

**REQUEST FOR PROPOSALS  
RFP# 177c**

**FOR**

**TOMORROW'S COLLEGE SAVINGS PLAN  
TEXAS 529 PLAN MANAGER AND  
RELATED SERVICES**

**FOR THE**

**TEXAS PREPAID HIGHER EDUCATION  
TUITION BOARD**

STATE OF TEXAS  
SUSAN COMBS  
COMPTROLLER OF PUBLIC ACCOUNTS  
111 East 17<sup>th</sup> Street  
Austin, Texas 78774

**April 30, 2007**

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**Texas 529 Plan Manager & Related Services**

**To: Interested Financial Institutions**

**From: Comptroller of Public Accounts**

**Re: Request for Proposals for Texas 529 Plan Management & Related Services for the Texas Prepaid Higher Education Tuition Board (RFP No. 177c)**

**1. Purpose**

The Texas Comptroller of Public Accounts (“Comptroller”), as executive director of the Texas Prepaid Higher Education Tuition Board (“Board”), issues this Request for Proposals (“RFP”) to solicit proposals from qualified financial institutions to assist Comptroller and the Board in providing plan manager and related services (“Services”) as the Board’s Texas 529 Plan Manager for the plan known as the “Tomorrow’s College Savings Plan” (“Plan” or “529 Plan”), as described in this RFP and the contract, if any, resulting from it (“Contract”). All requisite services are referred to as “Transition Management Services” or “services” in this RFP. The selected respondent is referred to as the “Contractor” in this RFP.

Comptroller, as Executive Director of the Board, issues this RFP on behalf of the Board. The Board has final approval on any contract award made as a result of this RFP. The Board intends to select one or more Contractor(s) to provide the Services requested herein. The Board reserves the discretion to make more than one contract award as a result of the issuance of this RFP. All questions in this RFP must be answered as completely and accurately as possible.

Contractor, as an independent contractor, shall provide the Services under the Contract at its facilities and with its own personnel. The initial term of the Contract is expected to be June 30, 2007, or as soon thereafter as practical, through August 31, 2012; transition services must begin on June 30, 2007, or as soon thereafter as is feasible, assuming transition to a different Contractor is necessary. The transition must be complete and the new plan manager in place by October 31, 2007. The Board shall have the option, in its sole discretion, to extend the Contract for up to two (2) additional one-year periods, one (1) year at a time.

**2. Authority & Background**

***Legal Authority***

This RFP is issued pursuant to Chapter 2155, Section 2155.001; Section 403.011; and Chapter 2156, Section 2156.121, Texas Government Code; and Subchapters F and G, of Chapter 54, the Texas Education Code.

The Plan is legally authorized by Chapter 54, Subchapter G, Texas Education Code. Under that law, the Board is required to contract with a financial institution as plan manager. A financial institution is defined as a bank, trust company, savings and loan association, credit union, broker-dealer, mutual fund, insurance company, or other similar financial institution authorized to transact business in Texas.

The Board anticipates selection of a plan manager from among respondents demonstrating that respondent will provide the most advantageous combination of the Services to the Plan, the Board, Comptroller, and the Plan’s account owners and beneficiaries, based on the following factors:

- The financial institution’s financial stability and integrity;
- The financial institution’s ability, directly or through a subcontract, to satisfy recordkeeping and reporting requirements;
- The financial institution’s strategy for working cooperatively with the Board to promote the Plan and the investment that the financial institution is willing to make to promote the Plan;
- The financial institution’s proposed portfolios or investment strategies and its ability to produce results that track the estimated costs of higher education as calculated by the United States Department of Education;
- The financial institution’s proposed fees to be charged to account owners for maintaining accounts;
- The minimum contributions that the financial institution will require and the willingness of the financial institution to accept contributions through payroll deduction plans or systematic deposit plans; and
- Any other proposed benefits to the state or to its residents and participants, the Board, Comptroller or the Plan.

The Board is authorized to enter into one or more contracts for the performance of services relating to the administration of the Plan. The Board has identified the requested services as essential services required for the effective management of the Plan.

***Background***

The Plan is administered by the Board and offers a program for tax-advantaged savings trust agreements from which distributions can be made for qualified higher education expenses at eligible educational institutions, as provided in Section 529, Internal Revenue Code of 1986, as amended (“Section 529”). The Plan is offered as a Qualified Tuition Program (QTP), pursuant to Section 529. The Plan began in 2002 and as of February 28, 2007, there are 20,860 College Savings Plan trust accounts with a total market value of \$207.5 million. Since inception, 74% of investments have been by Texas residents and 26% by non-Texans, and 57% of the investments have been the result of the direct sales program and 43% have been advisor sold. Historical plan assets at points in time are as follows:

Date	Assets	# of Accounts
12/31/2002	\$ 10,357,185	5,067
12/31/2003	\$ 55,015,322	8,584
12/31/2004	\$ 101,820,839	13,497
12/31/2005	\$ 145,642,878	16,968
12/31/2006	\$ 197,599,707	20,176
2/28/2007	\$ 207,518,083	20,860

	Feb. 2007	Total Since Plan Inception
Texas Direct	\$ 2,520,881	\$ 102,671,576
Texas Advisor	\$ 609,826	\$ 38,839,922
Subtotal Texas	\$ 3,130,706	\$ 141,511,498
Non-Texas Direct	\$ 121,622	\$ 5,664,336
Non-Texas Advisor	\$ 423,972	\$ 44,317,509
Subtotal Non-Texas	\$ 545,594	\$ 49,981,845
Total Sales	\$ 3,676,301	\$ 191,493,343
% Texas	85%	74%
% Non-Texas	15%	26%
% Direct	72%	57%
% Advisor	28%	43%

Total fees paid to the current plan manager under contract are paid by account holders and are based on market value of assets under management. Contractor's sole compensation under this RFP consists of contracted fees paid by the account owners. The Board pays no amounts under current Contract and Contractor is not guaranteed any minimum amount of compensation under the current Contract.

The Plan is administered by the Board, which also administers the "Texas Guaranteed Tuition Plan." The Texas Guaranteed Tuition Plan has been temporarily closed since 2003, but has approximately 118,000 active contracts and \$2.3 billion in assets. The Board oversees the management of funds invested on behalf of the Texas Guaranteed Tuition Plan, with the assistance of an investment consultant. Contractor will remain eligible to respond to any future request for proposals pertaining to the Texas Guaranteed Tuition Plan or any other 529 plans offered by the Board in the future.

The Texas Legislature is currently considering legislation that could affect the Texas Guaranteed Tuition Plan, including possibly opening enrollment in the future. Other filed legislation proposes to create a new prepaid tuition program separate from the Texas Guaranteed Tuition Plan, and would require that the Board engage a plan manager. Information on legislation can be found on the state's legislative Web site: <http://www.capitol.state.tx.us/>.

Attached as Exhibit N is a chart showing Underlying Funds by Portfolio and Unit Class.

### 3. Scope of Services

The Board seeks proposals from qualified financial institutions and firms that administer, manage, promote, and market a 529 higher education savings plan(s) in compliance with Section 529. The Board solicits proposals from qualified financial institutions to serve as Plan Manager including the provision of all reasonably-related Services. Key Services include acting as plan manager for the Plan, including serving as investment manager. The Plan Manager is required to offer both beneficiary age and non-age investment options to account holders. Other services include Texas and National marketing plans (if a National plan is offered) and a complete array of internet and web-based services, as well as call-center services.

Contractor, if any, shall be solely responsible for delivery of all such Services to the Board and for the performance of any of its subcontractors. (See the following sections for a more complete description of the Services requested in this RFP). All respondents must, **at a minimum**, submit a proposal which includes ***all*** of the following Services:

### **3.1 Tax and Legal Compliance**

The Plan is designed and shall be administered so as to ensure continuing compliance with Internal Revenue Code Section 529 and associated regulations. Consistent with this objective, Contractor must allow the Board, Comptroller and other authorized State of Texas representatives to review, supervise, and monitor the activities of Contractor and its subcontractors for compliance with Contracts and requirements of the Plan and for compliance with applicable law. In addition to other termination rights, the Board, or Comptroller on behalf of the Board reserve the right, in their sole discretion, to terminate any contract for non-compliance.

### **3.2 Investment Services**

#### **A. Investment Options**

Respondents must propose, for consideration and adoption by the Board, an age-based asset allocation portfolio, with a designated mix of investments that will depend upon the age of the beneficiary or the number of years remaining until likely enrollment at an eligible educational institution. In addition, respondents must propose a number of non-age-based fund options, which may include both equity and fixed-income assets or a combination of the two. The number of non-age-based fund options proposed is at the discretion of respondents; however, the Board seeks to minimize fees for account holders.

Respondents should take into account the Internal Revenue Service notice allowing account holders to make changes in their investment selections once per calendar year. Taking into account this change in policy, respondents should be creative and propose investment options for account holders who may want to adjust their investment selections. Because the Board is interested in the marketability and competitiveness of the Plan, respondents should propose options that will appeal to investors with different investment strategies or styles and different levels of risk tolerance. All investment options must be designed to comply with Internal Revenue Code Section 529 and related regulations. All investment options must eliminate the possibility that any investment will result in unrelated business income taxable under Internal Revenue Code Section 511.

The current plan has a Stable Value Fund with a guaranteed income provision. That fund requires a 5 year wind-down to exit the fund. The successful respondent should be prepared to work with the provider of the Stable Value Fund to either integrate the fund into the successful respondent's plan, or to negotiate with the fund provider to wind-down the fund.

#### **B. Investment Guidelines**

The Board considers consistent investment performance of each of the funds and tracking to appropriate benchmarks as critical to the success of the Plan. Contractor's actual investment decisions with respect to each investment option or strategy must conform to the parameters and disciplines that are established for that option or strategy. Contractor's fees and costs will be critical to the long-term success of the Plan. Investment guidelines, including designation of participating funds, fund account managers, types of investment vehicles to be included in the funds, and investment parameters and disciplines for each investment strategy or option will be developed in conjunction with Contractor and approved by the Board

from time to time. Contractor's investment activities must conform to the respective guidelines at all times.

### **C. Analysis of Performance**

The Board will conduct ongoing independent analyses of Contractor's performance at periods and times it deems appropriate. Each such analysis may include one or more of the following areas:

- A review of the investment guidelines and Contractor's compliance with the guidelines;
- Contractor's investment performance, compared to appropriate benchmarks and peer groups;
- Contractor's fee structure, compared to similar plans;
- Contractor's ongoing ability to perform in accordance with the terms of the Contract, including management stability and changes in philosophy or ownership structure;
- Contractor's compliance with the applicable investment standard;
- Contractor's administration of the Plan to ensure compliance with Chapter 54, Subchapters F and G, Texas Education Code; Internal Revenue Code Section 529; the Board's Rules; and all other applicable laws, regulations, rules and procedures;
- Any changes in Contractor's ownership structure and key personnel; and
- Contractor's compliance with all Standards of Performance of the Contract and other additional performance standards recommended throughout the contract term by the State Auditor, independent auditors, and other authorized State of Texas representatives.

## **3.3 Marketing Services**

### **A. Marketing Approach**

Contractor must propose a strategy to work cooperatively with the Board to market the Plan within the state of Texas, utilizing market research, advertising, and a public relations effort. Contractor must have substantial marketing potential and must commit funds to a statewide marketing effort. No marketing strategy or plan will be implemented without the Board's prior approval.

Contractor must work cooperatively with the Board and its agents to formulate a marketing, advertising, and public relations plan including development of the Plan name, branding, integrated logos, collateral materials, advertising, Web sites and public relations strategies. Marketing materials for the state must be available in both English and Spanish. Contractor must provide an interactive voice response (IVR) system and/or call center. The IVR and call center must be able to provide comprehensive information about the Plan to callers. Contractor may be required to provide a toll-free number and corresponding telephone lines that will be directed to the IVR system and/or call center. Additionally, Contractor must work with the Board to provide information on the Plan on the Board's Web site and to provide direct access to the Plan's investment options using the Web site.

Contractor must be prepared to coordinate with the Board for marketing for any other 529 Plan offered by the Board, including but not limited to the Texas Guaranteed Tuition Plan.

Further, Contractor shall be solely responsible, at its own expense, for ensuring that all marketing and sales of the Plan accounts comply with all applicable federal and state securities laws and other law. This includes without limitation the obligation to ensure that all sales representatives, including marketing agent representatives that provide investment information to prospects and clients, be duly registered and licensed by the National Association of Securities Dealers and by the State Administrators of each state where marketing activities will be performed, in addition to ensuring compliance with Municipal Securities Board Rules and Regulations and other federal law applicable to such marketing materials and promotions.

**B. The Board's Marketing Role**

The Board will take an active role in the development of a marketing plan for the state and will review and approve in advance the marketing strategy implemented by Contractor. The Board will retain prior approval authority of the marketing program, promotional materials, and advertisements, particularly as to appropriateness of content, image, and style.

**C. Contractor's Marketing Role**

Contractor must work with the Board to develop its Texas marketing strategy and program, including promotional materials and advertisements. In addition to providing a proposed strategy, Contractor must propose a timeline with the proposed marketing effort for the first twelve months of the Contract, beginning October 31, 2007, and annually thereafter during the term of the Contract. Contractor must provide the Board with monthly reports regarding marketing expenditures and activities for the previous month including copies of all promotional materials and advertisements. The report should include performance analysis on selected campaigns or activities and a schedule of the proposed marketing activities for the subsequent two months.

**D. National Marketing Efforts for the Texas Higher Education Savings Plan (optional)**

Respondents may propose a national marketing strategy in addition to the required Texas marketing strategy. If a national marketing strategy is proposed, respondents must specify the potential benefits of a national marketing strategy to the Plan and its savings account owners. Contractor will be required to provide the Board with regular written reports regarding the national marketing efforts, along with copies of any advertisements or promotional materials. The Board will retain prior approval authority of the marketing program, promotional materials, and advertisements, particularly as to appropriateness of content, image, and style. The Board will not provide marketing support (financial or other resources) toward Contractor's national marketing efforts.

### **3.4 Records Administration and Customer Service**

#### **A. General**

Section 529 establishes certain requirements for a Qualified Tuition Program (“QTP”) and requires the Board to provide adequate safeguards in its administration of the Plan in order to protect the tax benefits granted by Internal Revenue Code Section 529 and associated regulations. Contractor must provide records administration services for the Board that include safeguards designed to ensure that:

- Contributions made on behalf of a designated beneficiary are not in excess of the maximum allowed by the Plan’s rules;
- Distributions of funds from the Plan meet the requirements of the Plan and Internal Revenue Code Section 529; and
- All reporting requirements under the Internal Revenue Code are promptly, fully, and accurately met.

Contractor must provide the following basic Services relative to records administration:

- Record keeping at the individual account level;
- Aggregation of accounts by beneficiary for tax compliance and account owner reporting;
- Account Statements and customer mailings;
- Application development and processing;
- Savings trust agreement development and processing;
- Receipt and recording of deposits including proper accounting for rollovers from other QTPs;
- Disbursement documentation and tax compliance including federal and state withholding; and
- Form 1099G or 1099Q reporting.

Contractor shall provide an annual statement to each account owner not later than January 31<sup>st</sup> of each calendar year. Contractor shall provide each account owner an account statement at least quarterly and upon written request of an account owner. Contractor may provide statements electronically with the approval of the account owner. Such statements shall, at a minimum, include the following:

- Identification of the account owner and beneficiary;
- The amount contributed by the account owner during the reporting period;
- The value of the account at the end of the reporting period;
- Withdrawals made during the reporting period;
- The annual earnings and accumulated earnings of the account;
- Any terms and conditions necessary to conform the savings trust account with the requirements of Internal Revenue Code Section 529; and
- Any other information the Board reasonably requires.

Contractor must make customer service functions available to investors or potential investors via the Internet or through a call center. These functions are described in more detail below.

## B. Web Services

Contractor must provide a complete array of Services through the Internet. Accordingly, the evaluation process will consider the extent of Services provided through Contractor's website, which will be available to interested persons using a link from the Board's website. Contractor's website must be developed in cooperation with the Board and provide a seamless integration of the overall marketing strategy.

Contractor's website must provide basic customer service functions and must provide information about the Plan. The website must:

- Process inquiries or requests for information about the Plan;
- Provide account information including accumulated investments, earnings, and total investment balance;
- Provide information regarding enrollment in the Plan and the ability to process enrollments on-line;
- Process distribution requests and provide information about qualified expenses;
- Accept and process general inquiries via e-mail; and
- Provide general marketing information.

## C. Call Center Services

Understanding that not all investors or potential investors have ready access to the Internet, Contractor must provide an Interactive Voice Response System (IVR) and/or call center. The IVR and call center must be able to provide comprehensive customer service functions in connection with the Plan, be toll free and be available during normal Central time zone working hours.

Generally, the call center should provide all of the capabilities that are described above for Internet-based Services. Contractor must demonstrate appropriate administrative processes to fulfill requests for information or enrollment that may be received through the call center.

**Important Note: All Respondents must submit both a Workplan and a Transition Plan with all proposals; failure to include one or both may result in disqualification of a proposal in its entirety.**

All respondents must submit proposals that include the provision of investment management, records administration, customer service, and marketing for the Plan as described in this RFP. Contractor must directly provide one or more investment options and investment management strategies; must directly or through a subcontract provide records administration and customer service; and must develop a strategy to promote the Plan consistent with direction of Comptroller, the Board, and on approval of the Board, may promote the Plan according to that strategy. Contractor shall be solely responsible for delivery of all such Services to the Board and for the performances of any and all of its subcontractors.

Contractor shall provide Services as described in this Section. Any deviations from these specific requirements must be approved by Comptroller and Contractor in writing, and specifically refer to the requirement and the reason for approval of the deviation. Comptroller will consider approving written requests for such deviations if Comptroller determines, in its sole discretion, that such deviations are consistent with applicable law and in the best interests of the Plan and the State of Texas. For example, Contractor may suggest changes to the procedures and policies governing the operation of the Plan, but any suggested changes must be specifically approved by Comptroller in writing in advance of implementation to be effective. Also, any decrease in level of approved Services must be accompanied by a decrease in

approved fees.

Additionally, Contractor must adhere to all investment standards adopted by the Board, as and when adopted and revised by the Board. Contractor shall provide all Services in compliance with all requirements of this RFP and the Contract. Comptroller reserves the right, in its sole discretion, to enter into preliminary negotiations with more than one respondent. Contractor will work with Comptroller, the Board, the Board's investment consultant and the current Plan manager to complete the transition. Conversion costs are the sole responsibility of Contractor.

#### 4. Schedule of Events

Comptroller anticipates that the selection of Contractor and execution of a Contract will proceed according to the following approximate schedule:

April 30, 2007	- Issuance of RFP (after 10:00 a.m. CZT)
<b>May 11, 2007</b>	- <b>Deadline for Submission of Non-Mandatory Letters of Intent and Questions (2:00 p.m. CZT)</b>
May 18, 2007	- Electronic Posting of Official Responses to Questions (or as soon thereafter as practical)
<b>June 5, 2007</b>	- <b>Deadline for Submission of Proposals (2:00 p.m. CZT) (Late proposals will not be considered)</b>
June 11-12, 2007	- Interviews (if any) with respondents (or as soon thereafter as practical)
June 30, 2007	- Contract Execution (or as soon thereafter as practical)
June 30, 2007	- Commencement of Work (or as soon thereafter as practical)
October 31, 2007	- Transition Complete; Full Services Available for Plan

Comptroller reserves the right, in its sole discretion, to change the above dates. Notices of changes to items directly impacting the original RFP or proposal process will be posted electronically on the Electronic State Business Daily, located at: (<http://esbd.tbpc.state.tx.us>); however, if these notices are necessary after the deadline for receipt of the Non-Mandatory Letters of Intent and Questions, they will be sent only to those respondents filing such letters or questions.

#### 5. Contract and Evaluation Criteria

The Contract shall contain the Board's and Comptroller's standard contract terms and conditions for these services, which are included in the attached Exhibit D. All Respondents should review all terms and conditions with legal counsel prior to submitting a proposal. This RFP shall be incorporated as part of the Contract and shall control over conflicting language in Contractor's proposal. Proposals submitted in response to this RFP will be evaluated under the criteria in Exhibit G of this RFP.

#### 6. Proposal Content

Respondents' proposals must include all of the information described in Exhibit C of this RFP for each proposed service. Proposals without all of this information will be disqualified; however, Comptroller reserves the right, in its sole discretion, to waive minor technicalities and errors in the best interests of the State of Texas.

#### 7. Deadline for Proposals

To be considered, all proposals must be received by the date and time set forth in the Schedule of Events. Proposals must be submitted in the Issuing Office to:

William Clay Harris  
Assistant General Counsel, Contracts  
Comptroller of Public Accounts  
111 E. 17th Street, Room G-24, LBJ State Office Building  
Austin, Texas, 78774

An original ink (signed) and ten (10) complete copies of the proposal must be submitted. Comptroller prefers hand or overnight delivery of the proposals. Please indicate on the package face that the proposals are due **in the Issuing Office on June 5, 2007 by 2:00 p.m. CZT**. Faxed or electronic proposals will not be accepted in response to this RFP. **Comptroller will not consider proposals from respondents that do not submit timely proposals. Respondents are solely responsible for verifying the receipt of all proposals and copies in the Issuing Office by the deadline set forth in the Schedule of Events, above. Late proposals will not be considered under any circumstances.**

**Additionally, two (2) complete copies of the proposal must be submitted via SECURE DELIVERY MEANS (to maintain total confidentiality) to New England Pension Consultants (NEPC) in care of Ms. Jennifer Heilig, Consultant, at the address listed below. An electronic copy of the proposal must also be e-mailed to Ms. Heilig.** All proposals must be delivered on or before the date listed in the "Schedule of Events" of this RFP. Proposals received after the deadline shall be excluded. Neither the Board nor NEPC is obligated to return any proposals.

Jennifer Heilig, Consultant  
NEPC  
One Main Street  
Cambridge, MA 02142-1524  
Telephone (617) 374-1300 Fax (617) 374-1313  
Email: jheilig@nepc.com

## **8. Contract Elements; Sample Contract; Exceptions**

The Contract between the parties will consist of a written contract, the RFP together with any modifications thereto, and the successful proposal together with any clarifications thereto that are submitted at the request of Comptroller. In the event of any conflict or contradiction between or among these documents, the documents shall control in the order of precedence set forth in the attached Sample Contract, Exhibit D. Specific exceptions to this general rule may be noted in the final executed Contract. The Contract may be amended only in writing and by mutual agreement.

