reject a Proposal that fails to include required contents.

THECB will confirm receipt of the submitted Proposal via email. If a Respondent does not receive a confirmation from THECB, Respondent should contact the Point of Contact.

A Respondent may be required to provide proof of timely submission of the Proposal. THECB shall not be responsible for Proposals that are captured, blocked, filtered, quarantined, or otherwise prevented from reaching the proper destination server by THECB or Applicant's anti-virus or other security software.

## **6.0 Proposal Evaluation**

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

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

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

THECB's selection of a Contractor shall be subject to final approval by the OAG pursuant to Title 1 Texas Administrative Code § 57.4.

Upon execution of a Contract resulting from this RFQ, the term “Respondent” shall have the same meaning as “Contractor.”

The Contractor shall not begin or provide services until issuance of a Contract with an effective date on or after September 1, 2021, by THECB, or until the Contract is executed and approved by the OAG, if such execution and approval occur after September 1, 2021.

Respondent is strongly encouraged to provide a fair and reasonable price in its proposal. THECB shall award a Contract(s) to Respondent(s) whose Proposal is the most qualified to the state. Attachment C of this RFQ represents the Anticipated Contract (along with its incorporated exhibits) which will be entered into with the Contractor(s) and lists the additional terms and conditions governing this RFQ. 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:**

Qualifications and Experience	65%
Overall Fees and Costs	35%
Total	100%

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.

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

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 requirement noted in the submission process. Submission of Proposals confers no legal rights upon any Respondent. 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.

THECB is awarding Contract(s) to Respondent(s) pursuant to Competitive Sealed Proposals as authorized by Texas Government Code § 2156.121. THECB may evaluate the Proposals on a variety of factors. THECB is not authorized to conduct bid/proposal openings or bid/proposal tabulations prior to the award of a Contract. Respondent(s) should be aware that such information cannot and will not be provided prior to the award of a Contract.

Past Performance: A Respondent's past performance will be measured based upon pass/fail criteria, in compliance with Texas Government Code §§ 2155.074, 2155.075, 2156.007, 2157.003, and 2157.125. Respondents may fail this selection criterion for the following conditions:

- 1) Currently under a Corrective Action Plan through THECB;
- 2) Having repeated negative Vendor Performance Reports for the same reason;
- 3) Having a record of repeated non-responsiveness to Vendor Performance issues; or
- 4) Having purchase orders or other contracts that have been cancelled in the previous twelve (12) months for nonperformance (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 contract non-renewals. 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 Respondent.

## **6.2 Multiple Awards**

THECB may award multiple Contracts from this solicitation. 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 a Contract at the sole discretion of THECB, subject to OAG approval, to provide alternate resources for meeting the requirements of the requested services.

## **7. Additional Instructions**

### **7.1 Accuracy of the Proposal**

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

### **7.2 Cost of Submitting the Proposal**

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

### **7.3 Public Information Act Disclosures**

THECB is a government agency subject to the Texas Public Information Act (PIA), Texas Government Code §§ 552.001-.376. The Proposal and other information submitted to THECB by Respondent are subject to release as public information. The Proposal and other submitted information shall be presumed to be subject to disclosure unless a specific exception applies to disclosure under the PIA. If it is necessary for Respondent to include proprietary or otherwise confidential information in its Proposal or other submitted information, Respondent must clearly label that proprietary or confidential information and identify the specific PIA exception that applies to disclosure. Merely making a blanket claim that the entire Proposal is protected from disclosure because it contains some proprietary information is not acceptable and shall make the entire Proposal subject to release under the PIA. In order to trigger the process of seeking an Attorney General Opinion to prevent the release of proprietary or confidential information, the specific provisions of the Proposal that are considered by Respondent to be proprietary or confidential must be clearly labeled as described above. Any information which is not clearly identified as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA. Respondent is required to make any information created or exchanged with the State pursuant to the solicitation or contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

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

### **7.4 Working Paper Access and Retention**

Respondent shall, upon request, provide the internal auditor and the State Auditor's Office access to all relevant data relating to the cost incurred under this agreement. Respondent understands that acceptance of state funds under this agreement acts as

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

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

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

## **7.5 Irrevocability of the Proposal**

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

## **7.6 Affirmations and Required Clauses**

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

Respondent has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Proposal.

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

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



Respondent represents and warrants that all statements and information prepared and submitted in its Proposal are current, complete, true, and accurate. Submitting a Proposal with a false statement or material misrepresentation made during the performance of a contract is a material breach of contract and may void the submitted Proposal and any resulting contract.

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

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

Respondent 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.

Respondent agrees to comply with Texas Government Code § 2155.4441, relating to use of service contracts for products produced in the State of Texas.

## **7.7 Conflicting RFQ Language**

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

## **8. Definitions**

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

Contract	Any contract(s) resulting from this solicitation. Note: There is no guarantee that any contract will result from this solicitation.
Contractor or Awarded Contractor	The Respondent(s) awarded a Contract as a result of the RFQ.
ESBD	The Electronic State Business Daily, which is available <a href="#">online</a> .
HUB	Historically Underutilized Business
PIA	The Texas Public Information Act, <a href="#">Texas Government Code Chapter 552</a> , is a series of legislative acts intended to guarantee public access to governmental information in the interest of providing transparency in government.

