



**TEXAS EDUCATION AGENCY**  
William B. Travis Building  
1701 North Congress Avenue  
Austin, Texas 78701-1494

**REQUEST FOR QUALIFICATIONS (RFQ)**

**RFQ No. 701-12-019**

**OUTSIDE LEGAL COUNSEL FOR THE STATE BOARD OF EDUCATION AND THE  
PERMANENT SCHOOL FUND: FIDUCIARY COUNSEL, ALTERNATIVE ASSETS  
PORTFOLIO/CONTRACTING AND TAX COUNSEL**

Authorized by Article VII Section 5 of the Texas Constitution

<b>PROPOSAL DELIVERY LOCATION:</b> Purchasing & Contracts Texas Education Agency 1701 N. Congress Ave., Room 2-125 Austin, TX 78701-1494	<b>REFER INQUIRIES TO:</b> PSFRFQ@tea.state.tx.us <b>Available from Wednesday, May 9, 2012 through Wednesday, May 16, 2012</b>
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**WITHOUT EXCEPTION - PROPOSAL MUST BE TIME AND DATE STAMPED BY THE TEA  
PURCHASING & CONTRACTS BEFORE:**

**Thursday, June 7, 2012 - 3:00 PM, Central Standard Time (CT)**

Pursuant to the Provisions of the Texas Government Code Title 10 Subtitle D Chapter 2156.121 – 2156.127, sealed proposals will be received until the date and time established for receipt. After receipt, only the names of the Proposers may be made to the public. Prices and other proposal details may only be divulged after award of a contract, if a contract is awarded.

All written requests for information will be communicated to all applicants known to the agency.

All proposals shall become the property of the State of Texas upon receipt.

All proposals must be delivered to the Texas Education Agency Purchasing & Contracts as required by the instructions within this request.

All addenda to and interpretation of this solicitation shall be in writing. The State shall not be legally bound by an addenda or interpretation that is not in writing.

**NOTE:** Failure to formalize the terms of the proposal by signing the Execution of Offer will result in disqualification of the offer contained within the bid package. Proposers must indicate any General Provisions terms that are not feasible with the submission of the proposal to this RFQ. If a proposal is signed and submitted without including a specific identification of all General Provisions that are not feasible, the State Board of Education (SBOE) and the Texas Education Agency (TEA) will not negotiate the General Provisions.

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# REQUEST FOR QUALIFICATIONS (RFQ)

## OUTSIDE LEGAL COUNSEL FOR THE STATE BOARD OF EDUCATION AND THE PERMANENT SCHOOL FUND: FIDUCIARY COUNSEL, ALTERNATIVE ASSETS PORTFOLIO/CONTRACTING AND TAX COUNSEL

### SECTION 1 INTRODUCTION AND PURPOSE

#### 1.1 PURPOSE OF THE REQUEST FOR QUALIFICATIONS (RFQ)

The Texas Education Agency (TEA) on behalf of the State Board of Education (SBOE) and the Texas Permanent School Fund (TPSF) seeks to identify outside counsel (Counsel) qualified to provide legal services in the following subject areas: Fiduciary Counsel, Alternative Assets Portfolio/Contracting and Tax Counsel. See "Scope of Services" below for detailed descriptions. TEA and the SBOE will tentatively pre-qualify firms for engagement if and when needed. This engagement is not exclusive, nor are TEA and TPSF obligated to engage Counsel in any case recommended or analyzed by Counsel. TEA reserves the right to engage other legal counsel or consultants to provide the same or similar services to TPSF. TEA and the SBOE will select counsel for each engagement, if any, based upon a number of criteria, including the respondent's demonstrated competence, experience, knowledge, qualifications, written and verbal communication skills, ability and willingness to comply with TEA contracting and invoicing requirements, absence of disqualifying relationships or conflicts of interest, and reasonableness of proposed fees, among others. Respondents may be asked to come to Austin for an interview to discuss the firm's experience and qualifications. There is no assurance that TPSF will experience a need during the period covered by this RFQ for any particular legal services, although TPSF anticipates that counsel will be engaged for investment contract matters, tax matters, and fiduciary matters. All PSF engagements will be submitted for attorney general approval. All PSF engagements are non-exclusive.

#### 1.2 BACKGROUND INFORMATION

##### 1.2.1 Texas Permanent School Fund Overview

The fifteen (15) member SBOE is responsible for the management of the TPSF under Article VII of the Constitution of the State of Texas. The goal established by the SBOE for the TPSF is to obtain the greatest amount of income and capital appreciation consistent with the safety of principal. The investment staff of the TPSF implements the policies of the SBOE and administers the TPSF according to SBOE goals and objectives. The TPSF staff functions as part of the internal operations of the TEA under the direction of the Commissioner of Education. SBOE members serve terms as specified in Texas Education Code section 7.101.

As of February 2012, the market value of TPSF was \$25.43 billion. The Fund was constitutionally created to provide a growing capital base to contribute to the public school system of Texas. Prior to July 2006, the TPSF's asset allocation targeted 55% domestic equities, 20% international equities and 25% fixed income securities. On July 7, 2006, the SBOE approved a new strategic asset allocation policy to diversify the TPSF assets into alternative asset classes whose returns are not as correlated to traditional asset classes. The strategic asset allocation was amended in 2008, again in July 2010, and was most recently amended on September 16, 2011. It is expected that over time, this shift to diversify will provide incremental total return at reduced risk. The new target asset allocation is being implemented over multiple years and asset classes are strategically added commensurate with the economic environment and the goals and objectives of the SBOE. The current strategic allocation plan for the TPSF assets includes diversifying into emerging market

equities, small/mid cap international securities, private equity, real return, risk parity, and absolute return strategies.

### **1.2.2 Regulation and Administration**

The TPSF is regulated by Article VII of the Texas Constitution. In 1988, Section 5(d) was approved by the voters of the State which allowed the TPSF to be managed by the prudent person standard. Instructions for linking to the following legal documents can be found in **EXHIBIT A**:

- a. Article VII of The Texas Constitution
- b. Chapter 33 of the Texas Administrative Code: Statement of Investment Objectives, Policies, and Guidelines of the Texas Permanent School Fund.
- c. Chapter 43 of the Texas Education Code: Permanent School Fund and Available School Fund

The SBOE manages the TPSF through the Committee on School Finance/Permanent School Fund, which is comprised of five of the fifteen members of the SBOE. The TPSF is administered by the Investment Office of the Texas Education Agency, pursuant to the policies established by the SBOE. The Investment Office is headed by the Executive Administrator and currently has a staff of twenty-seven. For internal administrative purposes, the Investment Office reports to the Commissioner of Education. For TPSF management purposes, the investment staff meets periodically with the Committee on School Finance/Permanent School Fund to report on the investment activities of the TPSF.

The TPSF portfolio is internally and externally managed. TPSF assets are held by a custodian bank and a future commission merchant. The bank custodian is authorized to lend a portion of the TPSF securities held by the custodian. The bank custodian appoints subcustodians in foreign jurisdictions where TPSF invests. TPSF engages non-discretionary consultants to advise the SBOE and staff regarding investment matters. Presently, the TPSF has under its employ a non-discretionary general consultant and a non-discretionary real estate consultant.

Additional information about TEA is available at the TEA website. Links to additional information are in **EXHIBIT A**.

## **1.3 MINIMUM QUALIFICATIONS OF THE PROPOSER**

### **1.3.1 General Information Regarding Outside Counsel**

The Office of the Attorney General of Texas (OAG) generally provides legal representation to TEA in litigation. The TEA Legal Division has primary responsibility to manage, monitor and coordinate the provision of legal services by outside counsel in other matters. Counsel are selected by the SBOE and approved by the Attorney General. Any engagement resulting herein will be documented by a form contract that has been approved by the OAG, and is subject to further modifications by TEA or the OAG.

Many of the services to be performed will require Outside Counsel's presence in Austin, Texas advising the SBOE and the TPSF or will involve advice and legal services related to Texas law, including Texas Constitutional provisions and Texas Government Code statutes. The subject matter areas described in Section 1.5, Scope of Services, are independent and may be the subject of separate engagements or they may be combined into one engagement agreement (subject to OAG approval). Respondents may respond with respect to any one or more of the subject matter areas (or any relevant sub-area (*e.g.*, private equity investments) in which they consider themselves qualified. **A separate response is required for each subject matter area.**

### 1.3.2 **Minimum Qualifications**

The following minimum qualifications are required by TEA for outside legal counsel:

- a. The Lead and Co-Lead attorneys assigned to the TEA/TPSF team must be licensed and currently eligible to practice law in the state of Texas as reflected by the State Bar of Texas Online Membership Directory (required by the OAG).
- b. The Lead and Co-Lead Attorneys assigned to the TEA/TPSF team must be in good standing with the State Bar of Texas with no public disciplinary history in Texas or elsewhere as reflected by the State Bar of Texas' Online Membership Directory.
- c. Attorneys assigned to the TEA/TPSF team must be engaged in the active practice of law for at least seven (7) consecutive years prior to the date of responding to this RFQ.
- d. Counsel firms must maintain malpractice insurance or an acceptable substitute in an amount acceptable to the agency (\$1 million).
- e. Counsel firms must have expertise in partnership, corporation, limited liability partnership and limited liability corporation law; investment, endowment, public fund and trust fund law; fiduciary law and contracts law, as relevant to the subject area for which a response is made.
- f. Attorneys assigned to the TEA/TPSF team must demonstrate at least five (5) consecutive years of experience in the subject area for which a response is made.
- g. Attorneys assigned to the TEA/TPSF team and Counsel firms must agree to comply with the TPSF Code of Ethics Texas Administrative Code (TAC) Title 19 Part 2 Chapter 33 Rule 33.5, the reporting requirements there under, other applicable state laws, and the conflict-of-interest provisions of the agreement. Please link to: [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac view=4&ti=19&pt=2&ch=33&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac view=4&ti=19&pt=2&ch=33&rl=Y) to review the current policy statement. This minimum qualification will apply to any and all amendments to 19 TAC Chapter 33.5 that are being considered by the SBOE concurrent with the issuance of this RFQ. All approved amendments may be found at the same electronic posting site in the near future.

Proposers must complete and return the Statement of Minimum Qualifications contained in **DOCUMENT C**. Failure to provide complete information may, in the sole discretion of TEA/TPSF result in the rejection of the proposal.

### 1.4 **MINIMUM COMPLIANCE RELATED TO THE PROCUREMENT PROCESS**

Of particular significance to this procurement process is the need to comply with the following provisions of the TPSF Investment Procedures Manual related to communications between parties:

- a. This RFQ was authorized for issuance and posting by the SBOE on April 20, 2012.
- b. From the time that a RFQ is authorized by the SBOE to be distributed by TEA staff to prospective Proposers and continuing through the selection date, a Blackout Period will exist. No communication involving the TPSF or the type of investment or service that is the subject of the RFQ is permitted with any SBOE member during the Blackout Period.
- c. Applicants performing other duties on behalf of the TPSF may communicate with SBOE members concerning those other duties in writing or at a Committee or SBOE meeting. Written communications shall be copied to all SBOE members and the Executive Administrator, who will aggregate such communications and timely provide copies to all SBOE members.

Any Proposer seeking to provide outside expertise to the TPSF and found in violation of these procedures shall be disqualified from the RFQ or evaluation process with respect to the applicable RFQ.

Prospective Proposers providing outside expertise shall further comply with all other statutory provisions regulating RFQs.

## **1.5 SCOPE OF SERVICES**

Each of the subject matter areas is described in more detail below. With regard to investment matters, SBOE will prefer to engage firms with expertise and qualifications in all of the subject matter areas described below. However, SBOE will consider separate engagements based on demonstrated qualifications by subject matter area or firm specialization. SBOE anticipates that the Alternative Assets Portfolio will generate the largest demand for ongoing outside legal services. This engagement is not exclusive, nor is the SBOE/TEA and TPSF obligated to engage Counsel in any case recommended or analyzed by Counsel. SBOE and TEA reserve the right to engage other legal counsel or consultants to provide the same or similar services to TPSF. Respondents may respond to one or more of the requested subject areas; however, a separate response is required for each subject matter area.

### **1.5.1 Fiduciary Counsel Activities**

Outside fiduciary counsel selected by the SBOE will provide specialized legal advice about compliance with fiduciary responsibilities. The services of fiduciary counsel will generally be coordinated through the office of the TEA General Counsel. Fiduciary counsel should expect to have significant contact with in-house counsel, other outside counsel, and key staff personnel. Fiduciary counsel will attend SBOE board or committee meetings when requested by the Chairman of the SBOE, the Chief Investment Officer/Executive Director of the Fund, or by TEA General Counsel. Fiduciary counsel must be able to demonstrate substantial practical knowledge, skill, and experience with respect to the legal duties of trustees, including without limitation the common law of trusts, the Texas Trust Code (Tex. Prop. Code), and relevant case law. Fiduciary counsel must demonstrate expertise in endowment administration and investment matters generally, including portfolio theory, public fund administration, conflicts of interest, prohibited transactions, and "social investing." Fiduciary counsel should have experience with the legal concerns of institutional investors. Additionally, counsel should have experience with ERISA (TPSF is not subject to ERISA), and the Internal Revenue Code as it relates to public funds, permanent funds, and public endowments. Finally, counsel should be able to demonstrate political sophistication and sensitivity to conflicts of interest questions and related ethics issues, especially as they relate to transactions involving TPSF assets.

Fiduciary counsel will perform the following duties:

- a. Respond with oral or written legal opinions to questions regarding fiduciary duties submitted by the SBOE, the Chairman of the SBOE, the Chief Investment Officer/Executive Administrator, or the TEA General Counsel.
- b. Review investment policies and procedures as requested, review proposed changes, and submit comments and recommendations to TPSF staff and SBOE.
- c. Provide as requested, an education training program on fiduciary responsibility, including a written outline, to the SBOE and key staff.
- d. Provide requested opinions on ethics and conflict of interest questions with respect to fiduciaries.
- e. Assist as requested in the communication of fiduciary concerns involving TPSF to board members, staff, consultants, advisors and other parties.
- f. Attend TPSF board meetings when requested by the Chairman of the SBOE, the Chief Investment Officer/Executive Administrator or the TEA General Counsel and respond to questions regarding fiduciary duties.

g. Provide advice on potential liabilities of board members and other TPSF fiduciaries.

Counsel will be expected to have or develop a working knowledge of Texas laws creating or governing the TPSF.

### **1.5.2 Alternative Assets Portfolio Investment Transactions and Contracting.**

As described previously, TPSF is strategically deploying funds into alternative assets, which may include private equity funds, absolute return hedge funds, real return, commodities and real estate funds. To be qualified for engagement in this area, candidates must have extensive experience and qualifications in structuring investment vehicles, and should be familiar with the formation and organization of both domestic and foreign investment funds in jurisdictions offering a favorable tax regime for such funds.

Counsel for alternative assets transactions must also have demonstrated experience and qualifications in the following areas: state and federal securities law exemptions, including Regulation D, secondary transactions in partnership or LLC interests, "Plan Assets," "Venture Capital Operating Company," and "Qualified Professional Asset Manager" regulations and exemptions under ERISA, unrelated business taxable income ("UBTI"), and federal tax issues relating to investments in domestic and offshore investment vehicles, distributions in kind (restricted securities), and indemnification (coupled with a working knowledge of D&O insurance). Qualified counsel will also be generally familiar with public endowment law, public funds law, trust law principles, ERISA concepts, and regulation of investment advisers, and investment companies. Qualified counsel will also have expertise in commercial real estate investment vehicles and entities, financing arrangements, securitization, infrastructure, REITs, and general commercial real estate law incidental to private real estate fund investments. If requested, counsel will attend TPSF committee or board meetings to present information and advice.

Alternative assets counsel will perform the following duties:

- a. Assist and advise TPSF staff and consultants with respect to the investment due diligence for these transactions.
- b. If requested by TPSF, counsel will perform additional legal due diligence and prepare memoranda discussing the organization of the fund investment selected, material and/or significant terms of the proposed investment.
- c. If requested by TPSF, counsel will recommend issues to be addressed in side letter agreements.
- d. If requested by TPSF, counsel will draft, review, comment on, and negotiate the terms of each fund's constituent documents and side letter agreements directly with fund representatives on behalf of TPSF.
- e. If requested by TPSF, counsel will assist with preparation of subscription documents and closing matters.

Counsel selected for this subject area must have extensive experience and qualifications to assist TEA and TPSF in contracting for services related to alternative assets. This shall include knowledge of Texas procurement laws and TEA procurement policies and procedures as they relate to contracting for professional services, consultant services and external investment management services.

### **1.5.3 Tax Counsel**

TEA/TPSF desires to retain outside tax counsel for matters specifically related to alternative assets, including unrelated business taxable income; and generally for matters related to taxable entity, foreign tax exemption and reclamation related to foreign securities transactions and arbitrage regulations. Tax counsel will have extensive relevant experience applicable to public endowments, public funds, governmental organizations, and permanent funds. Tax counsel should be conversant with federal tax withholding issues and unrelated business income tax statutes, rulings, cases, and regulations. Tax counsel will:

- a. If necessary and requested during the engagement, prepare determination requests; represent the TPSF in applying for a determination letter, and represent TPSF before the IRS to obtain a determination letter.
- b. Assist TPSF in obtaining other tax-related rulings, letters and determinations from the U.S. Internal Revenue Service.
- c. Respond with formal legal opinions or memoranda of law to questions submitted regarding federal tax issues.
- d. Advise and assist TPSF on exemption at source and the tax reclamation process for foreign securities transactions.
- e. Advise TPSF concerning unrelated business taxable income issues.
- f. Attend meetings and hearings, including legislative hearings, to testify, present information, or respond to questions concerning federal tax issues. (Regular legislative sessions run from January through May of each odd-numbered year.)
- g. Attend SBOE meetings when requested by the SBOE, the Chairman of the SBOE, the Chief Investment Officer/Executive Administrator, or the TEA General Counsel and respond to questions regarding tax matters related to the TPSF.

**Note: Counsel engaged for tax matters must represent in the outside counsel agreement that neither it nor any attorney of the firm working on TEA and TPSF matters is required to register as a lobbyist under Tex. Govt. Code Chapter. 305, and that no such attorney is registered as a lobbyist. Counsel must also agree that neither it nor any other attorney of the firm working on TEA and TPSF matters will register as a lobbyist during the term of the engagement.**

## **1.6 TERM OF PRE-QUALIFICATION**

Subject to the review of the SBOE, TPSF, and/or TEA, firms that are selected for pre-qualification may retain pre-qualified status through the final closing date of the RFQ. Firms that are pre-qualified at the completion of this RFQ are subject to continuous review and may have their pre-qualified status removed at the discretion of the SBOE, at any time, for any reason and without explanation.

The RFQ has a final termination date of August 31, 2017.

Any potential engagement is not exclusive, nor is TPSF obligated in any case to engage attorneys, or seek legal counsel from outside lawyers. Subject to applicable statutes and procedures, TEA reserves the right to engage other Counsel to provide the same or similar services to TPSF. The SBOE and TEA will select Counsel for each engagement, if any, based upon a number of criteria, including the respondent's demonstrated competence, experience, knowledge, qualifications, written and verbal communication skills, ability and willingness to comply with TEA contracting and invoicing requirements, absence of disqualifying relationships or conflicts of interest, and reasonableness of proposed fees, among others. There is no assurance that TPSF will experience a need during the period covered by this RFQ for any particular legal services. All TPSF engagements are non-exclusive.

## **1.7 FEE PROPOSAL**

Selected firms and/or attorneys will only receive compensation for work actually performed as requested by the SBOE, TEA and/or TPSF. The OAG recommends a \$525 per hour cap on outside counsel rates paid by the State, and TEA will not approve an hourly rate above \$525.

Travel expenses must be approved in advance by TEA and the TPSF to receive reimbursement. Any reimbursement for travel expenditures will be at State approved rates in accordance with State travel regulations. <https://fmx.cpa.state.tx.us/fm/travel/index.php>

Proposers must submit a fee proposal by completing all documents in the **DOCUMENT G** set.

Fees must be justified in terms of activities and anticipated expenditures must be reasonable (i.e., consistent with current market price and practice) and necessary to accomplish the objectives stated herein. The fee proposal must evidence that financial resources are adequately and appropriately allocated among fee categories in a cost-effective and prudent business manner to accomplish the objectives stated herein. Services to be purchased from other agencies, subcontractors, including any amounts subcontracted to HUBs, consultants, and others must be specified.

Payment will be made upon satisfactory performance of services, receipt by the TEA of specified deliverables, and receipt of properly prepared and certified invoices/expenditure reports.

## SECTION TWO GENERAL INSTRUCTIONS AND STANDARD PROPOSAL REQUIREMENTS

All proposals in response to this request must meet the following conditions in order to be considered. Failure to meet these conditions shall result in disqualification of proposal and the proposal shall receive no further consideration.

### 2.1 PROPOSAL SUBMISSION, DATE, AND TIME

PROPOSAL DUE DATE and TIME: **Thursday, June 7, 2012, 3:00 PM, CT**

- WITHOUT EXCEPTION – **A proposal must be date and time stamped by the TEA Purchasing & Contracts staff before the proposal due date and time.**
- WITHOUT EXCEPTION – A proposal **will not be accepted** by facsimile transmission (FAX).

Proposals must be submitted as follows:

In sealed box(es);

- a. Proposer's name, prominently displayed on each box;
- b. RFQ No. 701-12-019, prominently displayed on each box;
- c. Closing date: **June 7, 2012**, prominently displayed on each box;
- d. Indicate: box # of total box #, prominently displayed on each box;
- e. **Single box weight not to exceed 50 lbs;**
- f. Addressee: **Purchasing & Contracts, Rm. 2-125  
Texas Education Agency  
William B. Travis Bldg.  
1701 N. Congress Ave.  
Austin, TX 78701-1494**
- g. Box **15** printed copies of **each subject submitted** and **5** CDs of the entire submission (See: Sect. 3 Proposal Format and Content);
- h. Proposer's name, RFQ # 701-12-019, and closing date clearly marked on each CD;
- i. Package CDs separately, do not place CDs inside individual proposal responses;
- j. Proprietary etc. clearly marked (See: Sect 2.6 Disclosure of Proposal Content).

