



TEXAS HIGHER EDUCATION COORDINATING BOARD

Request for Qualifications (RFQ)

**Outside Counsel for Review of Compliance
with Statutory and Regulatory Requirements
Regarding *The Strengthening Career and
Technical Education for the 21st Century Act***

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

RFQ No. 781-2-26635

NIGP: 961-49

<u>Solicitation Post Date:</u>	March 22, 2022
<u>Written Questions Deadline:</u>	April 1, 2022, by 11:30 p.m. CT
<u>Response to Written Questions</u>	April 8, 2022
<u>Proposal Deadline:</u>	April 21, 2022, by 11:30 p.m. CT

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1. INTRODUCTION

The Texas Higher Education Coordinating Board (THECB) is a state agency that provides leadership and coordination for Texas higher education.

As this state's designated eligible entity, the Texas Education Agency (TEA) receives the annual allocation of federal funds required under *The Strengthening Career and Technical Education for the 21st Century Act* (Perkins V). THECB administers the state's postsecondary funds allocated under contract with TEA.

THECB is seeking proposals for qualifications for outside counsel to conduct a review of and provide legal guidance on THECB's programmatic, fiscal, and administrative compliance with Perkins V and with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R Part 200. The Office of the Attorney General (OAG) generally provides legal representation to THECB. Outside counsel contracts are subject to approval by OAG.

2. MINIMUM ELIGIBILITY REQUIREMENTS

2.1 Experience

Respondent must have a minimum of ten (10) years' experience providing services like those described in the Scope of Work below. An entity or company in existence for fewer than ten (10) years is eligible to submit a Proposal if key personnel on the proposed team has the minimum required experience. A Respondent who does not meet this requirement is not eligible for award.

THECB encourages Historically Underutilized Businesses to compete for this award.

2.2 Qualifications

2.2.1 *Company Profile*

Respondent must demonstrate its knowledge and expertise to fulfill the requirements identified in the Scope of Work. Respondent should also describe any prior experience in providing similar or exact services, especially with other governmental organizations. Respondent shall describe the processes and procedures it intends to use to provide these services. Respondent shall submit an organizational chart identifying the functions and reporting relationships of the personnel who would be assigned to this work.

2.2.2 *Key Staff and Qualifications of Key Staff*

Each attorney performing services for THECB must be an active member in good standing with the State Bar of Texas or the bar of the jurisdiction where the representation occurs. Respondent must provide staff who are fully knowledgeable of the work required under this Request for Qualifications (RFQ) and include key personnel resumes, illustrating the qualifications of each individual to perform the

services. Respondent's employees and/or subcontractors must have the appropriate background experience to perform the work required under this RFQ.

3. SCOPE OF WORK

The scope of work will include a compliance review for State Administration, Local Application Processes, Fiscal Control, Accountability, Programs of Study, and Special Populations.

Respondent must demonstrate its ability to: (a) review THECB's compliance with Perkins V and 2 C.F.R. Part 200 requirements stated below, and (b) provide guidance as needed for correction of any deficiencies identified during the review.

3.1 State Administration

Respondent will review compliance with state administration of the Perkins V program, as detailed below.

3.1.1 *State Plan Development*

Respondent will evaluate compliance of THECB's State Plan Development including:

- Stakeholder consultation;
- State determination of performance measures; and
- Development of postsecondary state plan content.

3.1.2 *Postsecondary Subrecipient Monitoring*

Respondent will review compliance of postsecondary subrecipient monitoring including:

- Review of the required financial and programmatic reports;
- Monitoring for timely and appropriate action on identified deficiencies; and
- Issuance of management decisions for audit findings.

3.1.3 *State Leadership Activities*

Respondent will review compliance of state leadership activities including:

- Conducting state leadership activities to improve career and technical education (CTE).

3.2 Local Application Processes

Respondent will review compliance with the local application process including:

- Required submission by eligible recipients of a local application in compliance with Pub. L. No. 115-224, Sec. 134(b).
- Required submission by eligible recipients of a comprehensive local needs assessment in compliance with Pub. L. No. 115-224, Sec. 134(c) and (d).

- Required continued consultation with local stakeholders in a manner in compliance with Pub. L. No. 115-224, Sec. 134(e).