**Sample Contract.** The Contract will be based on the Sample Contract included as Exhibit D of this RFP and will incorporate the entire RFP. The Sample Contract includes boilerplate provisions and Comptroller reserves the right, in its sole discretion, to recommend an award of the Contract without negotiation of these provisions or to modify the terms and conditions in the best interests of the Board, Comptroller and State of Texas.

**Exceptions.** Any exceptions to any RFP requirements, including, but not limited to, the terms and conditions included in the Sample Contract, must be specifically noted and explained by the respondent in the proposal as a condition to becoming part of the Contract. Notwithstanding any exceptions or any other provision of Contractor's proposal to the contrary, Contractor shall indemnify Comptroller, the Board, and the State, as specified in the Sample Contract. The State of Texas and Comptroller, and their respective employees, officers, agents, and representatives, will not indemnify Contractor for any amount for any purpose, and any provisions to the contrary are void.

**Compensation and Payment; No Minimum Compensation.** Contractor's sole compensation shall be contracted fees paid by the account owners. The Board shall pay no amounts under this contract.

Contractor is not guaranteed any minimum amount of compensation under the contract. In addition, Contractor is expected to fund a marketing commitment to the Board as specified in this RFP.

**Failure to Perform Services; Liquidated Damages.** If Contractor fails to perform any Services in a timely manner, Comptroller may pursue all remedies under the Contract, and any available under applicable law and in equity. In the event of such nonperformance, Comptroller is not required to provide notice to Contractor and opportunity to cure prior to withholding payments, or prior to imposing or deducting from authorized payments all agreed liquidated damages for such failure to perform.

As a condition of executing a contract resulting from this RFP, Comptroller and Contractor shall agree to a final schedule of liquidated damages applicable to Contractor's failure to perform specific requirements of the Contract. Each respondent must include a proposed schedule of liquidated damages in its proposal; such schedules shall be subject to negotiation prior to inclusion in the final executed Contract. Such proposed schedules must include, at a minimum, the liquidated damages provisions, events and amounts included in this RFP.

## 9. No Conflicts of Interest

In submitting a proposal in response to this RFP, respondent represents and warrants that it and its proposed personnel have no actual or potential conflict of interest in providing services to Comptroller and the Board under the Contract. Each respondent also represents and warrants that its provision of the services under the Contract would not create the appearance of impropriety. In its proposal, respondent must disclose any existing or potential conflict of interest that respondent might have in providing services to Comptroller and the Board under the Contract. Comptroller or the Board will decide as a discretionary matter whether an actual or perceived conflict should result in proposal disqualification or Contract termination. In addition to these disclosures, respondent must also disclose any proposed personnel who are current or former employees of Comptroller, the Board, or the State of Texas. Each respondent must also disclose any proposed personnel who are related to any current or former employees of Comptroller, the Board, or the State of Texas.

## 10. Non-Mandatory Letters of Intent; Written Questions

Respondents interested in submitting a proposal in response to this RFP should fax non-mandatory letters of intent to the Issuing Office to the attention of William Clay Harris, fax number (512) 475-0973, no later than 2:00 p.m. on May 11, 2007. All questions concerning this RFP must be in writing and submitted no later than 2:00 p.m. on May 11, 2007. Questions must also be faxed to (512) 475-0973, Attn.: William Clay Harris. On or about the date set forth in the Schedule of Events, Comptroller expects to electronically post answers to these written questions as a revision to the electronic notice of the issuance of this RFP. This notice will be posted on (<http://esbd.tbpc.state.tx.us>). **Respondents are solely responsible for verifying the receipt of the non-mandatory letter of intent and questions by the deadline specified above. Late-filed letters or questions will not be considered under any circumstances.**

## 11. Issuing Office

Comptroller, on behalf of the Board and through Comptroller's Contracts Section, General Counsel Division, is the Issuing Office and the sole point of contact for the RFP. Comptroller's Contracts Section is the only office authorized to clarify, modify, amend, alter, or withdraw the specifications, terms, and conditions of this RFP and any contract awarded as a result of this RFP. **Except as otherwise indicated, all communications concerning this procurement must be in writing and addressed to:**

William Clay Harris, Assistant General Counsel, Contracts  
Office of Comptroller of Public Accounts  
Post Office Box 13528  
Austin, Texas 78711-3528  
FAX (512) 475-0973  
E-mail: contracts@cpa.state.tx.us

The physical address for overnight and personal delivery of proposals in response to this RFP is:

William Clay Harris, Assistant General Counsel, Contracts  
Office of Comptroller of Public Accounts  
111 E. 17th Street, Room G-24  
Austin, Texas 78774

## **12. Confidential Information; Nondisclosure**

All information gathered, produced, derived, obtained, analyzed, controlled or accessed by respondent in connection with this RFP or Contract (“Confidential Information”) shall be and remain Confidential Information and shall not be released or disclosed by the respondent without the prior written consent of Comptroller, which consent must specifically identify the Confidential Information to be disclosed by respondent, and the nature of the disclosure for which consent is sought. Respondents must execute and return with their proposals a Nondisclosure Agreement with Comptroller, in the form of Exhibit A attached hereto.

Respondents are not authorized to make or participate in any media releases pertaining to this procurement, Contractor’s response to the original solicitation, or the services to which they relate without Comptroller’s prior written consent, and then only in accordance with explicit written instructions from Comptroller. Disclosure of contents of proposals prior to the award of a Contract, or any other violation of this Section, may result in disqualification.

Following the award of a Contract, responses to this RFP are subject to release as public information unless the response or specific parts of the response can be shown to be exempt from the Texas Public Information Act. All respondents are advised to consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets or other proprietary information. Neither the Board nor Comptroller assumes any obligation or responsibility relating to the disclosure or nondisclosure of information submitted by respondents.

If a respondent believes that any portion of its proposal is confidential, then the respondent must so specify. The respondent must stamp in bold red letters the term “CONFIDENTIAL” on that specific *part or page* of the proposal, which the respondent believes to be confidential. Respondents must submit in writing specific detailed reasons, including any relevant legal authority, stating why respondents believe the material to be confidential. Vague and general claims as to confidentiality will not be accepted. Comptroller will determine whether a claim is general and/or vague in nature. All proposals and parts of proposals which are not marked as confidential will be automatically considered public information after Contract award. Contractor’s proposal may be considered public information even though parts are marked confidential.

In the event Comptroller receives a request for portions of a proposal marked as “CONFIDENTIAL” as specified above, Comptroller shall forward such request to the Texas Attorney General’s Office for an opinion on whether such information may be withheld from disclosure under the Texas Public Information Act. Comptroller will notify the respondent whose proposal is the subject of the request when the information is forwarded to the Attorney General’s Office.

**Copyrighted proposals are unacceptable and are subject to disqualification as non-responsive.**

Under House Bill 26 (H.B.26), 78<sup>th</sup> Texas Legislature, and as per the following requirements, upon written request by Comptroller prior to contract signature, Contractor (and no other respondents) must provide to Comptroller with electronic copies of its complete proposal. Contractor shall deliver to Comptroller a total of four (4) CDs with the following material prior to its signature on the Contract, if any, resulting from this RFP:

- Two CDs, each containing a complete copy of Contractor’s Proposal in pdf format. A complete copy of the Proposal includes all documents contained in the Proposal submitted in response to this RFP including those documents with Contractor’s signature. These two identical CDs should be titled: “Complete copy of [Name of Contractor]’s Proposal. Comptroller’s RFP No. 177c”; and
- Two CDs, each containing a copy of Contractor’s Proposal which Contractor has excised, blacked out, or otherwise redacted information from the Proposal that Contractor considers to be confidential and exempt from public disclosure under the Texas Public Information Act, Chapter 552 of the Texas Government Code (this should be a de minimis portion, if any, of Contractor’s Proposal, such as social security numbers or e-mail addresses). Each CD shall also contain an Appendix for Contractor’s Proposal which provides a cross reference for the location of each piece of material redacted by Contractor and a general description of the redacted information. These two identical CDs should be titled “For Public Release: Redacted Version of [Name of Contractor]’s Proposal and Appendix. Comptroller’s RFP No. 177c.”

### **13. Media Releases**

Media releases pertaining to this RFP or the Contract, or the Services to which they relate, will not be made without the prior written consent of Comptroller, and then only in accordance with explicit written instructions from Comptroller. The disclosure of the contents of proposals prior to the award of a Contract, or any other violation of this section, may result in disqualification.

### **14. Other Rights**

Comptroller and the Board shall pay no costs or other amounts incurred by any entity in responding to this RFP or prior to the effective date of any Contract resulting from it. Comptroller reserves the right, in its sole discretion, to recommend to the Board one or more qualified responses to this RFP without discussion of responses with the respondents. Comptroller and the Board reserve the right, in their sole discretion, to reject any or all submitted proposals. All proposals will become a part of Comptroller’s official procurement files, and may be available for public inspection as provided in Section 12 of this RFP. No obligation is made by retention of these proposals. Comptroller and the Board are not required to award any contracts as a result of this RFP. Comptroller and Board reserve the right, in their sole discretion, to amend or modify any provisions of this RFP, or to withdraw this RFP, at any time prior to award of a Contract, if it is in the best interests of Comptroller, Board, Plan or State to do so. The decision of Comptroller and Board shall be administratively final in this regard.

### **15. Independent Contractor; Termination; Transition**

**15.1 Independent Contractor.** Contractor shall serve as an independent contractor in providing services under the Contract. Contractor’s employees shall not be construed as employees of Comptroller, the Board, or the State of Texas.

**15.2 Termination for Cause.** Without limitation on the right of Comptroller and the Board to terminate any Contract resulting from this RFP pursuant to its terms, Comptroller and the Board reserve the right, in their sole discretion, to terminate such Contract, in whole or in part, upon any one of the following conditions:

A receiver, conservator, liquidator, or trustee of Contractor, or of any of its property is appointed by order or decree of any court or agency or supervisory authority having jurisdiction; or an order for relief is entered against Contractor, under Title 11, United States Code; or Contractor is adjudicated bankrupt or insolvent; or any portion of the property of Contractor is sequestered by court order and such order remains in effect for more than thirty (30) days after such party obtains knowledge thereof; or a petition is filed against Contractor under any state, reorganization, arrangement, insolvency, readjustment of debt, dissolution, liquidation, or receivership law of any jurisdiction, whether now or hereafter in effect, and such petition is not dismissed within thirty (30) days;

Contractor files a case under the Title 11, United States Code or is seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, receivership or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any case or petition against it under any such law;

Contractor makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due, or consents to the appointment of a receiver, trustee, or liquidator of Contractor or of all or any part of its property; of judgment for the payment of money in excess of \$50,000.00 (which is not covered by insurance) is rendered by any court or governmental body against Contractor and Contractor does not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereof within thirty (30) days from the date of entry thereof, and within said 30-day period or such longer period during which execution of such judgment shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal while providing such reserves therefore as may be required under generally accepted accounting principles; or a writ or warrant of attachment or any similar process shall be issued by any court against all or any material portion of the property of Contractor, and such writ or warrant of attachment or any similar process is not released or bonded within 30 days after its entry;

A court of competent jurisdiction finds that Contractor has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction;

Contractor fails to communicate with Comptroller or Board as required by Contract;

Contractor breaches an industry standard of confidentiality related to the Contract;

Comptroller or Board determine that Contractor or any of its subcontractors have an unacceptable conflict of interest, and such conflict is not cured within ten (10) calendar days following notification thereof to Contractor;

Comptroller or Board determine that Contractor has failed to substantially perform under the Contract, which determination shall specify the events resulting in Comptroller's determination that Contractor has failed to substantially perform under the Contract; or

Contractor fails to comply with any of the Standards of Performance of the Contract.

Upon termination of the Contract for any reason, Contractor shall, in good faith and with reasonable cooperation, aid in the transition to any new arrangement and provider.

- 15.3 Section 54.706(c) Termination.** Notwithstanding any other provisions of this RFP or the Contract to the contrary, the Board may cancel the Contract at any time for any violation by Contractor of the Contract or a provision of Subchapter G, Higher Education Savings Plan, Texas Education Code. See Section 54.706(c), Texas Education Code. If the Contract is terminated under Section 54.706(c), Texas Education Code, the Board shall take custody of the accounts held by Contractor

and shall promptly seek to transfer the accounts to another financial institution acting as a plan manager and into investment instruments as similar to the original investment instruments as possible.

- 15.4 Transition.** Upon termination of the Contract for any reason, Contractor shall, in good faith and with reasonable cooperation, aid in the transition to any new arrangement and provider. Contractor shall assist Comptroller in complying with Section 54.706(b), Texas Education Code, regardless for the reason for a transition to a new plan manager.

**If the Contract resulting from this RFP, if any, is terminated or cancelled for any reason, the Board, Comptroller and State of Texas shall not be liable to Contractor or any other entity or person for any damages, claims, losses, or any other amounts arising from or related to any such termination or cancellation.**

## **16. Limitation on Authority; No Other Obligations**

Contractor shall have no authority to act for or on behalf of Comptroller, the Board, or the State of Texas except as expressly provided for in the Contract; no other authority, power, use, or joint enterprise is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the Board, Comptroller or State of Texas.

## **17. Execution of Proposal**

All respondents must complete and sign the Execution of Proposal form (Exhibit E) and return it with their proposals. **Failure to complete and sign the Execution of Proposal form (Exhibit E) may result in disqualification of the proposal.**

## **18. HUB Participation**

The State of Texas, Comptroller and Board are committed to assisting Historically Underutilized Businesses (HUBs) through the contract awards process. Pursuant to the requirements in Chapter 2161, Texas Government Code and 1 Texas Administrative Code §§111.11-111.28, Texas Building and Procurement Commission (TBPC) Rules, a respondent must establish its good faith effort to voluntarily meet or exceed the goal set by the TBPC of a minimum of 33 percent HUB participation in all State contracts for other services. Comptroller may accomplish this goal through directly contracting with HUBs and through requiring vendors to submit HUB subcontracting plans with their proposals. As a condition of contract award, Comptroller must establish that a respondent has complied with all requirements of the HUB Program, including submission of a HUB subcontracting plan. Consequently, failure to provide acceptable evidence of this good faith effort or to complete and submit the applicable required forms, including the HUB subcontracting plan, will result in a proposal being rejected as non-responsive. Respondents must carefully review, complete and return all HUB forms as required in Exhibit F. Respondents must also complete, sign, and return the HSP with their proposals.

Comptroller has determined that HUB subcontracting opportunities are probable. Therefore, Comptroller identifies the list of HUB vendors located at: <http://www2.tbpc.state.tx.us/cmb1/cmb1hub.html> as a list of vendors from the centralized master bidders list (CMBL) that may perform the subcontract opportunities. Suggested class and item codes for this solicitation are as follows: **Class 946, items 25, 29 and 56; Class 958, item 82; and Class 961, item 53.** Additional instructions for completing the forms may be found at: <http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms>.

## **19. Property Rights**

For purposes of this RFP and for any Contract resulting from this RFP, the term “Work” is defined as all work papers, work products, materials, approaches, designs, specifications, systems, software, programs,

source code, documentation methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services to be provided by Contractor. Comptroller and Contractor intend any contract to be a contract for services and each considers the Work and any and all documentation or other products and results of the services to be rendered by Contractor to be a work made for hire. In submitting a proposal in response to this RFP, Contractor acknowledges and agrees that the Work (and all rights therein) belongs to and shall be the sole and exclusive property of Comptroller.

If for any reason the Work would not be considered a work-for-hire under applicable law, Contractor does hereby sell, assign, and transfer to Comptroller, its successors and assigns, the entire right, title and interest in and to all copyright and other intellectual property rights in and to the Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. Contractor agrees to execute all papers and to perform such other property rights as Comptroller may deem necessary to secure for Comptroller or its designee the rights herein assigned.

Contractor and Contractor's employees will have no rights in or ownership of the Work and any and all documentation or other products and results of the services or any other property of Comptroller.

In addition to compliance with the right to audit provisions of the Contract, Contractor must deliver to Comptroller, no later than the twenty-four (24) hours after receipt of Comptroller's written request for same, all completed, or partially completed, Work and any and all documentation or other products and results of the Services under such Contract. Contractor's failure to timely deliver such Work or any and all documentation or other products and results of the services will be considered a material breach of Contract. With the prior written approval of Comptroller, this twenty-four (24) hour period may be extended for delivery of certain completed, or partially completed, Work or other such information, if such extension is in the best interests of the State of Texas and Comptroller. If Contractor fails to deliver such Work within twenty-four (24) hours after receipt of written request for same, Comptroller may withhold all payments to Contractor, may withhold all authorization for payment of previously approved and future invoices, may impose liquidated damages of \$1,000 per each twenty-four (24) hour period of delay, or a pro rata amount for any portion of each such twenty-four (24) hour period. During the transition to any successor contractor, Comptroller may impose liquidated damages of \$2,000 rather than \$1,000 per each twenty-four (24) hour period of delay, or a pro rata amount for any portion of each such twenty-four (24) hour period. Respondents must include in their proposed Workplans specific proposed methods under which Contractor's Work shall be accessed directly, either on an ongoing or routine periodic basis, by Comptroller throughout the Contract term, eliminating the need for transition deliveries under the immediately preceding paragraph. Contractor shall not make or retain any copies of the Work or any and all documentation or other products and results of the services provided under such Contract without the prior written consent of Comptroller, except as required by law.

## **20. Incorporation of Exhibits**

Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, and N are attached hereto and incorporated as part of this RFP for all purposes.

**EXHIBIT A**  
**NON-DISCLOSURE AGREEMENT**

*This exhibit is prepared exclusively for RFP# 177c issued on April 30, 2007. Respondent's use and submission of any other attachments or documents, including prior year attachments, appendices or exhibits, exhibits from other agency or state solicitations, etc., may not include all substantive information, such as updated representations and warranties, required for a qualifying response to this solicitation and may result in disqualification of the response.*

In consideration of the Texas Comptroller of Public Accounts (Comptroller) considering a proposal from or meeting with \_\_\_\_\_ (Contractor) regarding proposed services and because of the sensitivity of certain information which may be provided to Contractor, both parties agree that all information regarding Comptroller or Board gathered, produced, collected or derived from or related to these services or provided to Contractor as a result of these services (Confidential Information) must remain confidential subject to release only upon prior written approval of Comptroller, and more specifically agree as follows:

1. The Confidential Information may be used by Contractor only to assist Contractor in connection with the proposed project or any resulting contract with Comptroller on behalf of the Board.
2. Contractor shall not, at any time, use the Confidential Information in any fashion, form, or manner except in its capacity as Contractor to Comptroller.
3. Contractor agrees to maintain the confidentiality of any and all Confidential Information related to this project or any resulting contract in the same manner that it protects the confidentiality of its own proprietary products of like kind.
4. The Confidential Information may not be copied, reproduced, disclosed or distributed without Comptroller's prior written approval.
5. All Confidential Information made available to Contractor, including copies thereof, must be returned to Comptroller upon the first to occur of; (a) completion of the project or any resulting contract, or (b) request by Comptroller.
6. The foregoing does not prohibit Contractor's use of the information (including, but not limited to, ideas, concepts, know-how, techniques and methodologies) (a) previously known to it, (b) independently developed by it, (c) acquired by it from a third party, or (d) which is or becomes part of the public domain through no breach by Contractor of this agreement.
7. This agreement shall become effective as of the date Confidential Information is first made available to Contractor and shall survive the project and any resulting contract and be a continuing requirement.
8. By their execution of this agreement, the parties agree that the measure of damages in the event of a default by Contractor may be difficult or impossible to determine and may vary with the nature of the default involved. The parties further agree that the amounts of liquidated damages set out below represent their best estimate, at effective date of this agreement, of actual damages which may be suffered by Comptroller as a direct result of a breach of contract and are not intended by either party to be a penalty. Comptroller in its reasonable discretion may reduce the amount of liquidated set out below depending on the nature or severity of the default. In lieu of the liquidated damages and in its reasonable discretion, Comptroller may pursue monetary damages as available to Comptroller under the contract any applicable law. The breach of this agreement by Contractor shall entitle Comptroller to immediately terminate the project or any resulting contract upon written notice to Contractor for such breach. Regardless of whether Comptroller elects to terminate the project or any resulting contract upon the breach hereof, Comptroller may require Contractor to pay to Comptroller the sum of \$5,000 as liquidated damages for each substantial breach involving release of Confidential Information. Comptroller does not waive any right to seek additional relief, either equitable or otherwise, concerning any breach of this agreement.

Comptroller of Public Accounts

Selected Contractor

By: \_\_\_\_\_

Martin A. Hubert  
Deputy Comptroller

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

By: \_\_\_\_\_

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

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

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

**IMPORTANT NOTICE: IF YOUR RESPONSE TO THIS SOLICITATION DOES NOT CONTAIN ONE ORIGINAL OF THIS FULLY COMPLETED AND SIGNED EXHIBIT, YOUR RESPONSE MAY BE AUTOMATICALLY DISQUALIFIED FOR FAILURE TO COMPLY WITH THE ADVERTISED SPECIFICATIONS, EVEN IF ALL OTHER MINIMUM QUALIFICATIONS, LETTERS AND EXHIBITS ARE FULLY COMPLETED, SIGNED AND RETURNED. IN THE PROPOSAL RESPONSE MARKED "ORIGINAL", RESPONDENTS MUST ENSURE BOTH FULL COMPLETION AND ORIGINAL INK SIGNATURE BY AN AUTHORIZED REPRESENTATIVE OF RESPONDENT.**



**IMPORTANT NOTICE: IF YOUR RESPONSE TO THIS SOLICITATION DOES NOT CONTAIN ONE ORIGINAL OF THIS FULLY COMPLETED AND SIGNED EXHIBIT, YOUR RESPONSE MAY BE AUTOMATICALLY DISQUALIFIED FOR FAILURE TO COMPLY WITH THE ADVERTISED SPECIFICATIONS, EVEN IF ALL OTHER MINIMUM QUALIFICATIONS, LETTERS AND EXHIBITS ARE FULLY COMPLETED, SIGNED AND RETURNED. IN THE PROPOSAL RESPONSE MARKED "ORIGINAL", RESPONDENTS MUST ENSURE BOTH FULL COMPLETION AND ORIGINAL INK SIGNATURE BY AN AUTHORIZED REPRESENTATIVE OF RESPONDENT.**

## **EXHIBIT C PROPOSAL CONTENT**

Respondents must include all of the following in their proposals in response to this RFP by the deadline set forth in the Schedule of Events. Failure to provide complete responses to any or all of these questions may result in the proposal being disqualified. Conciseness and clarity of content are required. Vague and general proposals will be considered non-responsive, and may result in disqualification. Proposal pages must be numbered and contain an organized, paginated table of contents corresponding to the sections and pages of the proposal.