Proposal	The response submitted by a Respondent to THECB as a result of this solicitation
Respondent	Any person or contractor who submits a Proposal in response to this solicitation.
RFQ	Request for Qualifications, which is the type of solicitation embodied in this document.
THECB/Agency	The Texas Higher Education Coordinating Board, the state agency issuing this solicitation.



**RFQ No. 781-1-24358**

**ATTACHMENT A – EXECUTION OF PROPOSAL**

(It is mandatory to complete, sign, and submit this form with the Proposal.)

**1. RESPONDENT INFORMATION**

Federal Employer ID No.: \_\_\_\_\_ Texas Tax ID No.: \_\_\_\_\_

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

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

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

Telephone No.: \_\_\_\_\_ Facsimile No.: \_\_\_\_\_

Website URL: \_\_\_\_\_

**EXECUTIVE REPRESENTATIVE**

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

Title: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Email Address: \_\_\_\_\_

**POINT OF CONTACT FOR PROPOSAL**

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

Title: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Email Address: \_\_\_\_\_

**POINT OF CONTACT FOR RECEIPT OF CONTRACT**

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

Title: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Email Address: \_\_\_\_\_

**2. TEXAS FAMILY CODE § 231.006(c)**

Pursuant to Texas Family Code § 231.006(c), Respondents are required to include the name and social security number of each person with at least a 25 percent ownership interest of the business entity submitting the Proposal.

Respondents meeting the ownership criteria **shall provide** the **names only** with their Proposal. 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 and/or contract award.

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

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

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

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

### **3. TEXAS GOVERNMENT CODE § 669.003**

Under the Texas Government Code § 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 acknowledgment below, 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 Agency: \_\_\_\_\_

Date of Employment with Respondent: \_\_\_\_\_

#### **4. PREFERENCES**

*See Texas Comptroller of Public Accounts, Statewide Procurement Division, State of Texas Procurement and Contract Management Guide, APPENDIX 21 (Version 1.3).*

Identify the preferences for which you qualify:

- ☐ Preference for Products of Persons with Mental Retardation or Physical Disabilities. Tex. Gov't Code § 2155.441.
- ☐ Preference for Energy Efficient Products. Tex. Gov't Code § 2155.442.
- ☐ Preference for Rubberized Asphalt Paving. Tex. Gov't Code § 2155.443.
- ☐ Preference to Texas and United States Products and Texas Services. Tex. Gov't Code § 2155.444.
- ☐ Preference Under Service Contracts. Tex. Gov't Code § 2155.4441.
- ☐ Preference for Recycled, Remanufactured, or Environmentally Sensitive Products. Tex. Gov't Code § 2155.445.
- ☐ Purchase of Recycled Oil. Tex. Gov't Code § 2155.447.
- ☐ Preference to Products and Services from Economically Depressed or Blighted Area. Tex. Gov't Code § 2155.449.
- ☐ Preference for Products of Facilities on Formerly Contaminated Property. Tex. Gov't Code § 2155.450.
- ☐ Vendors that Meet or Exceed Air Quality Standards. Tex. Gov't Code § 2155.451.
- ☐ Preference for Contractors Providing Foods of Higher Nutritional Value. Tex. Gov't Code § 2155.452.

**5. EXCEPTIONS TO TERMS AND CONDITIONS**

- ☐ No exceptions.
- ☐ Yes, please provide list of exceptions below

Section	Exception

## **6.     RESPONDENT ACKNOWLEDGMENT**

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

## **7.     SIGNATURE**

By signing this Execution of Proposal, Respondent certifies that the responses are true and accurate and 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 Government § 2252.001(4).

Signature: \_\_\_\_\_

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

Date: \_\_\_\_\_





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

Item Number:                      Description:

[illegible]

Page 1 of 1  
(Attachment A)

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

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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

## ATTACHMENT C - ANTICIPATED OUTSIDE COUNSEL CONTRACT

### OUTSIDE COUNSEL CONTRACT

OAG Contract No. \_\_\_\_\_

**This Agreement**, including all Addenda (the Addenda are incorporated herein by reference), is hereinafter referred to as the “Outside Counsel Contract” or “OCC.” This Outside Counsel Contract is made and entered into by and between the \_\_\_\_\_ (“Agency”) and \_\_\_\_\_ (“Outside Counsel”). The term “Parties” as used in this OCC refers to Agency and Outside Counsel, and does not include the Office of the Attorney General of Texas (“OAG”). This OCC is made and entered into with reference to the following facts:

#### INDUCEMENTS

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

**Whereas**, Agency has received prior approval from the OAG to contract for outside legal services; and

**Whereas**, Outside Counsel desires to provide legal services to Agency, subject to the authority of the Texas Attorney General.

#### AGREEMENT

**Now, therefore**, in consideration of the inducements, covenants, agreements, and conditions herein contained, the Parties agree as follows:

##### **Section 1. Purpose/OAG Approval.**

**1.1 Purpose.** The purpose of this OCC is for Outside Counsel to provide legal services to Agency, as described in Addendum A. Outside Counsel and Agency understand and agree to the OAG’s continuing authority and right to expand or limit the scope of legal services provided by Outside Counsel to Agency.

**1.2 OAG Approval.** The Texas Attorney General’s, or his Designee’s, signature on this OCC represents the OAG’s approval of Outside Counsel serving as legal counsel to Agency during the term of, and for the purposes expressed in, this OCC. Consistent with Section 402.0212 of the Texas Government Code, the OAG may withdraw, modify, or expand this approval at any time.