3.3 Fiscal Control

Respondent's fiscal control review shall include compliance with the following sections of Pub. L. No. 115-224 and the applicable Uniform Grant Guidance:

- Sec. 112(a) for distribution and uses of THECB's portion of the state allocation.
- Sec. 112(c) for use of reserve funds.
- Sec. 112(b) and Sec. 223(a) in matching use of administration funds dollar for dollar.
- Sec. 132 for calculating and distributing formula funds.
- Sec. 211(a) for use of Perkins funds to supplement and not supplant non-federal funds with Perkins funds, and for performing oversight of subrecipients for the same requirements.
- Sec. 211(b) for maintenance of effort, and for performing oversight of subrecipients for the same requirement.
- 2 C.F.R. § 200.332(a)(6)(2) and (d)(2)(3) in monitoring and auditing the fiscal compliance of subrecipients.

3.4 Accountability

Respondent's accountability review shall include compliance with the following sections of Pub. L. No. 115-224 and the applicable Uniform Grant Guidance:

- Sec. 113(b) in the establishment and maintenance of postsecondary core indicators of performance for CTE concentrators.
- Sec. 113(b)(3)(C), coordination with TEA in preparing and submitting the Consolidated Annual Report for submission to the U.S. Department of Education.
- Relevant parts of Sec. 113(b)(4)(B)(i) and (ii) in disaggregating postsecondary concentrator data.
- Sec. 123(b)(2) in requiring improvement plans from those subrecipients not meeting the core indicators of performance.
- Sec. 134(c)(1)(A-B), Sec. 134(c)(2)(A-E), and Sec. 134(d)(1-8) in requiring submission of approvable Comprehensive Local Needs Assessments (CLNAs) by subrecipients and periodic updates to approved CLNAs.
- 2 C.F.R. § 200.329 in monitoring of subrecipients for applicable federal requirements and performance expectations.
- 2 C.F.R. § 200.332 requirements for pass-through entities.

3.5 Programs of Study

Respondent's programs of study review shall include compliance with the following sections of Pub. L. No. 115-224:

- Sec. 3(41) in defining programs of study.
- Sec. 135(b)(2) in requiring that subrecipients have at least one local program of study.

3.6 Special Populations

Respondent's special populations review shall include compliance with the following sections of Pub. L. No. 115-224:

- Sec. 113(b)(3)(A)(i)(III)(bb) in requiring meaningful progress toward improved performance of all CTE students including special populations.
- Sec. 113(b)(4)(B)(ii)(I) in disaggregating the performance of special populations.
- Sec. 134(a)(1)(A) in using State Leadership funds to improve CTE.
- Sec. 124(c)(2)(E) in requiring subrecipients to identify gaps in the performance of special populations and develop strategies for supporting special populations success.
- Sec. 134 (b)(2)(C) in requiring subrecipients to provide information in the local application on local CTE offerings, including at least one (1) program of study and how students, including those who are members of special populations, will learn about CTE and program of study options.
- Sec. 134(b)(5)(A-D) in requiring subrecipients to document in the local application how they will educate and support members of special populations and ensure that such students will not be discriminated against.

THECB will compile supportive materials in advance of the review and will provide additional materials upon request during the review.

3.7 Deliverables

Awarded Respondent shall:

1. Report on THECB's compliance with Perkins V and 2 C.F.R. Part 200 as identified above, with any deficiencies identified.
2. Provide guidance on correcting any identified deficiencies in compliance.

TIMELINE FOR DELIVERABLES: Awarded Respondent must agree to provide deliverables by 11:30 p.m. CT on July 15, 2022.

4. REPORTS AND MEETINGS

4.1 Reports

Awarded Respondent is required to provide reports in the format and manner prescribed by THECB throughout the life of the project including, at a minimum, regular progress and status reports. Upon execution of the contract approved by the Office of the Attorney General of Texas (OAG), Awarded Respondent and THECB will establish a plan for additional reports to be created and delivered. In addition, Awarded Respondent shall provide any additional reporting as required by the OAG.

4.2 Meetings and Communication Plan Between Meetings

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

5. FINANCIAL MATTERS

5.1 Payment Terms and Award Summary

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

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

THECB will not apply for credit nor will THECB prepay. THECB shall pay, 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 and applicable deliverables have been approved by THECB. Awarded Respondent shall follow the guidelines in [Title 1 Texas Administrative Code § 57.6](#) for submitting invoices to THECB.

THECB shall award the Contract to the most qualified Respondent successfully meeting the criteria and conditions as outlined in this RFQ.

6. CONTRACT TERM AND TERMINATION

THECB shall pay Awarded Respondent for the reasonable and approved costs incurred in connection with the Contract during the period beginning upon execution and an anticipated end date of August 31, 2022. Once a Contract is executed with Awarded

Respondent and approved by the OAG, this period will be referred to as the “Contract Term.” Subject to proper approvals, the Parties may amend the Contract to extend the Contract Term, provided both Parties agree in writing to do so, prior to the expiration date. Any extensions shall have the same terms and conditions, plus any approved changes.