Proposers must sign the "Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences" **DOCUMENT I**. By signing, the Proposer or the Proposer's legally authorized agent affirms that the all statements within the proposal are true and correct. Proposers must indicate, in writing, any General Provisions, terms, or conditions that are not feasible with the submission of the proposal to this RFQ. Discovery of any false statement in the proposal is a material breach and shall void the submitted proposal or any resulting contracts and Proposer shall also be removed from all vendor lists maintained by the state of Texas.

### 2.1.1 **Receipt of Proposals**

To be eligible to be considered for funding, **proposals must be received in the TEA's Purchasing & Contracts Division (PCD) on or before 3:00 p.m. (Central Time) on the closing date** as specified in the RFQ. In establishing the time and date of receipt, the Commissioner of Education will rely solely on the time/date stamp of the Purchasing & Contracts Division.

### 2.1.2 **Method of Submittal**

Regardless of the method of submitting the proposal—United States Postal Service (USPS), United Parcel Service, Federal Express or any other delivery service—the **proposal must be received in the agency's Purchasing & Contracts Division by 3:00 PM (Central Time) on or before the closing date in order to be considered.**

**Note:** TEA WILL NOT accept a USPS postmark and/or round validation stamp, mail receipt with the date of mailing stamped by the USPS, a dated shipping label, invoice or receipt from a commercial carrier, or any other documentation as proof of receipt of any proposal. Proposers are advised that TEA assumes no responsibility, due to any circumstances, for the receipt of a proposal after the deadline time and date established in this RFQ.

### 2.1.3 **Purchasing & Contracts Division**

TEA's Purchasing & Contracts is open Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding holidays. Proposals will not be considered if received in PURCHASING & CONTRACTS after 3:00 p.m. (Central Time) on the closing date. PURCHASING & CONTRACTS is located on the 2nd floor of the William B. Travis Bldg, 1701 N. Congress (at 17<sup>th</sup> St. and N. Congress, two blocks north of the capitol) in Room 2-125 Austin, TX 78701-1494. The mailing address is:

Purchasing & Contracts  
Texas Education Agency William B. Travis Building  
1701 N. Congress Avenue, Room 2-125 Austin, TX 78701-1494

### 2.1.4 **Number of Copies of Proposal**

Fifteen (15) copies of the proposal for each subject matter must be submitted. Additionally, five (5) electronic proposal copies that can be duplicated must be provided for each subject matter response in both Microsoft Word and PDF format. The required number of copies of the proposal must be received in the TEA Purchasing & Contracts Division by 3:00 p.m. on the established deadline date. Failure to meet this condition shall result in disqualification of proposal and the proposal shall receive no further consideration.

Photocopying is not available at TEA.

Additions or replacements to the proposal will not be accepted after the closing date for receiving the proposal in the Purchasing & Contracts of TEA.

## 2.2 EXPECTED SEQUENCE OF EVENTS/CRITICAL DATES

DATE	EVENT
Friday, May 4, 2012	Publication of Request for Qualifications on the Electronic State Business Daily (ESBD) at <a href="http://esbd.cpa.state.tx.us">http://esbd.cpa.state.tx.us</a> .
Wednesday, May 9, 2012 through Wednesday, May 16, 2012	Proposer's Question and Answer Forum with questions e-mailed to <a href="mailto:psfrfq@tea.state.tx.us">psfrfq@tea.state.tx.us</a> and questions and answers posted to the Electronic state Business Daily at <a href="http://esbd.cpa.state.tx.us">http://esbd.cpa.state.tx.us</a>
Thursday, June 7, 2012	Proposal is due in the Purchasing & Contracts 3:00 p.m., Central Time.
Wednesday, July 19, 2012	Possible interviews for qualified firms.
September 1, 2012	Beginning date of contract and date assigned work may commence.
August, 31, 2013	Ending date of contract and any outstanding work product submitted to the TEA with final billing.

*It should be noted that all of these dates except the final completion date may vary slightly as conditions require.*

## 2.3 PROPOSERS QUESTION AND ANSWER FORUM

- ✓ Beginning: Wednesday, May 9, 2012
- ✓ Ending: Wednesday, May 16, 2012
- ✓ Questions: [PSFRFQ@tea.state.tx.us](mailto:PSFRFQ@tea.state.tx.us)
- ✓ Answers: <http://esbd.cpa.state.tx.us>

Proposers will be provided a forum to ask questions and receive clarifying information about the scope, discrepancies, omissions, or doubts as to the meaning of the specifications of the RFQ. All questions must include representative's name, name of the firm represented, address, telephone number, fax number, and e-mail address. The questions and posted responses will be de-identified. Answers will be updated and posted regularly at the Electronic State Business Daily (ESBD) at <http://esbd.cpa.state.tx.us>.

Any clarifications or interpretations of this RFQ that materially affect or change its requirements will be issued as an Addendum by TEA. It is the responsibility of interested parties to periodically check the ESBD for updates to the procurement prior to submitting a bid. The Respondent's failure to periodically check the Electronic State Business Daily (ESBD) will in no way release the selected vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFQ. It is the responsibility of all respondents to obtain this information in a timely manner. No oral explanation in regard to the meaning of the RFQ will be made and no oral instructions will be given before the award of the contract.

To search the Electronic State Business Daily, Select "Texas Education Agency - 701" from the drop down Name box, order the results by "Agency" and hit "go". From the list of proposals currently posted for TEA, select this proposal and links to all electronic documents will be available at the bottom of the posting, listed as "packages".

TEA may, at its discretion, post additional information as an Addendum if TEA determines any matter to require clarification. Proposers shall consider only those clarifications or interpretations to the RFQ specifications that TEA issues by addenda five (5) calendar days prior to the submittal deadline. Interpretations or clarifications in any other form will not be binding on TEA and should not be relied on in preparing proposals.



## 2.4 STANDARD PROPOSAL REQUIREMENTS

Proposals that address only part of the requirements contained in this RFQ can be considered non-responsive.

TEA reserves the right to reject any and all proposals and to negotiate portions thereof.

TEA makes no representations, written or oral, that it will enter into any form of agreement with any respondent to this RFQ and no such representation is intended or should be construed by the issuance of this RFQ.

The fee schedule submitted by the proposer is subject to negotiation by the TEA.

TEA reserves the right to select the proposal containing the best offer considering the outcomes desired. The proposer shall furnish such additional information that the Agency may reasonably require.

## 2.5 STATE NOT RESPONSIBLE FOR PREPARATION COSTS

The SBOE and TEA will not be liable for any costs incurred in the preparation and submittal of a proposal.

## 2.6 DISCLOSURE OF PROPOSAL CONTENT

After contract award, proposals are subject to release under the Texas Government Code, Chapter 552, Public Information Act.

Proposers **must**:

- a. Indicate on their proposal cover if their submission contains proprietary, confidential, or copyright material i.e., something that is considered a trade secret, or is protected by patent or copyright laws.
- b. Identify each document, page, and answer within the proposal if proprietary, confidential, or copyright material.
- c. **Clearly mark** each document, page, and answer.

A link to the Government Code citation is included in **EXHIBIT A**. As such, if an open records request related to the RFQ process is received by the TEA to disclose documents, the TEA would have to follow the procedures of Tex. Govt. Code Chapter 552. Exceptions to disclosure do exist and it is possible that confidentiality can be defended under the requirements of Tex. Govt. Code Section 552.110 Exception: Trade Secrets; Certain Commercial or Financial Information. If there appears to be an exception to disclosure, the matter would be presented to the Texas Attorney General to issue a decision and render an opinion about the confidentiality of the said document. The burden of proof concerning confidentiality rests with the author of the document and the PSF would not be required to argue on another's behalf. All opinions from the Texas Attorney General are binding.

## 2.7 INDEPENDENT AUDITING STANDARDS AND CONFLICT OF INTERESTS

If an entity or its subsidiary has or is currently contracted with TEA to perform professional services or consulting (non-audit) services, then they cannot be awarded a contract to provide financial audit, attestation, or performance audit services for two years from finishing an engagement.

An entity or its subsidiary that performed financial audit, attestation, or performance audit services for TEA, may not receive a contract award to perform professional services or consulting (non-audit) services for two years.

## SECTION THREE PROPOSAL FORMAT AND CONTENT

### 3.1 PROPOSAL FORMAT AND CONTENT

**A separate response submission is required for each subject matter area that is proposed.** The attached Contact Data Sheet (**DOCUMENT E**) should be completed for each subject matter area for which a response is submitted, and included as the cover page to **DOCUMENT F**.

To aid review, please do not submit responses in binders or fasteners (other than ordinary staples or clips) or with thick covers. To conserve space, please do not submit custom-printed folders, brochures, binders or firm résumés. Pages must be numbered sequentially (beginning after the Contact Data Sheet), with the name of the firm printed on each page. A response, exclusive of appendices and any title page, must be on standard white or buff 8 1/2" x 11" paper in at least 10 point type, and may not exceed ten(10) (double-sided) pages for each subject matter area. Supplemental information (such as general firm information or attorney résumés), if any, must be restricted to appendices following the responses. Fifteen (15) copies of each subject matter submission, **punched for standard three-hole binder**, must be submitted under a cover letter on firm letterhead. In addition, proposers should submit five (5) labeled electronic CDs containing **all** proposal submissions in both PDF and MS Word versions (including all attachments). Prospective counsel is strongly encouraged **to be as brief as possible in their responses. Responses should be narrowly focused on firm and attorney competency, qualifications, and experience in substantially similar client matters for similar clients.**

Please package the proposal responses and the CDs in separate containers. Do not place CDs inside individual proposal responses. Proposals **must** be submitted in a manner which does not carry any benefit, keepsake, or value for members of the review panel.

Proposal format and content should include the following:

- a. Proposal Cover Page, **DOCUMENT A** Check (✓) if contains proprietary material
- b. A signed Proposal Content Checklist, **DOCUMENT B**
- c. Proposal Content: **DOCUMENT C through DOCUMENT J**,
- d. Proprietary and/or confidential, clearly marked
- e. Tabs between each **DOCUMENT**,
- f. Sequentially numbered pages from front to back. (1, 2, 3, etc.)
- g. Written on 8 1/2" x 11" paper
- h. Each Subject does not exceed 10 double-sided pages
- i. Three Hole Punched, clipped, no binding or binders please.

#### 3.1.1 **Proposal Cover Page**

Proposals should include a Proposal Cover Page, which checks the method of proposed service delivery offered, checks if the proposal contains proprietary material, and clearly states the name of the firm or organization and the name, position, and telephone number of the proposer's Administrator who may be contacted regarding the proposal, **DOCUMENT A**.

#### 3.1.2 **Proposal Content Checklist**

Proposals should include a Proposal Content Checklist, **DOCUMENT B**. This checklist is to assist proposers in ensuring that all information is included in their response. Proposers **must** refer to the appropriate section of the RFQ for detailed information. Failure to return all information on the checklist can disqualify the proposal.

### 3.2 PROPOSER'S FINANCIAL RESPONSIBILITY

All proposers **must** submit along with the proposal, indicators of financial stability. Proposers should submit their most recent audited financial statement or a certified public accountant-compiled financial

report. Levels of financial disclosure and financial responsibility are factors in the evaluation process. The TPSF will determine whether the documents submitted are sufficient.

Proposers shall provide any details of all past or pending litigation or claims filed against the firm that may affect performance under a contract with TEA.

Proposal shall identify if the proposer is currently in default on any loan agreement or financing agreement with any bank, financial institution or other entity. If so, specify date(s), details, circumstances, and prospects for resolution.

Proposers shall complete **DOCUMENT D** to indicate the financial information provided for evaluation and review, and **DOCUMENT D Supplement** to describe the information and provide details.

Failure to meet these conditions can disqualify the proposal.

### 3.3 UNDERSTANDING OF THE SCOPE OF WORK

The proposer **must** describe clearly, specifically, and as completely as possible, the methodology for carrying out the scope objectives and requirements as described in this RFQ. Complete **DOCUMENT Set F** answering all questions as thoroughly as possible to address the requirements of Section 1.5 Scope of Work. When completing the Data Intakes, proposers must provide satisfactory evidence of capability to manage and coordinate the types of activities described in the RFQ.

<b><u>DOCUMENT F-1</u></b>	General Information about the Firm
<b><u>DOCUMENT F-2</u></b>	Data Intake – Fiduciary Counsel
<b><u>DOCUMENT F-3</u></b>	Data Intake – Alternative Assets Portfolios/Contracting
<b><u>DOCUMENT F-4</u></b>	Data Intake – Tax Counsel

### 3.4 CONFLICTS OF INTEREST

The proposal **must** describe any potential conflicts of interest that might arise in the course of providing the services required in this RFQ. Potential conflicts of interest that might occur include but are not limited to the following: payment of fees for any reason to consultants that may recommend managing various asset allocation mandates, owning or participating in the ownership of money management firms or brokerage firms, or paying fees to or receiving fees from TPSF Service Providers.

The appropriate Conflicts of Interest and Contacts document set should be completed in its entirety for the firm as a whole and for each individual as described.

<b><u>Document Set</u></b>	<b><u>Completed By</u></b>
<b>DOCUMENT H-1</b>	<b>Proposing Firm</b> as a whole
<b>DOCUMENT H-2</b>	Each <b>Lead Attorney or Co-Lead</b> assigned to the TPSF account
<b>DOCUMENT H-3</b>	Each <b>Key Legal Professional</b> and any other employee assigned to the TPSF account
<b>DOCUMENT H-4</b>	Each <b>Proposing Firm Affiliate</b> , meaning those who work on matters related to the TPSF on behalf of the proposing firm, including any lobbyist, petitioner, or any third-party marketer, solicitor or similar

Each document set will consist of the following:

- Page 1** Conflict of Interest and Contact: with SBOE Members and Committee of Investment Advisors.
- Pages 2 - 3** Conflict of Interest and Contact: with Investment Counsel, Advisors, and Service Providers.
- Page 4** Conflict of Interest and Contact: with TPSF Senior Staff and TEA Legal Staff.
- Page 5** Conflict of Interest and Contact: to describe the disclosed relationships the individual has with those persons/firms listed in the tables on Pages 1-4.

- Page 6** Record of All Contact with the SBOE, TEA Staff and TPSF Consultants. Especially where business relationships exist, the individual should briefly describe the nature of the relationship, identify what contact has been made, identify **each occurrence**, indicate **the date** of the occurrence, and clearly describe the content of discussions.
- Page 7** Disclosure of All Campaign Contributions and Gifts, per Section 4.3 of the State Board of Education Operating Rules.
- Page 8** Disclosure of All Campaign Contributions and Gifts to Statewide Elected Officials and Members of the Texas State Legislature. Signature Attestation (Pages 1-8)

### 3.5 PROPOSER IDENTIFICATION

Proposer shall provide to agency, respondent's 9-digit Federal Employer's Identification Number (FEI); Social Security Number (SSN) if respondent is an individual; or respondent's 14-digit State of Texas Vendor's Identification Number (VIN). If incorporated, respondent shall also provide to agency the corporation's charter number issued by the Texas Secretary of State's office. Proposer shall complete Section 3.B of **DOCUMENT I** with this information.

### 3.6 HISTORICALLY UNDERUTILIZED BUSINESS (HUB) IDENTIFICATION

Historically underutilized businesses (HUBs) as defined in V.T.C.A., TX Govt. Code, §2161.001 (see **EXHIBIT C**) are encouraged to submit a proposal for the services requested in this RFQ. Proposers are encouraged to become HUB certified.

Proposers that are not certified and who wish to become certified should complete the HUB Certification application available at <http://www.window.state.tx.us/procurement/prog/hub/hub-certification/>. The Statewide HUB Program at (512) 463-5872 can assist with questions regarding the requirements for certification. The proposer should also relay this information to any potential subcontractors who wish to become a certified HUB.

Proposers that are certified as a HUB with the Texas Comptroller of Public Accounts' Texas Procurement and Support Services should attach a copy of the certificate to the proposal.

The proposer must identify if subcontracting opportunities are available. The proposer may choose to subcontract any or all of the services to HUBs. If subcontracting, the proposer should submit the HUB Subcontracting Plan, **DOCUMENT J**, and complete all sections (1-10).

If the proposer can perform and intends to complete all the subcontracting opportunities identified by the TEA with its employees and resources **without benefit of subcontractors**, the proposer should complete Sections 1, 2, 9 and 10 of the HUB Subcontracting Plan, **DOCUMENT J**.

Failure to return the HUB Subcontracting Plan **DOCUMENT J** will disqualify the proposal.

#### HOW TO RETRIEVE HUBS ON THE CMBL

1. Open <http://www2.cpa.state.tx.us/cmb/cmbhub.html>.
2. **Search:** ☉ HUBs on CMBL.
3. **Selection 1:**  
Class Code: #961 Miscellaneous Services  
Item: #49 Legal Services, Attorney
4. Click **Submit Search**.

## SECTION FOUR REVIEW OF PROPOSALS

### 4.1 REVIEW OF PROPOSALS

Review of proposals will begin as soon as practical after receipt. Evaluation of proposals occurs in several stages. The first stage includes a compliance evaluation to ascertain proper form and content in accordance with all provisions stated within this RFQ. Proposals that pass the compliance evaluation will then be evaluated for minimum qualifications and be evaluated according to the criteria listed in Section 4.2 below. The proposers receiving the most favorable ratings during the first round of selection may be asked to send a representative to Austin, Texas, at a time and place to be arranged for oral presentation of proposals. Proposals may be rated again following oral presentations.

The recommendations of the review panel will be assembled and presented to the SBOE who will:

1. Approve the proposal in whole or in part;
2. Disapprove the proposal; or
3. Defer action on the proposal for such reasons as a requirement for further evaluation.

The Texas Education Agency, on behalf of the SBOE, will notify each proposer in writing of the selection or non-selection for qualification. Additional copies of proposals not selected for qualification will be destroyed in accordance with the agency approved records retention policy.

In the case of proposals selected for funding, notification to the proposers will include the contractual conditions, which the proposers must accept in accordance with federal and/or state law, if taken under contract.

### 4.2 SELECTION CRITERIA

Proposals will be qualified based on the ability of each proposer to carry out all of the requirements contained in this RFQ. The qualifying process will be based on, among other things, demonstrated competence and qualifications of the proposers. Following is a summary of the factors that will be evaluated in qualifying proposers, and the total number of points that will be applied in association with each:

<b>FACTORS</b>	<b>POSSIBLE POINTS</b>
Business and Organizational Strength	20
Legal Expertise and Experience	45
Conflicts and Business Conduct	20
Fee Structure	10
Other Factors	5
<b>TOTAL</b>	<b>100 points</b>

## **SECTION FIVE CONTRACTUAL REQUIREMENTS**

### **5.1 CONTRACTORS' PROPOSALS**

The selected proposals will be incorporated into contracts required by the Office of the Attorney General (sample OCC is found as EXHIBIT D) and prepared by the TEA for signature by the contracting parties.

### **5.2 EXECUTION OF OFFER, AFFIRMATION OF TERMS AND CONDITIONS AND PROPOSAL PREFERENCES**

Proposer shall review DOCUMENT I carefully, noting that the TEA General Provisions described therein consist of the conditions under which TEA will conduct its business with any proposer selected as qualified external counsel. When contracting with a qualified external counsel, TEA will incorporate these General Provisions into the body of the contract and they will become binding. Proposers wishing to do business with the TEA shall acknowledge their acceptance of these terms and conditions by signing DOCUMENT I and returning it as part of the proposal response.

Proposers must indicate in writing any General Provision term that is not feasible with the submission of the proposal to this RFQ. Proposers must identify the individual terms and explain why the terms are not feasible. An addendum can be attached to the submission of the executed DOCUMENT I in order to communicate contracting concerns. If a proposal is signed and submitted without specifically identifying all General Provisions that are not feasible, TEA will not negotiate the General Provisions.

Failure to formalize the terms of the proposal by signing the "Execution of Offer," can disqualify the proposal.

### **5.3 PAYMENT**

All payments are made in accordance with Texas Government Code § 2251.001 et seq. Payments for Goods and Services. Unless otherwise indicated by the TEA, payment is only by reimbursement upon satisfactory performance of services. Payment will be made upon submission of properly prepared and certified invoices/expenditure reports, which details services provided during the invoice period and associated costs and such invoices must be approved by the Attorney General.

According to guidelines set forth by the Texas Comptroller of Public Accounts, the payment scheduling policy requires agencies to pay as close to the due date as possible in order to maximize fiscal benefits to the state. Payments are due 30-days from receipt of a complete and correct invoice by the TEA. Invoices will be sent to the TEA Legal Services Division for review and processing.