**1.2.1 Litigation.** Outside Counsel shall not represent Agency in any litigation unless Addendum A specifically and unambiguously authorizes litigation in a particular matter. If Addendum A does not specifically authorize Outside Counsel’s representation of Agency in a particular litigation matter and Agency requires such representation, Agency must request

litigation authority from the OAG and submit a new Outside Counsel Contract to the OAG for approval before filing or responding to litigation matters. If Addendum A specifically authorizes litigation in a particular matter, Outside Counsel has the duty to promptly notify Agency and the OAG of the desirability or likelihood of an appeal.

**1.2.2 Appellate Matters.** Irrespective of any authorization to engage in litigation in this OCC, or in a writing outside of this OCC, Outside Counsel is not authorized to proceed on any appeal, in any capacity, whether interlocutory or otherwise, whether as appellant, appellee, respondent, applicant, or otherwise, without first obtaining the written permission of the Texas Attorney General, First Assistant Attorney General, or Solicitor General.

**1.2.3 OAG Review of Outside Counsel Invoice and Release of Payment.** In addition to approval from the OAG to contract for legal services, Outside Counsel invoices must be reviewed and approved by the OAG pursuant to Subsection 402.0212(b) of the Texas Government Code and Title 1, Chapter 57 of the Texas Administrative Code.

## **Section 2. OCC Term.**

This OCC shall commence on \_\_\_\_\_, and shall terminate on \_\_\_\_\_ (hereinafter “OCC Term”), unless terminated earlier pursuant to Section 7 of this OCC. The OCC Term may not be extended except by amendment pursuant to Section 9.12 of this OCC.

## **Section 3. Obligations of Outside Counsel.**

**3.1 Duties.** Outside Counsel shall provide professional legal services to Agency as described in Addendum A. Outside Counsel shall represent Agency with due professional care as required by applicable law and disciplinary rules.

**3.2 Staff.** Outside Counsel is expected to perform valuable services for Agency, and the method and amount or rate of compensation are specified in Section 5 and Addendum B of this OCC. Outside Counsel staff and employees are expected to perform work of a type commensurate with their professional titles. Outside Counsel agrees that any person employed or engaged by Outside Counsel and who assists in performing the services agreed to herein shall not be considered employees or agents of Agency or the State of Texas.

**3.3 Public Information and Client Communications.** Outside Counsel acknowledges that information created or exchanged in the course of representation of a governmental body may be subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code, and may be subject to required disclosure in a publicly accessible format pursuant to Section 2252.907 of the Texas Government Code. Outside Counsel will exercise professional judgment and care when creating documents or other media intended to be confidential or privileged attorney-client communications that may be subject to disclosure under the Public Information Act (e.g. invoices where incidental notation may tend to reveal litigation strategies or privileged information). Outside Counsel should mark confidential or privileged attorney-client communications as confidential. This subsection shall not be interpreted to limit Outside Counsel’s duty to provide

full disclosure to Agency and the OAG as necessary in Outside Counsel's judgment to represent Agency with due professional care or as required by applicable law or disciplinary rules.

**3.4 Status.** Pursuant to the standard of professional care owed to the Agency, Outside Counsel shall endeavor to keep Agency fully informed about all material matters relating to legal services provided under this OCC.

**3.5 Subcontracting Authority.** In the event Outside Counsel determines it is necessary or expedient to subcontract for any of the performances herein, or in support of any of those performances, Outside Counsel may enter into such subcontract(s) after obtaining express written approval from Agency. If Outside Counsel purports to enter into a subcontract without express written approval from Agency, the parties agree that such contract shall be voidable at the option of Agency, in consultation with the OAG, and that Outside Counsel shall have no recourse against Agency, the OAG, or the State of Texas for any direct or indirect costs, damages, or any other expenses related to the subcontractor. For all subcontracts entered by Outside Counsel, the Parties agree that all such subcontracts are subject to Section 4 (Liability), Subsection 5.2 (Reimbursement of Expenses), Subsection 5.3 (Subcontractor Payments), Subsection 6.2 (Subcontractor Invoices), and Subsection 6.5 (Supporting Documents; Right-to-Audit; Inspection of Records) of this OCC. Furthermore, if Outside Counsel elects to enter into a subcontract for any legal services, then the Parties agree that Agency shall not be liable to Outside Counsel for any rates or rate ranges greater than or inconsistent with the highest rate or rate range specified in Addendum B unless prior written approval is obtained from Agency and the OAG. Any subcontracted legal counsel also must comply with Subsections 5.5 (Administrative Staff/Clerks) and 9.8 (Conflict of Interest) of this OCC.

Outside Counsel agrees to comply with all state and federal laws applicable to any subcontractors, including, but not limited to, laws regarding wages, taxes, insurance, historically underutilized businesses, and workers' compensation.

In no event shall this section or any other provision of this OCC be construed as relieving Outside Counsel of the responsibility for ensuring that all services rendered under this OCC, and any subcontracts thereto, are rendered in compliance with all of the terms of this OCC.

#### **Section 4. Liability.**

**4.1 Limitation of Liability.** The Parties stipulate and agree that the State of Texas and Agency's total liability to Outside Counsel, including consideration for the full, satisfactory, and timely performance of all its duties, responsibilities, and obligations, and for reimbursement of all expenses, if any, as set forth in this OCC or other liability arising out of any performance herein shall not exceed:

\$\_\_\_\_\_ for this OCC Term.