### **1. General Organization**

Proposals must be organized as follows:

- A) Table of Contents
- B) Transmittal Letter
- C) Executive Summary
- D) Respondent Information
- E) Project Workplan & Transition Plan
- F) Respondent Qualifications and Experience
- G) Proposed Personnel and Organizational Information
- H) Conflicts of Interest
- I) Cost Proposal; Proof of Surety Bond & Insurance
- J) Nondisclosure Agreement (Exhibit A)
- K) Family Code Certification (Exhibit B)
- L) Execution of Proposal (Exhibit E)
- M) HUB Subcontracting Plan (Exhibit F)
- N) Schedule of Liquidated Damages (Exhibit H)
- O) Criminal Conviction Certificate (Exhibit K)

### **2. Transmittal Letter**

Respondents must submit with their proposals a transmittal letter that identifies the entity submitting the proposal, and includes a commitment by that entity to provide the services required by Comptroller and Board. The transmittal letter must state that the proposal is valid for **120 days from the deadline for delivery of proposals to Comptroller. Any proposal containing a term of less than 120 days for acceptance from this deadline will be rejected as non-responsive. The transmittal letter must also state the acceptance of contract terms; exceptions, if any, must be specifically stated.**

The transmittal letter must be signed by a person legally authorized to bind respondent to the representations in the response. The transmittal letter should include an executive summary of the proposal and a statement of why respondent believes that it is the most qualified respondent to provide the requisite services.

### **3. Executive Summary**

Respondent must provide an executive summary of its proposal and represent that its proposal addresses all of the requirements of this RFP. The executive summary must not exceed three pages, and must represent a full and concise summary of the contents of the proposal. The executive summary must not include any information concerning the cost of the proposal. The respondent must identify any services that are provided beyond those specifically requested. If the respondent is providing services that do not meet the specific requirements of this RFP, but in the opinion of the respondent are equivalent or superior to those specifically requested, any such differences must be noted in the executive summary. However, failure to provide the services specifically required may result in disqualification of the proposal.

#### 4. Respondent Information

Respondents must provide the following identifying information:

- name and address of respondent firm submitting the proposal;
- names of all principals;
- type of business entity (i.e., corporation, partnership, broker/dealer);
- state of incorporation or organization and principal place of business;
- name and location of Texas offices, other major offices, and other facilities that relate to respondent's performance under this RFP;
- name, address, business and home telephone number, email address, and fax number of respondent's principal contact person regarding the Contract;
- the respondent's Federal Employer Identification Number and Texas Tax Identification/Registration Number, if any;
- full name and address for each member, partner, associate, and employee of the respondent (and any subcontractors) who will perform services on this project; Comptroller reserves the right, in its sole discretion, to approve each member of the team and to request substitutions;
- a statement regarding the financial stability of respondent, including the ability of respondent to perform the requisite services and additional services included in its response;
- detail any firm ownership changes which have occurred in the last five (5) years, including changes pending;
- indicate whether it is registered to conduct business in the State of Texas as an investment advisor or manager, as a bank, or as a licensed insurance company affiliate; if so, the respondent must provide appropriate documentation, and include it as a separate exhibit to the respondent's proposal;
- indicate whether it is currently a party to litigation in process; if so, identify the parties, jurisdiction, case number, and subject matter;
- all affiliated companies and subsidiaries, or any joint ventures or other affiliations; and
- an organizational chart showing who is responsible for the Services.

#### 5. Project Workplan; Qualifications and Experience; Project Personnel and Organizational Information

Respondent must describe the technical expertise that it and its proposed subcontractor(s) and proposed project personnel have that will address the full scope of services in the Contract. Respondent must provide all of the information requested in the below questionnaire in its proposal:

Respondent must include in its proposal a proposed project workplan and a proposed project transition plan. Respondent must also include a project narrative that specifically describes (1) its expertise and that of its proposed personnel; (2) how its proposed Services, proposed project workplan and proposed project transition plan will meet Comptroller's requirements as described in this RFP and throughout the term of any contract resulting from this RFP; (3) the financial condition of the respondent and its capital resources that will be used to fund and support the Plan; and (4) the overall business objectives of the respondent with respect to future industry and client development, including the role that QTP will play in that development. The narrative must also address each of the following:

- Describe data transmission capabilities and options;

- Describe established disaster recovery procedures for protecting the Plan and the Board's information;
- Describe quality controls and measures employed to ensure systems and data integrity;
- Describe the automated system and technological operating environment, including hours of operation, hardware and software, and level of hardware and software support;
- Describe the commitment and approach to providing high quality customer service;
- Describe the method for obtaining approval from Comptroller and Board for operational modifications and changes; and
- Describe services other than the Services that respondent provides to other clients.

In its proposed workplan, transition plan and narrative, respondent must address each of the components of the Scope of Services included in Section 3, Scope of Work, of this RFP. Each of these components may be considered a separate "phase" for purposes of preparation of the proposed workplan, transition plan and narrative.

Respondent's workplan must include, at a minimum, the following for each component of the Scope of Services:

- title, description, objective, activities of each phase and task within each phase;
- name and title of proposed personnel and role of each (lead and support) by task;
- other resources by task;
- timeline, milestones, and deliverables by task; and
- any other information the respondent typically includes in its project workplans to address specific RFP requirements.

Respondent's proposed transition plan must include all of the information included in the proposed workplan for the duration of the transition phase, if any, resulting from this RFP. The transition phase is the period from the effective date of the fully executed contract (about June 30, 2007) to about October 31, 2007.

The proposed transition plan, workplan and narrative must address and demonstrate quality control mechanisms, dedication of personnel and other resources, and tasks that incorporate a high level of quality and commitment to excellence. Through these documents, respondent must demonstrate extensive experience in and understanding of Comptroller's requirements for its contractors, in general, and Contractor in particular. Through these documents, respondent must also demonstrate a thorough understanding of Comptroller's authority, the Board's authority, and the applicable laws regarding the operation of the Plan.

**529 PLAN MANAGER SEARCH QUESTIONNAIRE**

**All respondents must complete this Questionnaire of this Section and return the completed questionnaire with its proposal in order for respondent’s proposal to be evaluated; this is a Minimum Criterion and failure to complete this Questionnaire fully, accurately, and return with the proposal may result in disqualification of respondent’s proposal.**

***Contact Information***

1. Company Name:
2. Mailing Address:
3. Primary Contact Representative:
  - a. Name:
  - b. Title:
  - c. Mailing Address:
  - d. Telephone Number:
  - e. Fax Number:
  - f. E-mail Address:

***Qualifications and Experience***

1. Describe your firm's organization, highlighting where 529 plan services are positioned with respect to all of your business lines. Include revenue composition by line of business.
2. Provide an organizational chart diagramming the relationships between any parent-subsubsidiary, affiliate or joint venture entities. Provide a list of all business entities that will provide Services or products to the Plan either pursuant to the Contract or as a subcontract executed by respondent if awarded a Contract.
3. Identify all partners, subcontractors, third party vendors or any other entities that may provide any portion of the services needed to offer the Plan. State specifically which services and the type of arrangement you would create. Include how you intend to pay the contractor and what type of agreement you plan to use. Also include whether your firm or another financially viable entity will guarantee the performance of your firm, any partner, subcontractor, third party vendor or other entities, if necessary.
4. Describe your firm’s experience with other states’ 529 qualified tuition programs. Name the state, type of plan (savings or prepaid), and the person in the agency who served as your primary contact. Also, list the specific role your firm played with the program.
5. Discuss the relative importance of 529 plan services to your overall firm’s business and your plans for its future growth.
6. Provide a copy of the latest audited financial statements for your firm.
7. List the number of 529 plans serviced by your organization as requested below.

Number of 529 plans managed: \_\_\_\_\_  
Number of 529 plan individual accounts: \_\_\_\_\_  
Total 529 plan assets under management: \_\_\_\_\_

8. Provide three references for which your firm provides 529 plan services.
9. For clients lost from 2001-2005, provide the state contact, phone number, number of years as client, size of plan and the reason for termination. (Note: While we require you to provide references, they will not be contacted unless your firm is selected as a finalist.)
10. Provide the number of staff additions and losses for each of the last three years. Include reasons for departures of account management or relationship management staff.

<u>Number of staff:</u>	<u>Added</u>	<u>Lost</u>
<u>2006</u>	_____	_____
<u>2005</u>	_____	_____
<u>2004</u>	_____	_____

11. Identify and describe any litigation or investigation by any and all regulatory authorities that your organization or professionals have been involved in relative to your defined contribution and investment management activities over the last three years.
12. When was your last SAS 70 audit? What was the outcome of the audit? Were any exceptions uncovered as a result of the audit, and, if so, what were they? Include a copy of the latest SAS 70 audit.
13. Does your firm carry an Errors and Omissions insurance policy? Detail the levels and what actions you are covered for under your policies.

***Client Service Capabilities***

1. Describe the client services available for 529 plans.
2. Provide details on the single point of contact (Relationship Manager) who will be assigned to the Board, including his/her experience, client load, tenure in current position, other positions held, and years with your firm.
3. Provide details on the day-to-day contact (Account Manager) who will be assigned to the Board, including his/her experience, client load, tenure in current position, other positions held at your firm, and years with your firm.
4. What is the average experience and tenure of your relationship managers? What is the average experience and tenure of your account managers?
5. From what geographic location(s) will this account be serviced?
  - a. Participant Services (CSRs, IVRs, etc) ; and
  - b. Client Services (Relationship Manager, day-to-day contacts)
6. Describe your procedures for monitoring client and participant satisfaction.
7. Provide your performance standards for the following (i.e., Participant statements will be mailed within X numbers of days after quarter end):
  - a. Administrative reports;
  - b. Participant statements;
  - c. Investment election change;

- d. Transfers; and
- e. Investment of contributions.

8. How often do you measure whether these service standards have been met and how are these results communicated to the client?

### ***Investment Management Services***

1. Provide an outline of the investments you would recommend be included in the 529 plan. Indicate whether you propose to use mutual funds or other investment vehicles such as annuities, collective trusts, stable value funds, ETFs etc. List the number of funds and types of asset classes you propose to use. State whether or not you will use proprietary investments, sub-advised investments, other company's products or a combination of the above.
2. Do you propose to provide model portfolios such as those based on age or risk tolerance? If so, briefly describe these portfolios.
3. What are the main advantages to your investment approach that will help this program be successful? Distinguish how this investment program will be different from the existing 529 program in place in the State of Texas.
4. Describe in detail how the firm will approach the management of the model portfolios listed in question 2 above. Also list the underlying funds that will comprise these portfolios. Describe how asset allocation would be re-balanced.
5. If applicable, recommend a specific number of age-based portfolios. Discuss the rationale behind your recommendation as it pertains to both investment and administrative efficiency.
6. If you do not recommend age-based portfolios but are proposing another model portfolio format, discuss the rationale behind your recommendation.
7. Comment on your flexibility in using non-proprietary funds.
8. Describe in detail the due diligence review process in place at your firm to select and monitor the managers you are recommending to our client.
9. Provide 3 month, 12 month, 3, 5 and inception year investment returns for each investment option proposed as of December 31, 2006 (Performance figures should be provided net of fees). Provide this information in a Microsoft Excel spreadsheet file.

### ***Record Keeping System Capabilities***

1. Describe your company's record keeping system and its capabilities.
2. How long has the current system been used by your company?
3. Describe the capabilities of your company's system with respect to the following items:
  - Maximum number of investment funds?
  - What type of audit/error reports are generated?
4. Describe the methods available to accept contributions.

### ***Record Keeping System Enhancements***

5. What has been your annual average expenditure over the past five years to update and maintain your record keeping system?
6. Describe any major expenditures and enhancements to your system within the last two years.
7. Is your company contemplating any major changes or updates within the next three years, such as system upgrades or installation of a new system? If yes, describe.

### ***Telephone Access***

8. Describe the training, education and licensing you require for your call center representatives (CSRs).
9. What is the average tenure of your CSRs?
10. What are the days and hours of availability for your telephone service representatives?
11. Provide the following service statistics for your CSRs:
  - Average number of rings;
  - Average hold time;
  - Average call duration;
  - Abandoned call percentage; and
  - Call back ratio.

12. Can the voice system be personalized for a client, and to what extent?

### ***Internet Access***

13. Describe the information available from your Web site. How often is it updated, and how is accuracy ensured?
14. Describe your web site's transactional capabilities.
15. To what extent can the Web site be personalized for a client?
16. Provide a demo URL, logon, and password.

### ***Marketing and Communication***

1. What is your marketing philosophy for 529 plans, particularly for a state as large and culturally diverse as Texas?
2. Describe your marketing plan for the Texas plan. Discuss proposed local outreach and the print or other materials you would include in your marketing plan.
3. Describe the Board's role in marketing the Plan to in-state residents. Also, if applicable, describe how your in-state and out-of-state marketing efforts will differ.
4. Describe how you will distinguish marketing the direct-sold from the advisor-sold plans in Texas and nationwide, if applicable.

5. How will you use the internet to market the Plan and what information or tools will you provide online?  
6. Provide samples of 529 marketing materials you already use or samples of those you would propose for Texas.

7. Provide case studies where you have been successful in helping clients achieve their strategic goals, such as increasing participation in a tax-advantaged savings plan similar to the Texas 529 Plan.

8. Do you provide marketing materials in languages other than English and Spanish?

9. Complete the following table showing your annual marketing commitment in Texas:

Year	Annual Marketing Commitment
1	\$ _____
2	_____
3	_____
4	_____
5	_____

10. Provide samples of your participant statements and any other standard participant reporting, as well as any other participant communications.

11. How frequently are participant statements provided, and how soon after the end of the period are they sent? Are they available online?

***Implementation and Conversion***

1. What is your experience with 529 Plan conversions?
2. How much time does a typical 529 conversion usually take?
3. Provide details on the individual who would be directly responsible for the conversion of the Plan, including his/her experience, tenure in current position, other positions held, and years with your firm?
4. Describe the steps involved in converting a 529 plan and provide a recommended conversion date and schedule of events given the size and complexity of the Texas plan. Include actions required on the part of the Board and the time frame to complete each task.
5. What is your anticipated blackout period for this conversion?
6. Will you provide conversion communication to participants? Provide samples.
7. What dedicated resources, procedures and controls will you provide or recommend in the conversion period to ensure that the conversion is completed successfully in both a timely and accurate manner?
8. Is the on-going account management team involved during the conversion process and to what extent? If not, how do you ensure a smooth transition between teams?

***Costs of the Requested Services***

1. Provide detailed information on your proposed fee structure for Texas residents and non-residents who invest directly in the Plan, indicating whether the fees will be all-in and fixed, variable, or some combination:

<b>Investment Management Fees</b>	<b>Program Management Fees</b>	<b>Total Asset Based Fees</b>	<b>Other Fees</b>

- Indicate whether the Plan’s fees will be decreased in the future as the program’s asset base increases.
- Complete the following chart as applicable to your proposed share class structure. If fees vary by fund, provide all information for each fund proposed. With respect to age-based funds, provide your best estimate based on projected weights for underlying funds.

<b>Share Class</b>	<b>Investment Fee</b>	<b>Upfront Sales Load</b>	<b>CDSC</b>	<b>Trail</b>	<b>Program Mgt Fee</b>	<b>Estimated Total Fees</b>

- Complete the following table showing breakpoints. Indicate whether different commission structures apply to specific investment options.

<b>Share Classes</b>	<b>Selling Commission*</b>	<b>On-Going Sales Fee**</b>
<b>A</b>		
<b>B</b>		
<b>C</b>		
<b>Fee-Based Advisors</b>		
<b>Other (Specify)</b>		

\* Based on the amount contributed  
 \*\* Based on the average daily net assets in the account; indicate when payment begins.

- Describe any fee sharing or other financial arrangements that you will establish or already have in place with other distributors, investment managers, subcontractors or other service providers in the management of the plan,
- Identify any additional expenses or fees associated with your description of the Services required by this RFP and included in the proposal.

## **6. Conflicts of Interest**

By submitting a proposal in response to this RFP, respondent represents and warrants to Comptroller and the Board that it and its personnel have the requisite professional expertise, resources and independence to provide the services free from outside direction, control, or influence, and subject only to the accomplishment of the Contract's objectives. Respondents who cannot make this representation and warranty should not respond to this RFP.

In its proposal, respondent must disclose any existing or potential conflicts of interest or appearances of impropriety relative to respondent's selection as Contractor. In addition, respondent must disclose any fees or other consideration that have been paid to or that will be conferred upon other third parties for their assistance in respondent's efforts to acquire this engagement. Proposals must list in chronological order all past, present and anticipated future contractual, business, financial, adversarial or personal relationships between respondent, its principals, clients and employees and Comptroller or the Board. For each item, respondent must provide a detailed explanation of why respondent does or does not believe such item poses a conflict of interest, potential conflict of interest, or appearance of impropriety issue relative to the respondent's selection as Contractor.

Any respondent may be disqualified from consideration by Comptroller if the structure of respondent's business model or relationships respondent maintains in the course of conducting its business are determined by Comptroller, in its sole discretion, to be detrimental to, or could potentially interfere with, respondent's ability to remain independent in the recommendations it provides to the Board.

By submitting a proposal in response to this RFP, respondent affirms that it has not given, 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 or any employee or representative of the State of Texas, the Board, or Comptroller in connection with this procurement.

## **7. Cost Proposals; Insurance, Bonds and Other Security**

Respondent must complete Exhibit J, including all proposed fees under the Contract. These fees and costs are subject to negotiation in the best interests of Comptroller and will be negotiated prior to contract signature. No amounts other than contracted costs will be paid. Proposed fees must be all inclusive and will remain firm throughout the contract term unless specific items, with identifiable costs, are deleted from the contract under the provisions of Section 3 of this RFP; in such event, Contractor's fees shall be decreased. No fee increases will be approved.

Contractor will be required to post a performance bond or other acceptable security including, without limitation, an unconditional and irrevocable letter of credit in the amount of \$5 million. The performance bond or other security shall be referred to as "Security". At the request of Comptroller and prior to beginning any work under the final contract, Contractor must post Security which must be tendered to Comptroller within fourteen (14) business days following the execution of the final contract, and it must be written by a company that is of adequate financial rating, licensed and authorized to do business in Texas and otherwise acceptable to Comptroller. The Security must remain in effect during the term of any contract resulting from this RFP and must be in favor of Comptroller as principal or beneficiary. The Security must be increased throughout the term of such contract in the amount of increases, if any, in the amount of the total contract award, based on extended fees for each year exercised. Respondents must submit with their proposals evidence that they have made application to obtain Security pending their preliminary selection as Contractor and their receipt of a final contract award. Evidence of such application may consist of copies of an

application submitted to a bonding company or other entity indicating that the underwriter, or other entity, is processing an application to provide the Security. Failure to provide such evidence with the offer may be grounds for disqualification. Contractor is responsible for payment of all costs of required Security and insurance coverage.

Each respondent must also include, in its proposal, proof of the minimum insurance and bond coverage specified in the Sample Contract. Each respondent should also describe other insurance coverage maintained by the respondent in the ordinary course of business and provide proof of same in its proposal. Proof of insurance and bond coverage may be provided in the form of current certificates of insurance with Comptroller named as a certificate holder.

## **8. Evaluation Process and Selection Criteria**

### **8.1 Evaluation Process**

Comptroller's Staff and Manager, with the assistance of legal counsel, will review all proposals for compliance and thoroughness. The staff will then distribute copies of those proposals found to be in compliance to the Investment Consultant for their independent initial review. All Proposals will be evaluated under the criteria and according to the weights attached as Exhibit G to this RFP.

The Board's investment consultant will prepare an independent evaluation of the proposals. The investment consultant will prepare a written report of its evaluation. This report will be provided to the Board for its review and consideration. The Investment Consultant will present its rankings to the Board and Comptroller of all compliant proposals. Additionally, Comptroller's Advisory Group may assist the Board in its evaluation of the proposals and may provide feedback to the Board in this regard.

The Board may choose, in its sole discretion, to require one or oral presentations from qualified respondents. The Board will make the final selection of an apparent Successful Respondent. Comptroller and Board further reserve the right and discretion to enter into parallel negotiations with more than one respondent to this RFP.

Upon the Board's selection of an apparent Successful Respondent, Comptroller's and Board's legal counsel will proceed with contract negotiations and attempt to finalize a contract with the apparently Successful Respondent. Comptroller anticipates that these negotiations will involve few issues and be expedited; however, if a contract cannot be successfully negotiated within a reasonable period of time, contract negotiations will be terminated, and the Board may, in its discretion, approve that Comptroller's legal counsel enter into negotiations with another qualified respondent. This process may continue until a contract is signed or the RFP is withdrawn. However, Comptroller reserves the right, in its sole judgment and discretion and at any time upon failure of negotiations, to reissue or withdraw the RFP rather than continue with negotiations.

As soon as possible after the execution of the Contract, all other respondents will be provided with formal notification via facsimile. Comptroller will make every reasonable effort to fax this notification within one (1) business day of the date the contract is fully executed.

### **8.2 Selection Criteria**

**Only those proposals that meet minimum qualifications will be evaluated. Proposals that meet the minimum qualifications will be evaluated using the criteria in the evaluation sheet attached hereto as Exhibit G.**

## **9. Clarification of Intent and Project Manager**

After execution of the Contract, Contractor shall direct questions regarding the transition and conversion to the Board's Investment Consultant and Program Manager and Comptroller Staff, as appropriate. The

Investment Consultant will be available to Contractor after the Contract is awarded. The Board will use reasonable best efforts to provide reasonable and timely resolutions to questions of policy or procedure as they may affect Contractor's efforts. Key Board or Comptroller Staff will be available to Contractor on a reasonable basis, but may not be available on state holidays or weekends.