**EXHIBIT A**  
**REGULATION, ADMINISTRATION AND OTHER**

For ease of reference, select laws, statutes, policies and reports pertaining to the Texas Education Agency Texas Permanent School Fund can be found at the following links:

1. Article VII of The Texas Constitution  
<http://www.statutes.legis.state.tx.us/Docs/CN/htm/CN.7.htm>
2. Chapter 33 of the Texas Administrative Code: Statement of Investment Objectives, Policies, and Guidelines of the Texas Permanent School Fund  
[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac\\_view=4&ti=19&pt=2&ch=33&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=19&pt=2&ch=33&rl=Y)
3. Chapter 43 of the Texas Education Code: Permanent School Fund and Available School Fund  
<http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.43.htm>
4. Chapter 2155 of the Texas Government Code: Purchasing: General Rules and Procedures, including:  
Section 2155.004 Certain Bids and Contracts Prohibited  
<http://www.statutes.legis.state.tx.us/docs/gv/htm/gv.2155.htm>  
Section 2161.001, Texas Government Code: HUB Defined  
<http://www.statutes.legis.state.tx.us/docs/gv/htm/gv.2161.htm>
5. Texas Comptroller of Public Accounts:  
Electronic State Business Daily (ESBD)  
<http://esbd.cpa.state.tx.us/>  
HUB Certification Process  
<http://www.window.state.tx.us/procurement/prog/hub/hub-certification/>  
Vendors Indebted to the State of Texas  
[https://fm.x.cpa.state.tx.us/fm/pubs/purchase/restricted/index.php?section=indebted&page=persons\\_indebted](https://fm.x.cpa.state.tx.us/fm/pubs/purchase/restricted/index.php?section=indebted&page=persons_indebted)  
TINS – Vendor Hold Search  
<https://cpafmprd.cpa.state.tx.us/tpis/search.html>
6. Chapter 552 of the Texas Government Code: Public Information Act, including:  
Section 552.0225 Right of Access to Investment Information,  
Section 552.0230 Special Right of Access to Confidential Information,  
Section 552.1100 Exception Trade Secrets; Certain Commercial or Financial Information  
Section 552.1430 Confidentiality of Certain Investment Information  
<http://www.statutes.legis.state.tx.us/sotwdocs/gv/htm/gv.552.htm>
7. Section 4.3 of the State Board of Education Operating Rules, amended January 19, 2011, Disclosure of Campaign Contributions and Gifts.  
<http://www.tea.state.tx.us/index4.aspx?id=2147497741>
8. Audited Annual Financial Statements of the TPSF  
<http://www.tea.state.tx.us/psf/annualgateway.html>
9. Additional Information about TEA and TPSF  
TEA: <http://www.tea.state.tx.us>  
TPSF: <http://www.tea.state.tx.us/psf/>
10. Texas Attorney General's Office - New Outside Counsel Rules and Templates dated 04/02/2012  
[https://www.oag.state.tx.us/forms/contracts/agency\\_packet.pdf](https://www.oag.state.tx.us/forms/contracts/agency_packet.pdf)

**EXHIBIT B**  
**TEXAS PERMANENT SCHOOL FUND**  
**INVESTMENT PROCEDURES MANUAL**

The State Board of Education (SBOE) has adopted the Statement of Investment Objectives, Policies and Guidelines, which sets forth the prudent objective standards for the investment and administration of the Texas Permanent School Fund (Fund). The Statement addresses the needs of the Fund; establishes criteria for manager performance measurement; communicates the Statement to all parties; serves as a review document for compliance; demonstrates that the Board is in compliance with its responsibility of managing the investments of the Fund and documents compliance with the appropriate governing laws.

To effectuate the Statement of Investment Objectives, Policies and Guidelines, the State Board of Education adopts the following procedures, consistent with the objectives of the Fund. These procedures delineate with specificity the operative provisions, processes and procedures for the implementation of the Statement, consistent further with input from all of the appropriate parties, as follows:

**A. COMMITTEES OF THE STATE BOARD OF EDUCATION:**

1. The State Board of Education has established the Committee on The Permanent School Fund (Committee) to assist in the administration and oversight of the Fund. The following are the duties and responsibilities of the Committee:
  - a. The Committee is comprised of members of the State Board of Education selected under the rules of the Board;
  - b. The Committee shall make recommendations to the State Board of Education concerning the ratification of all investment manager transactions for the current reporting period, if the transactions are consistent with the Statement of Investment Objectives, Policies and Guidelines; the Procedures Manual; and all other applicable constitutional, statutory and contractual provisions;
  - c. The Committee may approve periodic tactical recommendations pertaining to adjustments to the long-term asset allocation strategic plan of the State Board of Education;
  - d. The Committee shall direct the activities of the executive administrator in implementing the policies of the State Board of Education concerning the investment of the Permanent School Fund;
  - e. The Committee shall implement the policies of the State Board of Education concerning the investment of the Permanent School Fund;
  - f. The Committee shall direct and monitor each Board approved action and counsel with and receive reports from the executive administrator, the Committee of Investment Advisors (CIA), Investment Counsel, and any investment manager hired under the provisions set forth;
  - g. The Committee shall ensure compliance with the State Board of Education's statement of investment policy and non-compliance shall be reported to the State Board of Education; and

- h. The Committee shall recommend to the State Board of Education, new procedures or recommend amendments to existing procedures consistent with the provisions of the Statement of Investment Objectives, Policies, and Guidelines.

**2. Committee of Investment Advisors (CIA) - Duties and Responsibilities**

- a. Members of the State Board of Education shall individually select the Committee of Investment Advisors (CIA) members. The SBOE shall approve selected appointments. The Committee of Investment Advisors shall be comprised of no more than 15 members. Each must have considerable institutional investment expertise and be free from conflicts of interest;
- b. Committee of Investment Advisors shall serve at the pleasure of each incumbent State Board of Education member;
- c. The Advisors may meet semi-annually or more frequently with the entire SBOE membership at the call of the chairman of the SBOE; and
- d. Advisors are to receive copies of all information that is not designated as confidential or proprietary and correspondence provided to SBOE members regarding PSF activities, performance and presentation materials so as to be fully informed.
- e. The Committee of Investment Advisors shall be independent investment experts who closely advise their respective State Board of Education member on investment issues.

**B. CRITERIA FOR THE ENGAGEMENT, RETENTION OR TERMINATION OF INVESTMENT COUNSEL (not attorneys):**

1. Investment counsel may be recommended by the Committee on the Permanent School Fund and retained by the State Board of Education, provided counsel meets the following minimum criteria by having or having access to:
  - a. organizational processes that will provide for combining the knowledge and judgments in different areas of institutional investment expertise in order that the advice and recommendations made to the Permanent School Fund will have evolved from the opinions of many rather than one individual; and
  - b. the capability of complying with additional criteria as may be established by the State Board of Education.
2. If at any time Investment Counsel fails to comply with any of the above-provisions, or fails to perform pursuant to the provisions of the Investment Counsel contract, the Committee on the Permanent School Fund shall notify the State Board of Education of said failure. The Board shall take appropriate measures to correct any deficiencies.

### **C. INTERNAL ACCOUNTING PROCEDURES AND CASH MANAGEMENT CONTROLS:**

The following procedures and controls shall be adopted and implemented by the investment staff of the Permanent School Fund:

1. All investments of the Permanent School Fund shall be accounted for in accordance with Generally Accepted Accounting Principles (GAAP) as prescribed by the Governmental Accounting Standards Board (GASB) unless otherwise prescribed by state law;
2. Income, gains and losses from investments shall be collected, accounted for, and allocated to Fund 0044.
3. Proper controls shall be maintained as well as a segregation of duties between the portfolio managers/traders and the accounting staff;
4. All investment transactions shall be properly authorized and in accordance with the portfolio manager's/trader's established investment limits;
5. All investment transactions shall be supported by a trade ticket prepared by the portfolio manager(s)/trader(s). The trade ticket may be in paper or electronic form and must be authorized by the portfolio manager(s)/trader(s);
6. All trades shall be verified by the accounting staff and affirmed by the Fund's custodian prior to settlement;
7. The investment office shall have no direct control over or access to physical cash currency;
8. The following monthly reconciliations are completed and reviewed:
  - a. between the investment accounting system and the records of the Custodian;
  - b. between the investment general ledger system (statewide and agency) and the investment accounting system;
9. Controls must be established to meet the liquidity needs of the Fund;
10. Outstanding purchase commitments shall be properly recorded including any accrued interest paid on purchases;
11. All requests to the Custodian to transfer funds in order to purchase securities or invest in short-term instruments shall be properly authorized by the Permanent School Fund staff and properly recorded in the records of the State Comptroller's office;
12. Investment reports shall be prepared in accordance with legal and regulatory requirements and to meet the information requirements of the SBOE; and
13. It shall be the policy of the SBOE to perform the delivery and settlement of cash and securities through the Fund's custodial bank. The Fund custodian will collect all monies due the Fund and deliver all monies due from the Fund.

The Fund custodian will make all Fund monies available for investment. In the event funds are not invested as a result of specific security transactions ordered by internal Permanent School Fund staff or external investment managers, the custodian will invest such proceeds on a short term basis pending further instructions. In the event monies are not invested within one business day by the custodian or as a result of instructions from authorized investment managers, such proceeds shall be remitted to the State Treasury.

The Fund custodian shall maintain currency accounts for all currencies traded in the Fund's international investment portfolios. The Fund custodian shall execute cash movements across these accounts at the direction of investment managers, including transmission of monies for foreign exchange transactions, upon authorized instruction from investment managers. In order to facilitate the settlement of trades denominated in foreign currency, the custodian may hold foreign currencies overnight as authorized by the investment managers.

#### D. STRATEGIC ASSET ALLOCATION PLAN

To pursue the objectives of the Texas Permanent School Fund at an acceptable risk level, the following strategic (i.e., long-term) allocation is adopted:

Asset Class	Strategic Asset Allocation	Minimum Range	Maximum Range
<b>Equity</b>			
Large Cap US Equity	21.0%	18.0%	24.0%
Small/Mid Cap US Equity	7.0%	6.0%	8.0%
Large Cap Developed and Emerging Market Equity	18.0%	15.0%	21.0%
Small/Mid Cap International Equity	4.0%	3.0%	5.0%
Total Equity	50.0%		
<b>Fixed Income</b>			
Domestic Investment Grade Fixed Income	15.0%	13.0%	17.0%
<b>Cash Equivalents</b>	0.0%		
<b>Global Risk Control Strategies</b>			
Absolute Return	10.0%	9.0%	11.0%
Risk Parity	7.0%	6.0%	8.0%
Total Global Risk Control Strategies	17.0%		
<b>Other Alternative Assets</b>			
Private Equity	6.0%	3.0%	8.0%
Real Estate	6.0%	3.0%	8.0%
Real Return	3.0%	2.5%	3.5%
U. S. Treasury Inflation Protected Securities (TIPS)	3.0%	2.5%	3.5%
Total Other Alternative Assets	18.0%		

Provided, however, that the Committee (SBOE) shall have the right to make periodic adjustments to the above-listed allocations as they see fit, commensurate with the economic environment and the goals and objectives of the Fund. It is understood that the strategic allocation to alternative assets may differ from the target ranges outlined for limited periods of time, due to the illiquid nature of these asset classes. Further, during the initial implementation of alternative asset classes, the allocation will fall below the minimum range until the program can be fully established.

Formal asset allocation studies shall be conducted by the Asset Allocation Consultant at least every two years, with annual evaluations of the validity of the adopted asset allocation.

## **E. ASSET ALLOCATION REBALANCING PROCEDURE:**

The SBOE has established specific asset allocation targets within the ranges of its investment policy. To assure allocations consistent with this policy, the Committee on the Permanent School Fund and the Executive Administrator has developed a systematic rebalancing policy, as follows:

Target rebalancing ranges will be established for each asset class and category based upon market volatility, liquidity and inherent transaction costs. The ranges are not necessarily symmetrical and reflect a practical approach to rebalancing – thus, whole numbers are employed to establish target limits.

### **1. Asset Class Rebalancing**

The following policies will be followed regarding asset weightings:

- a. Valuation and monitoring of asset classes in relation to their targets will be done as available from the custodian and investment managers;
- b. When all asset classes are within target ranges, any cash will be allocated between equity and fixed income portfolios as appropriate to take advantage of capital market opportunities;
- c. Whenever the asset classes of the Fund deviate from their target ranges, the Executive Administrator will rebalance the asset mix as follows:
  - (1) Utilize available cash first to bring asset classes to within target ranges;
  - (2) If available cash is insufficient, transfers between asset classes will be made to bring them to their target levels.
- d. Whenever the asset classes of the Fund lie within their target ranges, the Executive Administrator may perform a partial or full rebalance to move the Fund toward the optimal target allocation to take advantage of market conditions that could be beneficial to the long-term performance of the Fund.
- e. Cash-flows to and from illiquid portfolios will not be made, unless they are part of a predetermined plan.
- f. The SBOE may vote to delay automatic asset class rebalancing if major changes in the strategic asset allocation plan are expected in the near term.
- g. Distributions paid to the Available School Fund (ASF) shall be distributed from asset classes that exceed the target allocations and bring the PSF back in line with the target allocation.
- h. The Executive Administrator, in consultation with the Asset Allocation Consultant, should maintain the asset allocation targets and rebalance between asset classes when it is determined that imbalances have occurred within asset classes in excess of the Strategic Asset Allocation plan's ranges (Section D).

- i. Upon notice from the Commissioner of Education in regards to a guaranteed school district bond default, the Executive Administrator shall cause to be deposited in State Treasury Fund 0044 account sufficient cash to cover the default by funding the default from any asset class that exceeds its target and is highly liquid. If each asset class is at target, then assets will be sold in line with target weights. The funds will then be transferred to the paying agent in accordance with Texas Education Code Chapter 45.059.

In accordance with Texas Education Code Chapter 45.061, the Commissioner will immediately direct the Comptroller to withhold the amount paid, plus interest, from the first state money payable to the school district. The amount withheld shall be deposited to Fund 0044 in the State Treasury. The Executive Administrator shall return the funds to the asset classes from which they were taken or to asset classes that are underweighted at the time of receipt of the reimbursement.

## **2. Transition Procedure**

Investment manager changes and additions will occur due to the natural growth of the fund and to the attrition of managers due to performance or other reasons, as well as for rebalancing purposes. The Executive Administrator shall obtain an authorization from the SBOE to effect the transition of assets from one portfolio to another using the services of an outside, independent specialist that has experience in the management of portfolio transitions. The function of the specialist is to recommend the lowest cost and most efficient method for transitioning the assets and to monitor and report on the effectiveness of transitions.

## **F. STANDARDS OF PERFORMANCE**

### **1. Total Funds**

The Total Fund shall consist of a diversified portfolio including domestic and international equities, fixed income, and alternative asset classes.

The State Board of Education expects active managers to collectively out-perform their respective (and agreed upon) individual unmanaged benchmarks net of fees. Therefore, total performance of the Texas Permanent School Fund will be measured against a composite benchmark reflective of the Fund's targeted allocation between equities, fixed income, and alternative assets. During periods of transition, where assets deviate significantly from the long-term target allocation, the composite benchmark shall be dynamic, calculated monthly using the beginning of period capitalization weight of each investment portfolio and the return of their respective primary index. A transition period shall be defined as the period beginning on the first day of the month after the contract has been signed with the investment manager and the initial funding of asset class takes place. Once funding begins, the composite benchmark shall revert back to the standard static calculation on the first day of the month following funding. The static calculation shall be calculated based on the percentage allocated to each asset class.

In order to meet the investment objectives as specified in the SBOE's statement of Investment Objectives, Policies and Guidelines, the Total Fund will strive to maintain intergenerational equity whereby the fund will pay-out a constant distribution per student after adjusting for inflation.

The asset allocation adopted July 2010 reflects the following asset classes, benchmarks and target allocations of the Fund, utilized when calculating the composite benchmark:

<b>Asset Class Category</b>	<b>Passive Benchmark<sup>1</sup></b>	<b>Long-Term Target Allocation</b>
<b>Equities</b>		
Large Cap US Equity	S&P 500	21.0%
Small/Mid Cap US Equity	S&P 1000	7.0%
Large Cap Developed and Emerging Market Equity	MSCI All Country World Index EX US (Net Dividend)	18.0%
Small/Mid Cap International Equity	MSCI EAFE Small Cap (Net Dividend)	4.0%
Total Equity		50.0%
<b>Fixed Income</b>		
Domestic Investment Grade Fixed Income	Barclays Capital US Aggregate Bond Index	15.0%
<b>Cash Equivalents</b>		
		0.0%+
<b>Global Risk Control Strategies</b>		
Absolute Return	Hedge Fund Return Index (HFRI)	10.0%
Risk Parity	60% S&P 500/40% Barclays Capital US Aggregate Bond Index	7.0%
Total Global Risk Control Strategies		17.0%
<b>Other Alternative Assets</b>		
Private Equity	Actual Investment Return or Custom Benchmark	6.0%
Real Estate	NCREIF Property (NPI)	6.0%
Real Return	CPI + 5%	3.0%
U. S. Treasury Inflation Protected Securities (TIPS)	Barclays Capital U. S. TIPS	3.0%
Total Other Alternative Assets		18.0%

<sup>1</sup> The above benchmarks are representative of sample indices, subject to being redefined upon investment manager funding of their own unique portfolio.

<sup>2</sup> Over a rolling 3-year period, private equity investments should be measured against a long-term custom benchmark. However, for periods under 3 years, including the actual return for the investment in the benchmark accomplishes the dual goal of accurately portraying total fund performance for the Fund, while eliminating the short-term benchmark noise that is introduced by the mismatch between long-term objectives and short-term market movements.

## **2. Equity Allocation**

The equity allocation shall consist of diversified domestic and international stocks. The purpose of the equity allocation is to provide appreciation of principal that more than offsets inflation and provides a growing stream of current income.

The total equity allocation, upon full implementation, should represent approximately 50% of the Fund at market value.

The allocation to domestic and international equities will be across capitalization ranges.

The equity managers will be subject to the following general and specific investment guidelines:

### **a. Domestic Equity Manager(s):**

The strategic objective of the Fund is to obtain broad domestic equity market exposure:

(1) An indexed large cap core equity manager is expected to:

- (a) achieve an annualized time-weighted rate of total return (net of expenses and fees) equal to the return of the benchmark represented by the S&P 500 Index;
- (b) maintain an acceptable risk level when measured by the standard deviation of quarterly returns of the representative benchmark (S&P 500).

(2) An indexed small/mid cap core equity manager is expected to:

- (a) achieve an annualized time-weighted rate of total return (net of expenses and fees) equal to the return of the benchmark represented by the S&P 1000 Index;
- (b) maintain an acceptable risk level when measured by the standard deviation of quarterly returns of the representative benchmark (S&P 1000).

### **b. International Equity Manager(s):**

The strategic objective of the Fund is to obtain a broad international equity market exposure.

(1) An indexed large cap developed and emerging market equity manager is expected to:

- (a) achieve an annualized time-weighted rate of total return (net of fees and expenses) equal to the return of the benchmark represented by the MSCI All Country World Index Ex USA.
- (b) maintain an acceptable risk level when measured by standard deviation of quarterly returns of the representative benchmark MSCI All Country World Index Ex USA.

## **3. Core Fixed Income Allocation**

The total fixed income allocation shall consist of a well-diversified portfolio.

The fixed income portfolio will be managed under a broad market mandate. Each account shall be managed in an active manner to achieve the total return objective as established and to preserve principal while maintaining an acceptable income yield.

In addition to the prohibited transactions and restrictions delineated in Section 33.25 of the Statement of Investment Objectives, Policies and Guidelines, the fixed income portfolio of any manager of the Fund must maintain a minimum quality rating, duration average and minimum income yield consistent with the overall characteristics of the manager's fixed income benchmark.

The fixed income manager(s) will be subject to the following general and specific investment guidelines:

**a. Domestic High Grade Fixed Income Manager(s):**

A domestic fixed income manager is expected to achieve over the course of a fair market cycle of three to five years the following:

- (1) an annualized time-weighted rate of return (net of fees and expenses) in excess of the return of the benchmark represented by the Barclays Capital U.S. Aggregate Bond Index;
- (2) rank in the top half of a universe of peers of actively managed domestic fixed income portfolios with similar objectives and risk profiles; and
- (3) maintain an acceptable risk level when measured by the standard deviation of quarterly returns of the representative benchmark (Barclays Capital U.S. Aggregate Bond Index).

**b. Inflation Linked Securities Manager(s):**

An inflation linked securities manager is expected to achieve over the course of a fair market cycle of three to five years the following:

- (1) an annualized time-weighted rate of return (net of fees and expenses) in excess of the return of the benchmark represented by the Barclays Capital U. S. TIPS
- (2) Rank in the top half of a universe of peers actively managing inflation linked portfolios with similar objectives and risk profiles;
- (3) Maintain an acceptable risk level when measured by standard deviation of quarterly returns of the representative benchmark (Barclays Capital U. S. TIPS

**c. Cash Equivalent Manager(s):**

A Short Term Investment Fund (STIF) manager is expected to:

- (1) achieve an annualized time-weighted rate of total return (net of fees and expenses) in excess of the return of a benchmark represented by the 91 Day Treasury Bill;

- (2) rank in the top half of a universe of peers of actively managed short-term fixed income portfolios with similar objectives and risk profiles; and
- (3) maintain an acceptable risk level when measured by the standard deviation of quarterly returns of the representative benchmark (91-Day Treasury Bill).

#### **4. ALTERNATIVE ASSET ALLOCATION**

The alternative asset allocation shall consist of real estate, real return, absolute return, and private equity investments. Alternative investments are non-traditional investments that have low correlation with most traditional asset classes. Alternative investments are usually transacted through a partnership structure and are often characterized by limited liquidity, infrequent valuations, and the need for greater administrative workload and oversight. The State Board of Education recognizes that additional investment classes may reduce the Fund's overall volatility of returns and/or enhance overall performance.

The alternative asset allocation, upon full implementation, should represent approximately 35% of the Fund at market value.

The alternative asset manager(s) will be subject to the following general and specific investment guidelines:

##### **a. Real Estate Manager(s):**

A real estate manager is expected to achieve over the course of a fair market cycle of three to five years the following:

- (1) an annualized time-weighted rate of return (net of fees and expenses) in excess of the return of the benchmark represented by the NCREIF Property Index;
- (2) maintain an acceptable risk level when measured by the standard deviation of quarterly returns of the representative benchmark (NCREIF Property Index).