The Parties stipulate and agree that any act, action, or representation by either party, their agents, or their employees that purport to increase the liability of the State of Texas or Agency is voidable by the OAG, unless this OCC is amended to modify this limitation of liability. Outside Counsel

agrees that the OAG, the State of Texas and its agencies (other than Agency) shall have no liability arising out of this OCC or the services of this OCC to Outside Counsel.

**4.2 Subject to Appropriation.** The Parties acknowledge and agree that nothing in this OCC will be interpreted to create a future obligation or liability in excess of the funds currently appropriated to Agency.

## **Section 5. Compensation/Expenses.**

**5.1 Fees to Outside Counsel.** Subject to Title 1, Chapter 57 of the Texas Administrative Code, Agency agrees to pay Outside Counsel in consideration of full and satisfactory performance of the legal services under this OCC. Services for non-attorney timekeeper classifications listed on Addendum B, if applicable, such as paralegal, legal assistant, or patent agent, must be of a substantive legal nature in order to be reimbursable. Outside Counsel agrees to the fee schedule as described in Addendum B.

**5.2 Reimbursement of Expenses.** Agency will reimburse Outside Counsel for actual expenses incurred in the performance of the legal services described in Addendum A, if such expenses are reasonable and either necessary or advisable. Outside Counsel must provide copies of original receipts as evidence of actual expenditures. Limitations on the amount and type of reimbursement include the following, unless otherwise agreed upon by Agency in writing, in advance, and in accordance with Agency policy and relevant law:

**5.2.1 Mileage.** Agency will reimburse Outside Counsel for reasonable and necessary travel mileage at the per mile rate posted on the Texas Mileage Guide adopted under Section 660.043 of the Texas Government Code. The Texas Mileage Guide is currently available on the Comptroller of Public Accounts' website, at: <https://fm.xcpa.state.tx.us/fm/travel/travelrates.php>.

**5.2.2 Meals.** Agency will reimburse Outside Counsel for reasonable and necessary meal expenses at the rate of \$\_\_\_\_\_ or actual expenses, whichever is less, for each timekeeper as listed in Addendum B for each day requiring overnight travel and on the return day of travel. Agency will not reimburse Outside Counsel for the purchase of alcohol.

**5.2.3 Lodging.** Agency will reimburse Outside Counsel for reasonable and necessary lodging expenses. Texas lodging or overnight accommodations will be reimbursed at the lesser amount of the actual expense or \$200.00 per timekeeper, as listed in Addendum B, per night. Out-of-Texas lodging or overnight accommodations will be reimbursed at the lesser amount of the actual expense or \$250.00 per timekeeper, as listed in Addendum B, per night.

**5.2.4 Airfare.** Airfare will be reimbursed at the lesser amount of the actual expense or the regular published rates for airfares for commercial airlines. Agency will not reimburse Outside Counsel for expenses relating to first-class airfare, which includes first- or business-class airfare or any other expense related to premium or preferred airfare benefits.

**5.2.5 Expert Services.** Subject to Agency's prior approval, Agency will reimburse Outside Counsel for the reasonable and necessary cost of expert services.

**5.2.6 Other Reimbursable Expenses.** Agency will reimburse the actual cost for other expenses if Outside Counsel provides a reasonable and sufficient explanation of the nature and purpose of the charge and the charge is reasonable and either necessary or advisable.

**5.2.7 Non-Reimbursable Expenses.** Agency expects Outside Counsel to anticipate and include routine operating expenses and disbursements as part of overhead and, therefore, part of a basic hourly rate or flat rate. Therefore, Agency will not reimburse Outside Counsel for: routine copying and printing charges; fax charges; routine postage; office supplies; telephone charges unless related to teleconferencing services; local travel (within 20-mile radius of office including mileage, parking, and tolls) not relating to overnight travel; all delivery services performed by internal staff; electricity or other utilities; software costs or subscription fees; and internet or wireless access charges.

**5.2.8 Gratuity.** Agency will not reimburse Outside Counsel for tips or gratuities.

**5.2.9 Reimbursement for Agency Employee Expenses.** Agency will not reimburse Outside Counsel for the cost of expenses incurred by Agency employees.

**5.2.10 No Mark-up.** Outside Counsel will only be reimbursed for actual expenses. Outside Counsel shall not be reimbursed for any mark-up or other overhead costs.

**5.3 Subcontractor Payments.** Subject to Agency's prior approval, Agency will reimburse Outside Counsel for the actual, reasonable and necessary expenses relating to Outside Counsel's use of subcontractors. Outside Counsel shall be responsible for any payments and other claims due to subcontractors for work performed under this OCC. Outside Counsel, in subcontracting for any performances or in support of any of the performances specified herein (e.g., expert services, local counsel, and other services), expressly understands and agrees that Agency shall not be directly liable in any manner to Outside Counsel's subcontractor(s).

**5.4 Legal Research.** Agency may reimburse Outside Counsel for its reasonable and necessary expenses relating to legal research, including online legal research.

While Agency should be paying Outside Counsel to apply the knowledge and expertise for which it was hired, and not paying Outside Counsel to obtain that knowledge through extensive legal research, Agency understands that situations arise that justify extensive research on how best to proceed in order to achieve a desired result. Therefore, the need for extensive legal research will be addressed on a case-by-case basis by Outside Counsel and Agency.