## 10. Protest Procedures

**Protest of Issuance of RFP.** The issuance of this RFP may be protested by a respondent who objects to the form or content of the RFP. To protest the issuance of the RFP, a written protest must be filed with the issuing office within seventy-two (72) hours after the RFP becomes available. To be filed timely, such protest must be received in the Office of Comptroller's General Counsel, 111 East 17<sup>th</sup> Street, Room 113, Austin, Texas 78774. To be considered, the protest must contain an identification of any statutory provision or procurement procedure allegedly violated, a brief statement of relevant facts, an identification of the issue or issues to be resolved, arguments and authorities in support of the protest, and an affidavit that the contents of the protest are true and correct. If the General Counsel finds merit in the protest, the RFP or the schedule of events relating to this procurement may be modified accordingly. Otherwise, the protest will be deemed rejected. If no protest is received within the seventy-two (72) hour timeframe, a potential respondent shall be deemed to have waived irrevocably its right to protest either the form or content of the RFP.

**Protest of Award of Contract.** As soon as practical after Comptroller executes a written contract with Contractor, Comptroller will notify all other respondents by facsimile. Comptroller will make every reasonable effort to fax this notification within one (1) business day of the date the Contract is fully executed. Confirmation of delivery to the designated facsimile machine will be conclusive proof that notice was given. To protest the award of a contract, a written protest must be received in the Office of Comptroller's General Counsel within seventy-two (72) hours after the receipt of such notice by facsimile. To be considered, the protest must contain an identification of any statutory provision or procurement procedure allegedly violated, a brief statement of relevant facts, an identification of the issue or issues to be resolved, arguments and authorities in support of the protest, an affidavit that the contents of the protest are true and correct, and certification that a copy of the protest has been served on Contractor.

Contractor may file a response to the protest with the issuing office within three (3) business days following the day on which it receives a copy of the protest.

The General Counsel on behalf of Comptroller will review the protest, any responses received, and the procurement file, and deliver his findings and recommendations to Comptroller. Comptroller will make a decision based on the information provided by the General Counsel. Comptroller will then make a written determination of the protest, which shall be served upon Contractor and the protester, by facsimile. Confirmation of delivery to the designated facsimile machine will be conclusive proof that delivery was made. Upon such delivery, the determination by Comptroller shall be considered administratively final.

**Other Protest Procedures.** Respondents may also use the protest procedures adopted by Comptroller at 34 Texas Administrative Code § 1.72.

**EXHIBIT D**  
**TOMORROW'S COLLEGE SAVINGS PLAN**  
**TEXAS 529 PLAN MANAGEMENT SERVICES AGREEMENT**  
**BETWEEN**  
**THE TEXAS PREPAID HIGHER EDUCATION TUITION BOARD**  
**AND**  
**[SELECTED CONTRACTOR]**

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

This agreement ("Contract") is entered into by the Texas Prepaid Higher Education Tuition Board ("Board"), acting by and through the Office of the Comptroller of Public Accounts ("Comptroller"), an agency of the State of Texas, and \_\_\_\_\_ ("Contractor"), located at \_\_\_\_\_. All references in this Contract to the "Comptroller" include the "Board."

**I. Recitals**

**Whereas**, on April 30, 2007, Comptroller issued a Request for Proposals ("RFP") from qualified, independent firms to provide Texas 529 Plan Management Services to the Board as set forth in the RFP and on \_\_\_\_\_ issued its official responses to written questions (collectively "RFP"); and;

**Whereas**, Contractor submitted a proposal dated \_\_\_\_\_, 2007 in response to Comptroller's RFP ("Proposal"); and

**Whereas**, Contractor was selected as the Selected Contractor.

The parties hereby agree as follows:

**II. Authority**

This Contract is entered pursuant to Chapter 2155, Section 2155.001, Subsection 2; Section 403.011; and Section 2156.121, Texas Government Code, and Subchapters F and G of Chapter 54, Texas Education Code.

**III. Services and Standards of Performance**

Contractor shall provide to the Board all of the transition management and related services and deliverables described in and in the manner required by all of the following documents:

This 12-page document;

Exhibit A: Comptroller's RFP

Exhibit B: Final Project Workplan & Transition Plan;

Exhibit C: Standards of Performance;

Exhibit D: Authorized Personnel & Compensation;

Exhibit E: Schedule of Liquidated Damages;

Exhibit F: HUB Subcontract Plan; and

Exhibit G: Contractor's Proposal

All of the above are attached to and incorporated as part of this Contract for all purposes. All of these documents constitute the Standards of Performance for this Contract.

In the case of conflicts between this 12-page document and any of the above exhibits, the following shall control in this order of priority:

This 12-page document;

Exhibit A: Comptroller's RFP

Exhibit B: Final Project Workplan & Transition Plan;

Exhibit C: Standards of Performance;

Exhibit D: Authorized Personnel & Compensation;

Exhibit E: Schedule of Liquidated Damages;

Exhibit F: HUB Subcontract Plan; and

Exhibit G: Contractor's Proposal

Contractor shall provide all of the above services in accordance with all applicable professional standards. Comptroller, the Board, and other authorized State of Texas representatives shall have the right at any reasonable time to review, supervise and monitor the activities of Contractor under this Contract.

Contractor shall comply with all Board investment policies, rules, and procedures as amended, throughout the term of any contracts under this RFP.

Contractor shall provide the Services as Plan Manager of the Tomorrow's College Savings Plan and shall also all services reasonably related to the above specifically-described Services.

Contractor represents and warrants that it has the requisite qualifications, experience, personnel, financial stability and other resources to provide all of the required services to the Board and Comptroller in the manner required by this Contract. Contractor shall provide an annual statement regarding Contractor's financial stability to the Board and Comptroller, in a format approved by Comptroller, within five (5) business days of September 1<sup>st</sup> of each year of the Contract.

Comptroller hereby expressly grants to Contractor full and complete discretion and authority with respect to providing the Services and managing the assets under Contractor's control; provided, however, that Contractor shall in all respects be subject to the requirements of this Contract.

Contractor shall use its best efforts to obtain the execution of orders at the most favorable prices reasonably obtainable.

Contractor shall immediately notify the Board in writing of any actual or anticipated change in the control or ownership of Contractor, and of any legal or administrative proceedings initiated against Contractor regardless of the jurisdiction from which such proceedings originate.

Comptroller acknowledges that more than forty-eight (48) hours before the date Comptroller executes this contract, Comptroller received from Contractor a copy of the Manager's Disclosure Statement (Part II of Form ADV).

Contractor's performance under this Contract is limited to the requirements set forth in this Contract, including services reasonably related to satisfying those requirements. The requirements set forth in this Contract include, but are not limited to, compliance with all Standards of Performance of this Contract (including, but not limited to, the Board's separate investment policy statements for its funds). Contractor's performance under this Contract does not include any guarantee of the future performance of the Board's or the Plan's funds or any specific level of performance, or the success of any investment, trading decision or strategy that Contractor may recommend.

The Board and Comptroller understand that Contractor acts as an advisor to clients other than the Board and may give advice, and take action, with respect to other clients which may differ from advice given or actions taken with respect to this Contract.

Contractor understands that this Contract is not exclusive, and Comptroller may issue additional solicitations and/or award additional contracts for these or other services at any time. Contractor understands that no minimum compensation is guaranteed under this Contract.

#### **V. Personnel**

Contractor shall act as an independent contractor in providing services under this Contract. Contractor's employees shall not be construed as employees of Comptroller in providing services under this Contract. Contractor shall assign only qualified personnel to this Contract. As of the date of Comptroller's execution of this Contract, Comptroller's Project Manager has authorized the personnel listed in Exhibit D of this Contract to provide services under this Contract. Contractor, in its reasonable discretion, reserves the right to substitute appropriate key personnel to accomplish its duties so long as the substituted personnel are equally qualified and skilled in the tasks necessary to accomplish the tasks and services required. Contractor represents and warrants that none of its employees, including, but not limited to, those authorized to provide services under this Contract, are present or former employees of Comptroller. Contractor shall provide to Comptroller prior written notice of any proposed change in key personnel involved in providing services under this Contract.

#### **VI. Payment**

Contractor's total compensation under this Contract shall be paid by Account Owners and shall be determined by the formula specified in Exhibit B of this Contract. This compensation is all inclusive and shall include all expenses incurred by Contractor. In addition, Contractor shall submit to Comptroller and expend the amounts specified in Exhibit E of this Contract. Comptroller shall pay no amounts under this Contract for any amount for any purpose to Contractor or any other person or entity. Contractor shall submit all statements for services incurred to Account Owners on a monthly basis in arrears for approval by Comptroller prior to deducting fees from Account Owners' accounts. In submitting these statements, Contractor acknowledges and, by execution of this Contract certifies to the following: that fee statements have been carefully reviewed for detailed description of the services performed; that the services have been performed in compliance with this Contract; that the amount of the fee statement is based on the agreed fee set out above; that the amounts shown on the fee statement are reasonable and necessary; and that all appropriate and required supporting documentation is attached. Comptroller may, in its sole discretion, require additional documentation to support payment and Contractor shall respond to any such requests within five (5) days of receipt. Payments under this Contract are otherwise governed by the Texas Prompt Payment Act. Neither Comptroller nor the Board guarantees any specific amount of compensation under this Contract or derived from the plan assets or securities transitioned.

## **VII. Term and Termination**

This Contract shall become effective on the date signed by the Board, after having first been signed by Contractor, and shall terminate on August 31, 2012, unless otherwise sooner terminated as provided in this Contract. The Board shall have the right, in its sole discretion, to renew this Contract for up to two (2) additional one (1) year periods, one year (1) at a time. The Board may exercise this option by providing reasonable written notice to Contractor. Notwithstanding the termination or expiration of this Contract, the provisions of this Contract regarding confidentiality, indemnification, transition, records, right to audit and independent audit, property rights, dispute resolution, and invoice and fees verification and transition activities and obligations, shall survive the termination or expiration dates of this Contract.

## **VIII. Confidentiality and Open Records**

Contractor shall comply with the provisions of the Nondisclosure Agreement, Exhibit A of the RFP. Contractor's personnel must also sign the Nondisclosure Agreement prior to beginning any work under this Contract. Notwithstanding any provisions of this Contract to the contrary, Contractor understands that the Board and Comptroller are bound by the provisions of the Texas Public Information Act (formerly the Texas Open Records Act) and Attorney General Opinions issued under that statute. Within three (3) days of receipt, Contractor will refer to Comptroller any third party requests, received directly by Contractor, for information to which Contractor has access as a result of or in the course of performance under this Contract.

## **IX. Insurance**

Contractor represents and warrants that it will, within five (5) business days of executing this Contract, provide the Board with current certificates of insurance or other acceptable proof of the following insurance coverage for Contractor and its employees:

Performance Bond or other security--\$5,000,000.00

Dishonesty Bonds covering all personnel who will provide services under this Contract;  
\$100,000 minimum;

Standard Workers Compensation Insurance covering all personnel who will provide services under this Contract;

Commercial General Liability Insurance: \$5,000,000 minimum each occurrence limit;  
\$5,000,000 minimum aggregate limit; and

Professional Liability Insurance (Financial Institution Professional Liability or Other Appropriate Professional Liability Coverage): \$5,000,000 minimum each occurrence limit;  
\$5,000,000 minimum aggregate limit.

Contractor represents and warrants that all of the above coverage are with companies licensed in the State of Texas, with "A" rating from Best, and authorized to provide the corresponding coverage. Contractor also represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least thirty (30) days prior notice to the Board. Contractor represents and warrants that it shall maintain all of the above insurance coverage during the term of this Contract.

## **X. INDEMNIFICATION; EXPRESS NEGLIGENCE**

**THE BOARD, AND ITS OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES, COMPTROLLER, AND ITS OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES, AND THE STATE OF TEXAS, AND ITS OFFICERS, AGENTS, REPRESENTATIVES AND**

**EMPLOYEES, SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE SAVED AND HELD HARMLESS BY CONTRACTOR FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITIES OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, (COLLECTIVELY REFERRED TO AS "CLAIMS" IN THE REMAINDER OF THIS SECTION), ARISING OUT OF, CONNECTED WITH OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ANY OFFICER, AGENT, REPRESENTATIVE, EMPLOYEE, OR SUBCONTRACTOR OF CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT, INCLUDING CLAIMS ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE BOARD, OR ITS OFFICERS, AGENTS, REPRESENTATIVES OR EMPLOYEES, COMPTROLLER, OR ITS OFFICERS, AGENTS, REPRESENTATIVES OR EMPLOYEES, OR THE STATE OF TEXAS, OR ITS OFFICERS, AGENTS, REPRESENTATIVES OR EMPLOYEES, AS LIMITED BY THE PARAGRAPHS BELOW.**

**IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS CONTRACT THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY AND PROTECT THE BOARD, ITS OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES, COMPTROLLER, ITS OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES, AND THE STATE OF TEXAS, ITS OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM THE CONSEQUENCES OF THE BOARD'S, OR ITS OFFICERS', AGENTS', REPRESENTATIVES' OR EMPLOYEES' OWN NEGLIGENCE, COMPTROLLER'S, OR ITS OFFICERS', AGENTS', REPRESENTATIVES' OR EMPLOYEES' OWN NEGLIGENCE, OR THE STATE OF TEXAS', OR ITS OFFICERS', AGENTS', REPRESENTATIVES' OR EMPLOYEES' OWN NEGLIGENCE, PROVIDED, HOWEVER THAT SUCH INDEMNITY SHALL BE LIMITED BY BOTH OF THE FOLLOWING:**

- (1) THE INDEMNITY PROVIDED FOR IN THIS SECTION AGAINST COMPTROLLER'S OWN NEGLIGENCE SHALL APPLY REGARDLESS OF WHETHER OR NOT SUCH CLAIMS ARE CONTRIBUTED TO BY THE NEGLIGENCE OF THE BOARD, ITS OFFICERS, AGENTS, REPRESENTATIVES OR EMPLOYEES, COMPTROLLER, ITS OFFICERS, AGENTS, REPRESENTATIVES OR EMPLOYEES OR THE STATE OF TEXAS, ITS OFFICERS, AGENTS, REPRESENTATIVES OR EMPLOYEES; HOWEVER, IN THE EVENT OF SUCH CONTRIBUTORY OR COMPARATIVE NEGLIGENCE OF THE BOARD, ITS OFFICERS, AGENTS, REPRESENTATIVES OR EMPLOYEES, COMPTROLLER, ITS OFFICERS, AGENTS, REPRESENTATIVES OR EMPLOYEES OR THE STATE OF TEXAS, ITS OFFICERS, AGENTS, REPRESENTATIVES OR EMPLOYEES, CONTRACTOR SHALL NOT INDEMNIFY ANY SUCH INDEMNITEES IN THE PROPORTION (BASED ON THE PERCENTAGE OF NEGLIGENCE) THAT SUCH CONTRIBUTORY OR COMPARATIVE NEGLIGENCE CAUSED ANY SUCH CLAIMS; AND**
- (2) THE INDEMNITY PROVIDED FOR IN THIS SECTION AGAINST COMPTROLLER'S OWN NEGLIGENCE SHALL NOT APPLY WHEN THE NEGLIGENCE OR OTHER LIABILITY OF THE BOARD, OR ITS OFFICERS, AGENTS, REPRESENTATIVES OR EMPLOYEES, COMPTROLLER, OR ITS OFFICERS, AGENTS, REPRESENTATIVES OR EMPLOYEES, OR THE STATE OF TEXAS, OR ITS OFFICERS, AGENTS, REPRESENTATIVES OR EMPLOYEES IS THE SOLE CAUSE OF SUCH CLAIMS.**

## **XI. Dispute Resolution**

Chapter 2260 of the Texas Government Code ("Chapter 2260") prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. As required by Chapter 2260, Comptroller has adopted rules under Chapter 2260, codified at 34 Texas Administrative Code,

Sections 1.360-1.387, and may adopt revisions to these throughout the term of this Contract, including any extensions. Contractor shall comply with such rules.

The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by Comptroller and Contractor to attempt to resolve any claim for breach of contract made by Contractor under this Contract:

(A) Contractor's claim for breach of this Contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, Contractor shall submit written notice, as required by Chapter 2260, to Deputy Comptroller or his or her designee. Said notice shall also be given to all other representatives of Comptroller and Contractor otherwise entitled to notice under this Contract. Compliance by Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

(B) The contested case process provided in Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for an alleged breach of Contract by Comptroller if the parties are unable to resolve their disputes under subparagraph (A) of this Section.

(C) Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civ. Prac. and Rem. Code. Neither the execution of this Contract by Comptroller nor any other conduct of any representative of Comptroller relating to this Contract shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under this Contract, the following shall apply:

Should a dispute arise out of this Contract, Comptroller and Contractor shall first attempt to resolve it through direct discussions in a spirit of mutual cooperation. If the parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by Comptroller and Contractor within fifteen (15) days after written notice by one of them demanding mediation under this Section. Contractor shall pay all costs of the mediation unless Comptroller, in its sole good faith discretion, approves its payment of all or part of such costs. By mutual agreement, Comptroller and Contractor may use a non-binding form of dispute resolution other than mediation. The purpose of this section is to reasonably ensure that Comptroller and Contractor shall in good faith utilize mediation or another non-binding dispute resolution process before pursuing litigation. Comptroller's participation in or the results of any mediation or another non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by Comptroller of: (1) any rights, privileges, defenses, remedies or immunities available to Comptroller as an agency of the State of Texas or otherwise available to Comptroller; (2) Comptroller's termination rights; or (3) other termination provisions or expiration dates of this Contract.

Notwithstanding any other provision of this Contract to the contrary, Contractor shall continue performance and shall not be excused from performance during the period any breach of contract claim or dispute is pending under either of the above processes; however, Contractor may suspend performance during the pendency of such claim or dispute if Contractor has complied with all provisions of §2251.051, Tex Govt Code, and such suspension of performance is expressly applicable and authorized under that law.

## **XII. Representations, Warranties, and General Provisions**

**12.1 Family Code.** Under Section 231.006 of the Texas Family Code (relating to child support), Contractor represents and warrants that Contractor is not ineligible to receive the specified payment and

acknowledges that this Contract may be terminated and payment withheld if this representation and warranty is inaccurate.

**12.2 Eligibility.** Under Section 2155.004 of the Texas Government Code (relating to certain taxes), Contractor represents and warrants that Contractor is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this representation and warranty is inaccurate. Contractor represents and warrants that it is not delinquent in the payment of any franchise taxes owed the State of Texas.

**12.3 Liability for Taxes.** Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, state, or local income, sales or excise taxes of Contractor or its employees. Comptroller shall not be liable for any such taxes resulting from this Contract.

**12.4 HUBs.** Contractor represents and warrants that it shall comply with the Historically Underutilized Business requirements of this Contract.

**12.5 Amendments.** Except as provided in Section 12.12 of this Contract, this Contract may be amended only upon written agreement between Comptroller and Contractor; however, this Contract may not be amended so as to make it conflict with the laws of the State of Texas.

**12.6 Applicable Law; Venue.** This Contract shall be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit brought for any breach of this Contract is fixed in any court of competent jurisdiction of Travis County, Texas.

**12.7 Time Limits.** Time is of the essence in the performance of this Contract. Contractor shall strictly comply with all of the deadlines, requirements, and Standards of Performance for this Contract.

**12.8 Assignments.** Contractor may not assign this Contract, in whole or in part, and may not assign any right or duty required under it.

**12.9 Partially Completed Work.** No later than the first calendar day after the termination of this Contract, or at Comptroller's request, Contractor shall deliver to Comptroller all completed, or partially completed, work and any and all documentation or other products and results of these services. Failure to timely deliver such work or any and all documentation or other products and results of the services shall be considered a material breach of this Contract. Contractor shall not make or retain any copies of the work or any and all documentation or other products and results of the services without the prior written consent of Comptroller.

**12.10 Federal, State, and Local Requirements.** Contractor shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Contractor is responsible for both Federal and State Unemployment insurance coverage and standard Worker's Compensation Insurance coverage. Contractor shall comply with all Federal and State tax laws and withholding requirements. Comptroller shall not be liable to Contractor or its employees for any Unemployment or Workers' Compensation coverage, or Federal or State withholding requirements. Contractor shall indemnify Comptroller and pay to Comptroller all costs, penalties, or losses resulting from Contractor's omission or breach of this Section.

**12.11 Severability Clause.** In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

**12.12 Applicable Law and Conforming Amendments.** Contractor must comply with all laws, regulations, requirements and guidelines applicable to a contractor providing services to the State of Texas and to a Contractor providing professional financial or similar services to Comptroller, as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract, including SB1059, codified as Chapter 2263 of the Texas Government Code, relating to Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers, and rules promulgated thereunder. Comptroller reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for Comptroller's or Contractor's compliance with all applicable state and federal laws, regulations, requirements and guidelines.

**12.13 Provision for Direct Deposit.** The electronic funds transfer (EFT) provisions of Texas law were codified in Section 403.16 of the Texas Government Code. Depending on eligibility under the law, certain payments from the State may be directly deposited into Contractor's bank account or may be made by warrant. Contractor who may be eligible for direct deposit and who wishes to be paid by direct deposit, must complete the form titled "Vendor Direct Deposit Authorization" and return it as soon as possible to: The Comptroller of Public Accounts, Attention: Budget and Internal Accounting Division, Accounts Payable Section, LBJ State Office Building, 111 E. 17<sup>th</sup> Street, Austin, Texas 78774.

The Claims Division of the Comptroller of Public Accounts oversees the distribution of the state payments, both warrants (paper checks) and direct deposit. For questions regarding the statewide process, Contractor may contact the Claims Payment Processing Section, at 1-800-531-5441, ext. 6-2499 or (512) 936-2499, or send an email message to: [claims.division@cpa.state.tx.us](mailto:claims.division@cpa.state.tx.us).

**12.14 No Waiver.** This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Comptroller as an agency of the State of Texas or otherwise available to Comptroller. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities available to Comptroller under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. Comptroller does not waive any privileges, rights, defenses, remedies, or immunities available to Comptroller as an agency of the State of Texas, or otherwise available to Comptroller, by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract. **The modification of any privileges, rights, defenses, remedies, or immunities available to Comptroller must be in writing, must reference this section, and must be signed by Comptroller to be effective, and such modification of any privileges, rights, defenses, remedies, or immunities available to Comptroller shall not constitute waiver of any subsequent privileges, rights, defenses, remedies, or immunities under this Contract or under applicable law.**

**12.15 No Liability Upon Termination.** If this Contract is terminated for any reason, Comptroller and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination.