##### **b. Real Return Manager(s):**

A real return manager is expected to achieve over the course of a fair market cycle of three to five years the following:

- (1) an annualized time-weighted rate of return (net of fees and expenses) in excess of 5% above the return of inflation, represented by the Consumer Price Index (CPI);

##### **c. Absolute Return Manager(s):**

An absolute return manager is expected to achieve over the course of a fair market cycle of three to five years the following:

- (1) achieve an annualized time-weighted rate of return (net of fees and expenses) in excess of the return of the benchmark represented by the HFRI Fund of Funds Index;

- (2) maintain an acceptable risk level when measured by the standard deviation of quarterly returns of half (50%) the volatility of the broad equity market, represented by the S&P 500 Index.

**d. Private Equity Manager(s):**

A private equity manager is expected to achieve, over the life of each partnership (typically ranging 10+ years), the following:

- (1) an internal rate of return (net of fees and expenses) in excess of median returns of the Fund's investments' objectives and vintage year.
- (2) equity holdings that are taken private with the option to participate in the new private company ("stub equity"), shall be considered and analyzed for their value to the Fund. If the executive administrator deems that receiving shares of the new company is of economic value he/she shall inform the SBOE of the investment in the private company at the next board meeting. These assets will be treated as part of private equity allocation and shall not exceed 10% of the private equity asset class target.

**e. Risk Parity Manager(s):**

A risk parity manager is expected to achieve over the course of a fair market cycle of three to five years the following:

- (1) an annualized time-weighted return net of fees and expenses) in excess of the total return of a composite benchmark represented by 60% of the S&P 500 Index and 40% of the Barclays Capital U.S. Aggregate Bond Index.

**5. Performance Monitoring**

The objectives outlined above for managers within each asset class recognize that the investment horizon is long-term and that investment competence must be measured throughout a meaningful period of time. While the quantitative assessment of managerial competence will be measured over a fair market cycle of three to five years, the State Board of Education anticipates that its Investment Consultant will make interim quantitative and qualitative judgments. Specific quantitative and qualitative factors, which will be reported to the Board by its Investment Consultant and reviewed on an ongoing basis, include:

- Fundamental changes in investment philosophy
- Changes in organizational structure or financial condition (including significant changes in total assets under management)
- Changes in key personnel
- Changes in fee structure
- Any regulatory activity or litigation brought against the manager

**6. Watch List**

If a manager is not meeting the corresponding performance expectations outlined above, if the managers' performance falls below that of the appropriate index for three consecutive quarters, or the manager's relative rank falls significantly below the respective median, the manager will be

placed on a “watch list”. After the manager has been placed on the “watch list”, the investment consultant and/or the PSF staff should interview the manager via phone conversation or in person. If the manager’s performance fails to improve relative to the standards detailed above, and/or qualitative factor changes remain unresolved, the manager may be considered for termination.

## **7. Currency Hedging Strategies for International Portfolios**

According to 19 TAC 33.25: Permissible and Restricted Investments and General Guidelines for Investment Managers, the State Board of Education may approve currency hedging strategies for the international portfolios, if consistent with the overall objectives of the Fund.

The following sets forth the State Board of Education’s procedures in hedging the international portfolios foreign currency exposure of the Permanent School Fund:

- a. The objective of the currency hedge is to protect the value of the portfolio from currency fluctuations when investments in foreign securities are translated back into U. S. dollars. As such, portfolio leverage and cross hedging outside of US dollars is not permitted;
- b. While it is expected that most contracts open to hedge currency exposure will be for periods of less than three months, the Board recognizes the longer-term nature of currency movements. The maturity of any hedging contract engaged by a manager shall not exceed a period of 12 months, provided however, that a maturity beyond the 12 month period may be requested, in writing, by a respective manager and may be granted by the Board if conditions warrant the extension of maturity;
- c. Foreign exchange contracts and futures instruments may be purchased and sold against the receipt of cash, securities and other readily negotiable instruments related to securities held in the portfolios; and
- d. All institutional counterparties with which a foreign currency contract is engaged shall meet a minimum rating of A3 compiled by Moody’s Investors Service Global Credit Research Counterparty Ratings.

## **8. Financial Futures**

The Fund may purchase or sell financial futures contracts for the purpose of making asset allocation changes in a more efficient and cost effective manner, and to improve liquidity. Futures contracts shall be subject to the following terms and conditions:

- a. Traditional investment managers will not enter into futures transactions for the purpose of speculative leveraging. Speculative leveraging is defined as buying financial futures where the amount of the contract obligation is an amount greater than the market value of the portfolio’s cash and short-term (maturities of less than one year) securities. In no instance will the total amount of the contract be an amount greater than the market value of the portfolio’s cash and short-term securities. Some alternative asset investment strategies, such as private equity and real estate, may employ speculative leveraging. For private equity investment, leverage, if utilized, must be limited to less than 50% at the limited partnership level in which the Fund is an investor. For core real estate investments, leverage should not exceed 40% across the entire portfolio. For non-core real estate managers, there are no specific limits on leverage, however usage shall be outlined specific to each investment within the management agreement.

- b. The total amount of the portfolio's financial futures contract obligation should not exceed five percent 5% of the market value of the portfolio's total assets. The Fund may exceed the five percent 5% rule during a transition approved by the SBOE.
- c. The sum of each portfolio together with the financial futures contract obligation should be within the asset allocation range for each asset class.
- d. The Fund may use cash and obligations of the U.S. government or any of its agencies to meet the margin requirements.
- e. Financial futures contracts may be written in an underlying market index which reflects the asset class invested by the portfolio.
- f. Futures transactions will be conducted with only a few of the highest quality domestic and international banks and brokerage firms. These firms must be members of the National Futures Association (NFA) and the Commodities Futures Trading Commission (CFTC). The criteria to be used in selecting such banks and brokerage firms should include, but should not be limited to strong capitalization, their experience in the financial futures markets as well as compliance with the Fund's guidelines for selecting brokerage firms.

## **G. LEGAL ACTION**

The Fund staff will file and monitor all class action claims. In other instances where the Fund may have potential legal recourse over current or former investments, Fund staff shall consult with TEA counsel and the Attorney General's office if needed. Upon consultation, staff shall take action as needed to protect the Fund's legal rights, including authorizing suit. Staff shall report back to the SBOE on any action taken at the next regular meeting.

**H. PROCESS FOR THE SELECTION OF CONSULTANTS, INVESTMENT MANAGERS, CUSTODIANS AND OTHER PROFESSIONALS TO PROVIDE OUTSIDE EXPERTISE TO THE PERMANENT SCHOOL FUND:**

**1. Communications with Board Members While Request For Proposal or Qualifications Outstanding**

**a. Definitions:**

- (1) “Applicant” means a person or entity who submits a response to an RFP or RFQ, or who has expressed an interest in an RFP or RFQ by filing a notice of intent to bid. A person or entity ceases to be an Applicant if the person or entity does not submit an application by the required deadline or is selected or eliminated as a possible candidate.
  - (2) “Authorization date” means the date at which a Request for Proposal (“RFP”) or Request for Qualifications (“RFQ”) is approved by the Board to be distributed by Staff to prospective professionals.
  - (3) “Blackout Period” means the period beginning with the Authorization Date and continuing through the Selection Date.
  - (4) “Eligible List” means all persons or entities selected as eligible for a contract pursuant to an RFQ. A person or entity remains on the Eligible List until the period of eligibility expires, or the person or entity withdraws or is removed pursuant to subsection (d).
  - (5) “Restricted Period” means the period following the Selection Date during which qualified applicants could be selected as contractors to perform services for the PSF pursuant to an RFQ.
  - (6) “Selection Date” means the date at which a proposer to provide services enters into a contract pursuant to an RFP, or is finally determined to be eligible for selection to provide services pursuant to an RFQ.
- b. Except as allowed by subsections (c), (e) and (f), no communication involving the Permanent School Fund or the type of investment or service that is the subject of the RFP or RFQ is permitted with any Board member during the Blackout Period.
- c. Applicants performing other duties on behalf of the Permanent School Fund may communicate with Board members concerning those other duties in writing or at a Committee or Board meeting. Written communications shall be copied to all Board members and the Executive Administrator, who will aggregate such communications and timely provide copies to all Board members.
- d. During the Restricted Period for selection, an Applicant may communicate with Board members concerning the subject of the RFQ only in writing or at a Committee or Board meeting. Written communications shall be copied to all Board members and the Executive Administrator, who will aggregate such communications and timely provide copies to all Board members. During the restricted period, staff may remove a person or entity from the

Eligible List solely for failure to meet minimum qualifications under the RFQ and shall notify the Board of any such action.

- e. Applicants or persons or entities on the Eligible List may at any time communicate with Board members at a social function, workshop, conference, ceremonial event or press conference about matters unrelated to the Permanent School Fund or the type of investment or service that is the subject matter of the RFP or RFQ.
- f. The Chairs of the Board and the Permanent School Fund Committee may jointly authorize one or more Board members to accompany staff on due diligence meetings or visits with an Applicant and will announce the authorized members at a Board meeting. Staff shall prepare a record of the persons participating in the due diligence visit and the matters considered and provide the record to Board members. Under no circumstances may a quorum of the Board or any Committee of the Board participate in a due diligence visit or discuss any Board business unless posted as a public meeting of the Board or Committee. A member's expenses while participating in a due diligence meeting or visit shall be paid from the Permanent School Fund budget.
- g. Disclosures required of an applicant for an RFP or RFQ shall be updated prior to any final decision of the Board.
- h. Any professional seeking to provide outside expertise to the Permanent School Fund and found in violation of this procedure shall be disqualified from the bidding process with respect to the applicable RFP or RFQ.
- i. Prospective professionals providing outside expertise shall further comply with all other statutory provisions regulating RFPs and RFQs.

## **2. Steps for Identification and Selection of Outside Professionals**

The sequence of steps to be completed to identify and select qualified firms or individuals who satisfy the Board's need for expert assistance are:

- Step 1. The Permanent School Fund Committee directs staff to develop an RFP or RFQ to be adopted by the Board.
- Step 2. The Permanent School Fund Committee, in developing the RFP or RFQ, shall define the service or expertise needed, establish minimum objective criteria to be consistently applied to all parties in order to determine eligibility for consideration and detail all information to be considered for eligible parties.

(Examples of information required include name and address of the firm, number of employees, size and type of client basis, assets under management, areas of expertise, staff experience, staff turnover, other public fund clients, references, fee proposals, etc.)

A standard set of evaluation criteria are drafted and used to evaluate the proposals.

The Permanent School Fund Committee may appoint a sub-committee to oversee the RFP development process and the establishment of criteria for both eligibility and evaluation.

- Step 3. The Committee (or sub-committee, if appointed) in coordination with staff and/or consultants, shall identify the universe of potential firms and screen this universe based upon the minimum objective criteria.
- Step 4. The RFP or RFQ is adopted by the Board and posted to the Electronic State Business Daily web-site where prospective applicants may electronically download documents pertinent to the RFP or RFQ. Firms who request RFPs or RFQs will be mailed such documents. The candidates are given a deadline to respond. Any qualifying proposals received by the deadline, and any supplemental information requested, are considered further.
- Step 5. The proposals are presented to the Permanent School Fund Committee for review at a formal presentation. In the event that the number of proposals received in response to the RFP or RFQ is too extensive to be considered by the full Committee at a formal presentation, the Committee may delegate the process of screening the proposals and selecting the finalists to the appointed sub-Committee or to staff if no sub-committee has been appointed. These finalists will then make a formal presentation to the full committee. The Committee will then select a finalist or finalists to be recommended to the State Board of Education for final selection to provide the services requested.
- Step 6. All voting members shall disclose any conflicts of interest prior to vendor decisions/actions. This statement of independence shall be filed with the Executive Administrator.
- Step 7. After an Applicant or Applicants are selected and approved by the State Board of Education, staff shall negotiate a contract for the services requested subject to the maximum fee and any other conditions approved by the Board. The draft contract shall be reviewed by legal staff prior to execution by the Commissioner of Education.
- Step 8. SBOE members, the Committee of Investment Advisors, PSF staff, and PSF client relationship consultants will file a quarterly report which lists any substantive meetings with proposers or Applicants or persons or entities seeking to perform services for the PSF about Permanent School Fund investments or an outstanding RFP or RFQ for services for the PSF. Disclosure should include meetings and discussions involving solicitations of potential mandates by the PSF, including industry conferences, seminars and workshops. Staff shall provide for electronic means to file reports required under this step.

**Notification of Statutory Compliance:** The Fund will comply with all statutory provisions applicable to state agency RFPs and RFQs.

## **I. COMPLIANCE WITH SEC RULE 15C2-12 PERTAINING TO DISCLOSURE OF INFORMATION RELATING TO THE BOND GUARANTEE PROGRAM**

### **1. Annual Reports**

The Agency shall provide annually to the MSRB, within six months after the end of each fiscal year, financial information and operating data with respect to the Program of the general type which describes the Program and which is included in an Official Statement for Guaranteed Bonds. Any financial statements so to be provided need not be audited. Such information shall be transmitted electronically to the MSRB, in such format and accompanied by such identifying information as prescribed by the MSRB.

If the Agency changes its fiscal year from the year ending August 31, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the Agency otherwise would be required to provide financial information and operating data pursuant to this section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to each the MSRB or filed with the SEC.

### **2. Material Event Notices**

The Agency shall notify the MSRB, in a timely manner (but not in excess of ten business days after the occurrence of the event), of any of the following events with respect to the Program:

- a. Principal and interest payment delinquencies;
- b. Non-payment related defaults, if such event is material within the meaning of the federal securities laws;
- c. Unscheduled draws on debt service reserves reflecting financial difficulties;
- d. Unscheduled draws on credit enhancements reflecting financial difficulties;
- e. Substitution of credit or liquidity providers, or their failure to perform;
- f. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax-exempt status of the Program, or other material events affecting the tax status of the Program;
- g. Modifications to rights of holders of the Bonds, if such event is material within the meaning of the federal securities laws;
- h. Bond calls, if such event is material within the meaning of the federal securities laws, and tender offers;
- I. Defeasances;

- j. Release, substitution, or sale of property securing repayment of Guaranteed Bonds, if such event is material within the meaning of the federal securities laws;
- k. Rating changes;
- l. Bankruptcy, insolvency, receivership, or similar event of the Program, which shall occur as described below;
- m. The consummation of a merger, consolidation, or acquisition involving the Program or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if such event is material within the meaning of the federal securities laws; and
- n. Appointment of a successor or additional trustee with respect to the Program or the change of name of a trustee, if such event is material within the meaning of the federal securities laws.

For these purposes, any event described in the immediately preceding paragraph (l) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the Program in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Program, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Program.

The Agency shall notify the MSRB, in a timely manner, of any failure by the Agency to provide financial information or operating data in accordance with Section 1 of this Rule by the time required by such Section.

Nothing in this Program Regulation shall obligate the Agency to make any filings or disclosures with respect to Guaranteed Bonds, as the obligations of the Agency hereunder pertain solely to the Program.

### **3. Limitations, Disclaimers, and Amendments**

With respect to a series of Guaranteed Bonds, the Agency shall be obligated to observe and perform the covenants specified in this Program Regulation for so long as, but only for so long as, the Agency remains an “obligated person” with respect to the Guaranteed Bonds within the meaning of the Rule.

The provisions of this Program Regulation are for the sole benefit of each Issuing District, as well as holders and beneficial owners of the Guaranteed Bonds; nothing in this Program Regulation, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Agency undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Program Regulation and does not hereby undertake to provide any other

information that may be relevant or material to a complete presentation of the Program's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Program Regulation or otherwise, except as expressly provided herein. The Agency does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Guaranteed Bonds at any future date.

Under no circumstances shall the Agency or the Program be liable to the holder or beneficial owner of any Guaranteed Bond, the Issuing District or any other person or entity, in contract or tort, for damages resulting in whole or in part from any breach by the Agency, whether negligent or without fault on its part, of any covenant specified in this Program Regulation, but every right and remedy of any such person, in contract or tort, for or on account of any such breach shall be limited to an action for *mandamus* or specific performance.

No default by the Agency in observing or performing its obligations under this Program Regulation shall comprise a breach of or default under the Order for purposes of any other provision of the Order.

Nothing in this Program Regulation is intended or shall act to disclaim, waive, or otherwise limit the duties of the Agency under federal and state securities laws.

The provisions of this Program Regulation may be amended by the Agency from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Agency, but only if (1) the provisions of this Program Regulation, as so amended, would have permitted an underwriter to purchase or sell Guaranteed Bonds in the primary offering of the Guaranteed Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule since such offering as well as such changed circumstances and (2) either (a) the holders of a majority in aggregate principal amount of the outstanding Guaranteed Bonds consent to such amendment or (b) a person that is unaffiliated with the Agency (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interest of the holders and beneficial owners of the Guaranteed Bonds. If the Agency so amends the provisions of this Program Regulation, it shall include with any amended financial information or operating data next provided in accordance with Section 1 an explanation, in narrative form, of the reason for the amendment and of the impact of any change in the type of financial information or operating data so provided. The Agency may also amend or repeal the provisions of this continuing disclosure agreement if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction enters judgment that such provisions of the Rule are invalid, but only if and to the extent that the provisions of this sentence would not prevent an underwriter from lawfully purchasing or selling Guaranteed Bonds in the primary offering of the Guaranteed Bonds.

#### 4. Definitions

As used in this Program Regulation, the following terms have the meanings ascribed to such terms below:

“*Agency*” means the Texas Education Agency or the successor thereto with respect to the management of the Program.

“*Guaranteed Bonds*” means obligations for which application is made and granted for a guarantee under the Program.

“*Issuing District*” means a school district which issues Guaranteed Bonds.

“*MSRB*” means the Municipal Securities Rulemaking Board or any successor to its functions under the Rule.

“*Official Statement*” means each offering document of an Issuing District used in the offering and/or sale of Guaranteed Bonds.

“*Order*” means the resolution, order, ordinance or other instrument or instruments of an Issuing District pursuant to which Guaranteed Bonds are issued and the rights of the holders and beneficial owners thereof are established.

“*Permanent School Fund*” means the perpetual school fund established by Article VII, Section 2 of the Texas Constitution.

“*Program*” means the program of bond guarantee by the Permanent School Fund, which program has been established by Article VII, Sections 2 and 5 of the Texas Constitution, and is administered in accordance with Subchapter C, Chapter 45, Texas Education Code, as amended, and the rules and regulations of the Agency. The term “*Program*” shall also include the rules, regulations and policies of the Agency with respect to the administration of such program of guarantee of school district bonds, as well as the rules, regulations, policies of the Agency with respect to the administration, and the operational and financial results, of the Permanent School Fund.

“*Program Regulation*” means this rule of the Agency which is promulgated for the purpose of establishing and undertaking with respect to the Program which satisfies the requirements of the Rule.

“*Rule*” means SEC Rule 15c2-12, as amended from time to time.

“*SEC*” means the United States Securities and Exchange Commission.

## **J. TRADE POLICY. SOFT DOLLAR, DIRECTED TRADE, AND COMMISSION RECAPTURE PROCEDURES**

Section 33.40 Trading and Brokerage Policy of 19 TAC 33 Statement of Investment Objectives, Policies and Guidelines of the Texas Permanent School Fund establishes the trading and brokerage policy for the Permanent School Fund. The principles of the policy specify that all transactions executed by investment managers for the Permanent School Fund shall be obtained at best execution and <sup>1</sup>lowest cost. Ongoing efforts must be made to reduce trading costs provided that the investment returns of the Fund are not jeopardized.

Provided that the total return of a manager's portfolio is not adversely affected or that the investment process is not affected so as to place the Fund in a disadvantageous position relative to the investment manager's other accounts, and provided that best execution and lowest cost are obtained, each manager may be expected to direct a percentage of its trading to specified firms for the purpose of brokerage commission recapture programs as may be directed, from time to time, by the State Board of Education.

The SBOE recognizes that some broker/dealer firms provide services above and beyond pure execution as part of its services offered to the Fund in exchange for commission oriented transactions. Furthermore, the SBOE recognizes that transactions costs incurred by the Fund in the form of commissions<sup>21</sup> may be treated by brokerage firms as payment for research services as well as execution services. While many large broker/dealer firms provide proprietary research services, the Board recognizes that certain firms ("soft dollar" broker/dealers) distribute research services of independent third party providers. The value of independent research services provided by broker/dealers is known as "soft dollars."

The SBOE recognizes that a soft dollar program may be established through a commission recapture agreement between an investment manager and a broker/dealer whereby a portion of the commission may be returned to the Fund. According to Section 28(e) of the Securities Exchange Act of 1934, this portion of the commission is available for expenditure if it is used only for research, the brokerage firm provides the research, the commission is reasonable, and the commission applies only to an agency security transaction. A properly implemented soft dollar program can allow a portion of the listed commissions stream to be captured and used to offset direct investment management expenses of the Fund. "Commission recapture" is when a portion of the commission stream is returned to the Fund by the broker/dealer.

Additionally, the SBOE recognizes that the soft dollar potential of the Fund is limited by the trading activity for the Fund and the number of listed trades that can be executed with a specific broker under the standard of lowest cost and best execution.

The State Board of Education recognizes that creating and maintaining a prudent policy pertaining to brokerage commissions is an integral part of fulfilling its fiduciary duties and therefore establishes the following procedures related to soft dollar agreements, commission recapture agreements and directed trades for investment managers of the Permanent School Fund:

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<sup>1</sup> The term "commissions" shall include fixed income credits where applicable.