**5.5 Administrative Staff/Clerks.** Agency will only pay for substantive legal work performed by attorneys or other qualified personnel, regardless of the job title or classification applicable to such individual. For purposes of this agreement, "substantive legal work" has the same meaning as defined by the Texas Paralegal Standards adopted by the Board of Directors of the State Bar of Texas. Agency will not pay for law clerks or interns, however classified, under any circumstances. Agency will not pay for administrative staff, such as secretarial support, librarians, case clerks, and accounting and billing clerks, for activities including but not limited to the following:

overtime, file opening, file organization, docketing, and other administrative tasks; and preparation of billing, invoice review, budget preparation, and communications regarding same or any other accounting matter. The OAG cannot approve payment of any invoice if OAG determines, in its sole discretion, that the invoice includes a request for payment for services or expenses incurred that are administrative, clerical, or any other form of services other than substantive legal work.

**5.6 Training.** Agency will not pay for the education or training of attorneys, paralegals, or other staff of Outside Counsel, including assigning such staff on a transient basis to an Agency matter.

## **Section 6. Invoices for Payment.**

**6.1 General.** Agency and Outside Counsel agree to abide by the administrative rules adopted by the OAG governing the submission, review, and approval of invoices found at Title 1, Chapter 57 of the Texas Administrative Code. Agency and Outside Counsel understand and agree that no invoice shall seek reimbursement for services performed or expenses incurred in violation of the provisions of this OCC. Agency and Outside Counsel further understand and agree that the OAG cannot approve payment of any invoice if the OAG determines, in its sole discretion, that the invoice includes a request for payment for services that are prohibited by this OCC.

**6.1.1 Billing Period.** The billing period is the interval (ex. monthly) which determines the frequency Outside Counsel will submit invoices to the Agency. The billing period for this OCC is specified in Addendum B. Unless otherwise specified in Addendum B of the Contract, a billing period defined as “monthly” shall begin with the first day of the calendar month and end with the last day of the calendar month.

**6.1.2 Billable Time.** Agency will only pay for the services of individuals covered in Addendum B. All times must be billed in one-tenth hour or one-quarter hour increments, and must reflect only actual time spent. Tasks referencing correspondence and filings must describe the document received or authored. Agency expects to be billed for the actual time it takes to modify standardized forms, filings, and/or correspondence for use on the matter being billed. Agency will not reimburse Outside Counsel for the time it originally took to prepare any such standardized documents. Agency will not pay for review, execution, and processing of the OCC and submission of invoices.

**6.1.3 Submission of Invoices.** Outside Counsel must submit invoices to Agency for review within one calendar month from the end of the relevant billing period covered by the invoice. Outside Counsel must submit invoices to Agency at:

Agency must submit invoices and other related information to the OAG at the following e-mail address or mailing address:

OCCInvoice@oag.texas.gov

OR

Attn.: OCC Invoice  
Office of the Attorney General  
Financial Litigation & Charitable Trusts Division, Mail Code 017  
Post Office Box 12548  
Austin, Texas 78711-2548

**6.2 Subcontractor Invoices.** Subcontractor(s) shall directly invoice Outside Counsel, and Outside Counsel shall then invoice Agency for the work performed. The actual work performed by subcontractor shall be specifically identified in the invoice supported by attached documentation.

**6.3 Prompt Payment.** Payments to Outside Counsel by Agency under this OCC shall be in compliance with Chapters 402 and 2251 of the Texas Government Code and Title 34, Chapter 20, Subchapter F of the Texas Administrative Code.

**6.4 Administrative Fee.** Outside Counsel agrees that, pursuant to Subsection 402.0212(c) of the Texas Government Code and Title 1, Chapter 57 of the Texas Administrative Code, a non-refundable administrative fee is due to the OAG for the review of Outside Counsel invoices. In the event that Outside Counsel fails to timely submit to the OAG the required administrative fee, any invoices shall be deemed incorrect and incomplete and not eligible for payment. Outside Counsel may not charge or seek reimbursement from the Agency for the payment of the administrative fee.

Outside Counsel will submit the administrative fee to the following address:

Outside Counsel Invoice  
Office of the Attorney General  
P.O. Box 13175  
Austin, TX 78711-3175

Checks or money orders must be made payable to the "Office of the Attorney General" and reference the OCC Number.

## **6.5 Supporting Documents; Right-to-Audit; Inspection of Records.**

**6.5.1 Duty to Maintain Records.** Outside Counsel shall maintain adequate records to support its charges, procedures, and performances to Agency for all work related to this OCC. Outside Counsel shall also maintain such records as are deemed necessary by Agency, the OAG,



the State Auditor's Office, or federal auditors if federal funds are used to pay Outside Counsel, to ensure proper accounting for all costs and performances related to this OCC.

**6.5.2 Records Retention.** Outside Counsel shall retain, for a period of at least seven (7) years after the later of (1) the expiration or termination of this OCC or (2) the resolution of all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving this OCC, such records as are necessary to fully disclose the extent of services provided under this OCC, including but not limited to any daily activity reports, time distribution and attendance records, and other records that may show the basis of the charges made or performances delivered.