**12.16 Independent Contractor.** Contractor shall serve as an independent contractor in providing services under this Contract. Contractor's employees are not and shall not be construed as employees of Comptroller.

**12.17 Limitation on Authority; No Other Obligations.** Contractor shall have no authority to act for or on behalf of Comptroller or the State of Texas except as expressly provided for in this Contract; no other authority, power, use, or joint enterprise is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of Comptroller or the State of Texas.

**12.18 No Other Benefits.** Contractor shall have no exclusive rights or benefits other than those set forth herein.

**12.19 Patent, Trademark, Copyright and Other Infringement Claims.** Contractor shall indemnify, save and hold harmless Comptroller and the State of Texas from and against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from Comptroller's or Contractor's use of or acquisition of any services or other items provided to Comptroller by Contractor or otherwise to which Comptroller has access as a result of Contractor's performance under this Contract, provided that Comptroller shall notify Contractor of any such claim within a reasonable time of Comptroller's receiving notice of any such claim. Contractor shall pay all reasonable costs of Comptroller's counsel. If Contractor is notified of any claim subject to this Section, Contractor shall notify Comptroller of such claim within five (5) working days of such notice. If Comptroller determines that a conflict exists between its interests and those of Contractor or if Comptroller is required by applicable law to select separate counsel, Comptroller shall be permitted to select separate counsel and the reasonable costs of such Comptroller's counsel shall be paid by Contractor. No settlement of any such claim shall be made by Contractor without Comptroller's prior written approval. Contractor shall reimburse Comptroller and the State of Texas for any claims, damages, losses, costs, expenses, judgments or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. Contractor represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and permits.

**12.20 Supporting Documents; Right to Audit; Independent Audits.** Contractor shall maintain and retain supporting fiscal documents adequate to ensure that claims for Contract funds are in accordance with applicable Comptroller and State of Texas requirements. Contractor shall maintain all such documents and other records relating to this Contract and the state's property for a period of four (4) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all information related to the State's property, such as work papers, reports, books, data, files, software, records, and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by Comptroller, the State of Texas or their authorized representatives. Contractor shall cooperate with auditors and other authorized Comptroller and State of Texas representatives and shall provide them with prompt access to all of such State's property as requested by Comptroller or the State of Texas. By example and not as an exclusion to other breaches or failures, Contractor's failure to comply with this Section shall constitute a material breach of this Contract and shall authorize Comptroller to immediately assess liquidated damages for such failure. For purposes of this Section, the "State's property" includes, but is not limited to, "Work" as defined in the RFP. Comptroller may require, at Contractor's sole cost and expense, independent audits by a qualified certified public accounting firm of Contractor's books and records or State's property. The independent auditor shall provide Comptroller with a copy of such audit at the same time it is provided to Contractor. Comptroller retains the right to issue the request for proposals for the services of an independent certified public accounting firm under this Contract. In addition to and without limitation on the other audit provisions of this Contract, pursuant to Section 2262.003, Tex Gov't Code, the state auditor may conduct an audit or investigation of Contractor or any other entity or person receiving funds from the state directly under this Contract or indirectly through a subcontract under this Contract. The acceptance of funds by Contractor or any other entity or person directly under this Contract or indirectly through a subcontract under this Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Contractor or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This Contract may be amended unilaterally by Comptroller to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.003. Under procedures provided by the state auditor on September 5, 2003, in addition to the above, (1) Contractor understands that the acceptance of funds under this Agreement acts as acceptance of the authority of the state auditor to conduct an audit or investigation in connection with those funds; (2) Contractor further agrees to cooperate fully with the state auditor in the conduct of the audit or investigation, including providing all records requested; (3) Contractor shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any

subcontract it awards; and (4) the state auditor shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of Contractor relating to this Contract.

**12.21 DTPA; Unfair Business Practices.** Contractor represents and warrants that it has not been the subject of a Deceptive Trade Practices Act or any unfair business practice administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of a Deceptive Trade Practices Act or any unfair business administrative hearing or court suit and such officers have not been found to be liable for such practices in such proceedings. Contractor represents and warrants that within the last five years it has not been the subject of any investigation or proceeding by any federal or state securities regulator under any federal or state securities laws or regulations.

**12.22 Immigration.** Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under this Contract.

**12.23 Equal Opportunity.** Contractor represents and warrants that it shall comply with the Civil Rights Act in giving equal opportunity without regard to race, color, creed, sex or national origin.

**12.24 Antitrust.** Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, nor anyone acting for such firm, corporation or institution has violated the antitrust laws of Texas codified in 15.01, et. seq. Business and Commerce Code, or the federal antitrust laws, nor communicated directly or indirectly the proposal to any competitor or any other person engaged in such line of business.

**12.25 No Conflicts; Corporate Integrity.** Contractor represents and warrants that Contractor has no actual or potential conflicts of interest in providing services to Comptroller under this Contract and that Contractor's provision of services under this Contract would not reasonably create an appearance of impropriety. Without limitation on the foregoing, other disclosures required under the RFP, if any, and this Contract, as well as other prohibited work provisions of the this Contract, Contractor shall, throughout the term of this Contract, comply with and provide all of the following: provide to Comptroller, upon request, a copy of Contractor's most recent audit, if any, together with a full disclosure of any and all internal control weaknesses, if any; disclose and describe in detail Contractor's most recent peer review, if any, stating the date of the review and irregularities, if any, and concluding comments; disclose and describe in detail any emerging irregularities, if any, that could materially affect Comptroller's interests; describe in detail any consulting services provided by Contractor to Comptroller, if other than or additional to, those disclosed in the Proposal; and disclose and describe in detail how Contractor examines whether Contractor's outside auditors provide consulting or other services to Contractor or Contractor's clients or to Comptroller.

**12.26 Financial Interests; Gifts.** Contractor represents and warrants that neither Contractor nor any person or entity that will participate financially in this Contract has received compensation from Comptroller for participation in preparation of specifications for this Contract. Contractor represents and warrants that it has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to any public servant or employee in connection with this Contract.

**12.27 ADA.** Contractor represents and warrants that it shall comply with the requirements of the Americans with Disabilities Act (ADA).

**12.28 Buy Texas.** Contractor represents and warrants that it shall purchase products and materials produced in Texas when they are available at a comparable price and in a comparable period of time.

**12.29 Felony Criminal Convictions.** Contractor represents and warrants that Contractor has not and Contractor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised Comptroller as to the facts and circumstances surrounding the conviction.

**12.30 Notices.** Any written notices required under this Contract will be by either hand delivery to Contractor's office address specified on Page 1 of this Contract or to the Board's Legal Counsel, c/o Texas Comptroller of Public Accounts, 111 E. 17<sup>th</sup> Street, Austin, Texas, 78774, or by U.S. Mail, certified, return receipt requested, addressed to the appropriate foregoing address. Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this Section by written notification to the other party.

**12.31 False Statements; Breach of Representations.** By signature to this Contract, Contractor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Contractor signed its proposal with a false statement or signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Contractor shall be in default under this Contract and Comptroller may terminate or void this Contract for cause and pursue other remedies available to Comptroller under this Contract and applicable law.

**12.32 Force Majeure.** Except as otherwise provided, neither Contractor nor Comptroller shall be liable to the other for any delay in, or failure of performance, of an requirement contained in this Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. Force majeure is defined as those causes generally recognized under Texas law as constituting impossible conditions. Each party must inform the other in writing with proof of receipt within three (3) business days of the existence of such force majeure or otherwise waive this right as a defense.

**12.33 Debts or Delinquencies to State.** Contractor acknowledges and agrees that, to the extent Contractor owes any debt or delinquent taxes to the State of Texas, any payments or other amounts Contractor is otherwise owed under or related to this Agreement may be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes Contractor owes the State of Texas until the debt or delinquent taxes are paid in full. These provisions are effective at any time Contractor owes any such debt or delinquency. Contractor shall comply with rules adopted by Comptroller under §§403.055, 403.0551, 2252.903, Tex Gov't Code, and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

**12.34 Prohibited Use of Appropriated or Other Funds Under Control of State Agency; Lobbying.** Contractor represents and warrants that Comptroller's payments to Contractor and Contractor's receipt of appropriated or other funds under any this or any resulting agreement are not prohibited by §556.005 or §556.008, Texas Government Code.

**12.35 Texas Resident.** Contractor represents and warrants that if a Texas address is shown as the address of Contractor, then Contractor qualifies as a Texas Resident as defined by Section 2155.444 of the Texas Government Code.

**12.36 Executive Order #13224; Debarred Vendor List.** Contractor represents and warrants that it and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.

**12.37 Comptroller's Anti-Fraud Policy.** Contractor represents and warrants that it has read and understood and shall comply with Comptroller's Anti-Fraud Policy, Chapter 11, of Comptroller's Personnel Manual and Employee Handbook, as such Policy currently reads and as it is amended throughout the term of any resulting PO. Comptroller's Anti-Fraud Policy is located on Comptroller's website at <http://www.window.state.tx.us/ssv/ethics.html>.

### **XIII. Contingency of Funding Clause**

Comptroller's performance of its obligations under this Contract is contingent upon and subject to the availability of and actual receipt by Comptroller of sufficient and adequate funds from the sources contemplated by this Contract. This Contract is subject to immediate cancellation or termination, without penalty to Comptroller or the State of Texas, subject to the availability and receipt of these funds. In addition, Comptroller is a state agency whose authority and appropriations are subject to the actions of the Texas Legislature. If Comptroller becomes subject to a legislative change, revocation of statutory authority or lack of funds that would render the services to be provided under this Contract impossible or unnecessary, Comptroller may terminate this Contract without penalty to Comptroller or the State of Texas. In the event of a termination or cancellation under this Section, Comptroller shall not be required to give notice and shall not be liable for any damages or losses caused or associated with such termination or cancellation.

### **XIV. Signatories**

The undersigned signatories represent and warrant that they have full authority to enter into this Contract on behalf of the respective parties.

### **XV. Merger**

This Contract contains the entire agreement between Contractor and Comptroller relating to the rights granted and the obligations assumed in it. Any oral representations or modifications concerning this Contract shall be of no force or effect unless contained in a subsequent writing, signed by both parties.

**Texas Prepaid Higher Education Tuition Board**

**[Contractor]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Martin A. Hubert

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

Deputy Comptroller

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

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

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

**EXHIBIT D  
SAMPLE CONTRACT**

**Exhibit A to Sample Contract**

**Comptroller's RFP**

Comptroller's RFP, issued April 30, 2007, and Comptroller's official responses to written questions dated [insert date] (collectively "RFP"), are incorporated by reference into this Contract as Exhibit A of this Contract.

**EXHIBIT D  
SAMPLE CONTRACT**

**Exhibit B to Sample Contract**

**Final Project Workplan & Transition Plan**

Upon final written approval by Comptroller's Project Manager, the final agreed Project Workplan and Transition Plan shall be incorporated by reference into this Contract as Exhibit B of this Contract.

**EXHIBIT D  
SAMPLE CONTRACT**

**Exhibit C to Sample Contract**

**Standards of Performance**

This will include minimum Standards of Performance in the RFP and any additional Standards of Performance proposed by Contractor and agreed to by Comptroller and the following:

1. Contractor shall discharge all duties solely in the interest of Comptroller's beneficiaries and with the judgment, care, skill, prudence and diligence that an expert would use in a similar situation.
2. Contractor shall adhere to all applicable sections of the Board's investment policy statements, as they exist at the inception of this Contract and as they may be amended or revised during the term of this Contract.
3. Contractor shall comply with all applicable state and federal laws, regulations, requirements and guidelines, as they exist at the inception of this Contract and as they may be amended or revised during the term of this Contract.

**EXHIBIT D  
SAMPLE CONTRACT**

**Exhibit D to Sample Contract**

**Authorized Personnel and Compensation**

**Personnel:**

Contractor's authorized personnel are those individuals specified in the ["Proposed Personnel"] portion of its Proposal.

**Compensation:**

Contractor's fees for the Services provided and accepted pursuant to the terms of this Contract according to the following schedule:

[insert negotiated fees].

**EXHIBIT D  
SAMPLE CONTRACT**

**Exhibit E to Sample Contract**

**Schedule of Liquidated Damages**

The agreed upon Schedule of Liquidated Damages dated \_\_\_\_\_ is incorporated by reference into this Contract as Exhibit E of this Contract.

**EXHIBIT D  
SAMPLE CONTRACT**

**Exhibit F to Sample Contract**

**HUB Subcontracting Plan**

The final HUB Subcontracting Plan shall be incorporated by reference into this Contract as Exhibit F of this Contract.

**EXHIBIT D  
SAMPLE CONTRACT**

**Exhibit G to Sample Contract**

**Contractor's Proposal**

Contractor's Proposal, dated \_\_\_\_\_, is incorporated by reference into this Contract as Exhibit G of this Contract.

## EXHIBIT E

### Execution of Proposal

*This exhibit is prepared exclusively for RFP# 177c issued on April 30, 2007. Respondent's use and submission of any other attachments or documents, including prior year attachments, appendices or exhibits, exhibits from other agency or state solicitations, etc., may not include all substantive information, such as updated representations and warranties, required for a qualifying response to this solicitation and may result in disqualification of the response.*

1. By signature hereon, Respondent represents and warrants that the provisions in this Execution of Proposal apply to Respondent and all of Respondents' principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Proposal or any Contract resulting from it. Respondent represents and warrants that it shall provide a copy of this Execution of Proposals (RFP) to all such individuals and firms prior to submitting a Proposal under this RFP.
2. By signature hereon, Respondent represents and warrants its intent to furnish the requested services at the prices negotiated and to comply with all terms, conditions, and requirements set forth in Comptroller's RFP and the respondent's Proposal in the order of priority set forth in the Sample Contract.
3. By signature hereon, Respondent represents and warrants that it has read and understood and shall comply with Comptroller's Anti-Fraud Policy, found at: <http://windows.state.tx.us/ssv/ethics.html>, as such Policy currently reads and as it is amended throughout the term of any resulting Contract.
4. By signature hereon, Respondent represents and warrants that it has no actual or potential conflicts of interest in submitting a Proposal in response to this RFP or entering into any resulting Contract, and that Respondent submitting such Proposal or entering into such Contract will not reasonably create an appearance of impropriety.
5. By signature hereon, Respondent represents and warrants that it has not given, 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 its Proposal, this RFP or any resulting Contract.
6. By signature hereon, Respondent represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Texas Tax Code. In addition, if Respondent is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the following certification applies. Respondent represents and warrants that it holds a permit issued by Comptroller to collect or remit all state and local sales and use taxes that become due and owing as a result of the individual's or entity's business in Texas or represents and warrants that it does not sell tangible personal property or services that are subject to the state and local sales and use tax. Under Section 2155.004, Texas Government Code, Respondent represents and warrants that the individual or business entity named in its Proposal or any resulting Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this representation and warranty is inaccurate.
7. By signature hereon, Respondent hereby represents and warrants that neither the Respondent nor the firm, corporation, partnership or institution represented by the Respondent, nor anyone acting for such firm, corporation, or institution, has violated the antitrust laws of this state, codified in the *Texas Business and Commerce Code*, or the Federal antitrust laws, nor communicated directly or indirectly the Proposal made to any competitor or any other person engaged in such line of business.
8. By signature hereon, Respondent represents and warrants that all statements and information prepared and submitted in response to this RFP, its Proposal or on any resulting Contract are current, complete and accurate.
9. By signature hereon, Respondent represents and warrants that the individual signing this Execution of Proposal is authorized to sign this document on behalf of the Respondent and to bind the Respondent under any contract resulting from Respondent's Proposal.

10. By signature hereon, Respondent represents and warrants that if a Texas address is shown as the address of the Respondent, Respondent qualifies as a Texas Resident Respondent as defined by state statute (Texas Government Code 2155.444).
11. If Respondent qualifies as a Historically Underutilized Business (HUB) as defined under statutes of the State of Texas, Respondent must indicate the applicable category.  
 Black American                       Asian Pacific American       Hispanic American  
 Native American                       American Women (of any ethnicity other than those listed)
12. By signature hereon, Respondent represents and warrants that her/his business entity is not in arrears in payment of child support or in violation of Texas Family Code provisions pertaining to child support, or otherwise ineligible to receive any contract payment(s). Respondent acknowledges that any Contract resulting from this RFP may be terminated and payment(s) withheld at any time if this certification is false.
13. By signature hereon, Respondent represents and warrants that no relationship, whether by relative, business associate, capital funding contract or by any other such kinship exist between Respondent and an employee of any Comptroller component, and Respondent has not been an employee of any Comptroller component within the immediate twelve (12) months prior to Respondent's execution of this document. By signature hereon, Respondent represents and warrants that it is in compliance with Section 669 of the Texas Government Code, relating to contracting with the executive head of a State agency who was previously employed during the immediate four (4) years prior to Respondent's proposal. All such disclosures will be subject to administrative review and approval by Comptroller. Respondent acknowledges that any Contract resulting from this RFP may be terminated at any time, and payments withheld, if this information is false.

If Section 669 applies, Respondent must complete the following. If Section 669 is not applicable, mark with N/A.

Name of Former Executive: \_\_\_\_\_

Name of State Agency: \_\_\_\_\_

Date of Separation from State Agency: \_\_\_\_\_

Position with Respondent: \_\_\_\_\_

Date of employment with Respondent: \_\_\_\_\_

14. By signature hereon, Respondent represents and warrants that it has not received compensation for participation in the preparation of the specifications for Comptroller's RFP or any Contract resulting from this RFP.
15. By signature hereon, Respondent represents and warrants that its performance of this Contract, as applicable, meets or exceeds the safety standards established and promulgated under the *Federal Occupational Safety and Health Law* and its regulations in effect or proposed as of the date of any Contract resulting from this RFP.
16. By signature hereon, Respondent represents and warrants its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
17. By signature hereon, Respondent represents and warrants its compliance with the requirements of the Americans with Disabilities Act (ADA).
18. By signature hereon, Respondent represents and warrants that it will, in its performance of any Contract resulting from this RFP as applicable, purchase products and materials produced in Texas when they are

available at a comparable price and in a comparable period of time. By signature hereon, Respondent represents and warrants its compliance, in its performance of any Contract resulting from this RFP as applicable, with the requirements of Section 2155.441 of the Texas Government Code, by giving preference to products from workshops, organizations, or corporations whose primary purpose is training and employing individuals having mental retardation or physical disabilities if these products meet state specifications regarding quantity, quality, delivery, life cycle costs, and price.

- 19. Respondent certifies that Respondent entity and its principals are eligible to participate in any Contract resulting from this RFP and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local government entity and that Respondent is in compliance with State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 12224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.
- 20. By signature hereon, Respondent represents and warrants that each employee, including 'replacement employees', will possess the qualifications, education, training experience and certifications necessary to perform the services in the manner required by this RFP.
- 21. By signature hereon and by checking or initialing either Subsection (a) or Subsection (b), as applicable, Contractor represents and warrants the following:

(a) \_\_\_\_\_ Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Contractor or any of the individuals or entities included in Section 1 of this document that would or could impair Contractor's performance under any contract resulting from this RFP, relate to the solicited or similar goods or services, or otherwise be relevant to the agency's consideration of Contractor's Proposal. Contractor represents and warrants that it is not aware of any such court or governmental agency actions, proceedings or investigations, etc. against Contractor or any of these individuals or entities within the five (5) calendar years immediately preceding the submission of Contractor's Proposal in response to this RFP. In addition, Outside Counsel represents and warrants that it shall notify Comptroller in writing within five (5) business days of any changes to the representations or warranties in this Subsection (a) and understands that failure to so timely update Comptroller shall constitute breach of contract and may result in immediate termination of the contract.

(b) \_\_\_\_\_ Contractor is unable to make the representation and warranty in Subsection (a) above and instead represents and warrants that it has included as a detailed attachment in its Proposal, which expressly references this Subsection (b), a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc., and specifically addresses whether any of such past, pending or threatened actions, proceedings or investigations, etc., would or could (1) impair Contractor's performance under any contract resulting from this RFP; (2) relate to the solicited or similar goods or services; or (3) be otherwise relevant to the agency's consideration of Contractor's Proposal. In addition, Contractor represents and warrants that it shall notify Comptroller in writing within five (5) business days of any changes to the representations or warranties in this Subsection (b) or attachments in response to Subsection (b) and understands that failure to so timely update Comptroller shall constitute breach of contract and may result in immediate termination of the contract.

**Authorized signatory on behalf of Respondent must complete and sign the following:**

_____	_____
<b>Authorized Signature</b>	<b>Date Signed</b>
_____	_____
<b>Title of Authorized Signature</b>	<b>Phone Number</b>

<b>Company Name</b>	<b>Fax Number</b>
<b>Texas Taxpayer Identification Number</b>	<b>E-Mail Address</b>
<b>Physical Street Address</b>	<b>City, State, Zip Code</b>
<b>Mailing Address, if different</b>	<b>City, State, Zip Code</b>

**IMPORTANT NOTICE: IF YOUR RESPONSE TO THIS SOLICITATION DOES NOT CONTAIN ONE ORIGINAL OF THIS FULLY COMPLETED AND SIGNED EXHIBIT, YOUR RESPONSE MAY BE AUTOMATICALLY DISQUALIFIED FOR FAILURE TO COMPLY WITH THE ADVERTISED SPECIFICATIONS, EVEN IF ALL OTHER MINIMUM QUALIFICATIONS, LETTERS AND EXHIBITS ARE FULLY COMPLETED, SIGNED AND RETURNED. IN THE PROPOSAL RESPONSE MARKED "ORIGINAL", RESPONDENTS MUST ENSURE BOTH FULL COMPLETION AND ORIGINAL INK SIGNATURE BY AN AUTHORIZED REPRESENTATIVE OF RESPONDENT.**

EXHIBIT F

HUB Subcontracting Plan Information
\$100,000 and over



HUB SUBCONTRACTING PLAN (HSP)

In accordance with Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, respondents, including State of Texas certified Historically Underutilized Businesses (HUBs), must complete and submit a State of Texas HUB Subcontracting Plan (HSP) with their solicitation response.