1. The commission rate for a soft dollar trade shall be no more than the standard commission rate of a regular broker/dealer trade;
2. All commissions paid shall be reported to the Board at its regularly scheduled meetings appropriately separating soft dollar trades from regular trades, and shall include the average commission per share on equity transactions for both soft dollar commissions and regular commissions;
3. At least annually, the Committee on the Permanent School Fund shall review a schedule of soft dollar services provided by broker/dealers and the percent recapture rate of each broker/dealer;
4. Due to the differences in execution ability of broker/dealer firms and the differences in trading and liquidity characteristics of securities, investment managers will select broker/dealers based on the principle of best execution and lowest cost and other applicable provisions of 19 TAC 33.40 - Trading and Brokerage Policy;
5. The Accounting Department of the Permanent School Fund shall reconcile the statements of the soft dollar brokers to specific services provided to the Fund;
6. External investment managers are prohibited from participating in “soft dollar” programs and shall participate in commission recapture programs only as directed by the Fund; and
7. To facilitate the ability of investment managers to obtain the lowest cost and best execution, a broker/dealer firms shall be designated by the staff of the Permanent School Fund as soft dollar/commission recapture firms. The conversion rate is to be negotiated by the staff and reported to the Committee on the Permanent School Fund. The soft dollar/commission recapture broker must meet the applicable criteria for the selection of a broker/dealer firm as outlined in Section 33.40(c) - Guidelines for Selecting a Brokerage Firm, found in Chapter 33. - Statement of Investment Objectives, Policies, and Guidelines of the Texas Permanent School Fund.

**K. INCLUSION OF HISTORICALLY UNDERUTILIZED BUSINESSES IN THE MANAGEMENT OF THE PERMANENT SCHOOL FUND**

1. The State Board of Education (SBOE) wishes to ensure an equal opportunity for all businesses to provide goods and services to the Texas Permanent School Fund (PSF). It is the goal of the SBOE to promote full and equal opportunity for all businesses in contracting or subcontracting with the PSF. Accordingly, the Board encourages the utilization of historically underutilized businesses (HUBs), as defined by Section 2161.001 (2) of the Texas Government Code (rev. 1999), for securities brokerage services.
2. The PSF Executive Administrator shall abide by the provisions of the Comptroller of Public Accounts/Texas Procurement and Support Services (CPA/TPASS) procurement policy established by 34 TAC Part 1, Chapter 20, Subchapter B regarding the utilization of HUBs as subcontractors as set forth in this Section.
3. All external contractors providing investment management services to the PSF shall abide by the provisions of the Comptroller of Public Accounts/Texas Procurement and Support Services (CPA/TPASS) procurement policy established by 34 TAC Part 1, Chapter 20, Subchapter B regarding the utilization of HUBs as subcontractors. The Texas Education Agency requires that each prime contractor use the HSP Progress Assessment Report for reporting payments to HUB subcontractors.
4. For purposes of administration of this Section (Subchapter J), entities registered as HUBs, as defined by Section 2161.001 (2) of the Texas Government Code (rev. 1999) shall be considered as meeting the requirements of Chapter 20.
5. For the purpose of interpreting 34 TAC Part 1, Chapter 20, Subchapter B, broker/dealers are considered “professional service” providers. The goal for subcontracting to such providers is 23.6%.
6. The Executive Administrator of the Fund shall, immediately or upon selection of a new PSF vendor, deliver to each external Investment Manager or Contractor a copy of this rule and of 34 TAC Part 1, Chapter 20, Subchapter B.
7. The Executive Administrator of the PSF shall require in a form acceptable to the Committee on School Finance/Permanent School Fund, the submission of reports of compliance with these provisions by all outside contractors. Investment managers shall include in regular quarterly reporting on PSF portfolios to the SBOE summaries of brokerage commissions paid for the quarter and year-to-date by broker/dealer summarizing transactions paid to HUB firms.
8. After assembly of such reports, the Executive Administrator of the PSF shall report to the Committee on School Finance/Permanent School Fund regarding compliance with these provisions by internal staff and all external contractors at each regularly scheduled meeting. The committee shall receive the report of the Executive Administrator and report these findings to the SBOE.
9. The Executive Administrator shall include this policy with all requests for proposals, and shall include each prospective vendor’s response respective to this policy prominently to the SBOE.

**EXHIBIT C**  
**DEFINITION OF HISTORICALLY UNDERUTILIZED BUSINESS (HUB)**

(As defined in V.T.C.A., TX Govt. Code, §2161.001)

- (2) "Historically underutilized business" means an entity with its principal place of business in this state that is:
- (A) a corporation formed for the purpose of making a profit in which 51 percent or more of all classes of the shares of stock or other equitable securities are owned by one or more economically disadvantaged persons who have a proportionate interest and actively participate in the corporation's control, operation, and management;
  - (B) a sole proprietorship created for the purpose of making a profit that is completely owned, operated, and controlled by an economically disadvantaged person;
  - (C) a partnership formed for the purpose of making a profit in which 51 percent or more of the assets and interest in the partnership are owned by one or more economically disadvantaged persons who have a proportionate interest and actively participate in the partnership's control, operation, and management;
  - (D) a joint venture in which each entity in the venture is a historically underutilized business, as determined under another paragraph of this subdivision; or
  - (E) a supplier contract between a historically underutilized business as determined under another paragraph of this subdivision and a prime contractor under which the historically underutilized business is directly involved in the manufacture or distribution of the goods or otherwise warehouses and ships the goods.
- (3) "Economically disadvantaged person" means a person who is economically disadvantaged because of the person's identification as a member of a certain group, including Black Americans, Hispanic Americans, women, Asian Pacific Americans, and Native Americans, and who has suffered the effects of discriminatory practices or other similar insidious circumstances over which the person has no control.

Added by Acts 1995, 74th Leg., ch. 41, § 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1499, § 1.21, eff. Sept. 1, 1999.

**EXHIBIT D**  
SAMPLE  
**OUTSIDE COUNSEL CONTRACT**  
OAG Contract No. \_\_\_\_\_

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

**INDUCEMENTS**

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

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

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

**AGREEMENT**

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

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

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

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

**1.2.1 Litigation.** OUTSIDE COUNSEL SHALL NOT REPRESENT AGENCY IN ANY LITIGATION UNLESS ADDENDUM A SPECIFICALLY AUTHORIZES LITIGATION IN A PARTICULAR MATTER. If Addendum A does not specifically authorize Outside Counsel’s representation of Agency in a particular litigation matter and the Agency requires such representation, then the Agency must request litigation authority from the OAG and submit a

new Outside Counsel Contract to the OAG for approval before filing or responding to litigation matters.

**1.2.2 Appellate Matters.** Irrespective of any authorization to engage in litigation in this OCC, or in a writing outside of this OCC, OUTSIDE COUNSEL IS NOT AUTHORIZED TO PROCEED ON ANY APPEAL, IN ANY CAPACITY, WHETHER INTERLOCUTORY OR OTHERWISE, WHETHER AS APPELLANT, APPELLEE, RESPONDENT, APPLICANT, OR OTHERWISE, WITHOUT FIRST OBTAINING THE WRITTEN PERMISSION OF THE ATTORNEY GENERAL, FIRST ASSISTANT ATTORNEY GENERAL, OR SOLICITOR GENERAL. Outside Counsel has the duty to promptly notify the Agency and OAG of the desirability or likelihood of an appeal.

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

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

This OCC shall commence on September 1, 2012, and shall terminate on August 31, 2013 (hereinafter “OCC Term”), unless terminated earlier pursuant to section 7 of this OCC. The OCC Term may not be extended except by amendment pursuant to section 9.12 of this OCC.

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

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

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

**3.3 Public Information and Client Communications.** Outside Counsel acknowledges that information generated in the course of representation of a governmental body may be subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code. Outside Counsel will exercise professional judgment and care when creating documents or other media intended to be confidential or privileged attorney-client communications that may be subject to disclosure under the Public Information Act (e.g. invoices where incidental notation may tend to reveal litigation strategies or privileged information). Outside Counsel should mark confidential or privileged attorney-client communications as confidential. This subsection shall not be interpreted to limit Outside Counsel’s duty to provide full disclosure to Agency and the OAG as necessary in Outside Counsel’s judgment to represent Agency with due professional care or as required by applicable law or disciplinary rules.

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

**3.5 Subcontracting Authority.** In the event that Outside Counsel should determine that it is necessary or expedient to subcontract for any of the performances herein, or in support of any of those performances, Outside Counsel may enter into such subcontract(s). If Outside Counsel elects to enter into a subcontract, then the Parties agree that all such subcontracts are subject to section 4 (Limitation of Liability), subsection 5.2 (Reimbursement of Expenses), subsection 5.3 (Subcontractor Payments), subsection 6.2 (Subcontractor Invoices), and subsection 6.5 (Supporting Documents; Right-to-Audit; Inspection of Records) of this OCC. Furthermore, if Outside Counsel elects to enter into a subcontract for any legal services, then the Parties agree that the Agency shall not be liable to Outside Counsel for any hourly rates or rate ranges greater than the highest hourly rate or rate range specified in Addendum B unless prior written approval is obtained from the Agency and OAG. Any subcontracted legal counsel must comply with subsection 9.8 (Conflict of Interest) of this OCC.

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

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

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

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

**\$250,000 for this OCC Term.**

The Parties stipulate and agree that any act, action or representation by either party, their agents or employees that purport to increase the liability of the State of Texas or Agency is voidable by the OAG, unless this OCC is amended to modify this limitation of liability. Outside Counsel agrees that the OAG, the State of Texas and its agencies (other than Agency) shall have no liability arising out of this OCC or the performances of this OCC to Outside Counsel.

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

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

**5.1 Fees to Outside Counsel.** Subject to Title 1, Chapter 57 of the Texas Administrative Code, Agency agrees to pay Outside Counsel in consideration of full and satisfactory performance of the legal services under this OCC. Outside Counsel agrees to the following fee schedule, subject to the limitations described in this OCC (see Addendum B for additional terms and conditions regarding fees/compensation to Outside Counsel).

**5.2 Reimbursement of Expenses.** Agency will reimburse Outside Counsel for actual expenses incurred in the performance of the legal services described in Addendum A, if such expenses are reasonable and either necessary or advisable. Outside Counsel must provide copies of original receipts as evidence of actual expenditures. Limitations on the amount and type of reimbursement include:

**5.2.1 Mileage.** Agency will reimburse Outside Counsel for reasonable and necessary travel mileage at the per mile rate posted on the Texas Mileage Guide adopted under Section 660.043 of the Texas Government Code. The Texas Mileage Guide is currently available on the Comptroller of Public Accounts' website, at: <https://fm.x.cpa.state.tx.us/fm/travel/travelrates.php> (last visited April 2, 2012).

**5.2.2 Meals.** Agency will reimburse Outside Counsel for reasonable and necessary meal expenses at the rate of \$100.00 or actual expenses, whichever is less, for each attorney for each day requiring overnight travel. Agency will not reimburse Outside Counsel for the purchase of alcohol.

**5.2.3 Lodging.** Agency will reimburse Outside Counsel for reasonable and necessary lodging expenses. Unless otherwise agreed upon by Agency in writing in advance, in-state lodging or overnight accommodations will be reimbursed at the lesser amount of the actual expense or \$200.00 per night. Unless otherwise agreed upon by Agency in writing in advance, out-of-state lodging or overnight accommodations will be reimbursed at the lesser amount of the actual expense or \$250.00 per night.

**5.2.4 Airfare.** Airfare will be reimbursed at the lesser amount of the actual expense or the regular published rates for coach fares for commercial airlines.

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

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

**5.2.7 Non-Reimbursable Expenses.** Agency expects Outside Counsel to anticipate and include expenses and disbursements as part of overhead and, therefore, part of a basic hourly rate or flat rate. Therefore, Agency will not reimburse Outside Counsel for: copying charges (routine, day-to-day); fax charges; routine postage; office supplies; telephone charges; local travel (within 20-mile radius of office), including mileage, parking, and tolls; all delivery

services incurred by internal staff; air-conditioning; electricity or other utilities; and internet charges.

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

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

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

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

**5.4 Extensive Legal Research.** In general, Agency should be paying Outside Counsel to apply their knowledge and expertise for which it was hired, not paying Outside Counsel to obtain that knowledge. However, Agency understands that situations arise that justify extensive research on how best to proceed in order to achieve a desired result. The need for extensive legal research will be addressed on a case-by-case basis by Outside Counsel and Agency.

**5.5 Administrative Staff/Clerks.** Agency will not pay for law clerks, law interns, summer interns, or administrative staff, such as secretarial support, librarians, case clerks, and accounting and billing clerks, including but not limited to the following: overtime, file opening, file organization, docketing, and other administrative tasks; and preparation of billing, invoice review, budget preparation, and communications regarding same or any other accounting matter.

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

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

**6.1.1 General.** Agency and Outside Counsel agree to abide by the administrative rules adopted by the OAG governing the submission, review and approval of invoices. These rules are found at Title 1, Chapter 57 of the Texas Administrative Code.

**6.1.2 Billing Period.** The billing period is the interval (ex. monthly) which determines the frequency Outside Counsel will submit invoices to the Agency. The billing period for this OCC is specified in Addendum B.

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

standardized documents. Agency will not pay for review, execution, and processing of the OCC and submission of invoices.

**6.1.4 Submission of Invoices.** Outside Counsel must submit invoices to Agency at:

Name/Agency: Joan H. Allen, Deputy General Counsel  
Address: Texas Education Agency  
1701 N. Congress Avenue, 2-150  
City, State, Zip Code: Austin, Texas 78701  
Phone: (512) 463-9720

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

OCCInvoice@texasattorneygeneral.gov

OR

Attn.: OCC Invoice  
Office of the Attorney General  
General Counsel Division, Mail Code 074  
Post Office Box 12548  
Austin, Texas 78711-2548

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

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

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

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

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

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

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

**6.5.1 Duty to Maintain Records.** Outside Counsel shall maintain adequate records to support its charges, procedures, and performances to Agency for all work related to this OCC. Outside Counsel shall also maintain such records as are deemed necessary by Agency, OAG, the State Auditor’s Office, or federal auditors if federal funds are used to pay Outside Counsel, to ensure proper accounting for all costs and performances related to this OCC.

**6.5.2 Records Retention.** Outside Counsel shall retain, for a period of at least four (4) years after the later of (1) the expiration or termination of this OCC, (2) an audit relating to this OCC, or (3) litigation relating to this OCC, such records as are necessary to fully disclose the extent of services provided under this OCC, including but not limited to any daily activity reports and time distribution and attendance records, and other records that may show the basis of the charges made or performances delivered.

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

**6.5.4 State Auditor.** In addition to and without limitation on the other audit provisions of this OCC, pursuant to Section 2262.003 of the Texas Government Code, the State Auditor’s Office may conduct an audit or investigation of Outside Counsel or any other entity or person receiving funds from the State directly under this OCC or indirectly through a subcontract under this OCC. The acceptance of funds by Outside Counsel or any other entity or person directly under this OCC or indirectly through a subcontract under this OCC acts as acceptance of the authority of the State Auditor’s Office, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. Under the direction of the Legislative Audit Committee, Outside Counsel or other entity that is the subject of an audit or investigation by the State Auditor’s Office must provide the State Auditor’s Office with access to any information the State Auditor’s Office considers relevant to the investigation or audit. Outside Counsel further agrees to cooperate fully with the State Auditor’s Office in the conduct of the audit or investigation, including providing all records requested. Outside Counsel shall

ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through Outside Counsel and the requirement to cooperate is included in any subcontract it awards. The State Auditor's Office shall at any time have access to and the right to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of Outside Counsel related to this OCC.

## **Section 7. Termination**

**7.1 Convenience of the State.** The Agency has the right to terminate this OCC, in whole or in part, without penalty, by notifying Outside Counsel in writing of such termination prior to the effective date of such termination. Such notification of termination shall state the effective date of termination. In the event of such termination, Outside Counsel shall, unless otherwise mutually agreed upon in writing, cease all services immediately, except such services that are necessary to wind-up, in a cost-effective manner, all services being provided. Subject to Section 4 of this OCC, Agency shall be liable for payments for all services performed under this OCC to the effective date of termination, plus any necessary services to cost effectively wind-up.

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

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

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

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

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

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

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

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

**8.2 Buy Texas.** With respect to any services purchased pursuant to this OCC, Outside Counsel represents and warrants that it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and within a comparable period of time when compared to non-Texas products and materials. This subsection does not apply to Outside Counsel providing legal services located outside the State of Texas.

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

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

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

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

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

**8.8 Former Executive Head and Employees of the Agency.** Agency and Outside Counsel certify that this OCC is compliant, and will remain in compliance during the OCC term, with Sections 669.003 (Contracting with Executive Head of State Agency) and 2252.901 (Contracts with Former or Retired Agency Employees) of the Texas Government Code.

## **SECTION 9. GENERAL TERMS AND CONDITIONS**

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

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

**9.1.2** Outside Counsel agrees and acknowledges that during the OCC Term, Outside Counsel shall be entirely responsible for the liability and payment for Outside Counsel or Outside Counsel's employees or assistants, of all taxes of whatever kind, arising out of the performances in this OCC. Other than the payments described in this OCC, Outside Counsel agrees and acknowledges that Outside Counsel or Outside Counsel's employees or assistants shall not be entitled to any State benefit on account of the services provided hereunder. **AGENCY SHALL NOT BE LIABLE TO OUTSIDE COUNSEL, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION, OR ANY BENEFIT DUE TO A STATE EMPLOYEE.** If Agency or the State of Texas shall nonetheless become liable for such payments or obligations, Outside Counsel shall promptly pay or reimburse Agency or the State of Texas for such liability or obligation.

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

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

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

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

**9.6 Written Notice Delivery.** Any notice required or permitted to be given under this OCC by one party to the other party shall be in writing and shall be given and deemed to have been given immediately if delivered in person to the recipient's address set forth in this subsection, or on the

date shown on the certificate of receipt if placed in the United States mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the receiving party at the address hereinafter specified.

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

[Outside Counsel Name and Address]

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

Outside Counsel Contract Coordinator  
Office of the Attorney General  
General Counsel Division, Mail Code 074  
Post Office Box 12548  
Austin, Texas 78711-2548

Contact person/Agency: Joan H. Allen, Deputy General Counsel  
Address: Texas Education Agency  
1701 N. Congress Ave., Suite 2-150  
City, State, Zip Code: Austin, Texas 78701

## **9.7 Dispute Resolution.**

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

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

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

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

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

## **9.8 Conflict of Interest.**

**9.8.1** Funds appropriated by the General Appropriations Act may not be expended to pay the legal fees or expenses of Outside Counsel in representing Agency in a contested matter if Outside Counsel is representing a plaintiff in a proceeding seeking monetary damages from the State of Texas or any of its agencies. *See* General Appropriations Act, art. IX, sec. 16.01(j). For these purposes, "proceedings seeking monetary damages" do not include actions for tax refunds, compensation for exercise of eminent domain authority, or reimbursement of costs of litigation and attorney's fees.

**9.8.2** Funds appropriated by the General Appropriations Act may not be used to pay the legal fees or expenses of Outside Counsel under this OCC if Outside Counsel currently represents, has represented in the six months preceding this OCC, or will represent in the six months following the termination of this OCC, a client before the Agency. *See* General Appropriations Act, art. IX, sec. 16.01(a)(4).

**9.8.3** Outside Counsel shall regularly conduct conflicts analyses on its interests and those of its clients and any subcontractor and disclose any actual or potential conflict to Agency.

**9.9 Taxes.** This OCC shall not be construed so as to supersede the laws of the United States or the State of Texas that accord the State of Texas, Agency, and all departments, agencies, and instrumentalities of the State of Texas exemptions from the payment(s) of all taxes of whatever kind. More specifically, Agency shall not directly or indirectly be liable for taxes of any kind. To the extent allowed by law, Agency will provide, upon the request of Outside Counsel during this OCC Term, all applicable tax exemption documentation.

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

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

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

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

**9.13 Severability/Interpretation.** The fact that a particular provision in this OCC is held under any applicable law to be void or unenforceable in no way affects the validity of other provisions, and this OCC will continue to be binding on both Parties. Any provision that is held to be void or unenforceable will be interpreted by the Parties or the courts to be replaced with language that is as close as possible to the intent of the original provision so as to effectuate the purpose of this OCC. Any ambiguous or conflicting terms shall be interpreted and construed in such a manner as to accomplish the purpose of this OCC.

**9.14 Insurance Required.** Outside Counsel presently maintains malpractice insurance in an amount of not less than \$1,000,000.

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

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

[Firm Name]

Agency: Texas Education Agency

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[Authorized Signatory]

[Firm Address]

[City, State. Zip]

[Phone]

[Fax]

[Email]

Tax ID#

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Shirley Beaulieu

Chief Financial Officer

Approved:

By the Office of the Attorney General of Texas

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Attorney General or Designee

**OUTSIDE COUNSEL CONTRACT  
SAMPLE**

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

**Addendum A  
Services**

Description of Legal Services to be provided:

**AREA 1. \_\_\_\_\_ Fiduciary Counsel**

Outside fiduciary counsel selected by the SBOE will provide specialized legal advice about compliance with fiduciary responsibilities. The services of fiduciary counsel will generally be coordinated through the office of the TEA General Counsel. Fiduciary counsel should expect to have significant contacts with in-house counsel, other outside counsel, and key staff personnel. Fiduciary counsel will attend SBOE board or committee meetings when requested by the Chairman of the SBOE, the Chief Investment Officer/Executive Director of the Fund, or by TEA General Counsel. Fiduciary counsel must be able to demonstrate substantial practical knowledge, skill, and experience with respect to the legal duties of trustees, including without limitation the common law of trusts, the Texas Trust Code (Tex. Prop. Code) and relevant case law. Fiduciary counsel must be conversant with endowment administration and investment matters generally, including portfolio theory, public fund administration, conflicts of interest, prohibited transactions, and “social investing.” Fiduciary counsel should have experience with the legal concerns of institutional investors. Additionally, counsel should have experience with ERISA (TPSF is not subject to ERISA), and the Internal Revenue Code as it relates to public funds, permanent funds, and public endowments. Finally, counsel should be able to demonstrate political sophistication and sensitivity to conflicts of interest questions and related ethics issues, especially as they relate to transactions involving TPSF assets.