**6.5.3 Inspection of Records and Right to Audit.** Outside Counsel shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all information related to the State of Texas' property, services performed, and charges, such as work papers, reports, books, data, files, software, records, and other supporting documents pertaining to this OCC, for purposes of inspecting, monitoring, auditing, or evaluating by Agency, the State of Texas, or their authorized representatives. Outside Counsel shall cooperate with auditors and other authorized Agency and State of Texas representatives and shall provide them with prompt access to all of such property as requested by Agency or the State of Texas.

**6.5.4 State Auditor.** In addition to and without limitation on the other audit provisions of this OCC, pursuant to Section 2262.154 of the Texas Government Code, the State Auditor's Office may conduct an audit or investigation of Outside Counsel or any other entity or person receiving funds from the State of Texas directly under this OCC or indirectly through a subcontract under this OCC. The acceptance of funds by Outside Counsel or any other entity or person directly under this OCC or indirectly through a subcontract under this OCC acts as acceptance of the authority of the State Auditor's Office, 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, Outside Counsel or any other entity or person that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit. Outside Counsel further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. Outside Counsel shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through Outside Counsel and the requirement to cooperate is included in any subcontract it awards. The State Auditor's Office shall at any time have access to and the right to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of Outside Counsel related to this OCC.

## **Section 7. Termination**

**7.1 Convenience of the State.** Agency has the right to terminate this OCC, in whole or in part, without penalty, by notifying Outside Counsel in writing of such termination prior to the effective date of such termination. Such notification of termination shall state the effective date of termination. In the event of such termination, Outside Counsel shall, unless otherwise mutually agreed upon in writing, cease all services immediately, except such services that are necessary to

wind-up, in a cost-effective manner, all services being provided. Subject to Section 4 of this OCC, Agency shall be liable for payments for all services performed under this OCC to the effective date of termination, plus any necessary services to cost effectively wind-up.

In the event the OAG withdraws its approval of this OCC during the OCC term, then Agency, in consultation with the OAG, shall terminate this OCC for convenience.

**7.2 Cause/Default.** In the event that Outside Counsel commits a material breach of this OCC, Agency may, upon written notice to Outside Counsel, immediately terminate all or any part of this OCC. Termination is not an exclusive remedy but will be in addition to any other rights and remedies provided in equity, by law, or under this OCC.

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

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

**7.5 Termination by Outside Counsel.** Consistent with applicable rules of professional conduct, Outside Counsel may terminate this OCC upon reasonable notice for material breach by Agency.

## **Section 8. Certifications of Outside Counsel**

By agreeing to and signing this OCC, Outside Counsel hereby makes the following certifications and warranties:

**8.1 Delinquent Child Support Obligations.** Outside Counsel certifies that it is not ineligible to receive any grant, loan, or payment under this OCC pursuant to Section 231.006 of the Texas Family Code and acknowledges that this OCC may be terminated and payment may be withheld if this certification is inaccurate.

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

subsection does not apply to Outside Counsel providing legal services located outside the State of Texas.

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

**8.4 Franchise Tax.** By signing this OCC, Outside Counsel certifies that its Texas franchise tax payments are current, or that it is exempt from or not subject to such tax, consistent with Chapter 171 of the Texas Tax Code.

**8.5 Outside Counsel License/Conduct.** Outside Counsel certifies that each attorney performing services under this OCC is an attorney in good standing under the laws of the State of Texas or the jurisdiction where the representation occurs. Outside Counsel will notify Agency and the OAG in writing within one business day of any lapse in an assigned attorney's licensed status or any final disciplinary action taken against an assigned attorney. For the Lead Counsel(s) named in Addendum B, Outside Counsel will provide documentation of good standing from the state bar or the licensing authority of the jurisdiction in which the attorney resides and is licensed. An attorney that is not licensed by the State Bar of Texas may not provide legal services and advice concerning Texas law.

**8.6 Debt to State.** Outside Counsel acknowledges and agrees that, to the extent Outside Counsel owes any debt (child support or other obligation) or delinquent taxes to the State of Texas, any payments Outside Counsel are owed under this OCC may be applied by the Comptroller of Public Accounts toward any such debt or delinquent taxes until such debt or delinquent taxes are paid in full.

**8.7 Prohibited Bids and Contracts.** Under Section 2155.004 of the Texas Government Code, Outside Counsel certifies that it is not ineligible to receive this OCC and acknowledges that this OCC may be terminated and payment withheld if this certification is inaccurate.

**8.8 Compliance with State Law Contracting Provisions.** Agency and Outside Counsel certify that this OCC is compliant, and will remain compliant, with any and all applicable laws governing contracts involving the State of Texas or its agencies, including, but not limited to, Sections 572.054 (Representation by Former Officer or Employee of Regulatory Agency Restricted; Criminal Offense), 572.069 (Certain Employment for Former State Officer or Employee Restricted), 669.003 (Contracting with Executive Head of State Agency), 2252.901 (Contracts with Former or Retired Agency Employees), 2252.908 (Disclosure of Interested Parties), and 2261.252 (Disclosure of Potential Conflicts of Interest; Certain Contracts Prohibited) of the Texas Government Code.

**8.9 Does not Boycott Israel.** Pursuant to Section 2270.002 of the Texas Government Code, Outside Counsel certifies, by executing this OCC, that Outside Counsel does not, and will not during the term of this OCC, boycott Israel. Outside Counsel further certifies that no subcontractor of Outside Counsel boycotts Israel or will boycott Israel during the term of this agreement. Outside

Counsel agrees to take all necessary steps to ensure this certification remains true during the term of this OCC.