7. TERMS AND CONDITIONS

See Attachment D, Anticipated Outside Counsel Contract.

8. ADDITIONAL TERMS AND CONDITIONS

8.1 Awarded Respondent Responsibilities

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

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

8.2 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 Respondent to provide a proposal on the additional services. Awarded Respondent shall submit a proposal to THECB as instructed.

THECB may accept or reject the proposal and may issue a separate RFQ for the services after rejecting 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.

9. SCHEDULE OF EVENTS

9.1 Due Date for Proposals

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

9.2 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 THECB's website.

EVENT	DEADLINE
Publication of RFQ on the ESBD and THECB's website	March 22, 2022
Last Day to Submit Written Questions	April 1, 2022, by 11:30 p.m. CT
THECB's Response to Written Questions	April 8, 2022
Proposal Due Date and Time	April 21, 2022, by 11:30 p.m. CT
Post-Proposal Interviews/Presentations, if Required	April 27-29, 2022
Anticipated Contract Start Date	May 23, 2022

9.3 Point of Contact

Respondent 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. 781-2-26635.

Jacqueline Boilard
Texas Higher Education Coordinating Board
Office of General Counsel
eBids@highered.texas.gov

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

THECB will post additional information, responses to written questions, RFQ modifications, and addenda on the ESBD and THECB's 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. Failure to periodically check the ESBD and THECB's website will in no way release Awarded Respondent from "addenda or additional information" resulting in additional costs to meet the requirements of the RFQ.

10. PROPOSAL FORMAT AND CONTENT (REQUIRED)

10.1 Solicitation Attachments

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

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

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

Attachment B: HUB Subcontracting Plan (Required)

Attachment C: Conflict of Interest Disclosure Statement (Required)

For Reference Only

Attachment D: Copy of Anticipated OAG Outside Counsel Contract

[Title 1 Texas Administrative Code Chapter 57 – Outside Counsel Contracts](#)

[OAG Memorandum Regarding Outside Counsel Contract Rules and Templates](#)

10.2 Organization of the Proposal for Submission

Proposals must be submitted to the Point of Contact by an authorized representative via email to eBids@highered.texas.gov and received by THECB prior to the Proposal Due Date. The subject line of the email shall be entitled “[*Enter Respondent’s Name*] Proposal for RFQ No. 781-2-26635.” THECB recommends a limit of 75 MB for each attachment.

Proposals must include all required attachments in the order outlined below and be in the format described herein. THECB will not accept attachments received after the Proposal Due Date. Failure to submit all required information shall make the Proposal nonresponsive and thus disqualified from consideration. Respondents are solely responsible for thoroughly understanding this RFQ and its attachments. Any questions concerning this RFQ should be directed to the Point of Contact by the deadline for submitting written questions.

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

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

The first PDF shall contain responses to the following:

1. Minimum Eligibility Requirements under section 2 and all of its subsections;
2. Scope of Work under section 3 and all of its subsections;
3. The proposed hourly or fixed fee for the services in this RFQ; and
4. Respondent shall provide at least three references, including contact information. THECB prefers references from clients for whom Respondent has performed similar work, including other state agencies. Do not use THECB or any individuals employed by THECB as a reference.

The second PDF shall contain the following:

1. *Transmittal Letter* – Respondent shall provide a Transmittal Letter addressed to the Point of Contact that identifies the person or entity submitting the Proposal and includes a commitment by that person or entity to provide the services required by THECB through this RFQ.

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 Review of Compliance with Statutory and Regulatory Requirements Regarding the *Strengthening Career and Technical Education for the 21st Century Act*. **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 those detailed in the Anticipated OAG Outside Counsel Contract."**

Any exceptions to this RFQ must be specifically noted in the Transmittal Letter. However, any exceptions may disqualify the Proposal from further consideration. If Respondent takes any exceptions to any provision of this RFQ, 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 Respondent takes a "blanket exception" to this entire RFQ or the Anticipated Outside Counsel 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.

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.

2. *Execution of Proposal* (Attachment A) – All information on Attachment A is required to be completed.

3. *HUB Subcontracting Plan* (Attachment B) – All information on Attachment B is required to be completed. The form can also be found on the [Texas Comptroller of Public Accounts website](#).

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. 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 on the Comptroller's [website](#).

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.

4. *Conflict of Interest Disclosure Statement* (Attachment C) – The Conflict of Interest Disclosure Statement is required and must be attested to by an unsworn declaration. Respondent shall be neutral and impartial and shall not advocate specific positions to THECB. Respondent 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 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.