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to 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 State of Texas Disparity Study. The HUB goals defined in 1 TAC §111.13 are: 11.9 percent for heavy construction other than building contracts, 26.1 percent for all building construction, including general contractors and operative builders contracts, 57.2 percent for all special trade construction contracts, 20 percent for professional services contracts, 33 percent for all other services contracts, and 12.6 percent for commodities contracts.

-- Agency Special Instructions/Additional Requirements --

Note: The Comptroller's office is fully committed to increasing contracting opportunities with HUBs by contracting directly with HUBs or indirectly through subcontracting opportunities. Therefore, we ask that you please consider utilizing HUBs in subcontracting areas which are listed below, but in no way should this list be considered exhaustive. If your bid/proposal/offer does not contain a complete HSP and supporting documentation, your bid will be considered non-responsive and will be disqualified. Once awarded, respondent will be subject to debarment pursuant to Gov't Code 2161.253(d) if any modifications are made to the HSP without PRIOR approval from this agency. Any questions with regards to these "special instructions/additional requirements" can be directed to the HUB Program Administrator at 1-800-991-BIDS or 512/936-6006 (Austin).

Table with 3 columns: Class, Item, Description. Rows include Banking Services, Cash Management Services, Investment Management Services, Fidelity and Surety, Retirement Benefit Plan Insurance, Record Management Services, and Marketing Services.

SECTION 1 - RESPONDENT AND SOLICITATION INFORMATION

- a. Respondent (Company) Name: \_\_\_\_\_ State of Texas VID #: \_\_\_\_\_
Point of Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_
b. Is your company a State of Texas certified HUB? [ ] - Yes [ ] - No
c. Solicitation #: \_\_\_\_\_

SECTION 2 - SUBCONTRACTING INTENTIONS

After having divided the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, the respondent must determine what portion(s) of work, including goods or services, will be subcontracted. Note: In accordance with 1 TAC §111.12., a "Subcontractor" means a person who contracts with a vendor to work, to supply commodities, or contribute toward completing work for a governmental entity. Check the appropriate box that identifies your subcontracting intentions:

- [ ] - Yes, I will be subcontracting portion(s) of the contract. (If Yes, in the spaces provided below, list the portions of work you will be subcontracting, and go to page 2.)
[ ] - No, I will not be subcontracting any portion of the contract, and will be fulfilling the entire contract with my own resources. (If No, complete SECTION 9 and 10.)

Line Item # - Subcontracting Opportunity Description	Line Item # - Subcontracting Opportunity Description
( #1) -	(#11) -
( #2) -	(#12) -
( #3) -	(#13) -
( #4) -	(#14) -
( #5) -	(#15) -
( #6) -	(#16) -
( #7) -	(#17) -
( #8) -	(#18) -
( #9) -	(#19) -
(#10) -	(#20) -

\*If you have more than twenty subcontracting opportunities, a continuation page is available at [http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/hsp\\_sep06\\_cont1.doc](http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/hsp_sep06_cont1.doc).

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

Solicitation #: \_\_\_\_\_

**IMPORTANT:** You must complete a copy of this page for each of the subcontracting opportunities you listed in SECTION 2. You may photocopy this page or download copies at [http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/hsp\\_sep06\\_cont2.doc](http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/hsp_sep06_cont2.doc).

**SECTION 3 - SUBCONTRACTING OPPORTUNITY**

Enter the line item number and description of the subcontracting opportunity you listed in SECTION 2.

Line Item # \_\_\_\_\_ Description: \_\_\_\_\_

**SECTION 4 - MENTOR-PROTÉGÉ PROGRAM**

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting their Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the portion of work (subcontracting opportunity) listed in SECTION 3, constitutes a good faith effort towards that specific portion of work. Will you be subcontracting the portion of work listed in SECTION 3 to your Protégé?

- Yes (If Yes, complete SECTION 8 and 10.)  - No / Not Applicable (If No or Not Applicable, go to SECTION 5.)

**SECTION 5 - PROFESSIONAL SERVICES CONTRACTS ONLY**

This section applies to Professional Services Contracts only. All other contracts go to SECTION 6.

Does your HSP contain subcontracting of 20% or more with HUB(s)?

- Yes (If Yes, complete SECTION 8 and 10.)  - No / Not Applicable (If No or Not Applicable, go to SECTION 6.)

*In accordance with Gov't Code §2254.004, "Professional Services" means services: (A) within the scope of the practice, as defined by state law of accounting; architecture; landscape architecture; land surveying; medicine; optometry; professional engineering; real estate appraising; or professional nursing; or (B) provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified or state licensed real estate appraiser; or a registered nurse.*

**SECTION 6 - NOTIFICATION OF SUBCONTRACTING OPPORTUNITY**

Complying with a, b and c of this section constitutes Good Faith Effort towards the portion of work listed in SECTION 3. After performing the requirements of this section, complete SECTION 7, 8 and 10.

- a. Provide written notification of the subcontracting opportunity listed in SECTION 3 to **three (3)** or more HUBs. Use the State of Texas' Centralized Master Bidders List (CMBL), found at <http://www2.tbpc.state.tx.us/cmb/cmbhub.html>, and its HUB Directory, found at <http://www2.tbpc.state.tx.us/cmb/hubonly.html>, to identify available HUBs. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**
- b. Provide written notification of the subcontracting opportunity listed in SECTION 3 to a minority or women trade organization or development center to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. A list of trade organizations and development centers may be accessed at <http://www.tbpc.state.tx.us/hub/minoritywomenbuslinks.html>. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**
- c. Written notifications should include the scope of the work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. Unless the contracting agency has specified a different time period, you must allow the HUBs no less than five (5) working days from their receipt of notice to respond, and provide notice of your subcontracting opportunity to a minority or women trade organization or development center no less than five (5) working days prior to the submission of your response to the contracting agency.

**SECTION 7 - HUB FIRMS CONTACTED FOR SUBCONTRACTING OPPORTUNITY**

List **three (3)** State of Texas certified HUBs you notified regarding the portion of work (subcontracting opportunity) listed in SECTION 3. Specify the vendor ID number, date you provided notice, and if you received a response. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.)**

demonstrating evidence of the good faith effort performed.

Company Name	VID #	Notice Date (mm/dd/yyyy)	Was Response Received?
_____	_____	____/____/____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No
_____	_____	____/____/____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No
_____	_____	____/____/____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No







# HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report

*This form must be completed and submitted to the contracting agency each month to document compliance with your HSP.*

Contract/Requisition Number: _____	Date of Award: _____ <small>(mm/dd/yyyy)</small>	Object Code: _____ <small>(Agency Use Only)</small>
Contracting Agency/University Name: _____		
Contractor (Company) Name: _____	State of Texas VID #: _____	
Point of Contact: _____	Phone #: _____	
Reporting (Month) Period: _____	Total Amount Paid this Reporting Period to Contractor: _____	\$ _____ -

## ***Report HUB and Non-HUB subcontractor information***

Subcontractor's Name	Subcontractor's VID or HUB Certificate Number	*Texas Certified HUB? (Yes or No)	Total Contract \$ Amount from HSP with Subcontractor	Total \$ Amount Paid This Reporting Period to Subcontractor	Total Contract \$ Amount Paid to Date to Subcontractor	Object Code (Agency Use Only)
			\$ -	\$ -	\$ -	
			\$ -	\$ -	\$ -	
			\$ -	\$ -	\$ -	
			\$ -	\$ -	\$ -	
			\$ -	\$ -	\$ -	
<b>TOTALS:</b>			\$ -	\$ -	\$ -	

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\*Note: Prime contractors can verify subcontractor HUB certification status on-line at <http://www2.tbpc.state.tx.us/cmb/cmbhub.html>

Rev. 12/06

**EXHIBIT G**  
**RESPONDENT RFP EVALUATION DATA SHEET**  
**HIGHER EDUCATION SECTION 529 SAVINGS PLAN**

**I. Minimum Criteria**

Only those proposals that meet minimum qualifications will be evaluated. Minimum qualifications are:

- Respondent, or a subsidiary thereof, must be a registered investment advisor or exempt from registration (form ADV or disclosure of the nature of the exemption must be submitted). The respondent, or a subsidiary thereof, must have the necessary registrations according to Securities and Exchange Commission standards.
- Respondent must submit with its proposal its most recent audited financial statement, with a signed opinion letter of its independent auditors attached.
- Respondent that enters into a contract, if any, with the Board must directly provide one or more investment options and investment management, must directly or through a subcontract provide records administration and customer service, and must develop a strategy to promote the Plan and, on prior approval of the Board or the direction of Comptroller on behalf of the Board, may promote the Plan according to that strategy.
- Respondent must have at least \$1.0 billion in firmwide assets under management.
- Respondent must agree that any toll-free telephone numbers provided for specific use in marketing or servicing the Plan shall be transferred to the Board upon termination of any contract with the respondent.
- **EXHIBIT A** – Respondent must complete and sign the Nondisclosure Agreement in Exhibit A; this agreement must be signed by a person legally authorized to bind respondent to the representations in the proposal *and must be returned with the proposal*;
- **EXHIBIT B** – Respondent must complete and sign the Texas Family Code Certification in Exhibit B; this form must be completed and signed by a person legally authorized to bind respondent to the representation in the proposal and form *and must be returned with the proposal*;
- **EXHIBIT C** – Respondent must organize its proposal in the manner described in Exhibit C of this RFP and include all required information, references, responses and signatures *with the proposal*;
- **EXHIBIT C** – Respondent must submit its transmittal letter with the proposal and must include all provisions called for in Exhibit C, Section 2 of this RFP, and be signed by a person legally authorized to bind the respondent to the representations in the proposal and must state that the offer remains open for a period of ninety (90) days from the deadline for submission of proposals. *The transmittal letter must be submitted with the proposal*;
- **EXHIBIT C** - Respondent Identifying Information and proposed subcontractor(s) identifying information and statement(s) (if any) must be complete as specified in Exhibit C, Section 4 of this RFP; *this information must be clearly stated in the proposal*;
- **EXHIBIT C** - Respondent must detail respondent's experience providing the proposed Services as specified in Exhibit C, Section 5 of this RFP *and all information must be submitted with the proposal*;

- **EXHIBIT C** - Respondent must describe all Proposed Project Personnel and Organizational Information, and identify key personnel, describe respondent's organization in detail, and provide relevant miscellaneous information as specified in Exhibit C, Section 5 of this RFP. This information *must be provided in the proposal*;
- **EXHIBIT C** - *Respondent must disclose in its proposal* any existing or potential Conflicts of Interest or appearances of impropriety as specified in Exhibit C, Section 6 of this RFP; respondent must demonstrate that it can provide the Services under this RFP free from outside direction, control, and influence, as determined by Comptroller;
- **EXHIBIT C** - Respondent must include the detailed proposed workplan, transition plan and narrative as specified in Exhibit C, Section 5 of this RFP. This information *must be provided in the proposal*.
- **EXHIBIT C** - Respondent must provide an executive summary of its proposal as specified in Exhibit C, Section 3 containing a full and concise summary of the contents, identify Services that are provided beyond those specifically requested, and any items that do not meet specific requirements of the RFP. This information *must be provided in the proposal*.
- **EXHIBIT C** - Respondent must provide information pursuant to Exhibit C, Section 7 of this RFP regarding insurance and bond, performance bond or other acceptable security. This information *must be provided in the proposal*.
- **EXHIBIT E** – Respondent must complete and sign the Execution of Proposal in Exhibit E; this exhibit must be signed by a person legally authorized to bind respondent to the representations in the proposal *and must be returned with the proposal*;
- **EXHIBIT F** - The Historically Underutilized Businesses (HUB) Participation forms in Exhibit F must be completed and signed by a person legally authorized to bind the respondent to the representations in the proposal *and must be returned with the proposal. Respondents must return a fully completed and signed Exhibit F with their proposals or the proposal may be DISQUALIFIED*;
- **EXHIBIT H** – Respondent must carefully review, complete, sign and return the Liquidated Damages provisions and schedule set forth in Exhibit H *and return the completed signed Exhibit H with the proposal*;
- **EXHIBIT I** - Respondent must complete and provide all of the Proposed Marketing Expenditures information as set forth in Exhibit I *and return the completed Exhibit I with the proposal*.
- **EXHIBIT J** – Respondent must complete, sign and provide this Exhibit detailing respondent's proposed all inclusive fees *and return the completed, signed Exhibit J with the proposal*;
- **EXHIBIT K** – Respondent must complete and provide all of the information requested by the Criminal Conviction Form set forth in Exhibit K *and return the completed Exhibit K with the proposal*;

Only those proposals that meet the minimum qualifications will be evaluated based on percentages using the following criteria and weights. References may be contacted by the Investment Consultant or Comptroller on behalf of the Board as part of the evaluation. The criteria are:

## **II. Respondent Qualifications; Financial Stability & Integrity: Weight: 20 points**

- Overall qualifications of the respondent.
- Past experience in providing similar Services to those requested by this RFP.
- Overall understanding and ability to meet or exceed requirements of Section 529 and other

applicable law.

- Respondent has successfully implemented and provided Services similar to those required by this RFP, demonstrating that the proposed team includes personnel with all the skills and experience required to successfully complete all requirements of this RFP.
- The organizational chart demonstrates that a clear line of authority exists and responsibility is assigned to ensure quality and timely results.

**III. Ability of the Respondent, Directly or Through a Subcontract, To Satisfy Recordkeeping and Reporting Requirements: Weight: 15 points**

- Quality of customer service and records administration Services proposed.

**IV. The Respondent's Strategy For Promoting the Plan and The Investment That The Respondent Is Willing To Make To Promote The Plan: Weight: 15 points**

- The respondent is willing to work with the Board to develop a marketing strategy and to develop specific marketing materials.
- Quality and creativity of marketing Services proposed, including the overall marketing strategy.
- The respondent demonstrates an overall strategy to provide comprehensive services and information on the Plan through a call center and a Web site.
- Amount of total marketing expenditures proposed per year.
- The minimum contributions the respondent will require and the willingness of the respondent to accept contributions through payroll deduction plans and systematic deposit plans.

**V. Historic Ability of The Portfolios or Investment Strategies To Be Used By the Respondent To Produce Results That Track The Estimated Costs of Higher Education As Calculated by The United States Department of Education: Weight: 20 points**

- Quality, variety, and creativity of investment options proposed.
- Performance of investment options proposed; tracking to appropriate benchmarks.
- Results consistent with the type and dollar amounts of investments of this type.

**VI. The Fees Proposed To Be Charged By the Respondent To Account Owners For Maintaining Accounts: Weight: 25 points**

- Clear identification of all proposed fees, inclusive of all costs and expenses;
- Reasonableness of such fees, considering basis points in relation to work required for successful completion of the Contract.

**VII. Any Other Proposed Benefits To The State of Texas or To Its Residents: Weight: 5 points**

- Optional national marketing campaign, with ability to demonstrate concrete benefits to the Plan and its account owners.
- Best value considerations as set forth in Section 2155.074, Texas Government Code, and other proposed benefits.

**Total: 100 Points**

## **EXHIBIT H SCHEDULE OF LIQUIDATED DAMAGES**

In submitting a proposal in response to this RFP, Respondent agrees and acknowledges that the measure of damages in the event of certain events of default by Respondent may be difficult or impossible to calculate, depending on the nature of the default. Comptroller agrees and acknowledges the same. Thus, in the event Respondent fails to perform any of the Services described in this RFP in accordance with the requirements of the Contract, Comptroller may require Respondent to pay or may require Respondent to reduce from its fees to interested persons' or account owners the indicated amount, as set forth below, for the indicated failure to fully perform or deliver the described Services. The Services listed below are each separately subject to the assessment of liquidated damages. The assessment of liquidated damages for the failure to perform or deliver any listed Services neither requires nor precludes the assessment of liquidated damages for any other failure to perform or deliver in accordance with this RFP or the contract. Comptroller and Respondent agree that Comptroller is not required to give notice or opportunity to cure prior to assessing these liquidated damages.

Comptroller and Respondent agree and acknowledge that the amounts of liquidated damages set forth in this Schedule are not intended to be in the nature of a penalty, but are intended to be a reasonable estimate of the amount of damages to Comptroller in the event of the occurrence of any of the related category of listed events. Comptroller does not waive any right to seek additional relief, either equitable or otherwise, concerning any breach of contract by Respondent.

### **Minimum Liquidated Damages:**

1. \$1000 per occurrence for Contractor's failure to:
  - a. Process payroll deductions and systematic deposit requests.
  - b. Process request(s) from prospective account owners for information regarding the Plan.
  - c. Provide account owners with information regarding accounts and/or transaction history by 5:00 p.m. on the business day following the request, unless otherwise agreed to in advance by the requesting account owner.
  
2. \$5,000 per occurrence for Contractor's failure to:
  - a. Attend scheduled meetings, make presentations and/or provide scheduled and ad hoc reports to the Board as required by Comptroller.
  - b. By 4:00 p.m. on Monday of each week (or, if Monday is a State or national holiday, 4:00 p.m. the next following business day), provide a report to Comptroller listing all account owner complaints received during the preceding week and the resolution of those complaints.
  - c. Maintain a toll free 800 telephone line to receive and resolve account owner complaints and to provide Plan information during normal business hours which must include the hours from 8:00 a.m. to 5:00 p.m. CZT.
  - d. Provide account owners internet website and telephone access to account information twenty-four (24) hours a day, except as approved in advance by Comptroller for short periods of time after normal business hours with reasonable advance notice to account owners.
  
3. \$10,000 per occurrence for Contractor's failure to:
  - a. Provide the annual account statements required by this RFP to account owners.
  - b. Provide the quarterly account statements required by this RFP to account owners.
  - c. Provide account statements to account owners upon their request within fourteen (14) days of such request.

- d. Obtain Board authorization and approval of any marketing strategy and/or materials prior to implementing or disseminating any such strategy or materials.
- e. Comply with all provisions of Internal Revenue Code, Section 529, including maintaining proper recordkeeping and reporting to ensure the Plan's compliance with Section 529 and all regulations thereunder.
- f. Otherwise fully perform in accordance with the terms of the contract, including but not limited to (i) immediately reporting of any incidence of failure to perform under this Contract (other than systems failure), or (ii) timely delivery of the performance bond, if required, and the required insurance.

4. \$10,000 per hour of delay for Contractor's failure to:

Report any partial or total systems failure which significantly inhibits Contractor's ability to fully perform all Services required under this Contract within one (1) hour of the occurrence of such failure.

***Additional Liquidated Damages:***

[In their proposals, Respondents must propose an additional schedule of liquidated damages for Contractor's failure to comply with other Standards of Performance of the contract.

*For example:*

5. \$10,000 per occurrence for Contractor's failure to:

a. *Cooperate in a commercially reasonable manner with Comptroller's immediately preceding or successor contractors.*

This is in addition to Liquidated Damages under Section 19 of the RFP regarding transition to successor contractors.

For amounts assessed as liquidated damages under this subsection, Comptroller may, in its sole discretion, direct that Contractor adjust interested persons' or account owners' accounts within three (3) business days following Comptroller's notification of assessment to offset the amount of fees otherwise due to Contractor hereunder by the amount of the assessment, or may require payment directly from Contractor within twenty-four (24) hours for amounts so assessed.

Notwithstanding Comptroller's assessment of liquidated damages pursuant to this Exhibit H, if Comptroller shall determine, in its sole discretion, that Contractor's failure to perform is continuing unabated or otherwise is likely to significantly and adversely effect the administration of the Plan or security of its account owners, Comptroller may elect to pursue one or more other remedies available hereunder, or under the Contract or RFP, including but not limited to, the termination of the contract, filing a claim against Contractor's professional liability or other appropriate insurance coverage or performance bond or any other remedies available to Comptroller under the Contract, under applicable law or in equity.

**EXHIBIT I  
PROPOSED MARKETING EXPENDITURES**

**1. Amount respondent proposes to expend in each marketing period to market the Plan:**

- a. Amount respondent proposes to expend in initial marketing period (effective date of Contract to August 31, 2008) to market the Plan in Texas: \$\_\_\_\_\_
- b. Amount respondent proposes to expend in second marketing period (September 1, 2008 to August 31, 2009) to market the Plan in Texas: \$\_\_\_\_\_
- c. Amount respondent proposes to expend in third marketing period (September 1, 2009 to August 31, 2010) to market the Plan in Texas: \$\_\_\_\_\_
- e. Amount respondent proposes to expend in fourth marketing period (September 1, 2010 to August 31, 2011) to market the Plan in Texas: \$\_\_\_\_\_
- f. Amount respondent proposes to expend in fifth marketing period (September 1, 2011 to August 31, 2012) to market the Plan in Texas: \$\_\_\_\_\_
- g. Amount respondent proposes to expend in sixth marketing period (option year: September 1, 2012 to August 31, 2013) to market the Plan in Texas if the Board chooses to exercise its first renewal option on the Contract: \$\_\_\_\_\_
- i. Amount respondent proposes to expend in seventh marketing period (option year: September 1, 2013 to August 31, 2014) to market the Plan in Texas if the Board chooses to exercise its second renewal option on the Contract: \$\_\_\_\_\_

**2. If the respondent is proposing as an option a national marketing strategy for marketing the Plan *outside of Texas*, as described in Section 3.4D of this RFP, the respondent must list the amounts it will spend for each marketing period of the contract for such marketing as set out above.**

- a. Amount respondent proposes to expend in initial marketing period (effective date of Contract to August 31, 2008) to market the Plan outside of Texas: \$\_\_\_\_\_
- b. Amount respondent proposes to expend in second marketing period (September 1, 2008 to August 31, 2009) to market the Plan outside of Texas: \$\_\_\_\_\_
- c. Amount respondent proposes to expend in third marketing period (September 1, 2009 to August 31, 2010) to market the Plan outside of Texas: \$\_\_\_\_\_
- d. Amount respondent proposes to expend in fourth marketing period (September 1, 2010 to August 31, 2011) to market the Plan outside of Texas: \$\_\_\_\_\_
- e. Amount respondent proposes to expend in fifth marketing period (September 1, 2011 to August 31, 2012) to market the Plan outside of Texas: \$\_\_\_\_\_
- f. Amount respondent proposes to expend in sixth marketing period (option year: September 1, 2012 to August 31, 2013) to market the Plan outside of Texas if the Board chooses to exercise its first renewal option on the Contract: \$\_\_\_\_\_

- g. Amount respondent proposes to expend in seventh marketing period (option year: September 1, 2013 to August 31, 2014) to market the Plan outside of Texas if the Board chooses to exercise its second renewal option on the Contract: \$\_\_\_\_\_

**Respondent: [Name of Respondent Firm]**

**Signed:**\_\_\_\_\_

**By [Printed Name and Title]:**\_\_\_\_\_

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



4. Does the respondent have a "Most Favored Nation" fee provision?

( ) Yes ( ) No

**II. FEES FOR NON-INVESTMENT SERVICES: Records Administration and Customer Service  
(Indicate if this is a direct cost to the Plan or is built in to investment fee structure)**

**Option 1 – Annual Rate Per Account, with Break Points (number of accounts)**

\$ \_\_\_\_\_ per account, up to \_\_\_\_\_ accounts;  
\$ \_\_\_\_\_ per account, from \_\_\_\_\_ accounts to \_\_\_\_\_ accounts  
\$ \_\_\_\_\_ per account, from \_\_\_\_\_ accounts to \_\_\_\_\_ accounts  
\$ \_\_\_\_\_ per account, from \_\_\_\_\_ accounts to \_\_\_\_\_ accounts  
\$ \_\_\_\_\_ per account, from \_\_\_\_\_ accounts to \_\_\_\_\_ accounts  
\$ \_\_\_\_\_ per account, from \_\_\_\_\_ accounts to \_\_\_\_\_ accounts

**Option 2 – Annual Flat Rate – Unlimited Number of Accounts**

\$ \_\_\_\_\_

**III. BUNDLED FEE**

1. For Texas residents or beneficiaries:

- a. Respondents will be evaluated, in part, based on the competitive nature of the fees proposed. The Board intends to use the response to this section as the basis for comparing one Cost Proposal to another. Respondent must indicate the total basis points respondent proposes to charge Texas residents or investors who name Texas-domiciled beneficiaries for all Services provided to the Plan (i.e., percentage of assets under management). This bundled fee must be “no load” in nature, meaning the shares must be available to investors who enroll directly in the Plan who are (a) Texas residents; or (b) name beneficiaries who are Texas-domiciled. Be specific in describing any assumptions respondent employed in estimating this all-inclusive fee.