**8.10 Prohibited Companies.** Outside Counsel certifies, by executing this OCC, that neither Outside Counsel, nor any subcontractor of Outside Counsel, is a company under Texas Government Code section 2252.152 with which Agency may be prohibited from contracting. Outside Counsel agrees to take all necessary steps to ensure this certification remains true during the term of this OCC.

**8.11 Limitation on Abortion Funding.** Outside Counsel acknowledges and agrees that, under article IX, section 6.25 of the General Appropriations Act, 85th Leg., R.S. (2019), and except as provided by that Act, funds may not be distributed under this OCC to any individual or entity that: (1) performs an abortion procedure that is not reimbursable under the State of Texas' Medicaid program; (2) is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the State of Texas' Medicaid program; or (3) is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the State of Texas' Medicaid program.

## **Section 9. General Terms and Conditions**

**9.1 Independent Contractor.** Outside Counsel agrees and acknowledges that during the OCC Term, Outside Counsel and Outside Counsel's subcontractors are independent contractors of Agency or the State of Texas and are not employees of Agency or the State of Texas.

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

**9.1.2** Outside Counsel agrees and acknowledges that during the OCC Term, Outside Counsel shall be entirely responsible for the liability and payment for Outside Counsel or Outside Counsel's employees or assistants, of all taxes of whatever kind, arising out of the performances in this OCC. Other than the payments described in this OCC, Outside Counsel agrees and acknowledges that Outside Counsel or Outside Counsel's employees or assistants shall not be entitled to any State benefit on account of the services provided hereunder. Agency shall not be liable to Outside Counsel, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or workers' compensation, or any benefit due to a state employee. If Agency or the State of Texas shall nonetheless become liable for such payments or obligations, Outside Counsel shall promptly pay or reimburse Agency or the State of Texas for such liability or obligation.

**9.2 Assignment of OCC.** Outside Counsel may not assign this OCC, or assign any right or delegate any duty under this OCC, without prior written approval from the Agency and the OAG.

**9.3 Survival.** The obligations of Outside Counsel under the following sections and subsections shall survive the termination or expiration of this OCC: 3.3, 4, 5, 6.5, 7.1, 7.3, 7.4, 8.8, 9.7, 9.8, 9.11, and 9.13.

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

**9.5 Media Releases or Pronouncements.** Outside Counsel understands that the OAG and Agency do not endorse any vendor, commodity, or service. Outside Counsel, its employees, representatives, agents, or subcontractors may not participate in any media event or issue any media release, advertisement, publication, editorial, article, or public pronouncement that pertains to this OCC or the services or project to which this OCC relates or that mentions the OAG or Agency without the prior written approval of the OAG and Agency.

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

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

**9.6.2 OAG's and Agency's Addresses.** The addresses for the OAG and Agency for all purposes under this OCC, except as provided by Subsection 6.4, and for all notices hereunder shall be:

Outside Counsel Contract Coordinator  
Office of the Attorney General  
Financial Litigation & Charitable Trusts Division, Mail Code 017  
Post Office Box 12548  
Austin, Texas 78711-2548

## **9.7 Dispute Resolution.**

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

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

**9.7.3** The contested case process provided in Chapter 2260, Subchapter C, of the Texas Government Code is Outside Counsel's sole and exclusive process for seeking a remedy for any and all alleged breaches of this OCC by Agency or the State of Texas if the Parties are unable to resolve their disputes under Section 9.7.2 of this OCC.

**9.7.4** Compliance with the contested case process provided in Chapter 2260, Subchapter C, of the Texas Government Code is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code. Neither the execution of this OCC by Agency nor any other conduct of any representative of Agency relating to this OCC shall be considered a waiver of sovereign immunity.

**9.7.5** The submission, processing, and resolution of Outside Counsel's claim is governed by Agency's published rules, if any. If no Agency rules have been published, then Title 1, Chapter 68 of the Texas Administrative Code adopted by the OAG pursuant to Chapter 2260, as currently effective, hereafter enacted, or subsequently amended, shall govern.

## **9.8 Conflict of Interest.**

**9.8.1** Neither local funds nor funds appropriated by the General Appropriations Act may be expended to pay the legal fees or expenses of Outside Counsel in representing Agency in any matter if Outside Counsel is representing a plaintiff in a proceeding seeking monetary damages from the State of Texas or any of its agencies. For these purposes, "proceedings seeking monetary damages" do not include actions for tax refunds, compensation for exercise of eminent domain authority, or reimbursement of costs of litigation and attorney's fees.

**9.8.2** Neither local funds nor funds appropriated by the General Appropriations Act may be used to pay the legal fees or expenses of Outside Counsel under this OCC if Outside Counsel currently represents, has represented in the six months preceding this OCC, or will represent in the six months following the termination of this OCC, a client before Agency.

**9.8.3** Outside Counsel shall regularly conduct conflicts analyses on its interests and those of its clients and any subcontractor and immediately disclose, in writing, to Agency and the OAG any actual or potential conflict with respect to Agency, OAG, or the State of Texas.

**9.8.4** Outside Counsel has a continual and ongoing obligation to immediately notify the OAG and Agency, in writing, upon discovery of any actual or potential conflict to Agency, the OAG, or the State of Texas.

**9.9 Taxes.** This OCC 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, Agency, and all departments, agencies, and instrumentalities of the State of Texas exemptions from the payment(s) of all taxes of whatever kind. To the extent allowed by law, Agency will provide, upon the request of Outside Counsel during this OCC Term, all applicable tax exemption documentation.