Fiduciary counsel will perform the following duties:

- a. Respond with oral or written legal opinions to questions regarding fiduciary duties submitted by the SBOE, the Chairman of the SBOE, the Chief Investment Officer/Executive Administrator, or the TEA General Counsel.
- b. Review investment policies and procedures as requested, review proposed changes, and submit comments and recommendations to TPSF staff and SBOE.
- c. Provide as requested, an education training program on fiduciary responsibility, including a written outline, to the SBOE and key staff.
- d. Provide requested opinions on ethical and conflict of interest questions with respect to fiduciaries.
- e. Assist as requested in the communication of fiduciary concerns involving TPSF to board members, staff, consultants, advisors and other parties.

- f. Attend TPSF board meetings when requested by the Chairman of the SBOE, the Chief Investment Officer/Executive Administrator or the TEA General Counsel and respond to questions regarding fiduciary duties.
- g. Provide advice on potential liabilities of board members and other TPSF fiduciaries.

Counsel will be expected to have or develop a working knowledge of Texas laws creating or governing the TPSF.

## **AREA 2 \_\_\_\_\_ Alternative Assets Portfolio Investment Transactions and Contracting**

TPSF is strategically deploying funds into alternative assets, which may include private equity funds, absolute return hedge funds, real return, commodities and real estate funds. To be qualified for engagement in this area, candidates must have extensive experience and qualifications in structuring investment vehicles, and should be familiar with the formation and organization of both domestic and foreign investment funds in jurisdictions offering a favorable tax regime for such funds.

Counsel for alternative assets transactions must also have demonstrated experience and qualifications in the following areas: state and federal securities law exemptions, including Regulation D, secondary transactions in partnership or LLC interests, “Plan Assets,” “Venture Capital Operating Company,” and “Qualified Professional Asset Manager” regulations and exemptions under ERISA, unrelated business taxable income (“UBTI”), and federal tax issues relating to investments in domestic and offshore investment vehicles, distributions in kind (restricted securities), and indemnification (coupled with a working knowledge of D&O insurance). Qualified counsel will also be generally familiar with public endowment law, public funds law, trust law principles, ERISA concepts, and regulation of investment advisers, and investment companies. Qualified counsel will also have expertise in commercial real estate investment vehicles and entities, financing arrangements, securitization, infrastructure, REITs, and general commercial real estate law incidental to private real estate fund investments. If requested, counsel will attend TPSF committee or board meetings to present information and advice.

Alternative assets counsel will perform the following duties:

- a. Assist and advise TPSF staff and consultants with respect to the investment due diligence for these transactions.
- b. If requested by TPSF, counsel will perform additional legal due diligence and prepare memoranda discussing the organization of the fund investment selected, material and/or significant terms of the proposed investment.
- c. If requested by TPSF, counsel will recommend issues to be addressed in side letter agreements.
- d. If requested by TPSF, counsel will draft, review, comment on, and negotiate the terms of each fund’s constituent documents and side letter agreements directly with fund representatives on behalf of TPSF.

- e. If requested by TPSF, counsel will assist with preparation of subscription documents and closing matters.

Counsel selected for this subject area must have extensive experience and qualifications to assist TEA and TPSF in contracting for services related to alternative assets. This shall include knowledge of Texas procurement laws and TEA procurement policies and procedures as they relate to contracting for professional services, consultant services and external investment management services.

### **AREA 3. \_\_\_\_\_ Tax Counsel**

TEA desires to retain outside tax counsel for matters specifically related to alternative assets, including unrelated business taxable income; and generally for matters related to taxable entity, foreign tax exemption and reclamation related to foreign securities transactions and arbitrage regulations. Tax counsel will have extensive relevant experience applicable to public endowments, public funds, governmental organizations, and permanent funds. Tax counsel should be conversant with federal tax withholding issues and unrelated business income tax statutes, rulings, cases, and regulations. Tax counsel will:

- a. If necessary and requested during the engagement, prepare determination requests; represent the TPSF in applying for a determination letter, and represent TPSF before the IRS to obtain a determination letter.
- b. Assist TPSF in obtaining other tax-related rulings, letters and determinations from the U.S. Internal Revenue Service.
- c. Respond with formal legal opinions or memoranda of law to questions submitted regarding federal tax issues.
- d. Advise and assist TPSF on exemption at source and the tax reclamation process for foreign securities transactions.
- e. Advise TPSF concerning unrelated business taxable income issues.
- f. Attend meetings and hearings, including legislative hearings, to testify, present information, or respond to questions concerning federal tax issues. (Regular legislative sessions run from January through May of each odd-numbered year.)
- g. Attend SBOE meetings when requested by the SBOE, the Chairman of the SBOE, the Chief Investment Officer/Executive Administrator, or the TEA General Counsel and respond to questions regarding tax matters related to the TPSF.

**Note: Counsel engaged for tax matters must represent in the outside counsel agreement that neither it nor any attorney of the firm working on TEA and TPSF matters is required to register as a lobbyist under Tex. Gov't Code ch. 305, and that no such attorney is registered as a lobbyist. Counsel must also agree that neither it nor any other attorney of the firm working on TEA and TPSF matters will register as a lobbyist during the term of the engagement.**

**OUTSIDE COUNSEL CONTRACT  
SAMPLE**

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

**Addendum B  
Rates**

The hourly rate or rate range for attorneys, paralegals, patent agents, and others working on Agency matters:

**Name(s) of Lead and Co-Lead Counsel:**

For lead counsel, provide documentation of good standing with the relevant licensing authority.

<b>Billing Classification</b>	<b>Hourly Rate or Rate Range</b>
Attorney – Partner/Shareholder	
Attorney – Non-Partner	
Of Counsel	
Associates – Level 3	
Associates – Level 2	
Associates – Level 1, etc	
Paralegals	
Other (describe)	

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

**Travel Rate:** The rate for travel time for each attorney traveling for Agency matters will be listed below. An attorney’s travel rate may not exceed half of that attorney’s hourly rate listed above. If a travel rate(s) is not listed below, Outside Counsel may not charge Agency for time spent traveling on Agency matters.

## **EXHIBIT E**

### **Title 1, Chapter 57 of the Texas Administrative Code**

#### *§57.1. Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency--A department, commission, board, authority, office, or other agency in the executive branch of state government, including university systems and institutions of higher education as defined by §61.003 of the Education Code, but excluding public junior colleges.

(2) Chief Administrator--Has the meaning defined by §660.002(4) of the Government Code.

(3) Contingency Fee--Has the meaning defined by §2254.101(1) of the Government Code.

(4) Invoice--An itemized list of legal services provided, and fees, charges, or expenses associated with those services, by Outside Counsel to an Agency pursuant to an Outside Counsel Contract.

(5) Invoice Summary--As provided by the Outside Counsel Contract, a document furnished by Outside Counsel to the Agency that supports a submitted Invoice. The Invoice Summary must indicate the total number of hours worked by each legal professional during the billing period and the total number of hours billed by each timekeeper during the billing period; or, if the fee is based on a fixed fee basis or fee schedule, the number and type of projects or matters. The Invoice Summary must also include a subtotal for all legal fees, expenses, and the total amount of the Invoice, as well as the total amount of all Invoices submitted to the Agency to date under the Outside Counsel Contract.

(6) Outside Counsel--An attorney or law firm selected by an Agency to provide legal services. The term does not include a full-time employee of the Agency or the Office of the Attorney General.

(7) Outside Counsel Contract--A contract for legal services between an Agency and Outside Counsel selected by the Agency that must be approved by the Office of the Attorney General pursuant to this chapter.

(8) Request for Voucher Approval--A request made by an Agency to the Office of the Attorney General for the Office of the Attorney General to:

(A) review an Outside Counsel's Invoice; and

(B) to approve the payment of the Invoice, pursuant to this chapter.

(9) Request to Retain Outside Counsel--A request made by an Agency to the Office of the Attorney General for approval to retain an Outside Counsel pursuant to this chapter.

(10) State Fiscal Biennium--Period of time running concurrent with that set by the General Appropriations Act.

*§57.2.Application.*

(a) This chapter does not constitute independent authority for any Agency to contract for legal services with Outside Counsel.

(b) This chapter does not apply to an Agency excluded by §402.0212(a) of the Government Code or an Agency granted an exemption by, and at the sole discretion of, the Office of the Attorney General.

(c) The Attorney General, First Assistant Attorney General, or their designee, as designated in writing, may waive or modify any provision or requirement contained in this chapter at their sole discretion. To be effective, any such waiver or modification must be in writing.

(d) The Office of the Attorney General, at its sole discretion, may grant exemptions from or modify the retention of Outside Counsel process and the Request for Voucher Approval process in certain instances. Such exemptions or modifications may be based on the type and subject matter of the Outside Counsel Contract at issue.

*§57.3.Retention of Outside Counsel.*

(a) The Attorney General serves as the State of Texas' legal counsel and the Office of the Attorney General therefore represents state agencies and institutions of higher education. Accordingly, Agencies may not retain or select any Outside Counsel without first receiving authorization and approval from the Office of the Attorney General to do so. The Office of the Attorney General will determine if retaining Outside Counsel is in the best interest of the State.

(b) An Agency requiring legal services from Outside Counsel must first submit a completed Request to Retain Outside Counsel form to the Office of the Attorney General. The form and instructions for submitting the form are available on the Office of the Attorney General's official website or upon request from the General Counsel Division of the Office of the Attorney General.

(c) No later than ten (10) business days of receipt of the Request to Retain Outside Counsel form, the Office of the Attorney General will notify the requesting Agency that:

(1) the Agency's request has been approved and it may proceed with the process of selecting Outside Counsel;

(2) the Agency's request has been denied; or

(3) the Agency must provide the Office of the Attorney General with additional information before a decision to approve or deny the request will be made.

(d) A notification under subsection (c)(1) of this section may include limitations and requirements on the selection and retention of Outside Counsel, including, but not limited to, the

requirement that the requesting Agency use the Request for Qualification Process outlined in §57.4 of this chapter.

(e) A notification under subsection (c)(1) of this section does not constitute approval of an Outside Counsel Contract.

(f) Except as expressly allowed by a Texas statute, final decision by the Texas Supreme Court or a final judgment by a federal court, an Agency requiring legal services from Outside Counsel on a contingency fee arrangement must first seek the written approval of the Executive Director of the Legislative Budget Board, or their authorized designee, before submitting a Request to Retain Outside Counsel form pursuant to subsection (b) of this section. The Office of the Attorney General shall not approve an Agency's Request to Retain Outside Counsel, involving a contingency fee arrangement, until the Agency provides the Office of the Attorney General with the written approval of the Executive Director of the Legislative Budget Board, or their authorized designee.

*§57.4. Request for Qualification Process.*

(a) An Agency seeking to obtain legal services from Outside Counsel must publish a Request for Qualifications for Outside Counsel in the Texas State Business Daily for thirty (30) days.

(b) The Request for Qualifications for Outside Counsel publication must contain:

(1) a description of the legal services that the Outside Counsel will provide;

(2) the name and contact information for an Agency employee who should be contacted by an attorney or law firm that intends to submit their qualifications;

(3) the closing date for the receipt of qualifications;

(4) the procedure by which the Agency will make a selection of Outside Counsel;

(5) notice that the selection of and contracting with, Outside Counsel is subject to the approval of the Office of the Attorney General; and

(6) any other information the Agency deems necessary.

(c) After the closing date for the receipt of qualifications, the Agency may select an Outside Counsel. The Agency may only select an Outside Counsel that complied with the Request for Qualifications for Outside Counsel. The Agency shall make the selection of Outside Counsel:

(1) on the basis of demonstrated competence and qualifications to perform the legal services; and

(2) for a fair and reasonable price, which includes, but is not limited to, the hourly rates or fixed fee basis or fee schedule and expenses for legal services.

*§57.5. Outside Counsel Contract.*

(a) Except as authorized by law, an Outside Counsel Contract or any amendment to an Outside Counsel Contract must be approved by the Office of the Attorney General to be valid and enforceable.

(b) When entering into an Outside Counsel Contract, an Agency and Outside Counsel must use the Outside Counsel Contract template promulgated by the Office of the Attorney General. The contract template and instructions on submitting it are available on the Office of the Attorney General's official website or upon request from the General Counsel Division of the Office of the Attorney General.

(c) In the event of an inconsistency between this chapter and an executed Outside Counsel Contract, the contract shall prevail.

(d) Once an Agency selects an Outside Counsel, the Agency shall submit one copy of its proposed Outside Counsel Contract to the Office of the Attorney General for approval pursuant to this chapter. The Outside Counsel Contract must be signed by an authorized representative of the Outside Counsel and the chief administrator of the Agency, or authorized designee.

(e) Upon receipt of a proposed Outside Counsel Contract, the Office of the Attorney General will review the contract and either approve or reject it based upon the best interest of the State and compliance with state law.

(f) If the Office of the Attorney General approves a proposed Outside Counsel Contract, an authorized representative of the Office of the Attorney General will indicate that approval on the contract and return the signed copy to the Agency.

(g) If the Office of the Attorney General rejects a proposed Outside Counsel Contract, it will contact the submitting Agency to discuss the basis for the rejection and to explore whether revisions to the proposed contract could rectify the basis for the rejection. In the event the proposed contract is rejected and rectifying amendments are not acceptable or possible, the Office of the Attorney General will contact the submitting Agency to discuss alternatives to representation by the selected Outside Counsel.

*§57.6.Invoices for Legal Services and Expenses.*

(a) Outside Counsel shall prepare correct and complete Invoices and submit them, along with an Invoice Summary, for the billing period to the Agency for payment.

(b) A correct and complete Invoice must include, at a minimum, the following information:

(1) Outside Counsel Contract identification number;

(2) Agency name;

(3) Outside Counsel name;

(4) Vendor Identification Number (assigned by the Texas Comptroller of Public Accounts), Social Security Number of an authorized representative of Outside Counsel or other appropriate payment identification number;

- (5) Invoice number and date;
  - (6) Billing period of services rendered for which payment is being sought;
  - (7) Description and date of the task or service provided, the billable time for the task or service, the name and position (partner, associate, paralegal, etc.) of the timekeeper that performed the task or service, and the applicable hourly rate; or, if the fee is based on a fixed fee basis or fee schedule, the number and type of projects or matters;
  - (8) For filing charges, a description of the document filed and the name and location of the entity the document was filed with;
  - (9) For expenses, a copy of each receipt or other proof of payment; and
  - (10) Other information requested by the Agency or the Office of the Attorney General.
- (c) Unless requested to do so by the Agency or the Office of the Attorney General, Outside Counsel must not include information in its Invoices that is not related to compensable charges or reimbursable expenses.
- (d) Outside Counsel must verify, in writing, upon the submittal of each Invoice, that the Invoice is correct and complete and that: (1) the legal services being billed for were performed and were reasonable and either necessary or advisable;
- (2) the legal services being billed for were within the term and scope of services of the Outside Counsel Contract;
  - (3) the legal billing rates are the same as those set in the Outside Counsel Contract;
  - (4) any expense that requires the Agency's pre-approval was in fact pre-approved; and
  - (5) the total amount of the Invoice, along with all prior payments made to Outside Counsel under the Outside Counsel Contract, do not exceed the maximum liability amount set in the Outside Counsel Contract.

*§57.7.Agency Review of Invoices.*

- (a) Upon receipt of an Invoice, the Agency shall immediately mark the Invoice with the date the Agency received the Invoice. The Agency must review the submitted Invoice, and any other information deemed necessary, to verify that: (1) the legal services contained in the Invoice were performed and were reasonable and either necessary or advisable;
- (2) the legal services contained in the Invoice were performed within the term and scope of services of the Outside Counsel Contract;
- (3) the legal billing rates are the same as those set in the Outside Counsel Contract;
- (4) any expense that requires the Agency's pre-approval was in fact pre-approved; and

(5) the total amount of the Invoice, along with all prior payments made to Outside Counsel under the Outside Counsel Contract, do not exceed the maximum liability amount set in the Outside Counsel Contract.

(b) If the Agency determines that the submitted Invoice is correct and complete, and should be paid, the Agency's chief administrator or their designee must:

(1) approve the Invoice;

(2) verify that the requirements in subsection (a)(1) - (5) of this section have been met and attest to that verification with his or her signature;

(3) submit the Invoice and other required information to the Office of the Attorney General pursuant to §57.8(b) of this chapter; and

(4) if necessary, enter relevant information into the Uniform Statewide Accounting System.

(c) If the Agency determines that the Invoice is not correct and complete, and should not be paid, even in part, the Agency's designated representative must immediately notify Outside Counsel in writing that the Invoice is deficient and attempt to resolve the Invoice deficiency with Outside Counsel in a mutually agreeable manner.

(1) If the Invoice deficiency can be resolved in a reasonable time and in a mutually agreeable manner that results in a correct and complete Invoice, Outside Counsel should submit that Invoice to Agency for review and approval pursuant to §57.6 of this chapter.

(2) If the Invoice deficiency cannot be resolved in a reasonable time, the Agency should reject and deny payment for the disputed portions of the Invoice and approve the undisputed portions of the Invoice pursuant to subsection (b) of this section so that the undisputed portions of the Invoice can be processed for payment pursuant to this chapter. If necessary, Outside Counsel may resubmit the disputed and rejected portions of the Invoice to Agency once the deficiency is resolved in a mutually agreeable manner with Agency. In the event that Outside Counsel and Agency mutually agree on a resolution, then Outside Counsel must follow the steps in §57.6 of this chapter.

(d) Contingency Fee Outside Counsel may be required to submit Invoices for review as requested by the Office of the Attorney General.

*§57.8. Agency Submission of Request for Voucher Approval to the Office of the Attorney General.*

(a) An Invoice may not be paid without the prior approval of the Office of the Attorney General.

(b) If the Agency approves an Invoice, or a portion of an Invoice, pursuant to §57.7(b) of this chapter, the Agency must submit the following information to the Office of the Attorney General within ten (10) business days of receiving the Invoice from Outside Counsel:

(1) a Request for Voucher Approval;

(2) a copy of the Invoice and Invoice Summary at issue;

- (3) evidence of the date the Agency received the Invoice;
  - (4) a copy of the verification required by §57.7(b)(2) of this chapter;
  - (5) other information requested by the Office of the Attorney General;
  - (6) any other information the Agency deems necessary for the Office of the Attorney General to conduct a review of the Invoice; and
  - (7) if necessary, a description of any disputed charge that the Agency has not approved for payment and the reason(s) why it was not approved.
- (c) If the Office of the Attorney General determines that a properly submitted Invoice, or a portion thereof, is eligible for payment, it will provide the Agency with a voucher approval and, if necessary, enter relevant information in the Uniform Statewide Accounting System.
- (d) If the Office of the Attorney General determines that any portion of an Invoice is not eligible for payment, it will immediately notify the Agency of that decision. The Agency may then, after consulting with Outside Counsel:
- (1) abide by the Office of the Attorney General's determination to deny payment;
  - (2) inform the Office of the Attorney General that the Agency and the Outside Counsel agree that the payment should be denied and the Invoice will be withdrawn; or
  - (3) submit a new Invoice for review and approval after resolving the Invoice deficiency with Outside Counsel in a mutually agreeable manner.
- (e) The Office of the Attorney General will not approve payment of an Invoice in an amount that is greater than the amount approved by the Agency under §57.7(b) of this chapter.
- (f) The Office of the Attorney General, at its sole discretion, may permit Agencies to submit information other than the information specified in subsection (b)(1) - (7) of this section before the Office of the Attorney General approves or disapproves payment of an Invoice. The Office of the Attorney General will specify what information is acceptable for an Agency to submit under this subsection.
- (g) Except as allowed by the Office of the Attorney General, Agencies may submit only one Request for Voucher Approval per billing period per contract.

*§57.9. Administrative Fee.*

- (a) Outside Counsel must pay a non-refundable administrative fee to the Office of the Attorney General for the Invoice review described in §57.8 of this chapter. Outside Counsel may not charge, or seek reimbursement from, the Agency for payment of this administrative fee.
- (b) The administrative fee described in subsection (a) of this section is incurred on the date that the first Invoice after the effective date of this chapter is submitted to the Agency. Any Invoice submitted to the Office of the Attorney General by the Agency before the administrative fee has

been submitted by the Outside Counsel to the Office of the Attorney General shall be deemed incorrect and incomplete and not eligible for payment.

(c) The administrative fee is set as follows:

(1) For an Outside Counsel Contract with a maximum liability of less than \$2,000.00, but more than \$0.00, the administrative fee is \$100.00.

(2) For an Outside Counsel Contract with a maximum liability equal to or greater than \$2,000.00 but less than \$10,000.00, the administrative fee is \$200.00.

(3) For an Outside Counsel Contract with a maximum liability equal to or greater than \$10,000.00 but less than \$50,000.00, the administrative fee is \$500.00.

(4) For an Outside Counsel Contract with a maximum liability equal to or greater than \$50,000.00 but less than \$150,000.00, the administrative fee is \$1,000.00.

(5) For an Outside Counsel Contract with a maximum liability equal to or greater than \$150,000.00 but less than \$1,000,000.00, the administrative fee is \$1,500.00.

(6) For an Outside Counsel Contract with a maximum liability of equal to or greater than \$1,000,000.00, the administrative fee is \$2,000.00.

(7) For Contingency Fee Outside Counsel Contracts, the Office of the Attorney General will establish a reasonable administrative fee when Invoices are submitted to the Office of the Attorney General for review.