\_\_\_\_\_ Basis Points

Recognizing that the Plan is likely to become a very large QTP, at what point, in terms of assets under management (AUM) would you propose to reduce the bundled fee and by how many basis points?

\_\_\_\_\_ Break Point

\_\_\_\_\_ Basis Points once AUM exceeds Break Point

2. National Distribution

- a. If the respondent is proposing a national marketing effort, it must provide a no-load, bundled, basis-point fee proposal that includes such a national campaign. The respondent must be specific in describing the assumptions that underlie its estimates.

\_\_\_\_\_ Basis Points

**Note: The requirement that bundled fees be proposed on a no-load basis does not preclude also proposing classes of shares that include commissions or other fees that compensate advisors. If applicable, describe in detail the different classes of shares (e.g., front end load, deferred sales charge and level-load) you are proposing as a means of compensating financial intermediaries, including the commission structure for any sales agents. Be specific with respect to the applicability of such “load” shares to in-state and out-of-state residents. Respondents are free to propose such additional share classes, but cost comparisons will be based on your Bundled Fee proposal.**

**Respondent: [Name of Respondent Firm]**

**Signed:** \_\_\_\_\_

**By [Printed Name and Title]:** \_\_\_\_\_

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

**EXHIBIT K**  
**CRIMINAL CONVICTION CERTIFICATION**

*This exhibit is prepared exclusively for RFP# 177c issued on April 30, 2007. Respondent's use and submission of any other attachments or documents, including prior year attachments, appendices or exhibits, exhibits from other agency or state solicitations, etc., may not include all substantive information, such as updated representations and warranties, required for a qualifying response to this solicitation and may result in disqualification of the response.*

This Criminal Conviction Certification Form is incorporated as part of Contractor's proposal and any resulting Agreement for all purposes.

Contractor represents and warrants that it shall comply with all of the following requirements:

**Contractor must take appropriate steps and perform due diligence -- at a minimum, as described in this Exhibit K -- to become informed as to each assigned employee's felony criminal convictions, if any, and must promptly inform Comptroller's Contract Administrator of any such felony criminal convictions for any assigned employee. At a minimum, Contractor must take these appropriate steps and perform due diligence at each of these three (3) intervals: (1) within the seven (7) business days immediately prior to submission of Contractor's proposal; (2) within the seven (7) business days prior to the proposed effective date of any renewal or extension of this Agreement; and (3) within the seven (7) business days prior to requesting approval for assignment of a new employee (such as a substitute employee). Contractor must inform Comptroller in writing within three (3) business days of Contractor's receipt of any information on any felony convictions of assigned employees obtained from any of these steps at any of these intervals.**

**At each of the above three (3) intervals, Contractor must take minimum steps to review and perform due diligence of every assigned employee's criminal history. Contractor's minimum steps shall include, at a minimum, (1) Contractor's compliance with Contractor's published employee policies and procedures for background and criminal checks of Contractor's employees and (2) Contractor's comprehensive search of the public information portion of an online criminal conviction database, such as the DPS criminal conviction database at: [https://records.txdps.state.tx.us/DPS WEB/Portal/index.aspx](https://records.txdps.state.tx.us/DPS_WEB/Portal/index.aspx). If such DPS criminal conviction database is not appropriate for a particular assigned employee, Contractor must submit with its proposal, its renewal or extension, or with its request for assignment, as appropriate, sufficient documentation that an equivalent or more extensive search was conducted and that the alternative is appropriate for that assigned employee.**

**Upon request by Comptroller, Contractor must provide to Comptroller, no later than five (5) business days after receiving such request, the written results of these minimum steps for all assigned employees.**

**For purposes of this Exhibit K, "assigned employees" includes, without limitation, all employees or personnel, for example, who will or may (1) be assigned as lead or key employees or personnel under this Agreement; (2) interact on site at Comptroller's premises with any Comptroller personnel, assets, records or resources in connection with this Agreement; or (3) otherwise access or interact with any assets, records or resources of Comptroller in connection with this Agreement.**

By signing this form and initialing the appropriate space, Contractor represents and warrants that it took the above minimum steps and performed due diligence as required by this Exhibit K to become informed as to each assigned employee's felony convictions. If one or more proposed individuals have felony convictions, Contractor must describe the nature and timing of each conviction in a separate letter as part of Contractor's proposal (and in its renewal or extension, request for assignment, etc., as appropriate).

If Comptroller becomes aware that the completed certification form is false, or if Contractor fails to promptly advise Comptroller of a felony criminal conviction occurring after the certification becomes effective, Contractor shall be in breach of this Agreement and Comptroller shall have the option to terminate the Agreement without further obligation to Contractor and may pursue all other remedies and rights available to Comptroller under this Agreement, at law, or in equity.

Contractor must have an authorized company representative initial and sign this document in the blanks provided below, and must return the initialed and signed form along with the other required paperwork with its proposal (and as appropriate, its renewal or extension, or with its request for assignment).

Contractor shall indicate, by initialing in the space provided to the left of Items 1-3 below, its intent to comply with these provisions. Contractor shall initial Item 2 in any case and either initial Item 1 or 3 as applicable. Additionally, Contractor shall sign, date, and provide the title of the person executing this Criminal Conviction Certification on its behalf in the space provided below at the end of this document.

1. \_\_\_\_\_ Contractor represents and warrants that it performed all minimum steps and due diligence described in this Exhibit K and that all currently assigned employees and all employees proposed for assignment have no felony criminal convictions. (If Contractor cannot make this unqualified representation and warranty, Contractor must initial blank #3 below and provide the detailed letter as an attachment to this Exhibit K, detailing and explaining any such convictions.)
  
2. \_\_\_\_\_ Contractor represents and warrants that it shall notify Comptroller’s Contract Administrator in writing if any future proposed employee (for example, a substitute or other newly assigned employee) has any felony criminal conviction or if any information for any previously assigned employee has changed, no later than three (3) business days prior to such proposed employee’s proposed assignment starting date or no later than three (3) business days after Contractor’s receipt of such changed information, whichever is applicable.
  
3. \_\_\_\_\_ Contractor represents and warrants that it performed all minimum steps and due diligence described in this Exhibit K and that all currently assigned employees and all employees proposed for assignment have no felony criminal convictions except those noted on the attached separate letter. Contractor represents and warrants that it has attached a separate letter with this Exhibit K and that the attached detailed information describes the nature and timing of each felony conviction for each employee listed.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Printed Name of Authorized Representative

\_\_\_\_\_  
Title of Authorized Representative

**IMPORTANT NOTICE: IF YOUR RESPONSE TO THIS SOLICITATION DOES NOT CONTAIN ONE ORIGINAL OF THIS FULLY COMPLETED AND SIGNED EXHIBIT, YOUR RESPONSE MAY BE AUTOMATICALLY DISQUALIFIED FOR FAILURE TO COMPLY WITH THE ADVERTISED SPECIFICATIONS, EVEN IF ALL OTHER MINIMUM QUALIFICATIONS, LETTERS AND EXHIBITS ARE FULLY COMPLETED, SIGNED AND RETURNED. IN THE PROPOSAL RESPONSE MARKED “ORIGINAL”, RESPONDENTS MUST ENSURE BOTH FULL COMPLETION AND ORIGINAL INK SIGNATURE BY AN AUTHORIZED REPRESENTATIVE OF RESPONDENT.**

**EXHIBIT L**  
**ADMINISTRATIVE RULES FOR THE TEXAS HIGHER**  
**EDUCATION SECTION 529 SAVINGS PLAN**

*Note: These rules are subject to revision throughout the Contract term. Some rules may be subject to change to conform the rules to the contract contemplated by this RFP. Such rules will constitute a standard of performance of the Contract for Successful Respondent, if any.*

7.101 The following words, terms, and phrases, when used in this subchapter, shall have the following meanings.

(1) Beneficiary--The designated individual whose qualified higher education expenses are expected to be paid from a savings trust account.

(2) Financial institution--A bank, trust company, savings and loan association, credit union, broker-dealer, mutual fund, insurance company, or other similar financial institution that is authorized to transact business in this state.

(3) Nonqualified withdrawal--A withdrawal from a savings trust account other than:

(A) a qualified withdrawal;

(B) a withdrawal that is made as the result of the death or disability of the beneficiary of the account; or

(C) a withdrawal that is made as a result of the receipt of a scholarship or an allowance or payment that is described in Internal Revenue Code of 1986, §135(d)(1)(B) or (C), as amended, and that the beneficiary has received, to the extent that the amount of the withdrawal does not exceed the amount of the scholarship, allowance, or payment, in accordance with federal law.

(4) Owner--The individual, trust, estate, Uniform Gift to Minors Act (UGMA) custodian or Uniform Transfer to Minors Act (UTMA) custodian, guardian, corporation, non-profit entity, or other legal entity, or any combination thereof that results from transfers by operation of law, that owns a savings trust account under a savings trust agreement between the board and that individual, trust, estate, UGMA or UTMA custodian, guardian, corporation, non-profit entity, or other legal entity, or any combination thereof.

(5) Plan manager--A financial institution that is under contract with the board to serve as a plan administrator.

(6) Qualified higher education expenses--Tuition, fees, books, supplies, and equipment that are required for the enrollment or attendance of a beneficiary at an eligible educational institution as defined by Internal Revenue Code of 1986, §529, as amended, and including in certain instances the following:

(A) In the case of a special needs beneficiary, "qualified higher education expenses" include expenses for special needs services that are incurred in connection with enrollment or attendance of the beneficiary at an eligible educational institution; and

(B) To the extent permitted by Internal Revenue Code of 1986, §529, as amended, beneficiaries who live off-campus and not at home may include in "qualified higher education expenses" a reasonable room and board allowance as determined by the eligible educational institution, and beneficiaries who live on campus may include in "qualified higher education expenses" the actual invoice amount that is charged for room and board, if that amount is greater than the allowance.

(7) Qualified withdrawal--A withdrawal from a savings trust account to pay the qualified higher education expenses of the beneficiary of the account.

(8) Savings trust account--An account that an owner establishes through the savings plan under this subchapter and Education Code, Chapter 54, Subchapter G, on behalf of a beneficiary for the purpose of applying distributions from the account toward qualified higher education expenses at eligible educational institutions.

(9) Savings trust agreement--The agreement between the owner that establishes a savings trust account and the board, which may be amended over time.

(10) Special needs beneficiary--A beneficiary who, because of a physical, mental, or emotional condition, including a learning disability, requires additional time to complete education courses or degree requirements. This definition shall be automatically amended from time to time to conform with the definition of special

needs beneficiary in any proposed, temporary, or final Treasury Department regulations. The board may adopt policies and procedures by which a beneficiary's status as a special needs beneficiary will be determined.

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**Source Note:** The provisions of this §7.101 adopted to be effective July 14, 2002, 27 TexReg 6044

7.102 a) Applicability of this subchapter. This subchapter applies to each savings trust agreement.

(b) Rights of owners and beneficiaries. The rights of an owner or a beneficiary under a savings trust agreement are subject to:

- (1) Education Code, Chapter 54, Subchapter G;
- (2) this subchapter; and
- (3) the terms and conditions of that agreement.

(c) Composition and content of savings trust agreements.

(1) The savings trust agreement between the board and an owner consists of:

(A) the application for enrollment that the owner submitted to the plan manager that has custody of the owner's savings trust account; and

(B) the master agreement for the savings plan, except when the agreement irreconcilably conflicts with Education Code, Chapter 54, Subchapter G; Internal Revenue Code of 1986, §529, as amended; regulations thereunder; or this subchapter.

(2) The savings trust agreement between the board and an owner is governed by:

(A) the terms of the agreement;

(B) this subchapter;

(C) Education Code, Chapter 54, Subchapter G, and any other applicable law of this state; and

(D) Internal Revenue Code of 1986, §529, as amended, regulations thereunder, and any other applicable federal law.

(3) The savings trust agreement between the board and an owner must contain the information that is required by Education Code, §54.707(c) and §54.709(d).

(d) Conflicts between Education Code, Chapter 54, Subchapter G, and the Internal Revenue Code of 1986, §529, as amended, or this subchapter and the master agreement. To the extent of irreconcilable conflict, the provisions of Internal Revenue Code of 1986, §529, as amended, and regulations thereunder; Education Code, Chapter 54, Subchapter G; and this subchapter prevail over the master agreement for the savings plan. The agreement is at all times subject to this subchapter. Any amendment to Internal Revenue Code of 1986, §529; Education Code, Chapter 54, Subchapter G; or this subchapter that would apply to the savings plan, a savings trust agreement, or a savings trust account will automatically constitute an amendment to the savings trust agreement.

(e) Disclosures and promotion of the plan.

(1) Every savings trust agreement, deposit slip, or similar document that is used in connection with a contribution to a savings trust account must clearly indicate that:

(A) the account is not insured by this state; and

(B) neither the principal that is deposited nor the investment return is guaranteed by this state.

(2) The promotional material or other savings plan information that is distributed to an owner or beneficiary shall disclose that:

(A) no money that is invested in the savings plan is insured by this state; and

(B) neither the principal that is deposited nor the investment return is guaranteed by this state.

(3) The promotional material or other savings plan information that is provided to the public, an owner, or a beneficiary must disclose the administrative fees and service charges that are imposed under Education Code, Chapter 54, Subchapter G.

(4) The promotion of or other form of disclosure of information about the savings plan to an owner or a

beneficiary must be done in a manner that is consistent with:

- (A) Education Code, Chapter 54, Subchapter G; and
- (B) Internal Revenue Code of 1986, §529, as amended.

(5) No plan manager, financial institution, or person who acts on behalf of either shall make any representation that is inconsistent with the requirements and limitations of this subchapter, or that is otherwise misleading with respect to any attribute of the savings plan, a savings trust agreement, or a savings trust account.

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**Source Note:** The provisions of this §7.102 adopted to be effective July 14, 2002, 27 TexReg 6044

7.103 (a) Intent to satisfy tax exempt requirements. This subchapter, the savings plan, each savings trust agreement, and each savings trust account hereunder are intended to satisfy all requirements of:

- (1) Internal Revenue Code of 1986, §529, as amended, and regulations thereunder; and
- (2) federal securities laws.

(b) Media for making payments to savings trust accounts. Any payment of an amount due to a savings trust account under a savings trust agreement must be made in cash or by electronic funds transfer.

(c) Excess contributions prohibited.

(1) The owner of a savings trust account may not contribute to the account any sum that would cause the balance of the account to exceed the amount that is required to pay the qualified higher education expenses of the beneficiary of the account. Contributions to a savings trust account may not be made if, as a result thereof, the balance of the savings trust account would exceed the sum of four times the cost of one year of undergraduate tuition, fees, books, supplies, and room and board at the most expensive educational institution that is eligible for the savings plan, and three times the cost of one year of graduate school tuition, fees, books, supplies, and room and board at the most expensive graduate school that is eligible for the savings plan, which amount will be determined and published annually by the board. Contributions to a savings trust account shall be limited to the amount, if any, by which the foregoing sum exceeds the balance of that savings trust account (together with the balance of all other savings trust accounts that are maintained under the savings plan for the beneficiary of that savings trust account). Any contribution that exceeds that limit will be promptly refunded, without interest or earnings, to the account's owner.

(2) A plan manager shall monitor contributions to each savings trust account that is in the manager's custody, to ensure compliance with any applicable limits on contributions.

(3) In application of these rules, the plan manager must determine whether the beneficiary of a savings trust account is the beneficiary of any other qualified tuition program under Internal Revenue Code of 1986, §529, as amended, that is maintained by the state, and must enforce the foregoing limitation on contributions by incorporating all other such accounts into calculations of allowed contributions.

(d) Separate accountings. A plan manager shall maintain a separate accounting for each savings trust account in the manager's custody.

(e) Investment and earnings control prohibited. Except as provided in §7.106(f) of this title (relating to investment alternatives), neither the owner of a savings trust account nor the beneficiary of that account may control or direct the investment of:

- (1) the principal of the account; or
- (2) any earnings of the account.

(f) Pledge of interest as security prohibited. Neither the owner of a savings trust account nor the beneficiary of that account may:

- (1) assign any interest in the account for the benefit of a creditor;
- (2) use any interest in the account as security or collateral for a loan or other obligation; or
- (3) otherwise alienate, sell, transfer, assign, pledge, encumber, or charge any interest in the account.

(g) Reports. A plan manager shall make reports that are required by:

- (1) Internal Revenue Code of 1986, §529, as amended; and

(2) any other applicable tax law.

(h) Policies and procedures. Except where in conflict with Education Code, Chapter 54, Subchapter G, or this subchapter, the board may adopt any policy or procedure, and such policy or procedure automatically amends each outstanding savings trust agreement as necessary for:

(1) the savings plan to obtain or maintain qualification as a qualified tuition program under Internal Revenue Code of 1986, §529, as amended;

(2) owners and beneficiaries to obtain or maintain the federal income tax benefits or favorable treatment that is provided by Internal Revenue Code of 1986, §529, as amended; or

(3) the savings plan to obtain or maintain exemption from registration under federal securities laws.

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**Source Note:** The provisions of this §7.103 adopted to be effective July 14, 2002, 27 TexReg 6044

7.104(a) Enrollment period. The savings plan will have an open, continuous enrollment period.

(b) Date on which applications for enrollment are considered to have been received. For purposes of this section:

(1) if an application for enrollment has an official postmark date that is affixed by the United States Postal Service, a plan manager is considered to have received the application on the earlier of:

(A) the official postmark date; or

(B) the date that is reflected on the date stamp to the application or equivalent documentation that evidences actual receipt of the application by the plan manager; or

(2) if an application for enrollment does not have an official postmark date that is affixed by the United States Postal Service, a plan manager is considered to have received the application on the date that is reflected on the date stamp to the application or equivalent documentation that evidences actual receipt of the application by the plan manager.

(c) Limitations on enrollment. The board may limit enrollment in the savings plan as the board considers necessary.

(d) Opening of savings trust account. A prospective owner may open a savings trust account if:

(1) the prospective owner enters into a savings trust agreement with the board;

(2) the prospective owner makes the minimum contribution that the plan manager that has custody of the account requires; and

(3) the maintenance and funding of the account would not cause excess contributions in violation of §7.103(c) of this title (relating to Excess Contributions Prohibited).

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**Source Note:** The provisions of this §7.104 adopted to be effective July 14, 2002, 27 TexReg 6044

7.105 To be determined in consultation with the selected plan manager(s).

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**Source Note:** The provisions of this §7.105 adopted to be effective July 14, 2002, 27 TexReg 6044

7.106 (a) Access to books and records. A plan manager shall provide the comptroller with access to the books and records of the manager as the comptroller determines necessary to assess the manager's compliance with Education Code, Chapter 54, Subchapter G, this subchapter, the savings trust agreement, or the contract between the board and the manager.

(b) Savings trust accounts. A plan manager shall hold each savings trust account in trust. Notwithstanding the foregoing, the Texas Trust Code shall not apply to a savings trust agreement or a savings trust account.

(c) Investments. A plan manager shall ensure that each investment by the manager is made with the judgment and care that a person of prudence, discretion, and intelligence would exercise in the management of the property of another, not in regard to speculation but in regard to the permanent disposition of funds, with

consideration of the probable income as well as the probable safety of capital.

(d) Marketing of savings plan.

(1) A plan manager shall develop a strategy to market the savings plan and present the strategy to the board for review. If the board approves the strategy, the manager shall fully implement that strategy.

(2) A plan manager may contract with a financial institution to market the savings plan on behalf of the manager.

(e) Account services. A plan manager may contract with a financial institution to provide account services to the owner of a savings trust account that the manager administers. The institution may charge a fee or commission for those services.

(f) Investment alternatives. The plan manager may formulate a variety of alternative investment strategies for savings trust accounts, so long as such strategies are consistent with the requirements and limitations of Internal Revenue Code of 1986, §529, as amended, and the regulations thereunder. An owner is entitled to select a strategy from among such alternatives, as permitted by Internal Revenue Code of 1986, §529, as amended.