**9.10 Signatories.** Having agreed to the terms herein, the undersigned signatories hereby represent and warrant that they have authority to enter into this OCC and are acting in their official capacities.

**9.11 Applicable Law and Venue.** This OCC is made and entered into in the State of Texas, and this OCC and all disputes arising out of or relating to this OCC shall be governed by the laws of the State of Texas, without regard to any otherwise applicable conflict of law rules or requirements.

Outside Counsel agrees that Agency and the State of Texas do not waive any immunity (including, without limitation, state or federal sovereign immunity). Outside Counsel further agrees that any properly allowed litigation arising out of or in any way relating to this OCC shall be commenced exclusively in a court of competent jurisdiction in Travis County, Texas. Outside Counsel thus hereby irrevocably and unconditionally consents to the exclusive jurisdiction of a court of competent jurisdiction in Travis County, Texas for the purpose of prosecuting or defending such litigation. Outside Counsel hereby waives and agrees not to assert: (a) that Outside Counsel is not personally subject to the jurisdiction of a court of competent jurisdiction in Travis County, Texas, (b) that the suit, action or proceeding is brought in an inconvenient forum, (c) that the venue of the suit, action or proceeding is improper, or (d) any other challenge to jurisdiction or venue.

**9.12 Amendments.** This OCC, including addenda hereto, may be amended only upon written agreement signed by the Parties and approved by the OAG.

**9.13 Severability/Interpretation.** The fact that a particular provision in this OCC is held under any applicable law to be void or unenforceable in no way affects the validity of other provisions, and this OCC will continue to be binding on both Parties. Any provision that is held to be void or unenforceable will be interpreted by the Parties or the courts to be replaced with language that is

as close as possible to the intent of the original provision so as to effectuate the purpose of this OCC. Any ambiguous or conflicting terms shall be interpreted and construed in such a manner as to accomplish the purpose of this OCC.

**9.14 Insurance Required.** Outside Counsel certifies that it presently maintains malpractice insurance in an amount not less than Agency's limitation of liability under Section 4.1 of this OCC.

Outside Counsel agrees to maintain at least this amount of insurance coverage during this OCC Term. Further, Outside Counsel agrees to give notice to Agency and to the OAG in the event any amount of malpractice insurance is canceled. Outside Counsel also agrees to furnish to Agency or the OAG certified copies of such insurance policies when requested. Outside Counsel agrees that no claim by Agency and the State of Texas for damages resulting from breach of Outside Counsel's duties to Agency under this OCC shall be limited to the amount of malpractice insurance maintained by Outside Counsel.

**9.15 Additional Terms.** Any additional terms agreed to by Outside Counsel and Agency shall be electronically appended to this Contract and must be approved by the OAG. These terms shall not be inconsistent with or contrary to the Contract terms listed in Sections 1–9 of this OCC, and nothing in any additional terms or conditions shall remove or modify terms contained in Sections 1–9. In the event of any conflict, ambiguity or inconsistency between any additional terms and conditions appended electronically hereto and Sections 1–9 of this Outside Counsel Contract, Sections 1–9 shall take precedence and control.



**IN WITNESS THEREOF, THE PARTIES HAVE SIGNED AND EXECUTED THIS OCC.**

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Tax ID#

Approved:

By the Office of the Attorney General of Texas

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Texas Attorney General or Designee

# **OUTSIDE COUNSEL CONTRACT**

**OAG Contract No. \_\_\_\_\_**

## **Addendum A**

### **Services**

# **OUTSIDE COUNSEL CONTRACT**

**OAG Contract No.** \_\_\_\_\_

## **Addendum B**

### **Rates**

**Name(s) of Lead Counsel:**

**Billing Period.** The billing period for this OCC shall be:

**Travel Rate.** An attorney's travel rate may not exceed one-half of that attorney's hourly rate listed above. If no hourly rate is identified above or no travel rate(s) listed below, Outside Counsel may not charge Agency for time spent traveling on Agency matters.



**RFQ No. 781-1-24358**

**ATTACHMENT D – CONFLICT OF INTEREST STATEMENT**

Respondents shall be neutral and impartial and shall not advocate specific positions to THECB. Respondents are encouraged to provide complete disclosure of matters that might be considered a conflict of interest. Completeness of disclosure may be a factor in evaluating proposals. Respondents shall identify the extent, nature, and length of any relationships or engagements that might be considered a conflict of interest. THECB will determine whether a conflict of interest or the perception of a conflict of interest exists from the perspective of a reasonable person uninvolved in the matters covered by the resulting contract. THECB is the sole arbiter of whether a conflict or the appearance of a conflict of interests exists. Entities having a conflict of interest, as determined by THECB, will not be eligible for contract award.

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

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

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

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

Insert Conflict of Interest Statement:

UNSWORN DECLARATION:

"My name is \_\_\_\_\_, my date of birth is \_\_\_\_\_,  
(Authorized Respondent Representative)

and my address is \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_,  
(Street) (City) (State)

\_\_\_\_\_ and \_\_\_\_\_. I declare under penalty of perjury that the  
(Zip Code) (Country)

foregoing is true and correct.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_ day of  
\_\_\_\_\_ 2021.

\_\_\_\_\_, Declarant."  
(Signature of Authorized Respondent Representative)