(d) The administrative fee due under subsection (c) of this section covers the then current State Fiscal Biennium in an Outside Counsel Contract term. Outside Counsel must pay a non-refundable administrative fee to the Office of the Attorney General, as set by subsection (c) of this section, for every State Fiscal Biennium covered in an Outside Counsel Contract term. Subsequent biennial administrative fees are due upon submission of the first Invoice of a new State Fiscal Biennium.

(e) The administrative fee described in subsection (a) of this section is not due for a contract having a zero dollar liability or a contract that is only seeking reimbursement for expenses.

(f) For exceptional circumstances, the Office of the Attorney General, at its sole discretion, may modify the amount of the administrative fee due under subsection (c) of this section. If the Office of the Attorney General, at its sole discretion, permits an Agency to submit information other than the information specified in §57.8(b)(1) - (7) of this chapter, the Office of the Attorney General, in its sole discretion, may reduce or waive the administrative fee.

(g) When an Outside Counsel Contract is amended to increase the maximum liability of the contract to an amount that requires Outside Counsel to pay a higher administrative fee, under subsection (c) of this section, then Outside Counsel shall pay the difference between the original lesser fee, if already paid, and the new higher fee upon submission of the next submitted Invoice.

(h) The administrative fee described in subsection (a) of this section shall be sent to the Office of the Attorney General and not to the Agency.

**EXHIBIT F**

Texas State Board of Education 2012 Elections – Candidates  
As of 03/28/2012

<b>Party</b>	<b>Seat</b>	<b>Name</b>	<b>City</b>	<b>Profession</b>
R	Member, State Board of Education, District 1	<b>Carlos "Charlie" Garza</b>	El Paso, TX	School Admin
D	Member, State Board of Education, District 1	Martha M. Dominguéz	El Paso, TX	Dir. Education Support
D	Member, State Board of Education, District 1	Sergio Mora	Laredo, TX	Business Owner
D	Member, State Board of Education, District 1	Andres Muro	El Paso, TX	Educator
R	Member, State Board of Education, District 2	Veronica Anzaldua	McAllen, TX	Teacher
R	Member, State Board of Education, District 2	Laurie J. Turner	Corpus Christi, TX	Teacher
D	Member, State Board of Education, District 2	Ruben Cortez, Jr.	Brownsville, TX	Self-employed
D	Member, State Board of Education, District 2	Larry E. Garza	Kingsville, TX	Pharmacist
D	Member, State Board of Education, District 2	Celeste Zepeda Sanchez	San Benito, TX	Assistant Superintendent
L	Member, State Board of Education, District 2	Leonard Nelson		
R	Member, State Board of Education, District 3	David M. Williams	San Antonio, TX	Teacher
D	Member, State Board of Education, District 3	Marisa B. Perez	San Antonio, TX	TDFPS-Child Protective Service
D	Member, State Board of Education, District 3	<b>Michael Soto</b>	San Antonio, TX	College Professor
R	Member, State Board of Education, District 4	Dorothy Olmos	Houston, TX	Business owner
D	Member, State Board of Education, District 4	<b>Lawrence Allen Jr.</b>	Fresno, TX	Educator
R	Member, State Board of Education, District 5	<b>Ken Mercer</b>	San Antonio, TX	IT Project Manager
R	Member, State Board of Education, District 5	Steve Salyer	Universal City, TX	Physician Asst
D	Member, State Board of Education, District 5	Rebecca Bell-Metereau	San Marcos, TX	Professor
G	Member, State Board of Education, District 5	Irene Meyer Schart		
L	Member, State Board of Education, District 5	Mark Loewe	Austin, TX	Professor
R	Member, State Board of Education, District 6	Donna Bahorich	Houston, TX	Homemaker
D	Member, State Board of Education, District 6	Traci Jensen	Houston, TX	Educator
D	Member, State Board of Education, District 6	Patty Quintana-Nilsson	Houston, TX	Teacher

D	Member, State Board of Education, District 6	David Scott	Houston, TX	Librarian
G	Member, State Board of Education, District 6	G. C. Molison		
L	Member, State Board of Education, District 6	Gene Clark		
R	Member, State Board of Education, District 7	Rita Ashley	Beaumont, TX	Business Woman
R	Member, State Board of Education, District 7	<b>David Bradley</b>	Beaumont, TX	Insurance/Real Estate
L	Member, State Board of Education, District 7	Matthew Petre		
R	Member, State Board of Education, District 8	<b>Barbara Cargill</b>	The Woodlands, TX	science educator
R	Member, State Board of Education, District 8	Linda Ellis	The Woodlands, TX	Educator
D	Member, State Board of Education, District 8	Dexter Smith	Friendswood, TX	Educator
D	Member, State Board of Education, District 8	Rick Soliz	Humble, TX	Lawyer
R	Member, State Board of Education, District 9	<b>Thomas Ratliff</b>	Mt. Pleasant, TX	Govt Affairs Consultant
R	Member, State Board of Education, District 9	Randy Stevenson	Tyler, TX	Financial Advisor
L	Member, State Board of Education, District 9	Sherri L. Little		
R	Member, State Board of Education, District 10	Jeff Fleece	Liberty Hill, TX	Technology Executive
R	Member, State Board of Education, District 10	Tom Maynard	Florence, TX	ED, Texas FFA
R	Member, State Board of Education, District 10	Rebecca Osborne	Round Rock, TX	Educator
D	Member, State Board of Education, District 10	Judy Jennings	Austin, TX	Educational Consultant
R	Member, State Board of Education, District 11	<b>Patricia "Pat" Hardy</b>	Forth Worth, TX	Educator
L	Member, State Board of Education, District 11	Jason Darr		
R	Member, State Board of Education, District 12	<b>George M. Clayton</b>	Richardson, TX	Teacher
R	Member, State Board of Education, District 12	Pam Little	Fairview, TX	Business Owner
R	Member, State Board of Education, District 12	Geraldine "Tincy" Miller	Dallas, TX	Vice Chairman
R	Member, State Board of Education, District 12	Gail Spurlock	Richardson, TX	Consultant
D	Member, State Board of Education, District 12	Lois Parrott	Dallas, TX	Professor
R	Member, State Board of Education, District 13	S.T. Russell	Dallas, TX	Real Estate Investor
D	Member, State Board of Education, District 13	<b>Mavis Best Knight</b>	Dallas, TX	Community Volunteer

R	Member, State Board of Education, District 14	<b>Gail Lowe</b>	Lampasas, TX	publisher
R	Member, State Board of Education, District 14	Sue Melton	Waco, TX	Teacher - Retired
L	Member, State Board of Education, District 14	Stephen Hawkins		
R	Member, State Board of Education, District 15	Anette Carlisle	Amarillo, TX	consultant
R	Member, State Board of Education, District 15	Marty Rowley	Amarillo, TX	Attorney/Mediator
D	Member, State Board of Education, District 15	Steven D. Schafersman	Midland, TX	Scientist

D = Democrat

R = Republican

G = Green Party

L = Libertarian

Bold face = Incumbent

**DOCUMENT A**  
(FORMAT FOR COVER PAGE)

PROJECT PROPOSAL

Submitted to the Texas Education Agency  
Purchasing & Contracts Division  
for

The State Board of Education and the Texas Permanent School Fund  
RFQ No. 701-12-019

TITLE OF PROPOSED PROJECT:	<b>OUTSIDE LEGAL COUNSEL FOR THE STATE BOARD OF EDUCATION AND THE PERMANENT SCHOOL FUND: FIDUCIARY COUNSEL, ALTERNATIVE ASSETS PORTFOLIO/CONTRACTING, AND TAX COUNSEL</b>
RESPONDENT ORGANIZATION:	<i>Name and complete address of organization submitting proposal.</i>
CONTAINS PROPRIETARY INFORMATION:	<input type="checkbox"/> (Check this box, if the proposal being submitted contains proprietary information.)
ACCEPTANCE OF TERMS AND CONDITIONS:	<input type="checkbox"/> We hereby accept by the submission of the proposal the Terms and Conditions of the General Provisions
DATE SUBMITTED:	<i>Date proposal is submitted to TEA</i>
RESPONDENT ORGANIZATION FEI Number:	<i>Show respondent organization's Federal Employer's Identification Number or SSN if an individual. If respondent organization is a corporation or if individual is incorporated, the charter number of respondent organization or individual must also be shown.</i>
PROPOSAL DEVELOPED BY:	<i>Name, position, telephone number and email address of person to be in charge of proposed project</i>
PROJECT ADMINISTRATOR:	<i>Name, position, telephone number and email address of official committing the respondent organization to the proposed project</i>
PROPOSAL TRANSMITTED BY:	<i>Name, position, telephone number and email address of person submitting the proposal</i>
CONTRACTING OFFICER:	<i>Name, position, and telephone number of official with authority to negotiate contracts for respondent organization</i>
SUBJECT MATTERS BEING PROPOSED	<i>(Check those included herein)</i>
	<input type="checkbox"/> <b>Fiduciary Counsel</b>
	<input type="checkbox"/> <b>Alternative Assets Portfolio/Contracting</b>
	<input type="checkbox"/> <b>Tax Counsel</b>

**DOCUMENT B  
PROPOSAL CONTENT CHECKLIST**

\_\_\_\_\_  
**Proposer Firm Name**

In accordance with Section 3.1 of RFQ 701-12-019, we hereby state that this proposal response is complete and includes the following documents arranged in tabular sections in the order listed below. *(check the box for each document included in the response and list the tab letter in the right column).* Sign below.

	<b>Document</b>	<b>Document Title</b>	<b>Tab</b>
<input type="checkbox"/>	Document A	Proposal Cover Page	
<input type="checkbox"/>	Document B	Proposal Content Checklist	
<input type="checkbox"/>	Document C	Statement of Minimum Qualifications	
<input type="checkbox"/>	Document D	Evidence of Proposer's Financial Responsibility	
<input type="checkbox"/>	Document E	Contact Data Sheet	
<input type="checkbox"/>	Document F-1	Data Intake - General Information about the Firm	
<input type="checkbox"/>	Document F-2	Data Intake - Fiduciary Counsel	
<input type="checkbox"/>	Document E	Contact Data Sheet	
<input type="checkbox"/>	Document F-1	Data Intake - General Information about the Firm	
<input type="checkbox"/>	Document F-3	Data Intake - Alternatives Portfolio/Contracting	
<input type="checkbox"/>	Document E	Contact Data Sheet	
<input type="checkbox"/>	Document F-1	Data Intake – General Information about the Firm	
<input type="checkbox"/>	Document F-4	Data Intake - Tax Counsel	
<input type="checkbox"/>	Document G	Fee Proposal	
<input type="checkbox"/>	Document Set H	Conflict of Interest and Contacts H-1 Proposing Firm, H-2 Each <b>Lead Attorney or Co-Lead</b> assigned to the TPSF account,(multiple sets) H- 3 Each <b>Key Legal Professional</b> and any other employee assigned to the TPSF account (multiple sets) H-4 Each <b>Proposing Firm Affiliate</b> , meaning those who work on matters related to the TPSF on behalf of the proposing firm, including any lobbyist, petitioner, or any third-party marketer, solicitor or similar (multiple sets)	
<input type="checkbox"/>	Document I	Signed Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences	
<input type="checkbox"/>	Document J	HUB Subcontracting Plan (HSP)	

\_\_\_\_\_  
Proposer's Authorized Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**DOCUMENT C**  
**STATEMENT OF MINIMUM QUALIFICATIONS**

(Proposer Firm Name) \_\_\_\_\_ certifies that it meets the following minimum qualifications of RFQ 701-12-019 as required in accordance with 1.4 Minimum Qualifications of the Proposer. The proposer must use this document to clearly demonstrate that it meets the minimum qualifications as of **April 30, 2012**.

- a. Lead and Co-Lead attorneys assigned to the TEA/TPSF team must be licensed and currently eligible to practice law in the state of Texas as reflected by the State Bar of Texas Online Membership Directory (required by the OAG).

Yes, the Lead and Co-Lead attorneys assigned to this engagement are licensed and eligible to practice law in Texas.

No, our firm is unable to comply with Minimum Qualification **a**, because we wish to assign attorneys to the engagement as Lead and Co-Lead that are not licensed to practice law in Texas but who have legal expertise as requested.

Please complete this table with information regarding the licensure of legal professionals selected to work on TPSF engagements.

Name	Position	Texas License Yes or no	Date of License Award	# of Years Licensed In Texas	Other Licenses? Please List with State Abbreviations
1.	Lead Attorney				
2.	Co-Lead				
3.					
4.					
5.					
Add additional lines if needed					

- b. Lead and co-lead attorneys assigned to the TEA/TPSF team must be in good standing with the State Bar of Texas with no public disciplinary history in Texas or elsewhere as reflected by the State Bar of Texas' Online Membership Directory.

Yes, all lead and co-lead attorneys assigned to this engagement are in good standing with the State Bar of Texas with no public disciplinary history in Texas or elsewhere.

No, our firm is unable to comply with Minimum Qualification **b**.

- c. Attorneys assigned to the TEA/TPSF team must be engaged in the active practice of law for at least seven (7) consecutive years prior to the date of responding to this RFQ.

Yes, the legal professionals selected to be assigned to TPSF engagements have been practicing law for at least seven years.

No, our firm is unable to comply with Minimum Qualification **c**.

Please complete this table with information regarding the years of experience of legal professionals selected to work on TPSF engagements.

LEGAL PROFESSIONALS				
Assigned to the Texas Permanent School Fund Engagements				
Name	Position	Year Joined Firm	Years With Firm	Years with Firm and Prior
1.	Lead Attorney			
2.	Co-Lead			
3.				
4.				
5.				
Add additional lines if needed				

d. Counsel firms must maintain malpractice insurance or an acceptable substitute in an amount acceptable to the agency (\$1 million).

Yes, our firm maintains malpractice insurance or an acceptable substitute of at least \$1 million.

No, our firm is unable to comply with Minimum Qualification **d**.

e. Counsel firms must have expertise in partnership, corporation, limited liability partnership and limited liability corporation law; investments, endowment, public funds and trust fund law; fiduciary law and contracts law.

Yes, our firm has legal professionals with the requisite expertise to service the TPSF needs.

No, our firm is unable to comply with Minimum Qualification **e**.

f. Attorneys assigned to the TEA/TPSF team must demonstrate at least five (5) consecutive years of experience in the subject area for which a response is made.

Yes, our firm has legal professionals with the requisite expertise to service the TPSF needs.

No, our firm is unable to comply with Minimum Qualification **f**.

Please complete this table with information regarding the expertise of legal professionals selected to work on TPSF engagements to satisfy meeting Minimum Qualifications **e** and **f**:

LEGAL PROFESSIONALS					
Assigned to the Texas Permanent School Fund Engagements					
Years of Experience in Select Areas of Expertise					
Name	Partnership, Corporation, Limited Liability Entities Law	Investments Law	Endowments, Public Funds, Trust Fund Law	Fiduciary Law	Contracts Law
1.					
2.					
3. Add additional lines if needed					

g. Attorneys and Counsel firms must agree to comply with the TPSF Code of Ethics Texas Administrative Code (TAC) Title 19 Part 2 Chapter 33 Rule 33.5, the reporting requirements there under, other applicable state laws, and the conflict-of-interest provisions of the agreement. Go to: [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac\\_view=4&ti=19&pt=2&ch=33&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=19&pt=2&ch=33&rl=Y)

Yes, we have read the provisions of the Ethics Policy stated in Chapter 33.5 of the Texas Administrative Code: Statement of Investment Objectives, Policies, and Guidelines of Texas Permanent School Fund and we see no barriers to complying with such provisions.

No, our firm is unable to comply with Minimum Qualification **g**.

\_\_\_\_\_  
Proposer's Authorized Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**DOCUMENT D  
EVIDENCE OF PROPOSER'S FINANCIAL RESPONSIBILITY**

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**Proposer Firm Name**

In accordance with Section 3.2 of RFQ 701-12-019, a firm **must** submit the following documents to substantiate the financial viability of the firm. Attach all statements directly behind this document. For the evidence we are not including as part of our proposal submission, we have provided a brief explanation.

Check all those that apply and include behind this cover sheet. If any of questions 5 through 9 are NOT applicable, please enter "N/A". Questions 1 through 4 must be answered, with appropriate documentation.

**Evidence Requested In Support of Financial Viability:**

1.  Most current audited financial statements, or ([link here](#) if publicly available), and statements of cash flows are attached;  
Or  
 Most current certified public accountant-compiled financial report and statements of cash flows are attached.
2.  Contact information and statement authorizing direct contact with the firm for the following is in **DOCUMENT D Supplement**:
  - a. External certified public accountant; and
  - b. Chief Financial Officer.
3.  Schedule(s) of all applicable insurance coverage are attached, i.e. Fiduciary, Errors and Omissions, Fidelity Bond, Malpractice.
4.  A list of all regulatory bodies the firm is registered with.
5.  Statements from Auditors have not been issued to the management of our firm.  
Or  
 All management letters including \_\_\_\_\_SAS No.115 and \_\_\_\_\_ are attached and explained in **DOCUMENT D Supplement**.
7.  Firm currently has NO pending or threatened litigations or claims filed against it that may affect performance under a contract with TPSF. (Past concerns are addressed in **DOCUMENT G**).  
Or  
 All pending or threatened litigations or claims against the firm that may affect performance under a contract with TPSF are listed, dated, and explained in **DOCUMENT D Supplement**.

8.  Firm is currently NOT in default on any loan agreement or financing agreement with any bank, financial institution or other entity. (Past concerns are addressed in **DOCUMENT G**).

Or

- All current defaults are listed, dated, and explained, including circumstances and prospects for resolution, in **DOCUMENT D Supplement**
9.  Other evidence of financial viability: Explained in **DOCUMENT D Supplement and Attached**.

If your proposal does not include attachments as requested, explain in **DOCUMENT D – Supplement**.  
Include directly behind **DOCUMENT D**.

**DOCUMENT E**  
**TEXAS PERMANENT SCHOOL FUND**  
**CONTACT DATA SHEET for REQUEST FOR QUALIFICATION FOR OUTSIDE COUNSEL**  
**RFQ 701-12-019**

To be Completed and submitted with Proposal Response  
 (Check Applicable Subject Matter Area included in Proposal Response)  
**ONE SHEET FOR EACH SUBJECT SUBMITTED**

<b>SUBJECT MATTER AREAS</b>		
<input type="checkbox"/> <b>(1) Fiduciary Counsel</b>	<input type="checkbox"/> <b>(2) Alternative Assets Portfolios/Contracting</b>	<input type="checkbox"/> <b>(3) Tax Counsel</b>
Full Legal Name of Firm		
Street Address of Firm with Floor and/or Suite Number:		
City, State, Zip Code:		
Internet Address of Firm:		
Main Telephone Number of Firm:		
Main Fax Number of Firm:		
Last Name/First Name of Lead Attorney on Team:		
Street Address of Lead Attorney <i>(if different than above)</i>		
City, State, Zip Code: <i>(if different than above)</i>		
Telephone Number of Lead Attorney:		
Fax Number of Lead Attorney:		
Email Address of Lead Attorney:		
State(s) Where Lead Attorney is Licensed:		
States Where Team Attorneys are Licensed		

**DOCUMENT F  
DATA INTAKE  
Instructions**

Please complete a Data Intake for each subject matter proposed. There are general questions pertaining to legal services and the firm and there are specific questions related to the individual subject matters. **Do not exceed ten (10) double-sided pages for your answers for each submission set.**

Your proposal submission may contain the following sets:

DOCUMENT E	CONTACT DATA SHEET - Fiduciary Counsel
<b>DOCUMENT F-1</b>	DATA INTAKE – General Information about the Firm
<b>DOCUMENT F-2</b>	DATA INTAKE - Fiduciary Counsel

DOCUMENT E	CONTACT DATA SHEET– Alternative Assets Portfolios/Contracting
<b>DOCUMENT F-1</b>	DATA INTAKE – General Information about the Firm
<b>DOCUMENT F-3</b>	DATA INTAKE – Alternative Assets Portfolios/Contracting

DOCUMENT E	CONTACT DATA SHEET– Tax Counsel
<b>DOCUMENT F-1</b>	DATA INTAKE – General Information about the Firm
<b>DOCUMENT F-4</b>	DATA INTAKE – Tax Counsel

**DOCUMENT F-1**  
**DATA INTAKE – GENERAL INFORMATION ABOUT THE FIRM**

1. Please state how long your firm has been providing advice to investors for the subject matter proposed. Include in your response the following table completed to indicate how many lawyers and legal professionals are dedicated to this practice.

Position	Partnership, Corporation, Limited Liability Entities Law	Investments Law	Endowments, Public Funds, Trust Fund Law	Fiduciary Law	Contracts Law
Attorney – Partner or Shareholder					
Attorney – Non-Partner Of Counsel					
Associates – Level 3					
Associates – Level 2					
Associates – Level 1, etc					
Paralegals					
Other (describe)					

2. Provide a description of your law firm (if with a firm), including historical background, number and location of firm offices, number of attorneys, and major areas of practice.
3. List the names of the pension funds, endowment funds or other institutional clients in Texas, if any, for which your firm serves or has served as fund counsel. List the names of pension funds, endowment funds or other institutional clients outside Texas for which your firm serves or has served as fund counsel.
4. Do you foresee any potential conflicts of interest arising from continued representation of the current clients of your firm and an engagement with us? If so, please describe such conflicts in detail.
5. State with specificity any inability to comply with any provision of the current form of Outside Counsel Agreement (including the addenda) attached to this RFQ as EXHIBIT D.
6. State whether, during the past ten years, you or any firm attorney has had a formal grievance or complaint lodged against him or her pursuant to the applicable disciplinary rules, been sued for malpractice, or been the target of or a named defendant in any civil or criminal investigation or regulatory enforcement action in connection with any type of legal representation. Please state whether any firm attorney proposed to work on TPSF matters has been investigated, sued or charged with a crime involving fraud, dishonesty, theft, breach of professional ethics, campaign contribution, kickback or “pay-to-play” arrangements (whether alleged or adjudicated), lobbying violation, ethics violation, or any personal investment or other personal or business involvement concerning an underwriter or issuer of securities, investment adviser, fiduciary institution, employee benefits plan, investment company, investment vehicle, placement agent, broker-dealer, insurer, real estate transaction, or a lending institution.