(g) Board review. From time to time, and in accordance with procedures that the board establishes, the board shall review, monitor, and audit the actions of the plan manager and financial institutions, as described in subsections (c), (d), (e), and (f) above, and without impairment to any other right that the board may have to terminate a contract with a plan manager, may terminate the contract with a plan manager or withdraw its approval to any of the above matters, if in its judgment the board finds that continuation of that contract or the continued approval is not in the best interests of the owners and beneficiaries, so long as such action is consistent with rights and obligations of the board under the savings trust agreement.

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**Source Note:** The provisions of this §7.106 adopted to be effective July 14, 2002, 27 TexReg 6044

7.107. Any individual may be the beneficiary of a savings trust account, including the owner of that account.

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**Source Note:** The provisions of this §7.107 adopted to be effective July 14, 2002, 27 TexReg 6044

7.108 In the case of a roll-over contribution from another qualified tuition plan into a savings trust account, the board shall require that the owner provide additional information and certifications to confirm that the contribution is a qualified roll-over under Internal Revenue Code §529, as amended, and to properly specify that portion of the contribution that is attributable to the investment in the account that was maintained under the previous qualified tuition program and that portion of the contribution that is attributable to earnings that were accumulated in that account.

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**Source Note:** The provisions of this §7.108 adopted to be effective July 14, 2002, 27 TexReg 6044

7.109 A savings trust account may only be established with one owner at the time it is opened, and thereafter shall have only one owner except when owned by more than one individual, trust, estate, or UGMA/UTMA custodian, guardian, corporation, non-profit entity, or other legal entity (or any combination thereof) as a result of a transfer by operation of law.

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**Source Note:** The provisions of this §7.109 adopted to be effective July 14, 2002, 27 TexReg 6044

7.110 (a) Criteria for being a qualified replacement beneficiary. An individual may be the qualified replacement beneficiary of a savings trust agreement if:

(1) the individual is a member of the family of the former beneficiary who satisfies the requirements of

Internal Revenue Code of 1986, §529(e)(2), as amended, so that the change of beneficiary is not treated as a distribution under that law; and

(2) documentation that evidences the relationship between the individual and the former beneficiary is submitted to the plan manager that has custody of the savings trust account.

(b) Conditions for replacement of beneficiary. The owner of a savings trust agreement may replace the beneficiary of that agreement with another individual only if:

(1) the individual is a qualified replacement beneficiary as described in subsection (a) of this section; and

(2) the owner pays to the plan manager that has custody of the savings trust account any fees that are required under the board's administrative fee and service charge schedule.

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**Source Note:** The provisions of this §7.110 adopted to be effective July 14, 2002, 27 TexReg 6044

7.111 (a) General provisions. The owner of a savings trust account may withdraw any amount from that account if:

(1) the withdrawal is made in accordance with Education Code, Chapter 54, Subchapter G; this subchapter; and the applicable savings trust agreement;

(2) the owner certifies to the appropriate plan manager the portion, if any, of the withdrawal that constitutes a nonqualified withdrawal if requested by the plan manager; and

(3) the withdrawal would not adversely affect the tax status of the savings plan under applicable provisions of Internal Revenue Code of 1986, as amended. Notwithstanding the owner's certifications that are described in clause (2) above, the board may independently determine the extent to which any withdrawal constitutes a nonqualified withdrawal.

(b) Responsibility of plan managers. A plan manager shall monitor withdrawals from each savings trust account in the manager's custody to ensure compliance with any applicable limitations on withdrawals.

(c) Examples of particular types of withdrawals. The circumstances under which a withdrawal is authorized include the following.

(1) If the beneficiary of a savings trust agreement receives a full or partial scholarship for tuition and required fees, the owner of the agreement may withdraw the amount of the scholarship from the savings trust account. A withdrawal under this paragraph may occur:

(A) only as each academic term occurs; and

(B) only if proof of the scholarship is submitted to the plan manager that has custody of the account, in a form that is acceptable to the plan manager.

(2) If the beneficiary of a savings trust agreement dies or becomes disabled:

(A) The owner of the agreement may withdraw the entire balance of the savings trust account or replace the deceased or disabled beneficiary with a qualified replacement beneficiary as provided in §7.110 of this title (relating to Replacement of Beneficiary).

(B) If the owner of the agreement requests a withdrawal, the appropriate plan manager shall pay the withdrawal to the owner not later than the 60th day after the date on which the plan manager receives proof of the death or disability in a form that is acceptable to the plan manager.

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**Source Note:** The provisions of this §7.111 adopted to be effective July 14, 2002, 27 TexReg 6044

**EXHIBIT M**  
**TEXAS PREPAID HIGHER EDUCATION TUITION BOARD**  
**INVESTMENT POLICY STATEMENT**

*Note: These investment policies and statements are subject to revision and substantive changes due to the contract changes contemplated through this RFP and throughout the Contract term; such changes may be made by the Board at any time during the term.*

**TEXAS HIGHER EDUCATION**  
**SECTION 529 SAVINGS PLAN**  
**INVESTMENT GUIDELINES**

Adopted June 2002

## **Texas Higher Education Section 529 Savings Plan Investment Guidelines**

### **Part I. BACKGROUND**

The Texas Higher Education Section 529 Savings Plan (Plan) was created by Senate Bill 555 in the 77<sup>th</sup> Regular Session of the Texas Legislature (2001). The Plan was established to offer a program for tax-advantaged savings trust agreements from which distributions will be made for qualified higher education expenses at eligible educational institutions as provided in Internal Revenue Code, Section 529 and other applicable law. The Plan is governed and administered by the Texas Prepaid Higher Education Tuition Board, which also oversees the state's existing prepaid higher education tuition program. Pursuant to Section 529 and other applicable law, the Board reviews, supervises, monitors and audits the activities of the Plan Manager. The Texas Comptroller of Public Accounts (Comptroller) is the Executive Director of the Board, and Comptroller's Office employees serve at the direction of Comptroller as program administrators of the Plan as well as the prepaid tuition program.

#### **Definitions**

##### **The "Board" Defined**

In these Investment Guidelines, the "Board" refers to the Texas Prepaid Higher Education Tuition Board. The Board will contract with a financial institution to serve as plan manager (Plan Manager) of the Plan and to invest the money in savings trust accounts.

##### **The "Investment Committee" Defined**

In these Investment Guidelines, references to the "Investment Committee" or "Committee" are to the Committee of the Board that will advise on issues related to the investments of the Plan. The Board appoints members of the Committee.

### **Part II. THE PLAN**

The Plan is intended to provide eligible participants with the long-term accumulation of education savings for qualified higher education expenses through contributions to individual savings trust accounts and the earnings thereon.

The Plan's participants are expected to have different investment objectives, time horizons and risk tolerances. To meet these varying investment needs, participants will be able to direct their account balances, to the extent allowed by law, among a range of investment options to construct diversified portfolios that reasonably span the risk/return spectrum. Participants alone bear the risk of investment results from the options and asset mixes that they select.

Initially, investment choices under the Plan will include an age-based portfolio, two static allocation options and several single fund options.

### **Part III. THE PURPOSE OF THE INVESTMENT GUIDELINES STATEMENT**

These Investment Guidelines (Guidelines) are intended to assist the Plan Manager by ensuring that the Plan Manager makes investment-related decisions in a prudent manner. These Guidelines outline the underlying philosophies and processes for the selection, monitoring and evaluation of the investment options and investment managers utilized by the Plan. Specifically, these Guidelines:

- Define the Plan's investment objectives.
- Define the roles of those responsible for the Plan's investments.
- Describe the criteria and procedures for selecting investment options and investment managers or mutual funds.
- Establish investment procedures, measurement standards and monitoring procedures.
- Describe ways to address investment options and investment managers or mutual funds that fail to satisfy established objectives.

### **Part IV. INVESTMENT OBJECTIVES**

Investments in the Plan shall be made with the judgment and care that persons of prudence, discretion, and intelligence exercise in the management of the property of another, not in regard to speculation but in regard to the permanent disposition of funds, considering the probable income as well as the probable safety of capital.

The Plan's investment options will be selected to:

- Maximize return within prudent levels of risk.
- Provide returns comparable to returns for similar investment options.
- Provide exposure to a wide range of investment opportunities in various asset classes.
- Control administrative and management costs.

### **Part V. ROLES AND RESPONSIBILITIES**

The Board and the Plan Manager are responsible for holding in trust and investing plan assets in accordance with the terms of the Plan Manager agreement between the Board and the Plan Manager (Agreement), the Board's administrative rules, and applicable law. The Plan Manager and investment managers selected by the Plan Manager are responsible for making investment decisions consistent with the stated approach of the Plan, and reporting investment results on a quarterly basis.

The Plan Manager is responsible for maintaining and updating individual account balances as well as providing the Board and Plan participants information regarding plan contributions, withdrawals and distributions as required by the Agreement, the Board's administrative rules, and applicable law. The Plan Manager is responsible for:

- Establishing, maintaining and ensuring compliance with the Investment Guidelines.
- Selecting investment options, subject to Board or Committee approval.
- Selecting investment managers.
- Quarterly evaluating the Plan's investment performance.
- Recommending investment option changes to the Board or Committee as appropriate.
- Maintaining the Plan's compliance with Section 529 of the Internal Revenue Code and applicable law.

## **Part VI.**

### **SELECTION OF INVESTMENT OPTIONS AND INVESTMENT MANAGERS OR MUTUAL FUNDS**

The selection of investment options offered under the Plan is among the Plan Manager's most important responsibilities. Set forth below are the considerations and guidelines employed in fulfilling this fiduciary responsibility.

The Plan intends to provide an appropriate range of investment options that will span the risk/return spectrum. Further, the Plan's investment options will allow Plan participants to construct portfolios consistent with their unique individual circumstances, goals, time horizons and tolerance for risk. Major asset classes to be offered by the Board's current Plan Manager, Enterprise Capital Management (ECM), will include:

Stable Value

Fixed Income

Age-Based, 100% Stock and Balanced Allocation Options

Large Cap Stocks

Small Company Stocks

Global/International Stocks

The Board or Committee must first approve the specific investment options before the Plan Manager offers such options to the public. The Plan Manager may select investment managers to manage the specific investment options. Each investment manager must meet the following minimum criteria:

1. It should be a bank, insurance company or investment management company or an investment adviser under the Registered Investment Advisers Act of 1940.
2. It should be operating in good standing with regulators and clients, with no material pending or concluded legal actions.
3. It should provide detailed additional information on the history of the firm, its investment philosophy and approach, and its principals, clients, locations, fee schedules and other relevant information.

Assuming the minimum criteria are met, the particular investment under consideration should meet the following standards for selection:

1. Specific risk and risk-adjusted return measures should be established and agreed to by the investment manager, Plan Manager and the Board or Committee and be within a reasonable range relative to an appropriate, style-specific benchmark and peer group.
2. It should demonstrate adherence to the stated investment objective.
3. Fees should be competitive compared to similar investments.
4. The investment manager should be able to provide all performance, holdings, and other relevant information in a timely fashion, with specified frequency.

**Part VII. INVESTMENT OPTIONS**

**Age-Based Portfolios**

<b>Age-Based Portfolios</b>					
	<b>Age-Based Portfolio Allocations</b>				
<b>Underlying Fund</b>	<b>0-3</b>	<b>4-7</b>	<b>8-11</b>	<b>12-15</b>	<b>16+</b>
Money Market			10%	20%	45%
Government Securities	10%	25%	25%	30%	40%
Growth and Income	20%	20%	20%	15%	5%
Growth	20%	20%	15%	15%	
SSgA S&P 500 Index	20%	15%	15%	10%	5%
Small Co. Value	15%	10%	10%	10%	5%
Small Co. Growth	15%	10%	5%		

**Static Allocations**

- 100% Stock Allocation
  - 25% Growth
  - 25% Growth and Income

- 25% S&P 500 Index
- 10% Small Company Growth
- 15% Small Company Value
- **Balanced Allocation**
  - 40% Government Securities
  - 25% Growth
  - 25% Growth and Income
  - 10% S&P 500 Index

**Single Fund Options**

- Stable Value (Aegon)
- S&P 500 Index (SSgA)

**Additional Single Fund Options**

<b>Investment Category</b>	<b>Enterprise Fund Option</b>
Large-Cap Growth Stock	Enterprise Capital Appreciation
Large-Cap Growth Stock	Enterprise Equity
Large-Cap Value Stock	Enterprise Deep Value
Large-Cap Core Stock	Enterprise Growth
Large-Cap Core Stock	Enterprise Growth and Income
Small-Cap Growth Stock	Enterprise Small Company Growth
Small-Cap Value Stock	Enterprise Small Company Value
Socially-Screened Global Stock	Enterprise Global Socially Responsive
Flexible Portfolio	Enterprise Strategic Allocation
Multi-Sector Bond	Enterprise Total Return
Government Bond	Enterprise Government Securities

## **Performance Benchmarks**

The Committee intends to use the following guidelines for measurement of the funds' performance. The period for the assessment of fund performance relative to the objectives shall be a full market cycle. In lieu of a distinct market cycle, 3 and 5 year relative performance will be reviewed. Quarterly reports will also be reviewed.

The performance of each fund shall be measured on a time-weighted basis. Volatility of the funds shall be measured against the peer universe of funds.

The benchmarks to be used are:

<b>Fund Name</b>	<b>Benchmarks</b>
Stable Value	90-day Treasury Bills Ryan Labs 1-3 Year GIC Index
Total Return	Lehman Aggregate Bond Index Peer median of core fixed income mutual funds
Government Securities	Lehman Intermediate Government Bond Index Peer median of government fixed income mutual funds
Strategic Allocation Age-Based Portfolios	Blend of S&P 500, Lehman Aggregate and 91 day Treasury Bill Indices Peer universe of balanced funds
S&P 500 Index Fund	S&P 500 Index
Deep Value Growth and Income	Russell 1000 Value Index Peer universe of similarly managed mutual funds
Capital Appreciation Growth Fund Equity Fund	Russell 1000 Growth Index Peer median of similarly managed mutual funds
Small Company Value	Russell 2000 Value Index Peer median of similarly managed mutual funds
Small Company Growth	Russell 2000 Growth Index Peer median of similarly managed mutual funds
Global Socially Responsive	MSCI World Index Peer median of similarity managed mutual funds

## **Part VIII. INVESTMENT MONITORING AND REPORTING**

The ongoing monitoring of investments must be a regular and disciplined process. It is the mechanism for revisiting the investment option selection process and confirming that the criteria originally satisfied remain so and that an investment option continues to be a valid offering. While frequent change is neither expected nor desirable, the process of monitoring investment performance relative to specified guidelines is an ongoing process.

Monitoring will occur on a quarterly basis and utilize the same criteria that were the basis of the investment selection decision. Monitoring will include a formal review annually. The Plan Manager will promptly communicate to the Board any unusual, notable or extraordinary events. Examples of such events include portfolio manager or team departure, violation of investment guidelines, material litigation against the firm, or material changes in firm ownership structure, or announcements thereof.

**If overall satisfaction with the investment option is acceptable, no further action is required. If areas of dissatisfaction exist, the Plan Manager must take steps to remedy the deficiency. If over a reasonable period the investment manager is unable to resolve the issue, termination may result.**

## **Part IX. INVESTMENT MANAGER TERMINATION**

An investment manager should be terminated when the Plan Manager has lost confidence in the investment manager's ability to:

- Achieve performance and risk objectives,
- Comply with investment guidelines,
- Comply with reporting requirements, or
- Maintain a stable organization and retain key relevant investment professionals.

If the investment manager has consistently failed to adhere to one or more of the above conditions, it is reasonable to presume a lack of adherence going forward. Failure to remedy the circumstances of unsatisfactory performance by the investment manager, within a reasonable time, shall be grounds for termination.

Any decision to terminate an investment manager will be treated on an individual basis, and will not be made solely based on quantitative data. In addition to those above, other factors may include professional or client turnover, or material change to investment processes. Considerable judgment must be exercised in the termination decision process. The Plan Manager will provide the Board with at least thirty (30) days notice prior to terminating an investment manager. If an emergency situation exists requiring the immediate removal of an investment manager, the Plan Manager will provide the Board with reasonable notice prior to terminating such investment manager.

A manager to be terminated shall be removed using one of the following approaches as determined by the Plan Manager:

- Remove and replace with an alternative manager.
- Freeze the assets managed by the terminated manager and direct new assets to a replacement manager.
- Phase out the manager over a specific time period.
- Continue the manager but add a competing manager.

Replacement of a terminated manager would follow the criteria outlined in Part VI, Selection of Investment Options and Investment Managers or Mutual Funds.

#### **Part X. PARTICIPANT EDUCATION AND COMMUNICATION**

The Plan will communicate to participants that they control their own investments to the extent allowed by law and that annual investment changes are permitted to the extent allowed by law. The Plan will provide effective educational materials allowing participants to make informed decisions.

#### **Part XI. COORDINATION WITH THE PLAN DOCUMENT**

Notwithstanding the foregoing, if any term or condition of these Guidelines conflicts with any term or condition in the Plan, including the Agreement, the Board's administrative rules, and applicable law, the terms and conditions of the Plan shall control.

#### **Part XII. REVIEW AND REPORTING**

The Committee will review these Guidelines at least annually. The Board's Investment Contractor (Contractor) will monitor the selected funds on an ongoing basis and will provide the Committee with an annual, independent written review of the performance of each of the options. Performance will be evaluated on both a risk and return basis compared to the appropriate benchmark. In addition, Contractor will provide a review of the manager's style and performance relative to its peer-group. Other factors that will be considered as part of the review include the fund's adherence to these Guidelines and material changes in the fund's organization, investment style and/or personnel. If appropriate, and upon Committee approval, these Guidelines can be amended to reflect changes in the capital markets, or other factors relevant to the Plan.

**GUIDELINES ADOPTION**

This Guideline document was adopted by the Texas Prepaid Higher Education Tuition Board in June, 2002.

**Texas Prepaid Higher Education Tuition Board**

**By:** \_\_\_\_\_

**[Successful Respondent]**

**By:** \_\_\_\_\_

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

**Exhibit N**  
**Tomorrow's College Investment Plan**  
**Assets by Portfolio and Unit Class**  
**as of: February 28, 2007**

<b>Portfolio</b>	<b>Class A</b>	<b>Class B</b>	<b>Class C</b>	<b>Class T</b>	<b>TOTALS</b>	<b>%</b>
College-Ready Allocation	\$ 4,061,302	\$ 1,929,091	\$ 3,672,168	\$ 11,696,368	\$ 21,358,929	<b>10.3%</b>
1992-1995 Allocation	\$ 7,424,725	\$ 3,125,872	\$ 2,788,544	\$ 16,475,961	\$ 29,815,102	<b>14.4%</b>
1996-1999 Allocation	\$ 8,080,026	\$ 2,562,034	\$ 1,701,400	\$ 17,151,919	\$ 29,495,379	<b>14.2%</b>
2000-2003 Allocation	\$ 7,001,386	\$ 2,632,662	\$ 1,803,714	\$ 24,200,962	\$ 35,638,724	<b>17.2%</b>
2004-2007 Allocation	\$ 2,700,664	\$ 647,162	\$ 315,809	\$ 10,150,177	\$ 13,813,812	<b>6.7%</b>
<b>Total Age-Based Portfolios</b>	<b>\$ 29,268,103</b>	<b>\$ 10,896,821</b>	<b>\$ 10,281,635</b>	<b>\$ 79,675,387</b>	<b>\$ 130,121,946</b>	<b>62.7%</b>
Balanced Allocation	\$ 1,714,484	\$ 602,290	\$ 963,006	\$ 10,109,724	\$ 13,389,504	<b>6.5%</b>
100% Stock Allocation	\$ 2,182,803	\$ 1,094,059	\$ 1,629,053	\$ 15,431,009	\$ 20,336,924	<b>9.8%</b>
<b>Total Static Allocation Portfolios</b>	<b>\$ 3,897,287</b>	<b>\$ 1,696,349</b>	<b>\$ 2,592,059</b>	<b>\$ 25,540,733</b>	<b>\$ 33,726,428</b>	<b>16.3%</b>
Stable Value	\$ 2,403,788	\$ 546,700	\$ 793,714	N/A	\$ 3,744,202	<b>1.8%</b>
Government Securities	\$ 1,294,975	\$ 257,146	\$ 133,687	N/A	\$ 1,685,808	<b>0.8%</b>
Core Bond	\$ 1,293,349	\$ 384,110	\$ 459,341	N/A	\$ 2,136,800	<b>1.0%</b>
Deep Value	\$ 1,346,782	\$ 378,185	\$ 632,762	N/A	\$ 2,357,729	<b>1.1%</b>
Growth and Income	\$ 1,705,670	\$ 288,442	\$ 222,745	N/A	\$ 2,216,857	<b>1.1%</b>
S&P 500 Index	\$ 11,214,587	\$ 1,181,340	\$ 372,369	N/A	\$ 12,768,296	<b>6.2%</b>
Growth	\$ 2,204,786	\$ 1,144,181	\$ 887,854	N/A	\$ 4,236,821	<b>2.0%</b>
Equity	\$ 1,743,560	\$ 194,479	\$ 302,539	N/A	\$ 2,240,578	<b>1.1%</b>
Capital Appreciation	\$ 1,976,755	\$ 670,242	\$ 502,063	N/A	\$ 3,149,060	<b>1.5%</b>
Socially Responsible	\$ 738,218	\$ 129,901	\$ 353,297	N/A	\$ 1,221,416	<b>0.6%</b>
Small Company Value	\$ 4,175,001	\$ 1,003,791	\$ 687,940	N/A	\$ 5,866,732	<b>2.8%</b>
Small Company Growth	\$ 1,298,952	\$ 376,096	\$ 370,362	N/A	\$ 2,045,410	<b>1.0%</b>
<b>Total Single-Fund Portfolios</b>	<b>\$ 31,396,423</b>	<b>\$ 6,554,613</b>	<b>\$ 5,718,673</b>	<b>N/A</b>	<b>\$ 43,669,709</b>	<b>21.0%</b>
<b>TOTALS</b>	<b>\$ 64,561,813</b>	<b>\$ 19,147,783</b>	<b>\$ 18,592,367</b>	<b>\$ 105,216,120</b>	<b>\$ 207,518,083</b>	<b>100.0%</b>
<b>%</b>	<b>31.1%</b>	<b>9.2%</b>	<b>9.0%</b>	<b>50.7%</b>	<b>100.0%</b>	