Additionally, if a Respondent is selected as a result of this solicitation, the selected Respondent will be required to submit a written disclosure statement identifying every litigation matter in which the firm represents or has represented an entity or individual that is directly adverse to the state of Texas, including its boards, agencies, commissions, universities, and elected or appointed officials in connection with their official job duties and responsibilities, within the past calendar year. 1 Tex. Admin. Code § 57.4(d).

10.3 Proposal Submission

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 Respondent's anti-virus or other security software.

11. PROPOSAL EVALUATION

11.1 Evaluation Criteria

THECB will review and score responsive Proposals according to the Evaluation Criteria outlined in the table below. The relative weight of each criterion is indicated in the right-hand column.

Evaluation Criteria Table	
Criterion	Weight
Experience and qualifications:	
Demonstrated expertise in Perkins V statutory requirements	30%
Demonstrated expertise in federal regulations in 2 CFR Part 200	30%
Prior experience in performing the same or similar work for state entities administering Perkins funds	20%
Work plan and timeline:	
Ability to perform requested services and submit deliverables by due date	20%
Total	100%

11.2 Proposal Evaluation Process

11.2.1 *Evaluation Committee*

THECB will assemble an evaluation committee that will review and score the proposals. Proposal evaluation will begin as soon as practicable after the submission deadline and after an administrative review of the proposals has been completed. The evaluation committee will meet and discuss the proposals. Evaluation committee members will score each proposal individually based on the evaluation criteria in the table above. Once the evaluation committee has scored the proposals, a recommendation for selection or a recommendation to take further action will be made.

If further action is required, the evaluation committee may pose clarifying questions, hold oral presentations/discussion sessions, and/or ask for best and final proposals from Respondents with the highest-ranking proposals. The evaluation committee will score the proposals again following Respondents' responses to any clarifying questions, oral presentations/discussion sessions, or requests for best and final proposals. After the second round of scoring, the evaluation committee will make a recommendation for selection or no selection.

The recommended vendor's past performance will be evaluated, and references will be checked as detailed below.

11.2.2 *Past Performance*

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. Respondent 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.).

11.2.3 *Reference Checks*

THECB will 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.

11.2.4 *Respondent Notification*

If the evaluation committee recommends a Respondent for the services detailed in this RFQ, THECB will notify the selected Respondent. Contract negotiations will begin 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's selection of a Respondent shall be subject to final approval by the OAG pursuant to Title 1 Texas Administrative Code § 57.5.

12. ADDITIONAL INSTRUCTIONS

12.1 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

12.2 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.

12.3 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 on the release of proprietary or confidential information, the specific provisions of the Proposal that are considered by Respondent to be proprietary or confidential must be clearly labeled as described above. Any information which is not clearly identified as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA. Respondent is required to make any information created or exchanged with the state pursuant to the solicitation or contract, and not otherwise excepted from disclosure under the PIA, available in a format that is accessible by the public at no additional charge to the state.

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

12.4 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.

12.5 Irrevocability of the Proposal

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

12.6 Affirmations and Required Clauses

Antitrust Affirmation. Respondent represents and warrants that, in accordance with Texas Government Code § 2155.005, neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Texas Business and Commerce Code §§ 15.01-.52, or the federal antitrust laws; or (2) communicated directly or indirectly the contents of its Proposal to any competitor or any other person engaged in the same line of business as Respondent.

Assignment. Respondent shall not assign its rights under any contract awarded as a result of this RFQ or delegate the performance of its duties under the contract without prior written approval from THECB. Any attempted assignment in violation of this provision is void and without effect.

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

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

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

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

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

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

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

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

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

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

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

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

Dispute Resolution. The dispute resolution process provided for in Texas Government Code §§ 2260.001-.108 must be used to attempt to resolve any dispute arising under a contract awarded pursuant to this Request for Offers.

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

Human Trafficking Prohibition. “Under Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.” Tex. Gov’t Code § 2155.0061.

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

Prior Disaster Relief Contract Violation. “Under Section 2155.006, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.” Tex. Gov’t Code § 2155.006.

“Under Section 21261.053, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified

contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.” Tex. Gov’t Code § 2261.053.

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

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

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

Data Center Services Utilization. Pursuant to Texas Government Code § 2054.391, Respondent shall utilize all services included in the Data Services Center (DCS) Program in order to provide the services requested by THECB.

12.7 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.

Award Notice. If the RFQ is awarded, THECB will post a Notice of Award on the Electronic State Business Daily. However, there is no guarantee that an award, any contract, or any purchase order will result from this RFQ. THECB will not respond to inquiries regarding procurement status. THECB will not respond to inquiries regarding procurement status.