7. The standard form of Outside Counsel Agreement promulgated by the Texas Attorney General's Office requires disclosure of counsel's professional liability insurance limits and deductibles. Please indicate in your response the firm's or attorney's professional liability insurance limits within the following ranges, and the name of the carrier or carriers.

- None
- Under \$1million
- \$1 million to \$5 million
- Over \$5 million, up to \$10 million
- Over \$10 million, up to \$50 million
- Over \$50 million

Indicate also the range of the deductible or any self-insured retention with respect to the foregoing insurance.

- None
- Between 0 and \$100,000
- Between \$100,001 and \$500,000
- Between \$500,001 and \$1 million
- Between \$1,000,001 and \$10 million
- Over \$10 million

8. What proportion of your firm's partners and associates are minorities? What proportion of your firm's partners and associates are women? Describe your affirmative action program.
9. What is the total attrition rate for partners and associates categorized by race and gender for the last three years?
10. Please provide your firm's NALP forms for the last three years and report on any other developments (e.g., new programs, initiatives, or strategic plans) relating to your firm's diversity efforts in the United States.

**DOCUMENT F-2**  
**DATA INTAKE – FIDUCIARY COUNSEL**

1. Provide a very brief summary description of your firm's practice of offering fiduciary counsel services to institutional investors, including the size and scope of the practice and any other resources of your firm that are relevant to your practice in that area.
2. Provide a very brief summary résumé describing the education, legal or investment experience, recent speaking engagements, and a list of significant, relevant publications of the attorney proposed to work as a lead attorney for fiduciary counsel services. Please include a list of all states where this attorney is licensed to practice law. Provide a résumé and biographical sketch describing the education, experience, speaking engagements or other activities, and publications of other attorneys and legal professionals proposed to work on TPSF matters. For other attorneys on the team, please include a list of all states where these attorneys are licensed to practice law.
3. Provide a detailed explanation of each of the qualifying criteria listed in Section 4.2 and how your firm can achieve the highest point assignment in each category for delivering fiduciary services to the TPSF.
4. State whether your response excludes any services contemplated by this RFQ set forth in the scope of services for fiduciary counsel services.
5. Please list at least three (3) investors that have a similar profile to TPSF (state investment fund or pension plan) for which the attorneys listed in item #2 have provided fiduciary counsel services. Provide reference contact information.
6. Provide a very brief summary description of three (3) significant ethical issues, including the outcome, which your firm has dealt with in advising institutional investors and their governing boards who act as fiduciaries.
7. Provide a very brief summary description of three (3) significant conflicts of interest issues, including the outcome, which your firm has dealt with in advising institutional investors and their governing boards who act as fiduciaries.
8. Provide a very brief summary description of five (5) significant transactions or cases, including the outcome, in which your firm has provided extensive legal services involving pension funds or other institutional clients relating to fiduciary services that relate to matters other than ethics and conflicts of interest.

**DOCUMENT F-3**  
**DATA INTAKE – ALTERNATIVE ASSETS PORTFOLIOS/CONTRACTING**

Alternative Assets considered herein include: private equity, real estate, real return, commodities and absolute return hedge funds.

1. Provide a very brief summary description of your firm's practice of offering alternatives assets portfolio/contracting services to institutional investors, including the size and scope of the practice and any other resources of your firm that are relevant to your practice in that area. Include data relating to the turnover ratios of attorneys specializing in the subject matter in the last three (3) years.
2. Provide a very brief summary résumé describing the education, legal or investment experience, recent speaking engagements, and a list of significant, relevant publications of the attorney proposed to work as a lead attorney for fiduciary counsel services. Please include a list of all states where this attorney is licensed to practice law. Provide a résumé and biographical sketch describing the education, experience, speaking engagements or other activities, and publications of other attorneys and legal professionals proposed to work on TPSF matters. For other attorneys on the team, please include a list of all states where these attorneys are licensed to practice law.
3. Provide a detailed explanation of each of the qualifying criteria listed in Section 4.2 and how your firm can achieve the highest point assignment in each category for delivering alternative assets portfolio/contracting services to the TPSF.
4. State whether your response excludes any services contemplated by this RFQ set forth in the scope of services for alternatives assets portfolios/contracting services.
5. Please list at least three (3) investors that have a similar profile to TPSF (state investment fund or pension plan) for which the attorneys listed in item #2 have provided alternative assets portfolio/contracting services. Provide reference contact information.
6. Provide a very brief summary description of five (5) significant transactions or cases, including the outcome, in which your firm has provided extensive legal services involving pension funds or other institutional clients relating to alternative assets portfolios/contracting needs.
7. Does the firm have tax, ERISA, ISDA, trading (SEC/Reg Sho/Rule 105/etc), Investment Advisers Act, Commodity Exchange Act and BHCA lawyers which specialize in hedge funds/PE funds/FoFs? Briefly, describe.
8. Does the firm work primarily on funds of funds or direct trading funds? Briefly describe.
9. Does the firm represent major ISDA counterparties and prime brokers? Briefly describe.
10. To your knowledge, are any of the fund or management company clients of your firm in litigation regarding their funds or their investors? SEC, CFTC or self-regulatory proceedings? Briefly describe.
11. Do you have experience working with investment managers that have experienced liquidity or settlement-related issues (e.g., suspending redemptions, creating special liquidating vehicles, paying redemptions in-kind)? Briefly describe.

12. Do you have experience negotiating side-letter arrangements that meet the needs of institutional clients such as pension funds, endowments, public funds, state entities, sovereign wealth funds? Briefly describe.
13. In the context of the TPSF, describe the five most important components of an LPA that you would review (and negotiate, if possible) for both (a) private equity funds and (b) closed-end real estate funds.
14. Describe the five most significant changes in terms or conditions of LPA's for private equity and/or real estate that you require currently, when compared to pre-2008 LPA's.
15. What specific terms and conditions of private equity and real estate LPA's do you anticipate would be of particular significance to the TPSF?
16. What are the five most important topics that you would recommend that the TPSF, as a limited partner, consider in negotiating side letters for (a) private equity funds and (b) closed-end real estate funds?
17. Complete the following table for the lead attorney assigned to the account. Provides details of LPA's for which you performed the **primary role** for review and/or negotiation, on behalf of clients who were limited partners.

Date of Final Close <sup>(a)</sup>	Fund Size (\$ USD equivalent) <sup>(b)</sup>	Size of LP Interests Represented by Lead Attorney (\$USD equivalent)	Alternative Asset Class <sup>(c)</sup>	Sector Type <sup>(d)</sup>	Investment Geography <sup>(e)</sup>

- (a) Or most recent, or anticipated close
- (b) Fund size at final close or most recent close
- (c) Private Equity, real estate, real return, commodities, absolute return hedge funds
- (d) Buyout, venture capital, value real estate, real estate debt, etc.
- (e) United States, Europe, Asia, etc.

18. This question lists practice and regulatory categories, as well as specific situations or circumstances, with respect to which we request that you identify experienced attorneys, if any, at the your firm. We understand that some of the categories overlap significantly, and we expect names to recur. List only partners of the firm, and only those attorneys whom you reasonably expect would be available to represent us; do *not* identify attorneys who have expertise in a given area but whom you regard as unlikely, for any reason, to be available and willing to represent us. Please list attorneys by name.

<b>Category</b>	<b>Attorney(s)</b>
Fund formation (on-/off-shore master/feeder structure)	
Fund formation (emerging market)	
Fund formation (multi-asset strategy w/public securities and illiquids in single vehicle)	
Investment Advisers Act compliance	
Investment Company Act compliance	
Securities Act Compliance	
Securities Exchange Act compliance	
Hedge fund advertising/marketing/communications w prospective/existing investors (including non-U.S. investors)	
Broker/dealer regulation	
Privacy regulation compliance	
SEC registration and examinations	
Insider trading – compliance and procedures drafting/implementation; internal investigations	
Insider trading – defense of government investigations/actions	
Foreign Corrupt Practices Act (FCPA) – compliance and procedures drafting/implementation; internal investigations	
FCPA – defense of government investigations/actions	
SOX (as applicable to investment managers)	
Defense of investment manager in criminal proceedings (to the extent not addressed above)	
Tax planning/compliance for investment manager and investment funds	
Labor and employment law (federal/TX)	
Defense of investment manager in controversy with investor/limited partner/subscriber	
Defense of investment manager in controversy with counterparty/vendor/broker	

**DOCUMENT F-4**  
**DATA INTAKE – TAX COUNSEL**

1. Provide a very brief summary description of your firm's practice of offering tax counsel services to institutional investors, including the size and scope of the practice and any other resources of your firm that are relevant to your practice in that area.
2. Provide a very brief summary résumé describing the education, legal or investment experience, recent speaking engagements, and a list of significant, relevant publications of the attorney proposed to work as a lead attorney for tax counsel services. Please include a list of all states where this attorney is licensed to practice law. Provide a résumé and biographical sketch describing the education, experience, speaking engagements or other activities, and publications of other attorneys and legal professionals proposed to work on TPSF matters. For other attorneys on the team, please include a list of all states where these attorneys are licensed to practice law.
3. State whether your response excludes any services contemplated by this RFQ set forth in the scope of services for tax counsel services.
4. Provide a detailed explanation of each of the qualifying criteria listed in Section 4.2 and how your firm can achieve the highest point assignment in each category for delivering tax counsel services to the TPSF.
5. Please list at least three (3) investors that have a similar profile to TPSF (state investment fund or pension plan) for which the attorneys listed in item #2 have provided tax counsel services. Provide reference contact information.
6. Provide a very brief summary description of three (3) significant IRS related transactions or cases, including the outcome, which your firm has dealt with in advising institutional investors. Such issues should include matters related to letters of determination, unrelated business income tax, FBAR and other tax related rulings and filings.
7. Provide a very brief summary description of three (3) significant foreign tax transactions or issues, including the outcome, which your firm has dealt with in advising institutional investors. Such issues should include matters related to foreign tax exemption and reclamation related to foreign securities transactions, establishing tax counsel in foreign countries such as India and tax treaty treatment of investment earnings.
8. Provide a very brief summary description of five (5) significant transactions or cases, including the outcome, in which your firm has provided extensive legal services involving pension funds or other institutional clients relating to other tax counsel needs.

**DOCUMENT G  
FEE PROPOSAL**

The hourly rate or rate range for attorneys, paralegals, patent agents, and others working on Agency matters:

Billing Classification	Hourly Rate or Rate Range
Attorney – Partner/Shareholder	
Attorney – Non-Partner	
Of Counsel	
Associates – Level 3	
Associates – Level 2	
Associates – Level 1, etc	
Paralegals	
Other (describe)	

**Billing Period.** The billing period for this OCC shall be: \_\_\_\_\_ [ex. monthly, quarterly, etc.]

**Travel Rate.** The rate for travel time for each attorney traveling for Agency matters will be listed below. An attorney's travel rate may not exceed half of that attorney's hourly rate listed above. If a travel rate(s) is not listed below, Outside Counsel may not charge Agency for time spent traveling on Agency matters.

Billing Classification	Rate For Travel
Attorney – Partner/Shareholder	
Attorney – Non-Partner	
Of Counsel	
Associates – Level 3	
Associates – Level 2	
Associates – Level 1, etc	
Paralegals	
Other (describe)	

**Additional Requirement:**

For the lead and co-lead attorneys assigned to the TEA/TPSF team, attach as **DOCUMENT G-1** documentation of good standing in the Texas State Bar.

Name of Lead Attorney: \_\_\_\_\_

Name of Co-Lead Attorney: \_\_\_\_\_



DOCUMENT H-1

Page 1 of 8

CONFLICT OF INTEREST AND CONTACTS

Firm Submission  Name of Firm: \_\_\_\_\_

Date: \_\_\_\_\_ Firm Representative Completing Form: \_\_\_\_\_

Person	Description	Personal/Social Contact	Business Contact	No Prior Relationship
<b>SBOE Members</b>				
Lawrence A. Allen Jr.,	District 4 Houston	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mary Helen Berlanga, Secretary	District 2 Corpus Christi	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Bradley	District 7 Beaumont	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Barbara Cargill, Chair	District 8 The Woodlands	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
George M. Clayton	District 12 Richardson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Craig, Vice Chair	District 15 Lubbock	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marsha Farney	District 10 Georgetown	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carlos "Charlie" Garza	District 1 El Paso	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Patricia Hardy	District 11 Fort Worth	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mavis B. Knight	District 13 Dallas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gail Lowe	District 14 Lampasas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Terri Leo	District 6 Spring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ken Mercer	District 5 San Antonio	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Thomas Ratliff	District 9 Mount Pleasant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Michael Soto	District 3 San Antonio	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Committee of Investment Advisors to SBOE Members</b>				
T. Hardie Bowman		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Walter Davis		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Eric McDonald		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
John Osborn		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**DOCUMENT H-1  
CONTINUED  
Page 2 of 8**

**CONFLICT OF INTEREST AND CONTACTS**

Person	Description	Personal/Social Contact	Business Contact	No Prior Relationship
<b>Investment Counsels, Advisors and Service Providers</b>				
Andrews Kurth, L.L.P.-Gregg Jones,	Legal counsel for Bond Guarantee Program - IRS Tax matters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
McCall, Parkhurst & Horton L.L.P. Dan Culver	Legal counsel for Bond Guarantee Program - Disclosure and SEC Compliance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Andrews Kurth, L.L.P.-Carmelo Gordian	Contracting Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Graves, Dougherty , Hearon & Moody PC – Cliff Ernst	Contracting Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Graves, Dougherty , Hearon & Moody PC – Rod Edens	Contracting Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reinhart Boerner Van Deuren sc – Keith Johnson	Contracting Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reinhart Boerner Van Deuren sc – Jussi Snellman	Contracting Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Strasburger & Price, - Gary Lawson	Fiduciary Legal Counsel for SBOE and contracting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Strasburger & Price– Gus Fields	Fiduciary Legal Counsel for SBOE and contracting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courtland Partners, Ltd - Michael Humphrey	Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courtland Partners, Ltd - Steven Novick	Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courtland Partners, Ltd – Benjamin Blakney	Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courtland Partners, Ltd – Dan Moore	Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NEPC – Rhett Humphreys	General Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NEPC – Jeff Markarin	General Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NEPC – Keith Stronkowsky	General Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NEPC – Tim McCusker	General Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BNYMellon Asset Servicing	Global Custodian, Securities Lender & Performance Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Deutsche Bank	Futures Commission Merchant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bank of America Merrill Lynch	Futures Commission Merchant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blackrock Investment Mgmt LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**DOCUMENT H-1  
CONTINUED  
Page 3 of 8**

**CONFLICT OF INTEREST AND CONTACTS**

Person	Description	Personal/Social Contact	Business Contact	No Prior Relationship
<b>Investment Counsels, Advisors and Service Providers continued</b>				
Blackstone Alternative Asset Management, LP	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
GAM, USA	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Grosvenor Capital Management, L.P.	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
K2 Advisors, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mesirow Advanced Strategies, Inc.	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DLJ Fund Partners II, LP	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NB Alternatives Advisers, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Angelo Gordon Core Plus III LLC	Investment General Partner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Angelo Gordon Realty Fund VIII LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blackstone Real Estate Partners VII LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cornerstone Real Estate Fund VIII GP LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Invesco Mortgage Recovery Master Associates LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Invesco Realty Inc. Core-GP, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
L&B Core Income Partners GP LP	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mesa West Real Estate Income Fund II GP LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Oaktree Real Estate Opportunities Fund V GP, LP	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prudential Real Estate Investors	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Realty Associates Fund X, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Realty Fund Associates X REIT GP, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senior Housing Partnership Fund IV, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trumbull Property Fund GP, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
AQR Capital Management LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bridgewater Associates, LP	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**DOCUMENT H-1  
CONTINUED  
Page 4 of 8**

**CONFLICT OF INTEREST AND CONTACTS**

<b>TPSF Senior Staff and TEA Legal Staff</b>				
B. Holland Timmins	Chief Investment Officer and Executive Administrator	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carlos Veintemillas	Deputy Chief Investment Officer, Director of Fixed Income	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Catherine A. Civiletto	Deputy Executive Administrator	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
John Grubenman	Director of Private Market Alternatives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kathryn Gernert	Investment Analyst, Pvt Mkts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Karim Hirani	Director of Equities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
James Hubbard	Director of Public Market Alternatives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Anderson	TEA General Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Joan Allen	TEA Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Maska	TEA Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jeff Armstrong	TEA Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



**DOCUMENT H-1  
CONTINUED  
Page 6 of 8**

**RECORD OF ALL CONTACT WITH THE SBOE, TEA STAFF AND TPSF CONSULTANTS**

All proposers shall provide a listing of all substantive contacts, concerning this or any other procurement of the TPSF, with the members of the SBOE, the TEA/TPSF Staff and TPSF consultants and legal counsel for the six months prior to the posting of this RFQ. Please include all phone conversations or personal meetings held with persons named above

No, no contact has been made  Yes, contact has been made. Details listed below

Date	Person Contacted	Nature of Contact/Topic

Warrant and represent that the firm or its affiliates have not paid and will not pay, have not given and will not give, any remuneration or thing of value directly or indirectly to members of the SBOE, Committee of Investment Advisors to the SBOE, the TEA Commissioner of Education, the TPSF Chief Investment Officer, or any State of Texas Employee, or any third-party for the benefit of the aforementioned, except as disclosed below, including but not limited to: cash, carried interest (or other form of value), a finder's fee, cash solicitation fee, or a fee for consulting, lobbying, or otherwise.

- I have read the above and I warrant and represent that I have no disclosures to report.
- I have read the above, and I warrant and represent that all disclosures are as follows:

Person For Whom A Benefit was Conferred	Person, Corporation, or Legal Entity Providing the Benefit	Description of the Benefit	Dollar Value of the Benefit	Date

DOCUMENT H-1

CONTINUED

Page 7 of 8

**DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND GIFTS TO  
CANDIDATES AND MEMBERS OF THE STATE BOARD OF EDUCATION**

In accordance with Section 4.3 of the State Board of Education Operating Rules, amended January 19, 2011, Disclosure of Campaign Contributions and Gifts.

- a. Any person, corporation or other legal entity which proposes to enter into a contract with or applies for a grant, contract, or charter which may be granted by the State Board of Education shall disclose whether, at any time in the preceding four years, the person, corporation, or other legal entity has made a campaign contribution to a candidate for or member of the State Board of Education. Disclosure shall be made in writing to the commissioner of education 14 calendar days prior to consideration by the board or any committee of a contract, grant or charter.
- b. Candidates for the 2012 Election for State Board of Education are listed in **EXHIBIT F**.

**No, no campaign contributions have been made.**

**Yes, campaign contributions have been made. Details listed below:**

<b>Person For Whom A Campaign Contribution was Made (Candidate or SBOE Member)</b>	<b>Person, Corporation, or Legal Entity Making the Contribution</b>	<b>Dollar Value of the Contribution</b>	<b>Date</b>

- c. A person, corporation or other legal entity which proposes to enter into a contract with or applies for a grant, contract, or charter which may be granted by the State Board of Education shall disclose in the same manner any benefit conferred on a candidate for or member of the State Board of Education during the preceding four years. A benefit need not be disclosed if the aggregate value of benefits conferred on a member of the State Board of Education during the preceding four years does not exceed \$250, or a different limit set by Section 572.023(b)(7), Texas Government Code. This requirement applies whether or not the person, corporation, or other legal entity is required to report the expenditure to the Texas Ethics Commission. For purposes of this section, a benefit is not conferred if the State Board member has paid for the member's own participation, as well as any participation by other persons for the direct benefit of any business in which the member has a substantial interest as defined under Texas Government Code Section 572.005 (1) - (7).

**No, no benefit has been conferred.**

**Yes, benefit has been conferred. Details listed below:**

<b>Person For Whom A Benefit was Conferred (Candidate or SBOE Member)</b>	<b>Person, Corporation, or Legal Entity Providing the Benefit</b>	<b>Dollar Value of the Benefit</b>	<b>Date</b>

**DOCUMENT H-1**

**CONTINUED**

**Page 8 of 8**

**DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND GIFTS TO STATEWIDE ELECTED OFFICIALS AND MEMBERS OF THE TEXAS STATE LEGISLATURE**

a. Any person, corporation or other legal entity which proposes to enter into a contract with or applies for a grant, contract, or charter which may be granted by the State Board of Education shall disclose whether, at any time in the preceding four years, the person, corporation, or other legal entity has made a campaign contribution to a statewide elected official or member of the Texas State Legislature.

**No, no campaign contributions have been made.**

**Yes, campaign contributions have been made. Details listed below:**

<b>Person For Whom A Campaign Contribution was Made (Statewide Elected Official or Member of State Legislature)</b>	<b>Person, Corporation, or Legal Entity Making the Contribution</b>	<b>Dollar Value of the Contribution</b>	<b>Date</b>

**ACCESS TO CONFIDENTIAL INFORMATION**

I understand that any unauthorized disclosure of confidential, sensitive and restricted student information is illegal as provided in the Family Educational Rights and Privacy Act of 1974 (FERPA) and in the implementing of federal regulation found in 34 CFR, Part 99.

I also understand that failure to observe these restrictions is prohibited by the Texas Government Code, Section 552.352 and that such an offense constitutes a Class A misdemeanor.

**SIGNATURE ATTESTATION**

I have disclosed any information of which I am aware that could be viewed as impairment to my independence in providing the service as described in the RFQ. I certify that all disclosures contained in this document set are accurate and I have read and I understand the above statement as it applies to my response.

\_\_\_\_\_  
Authorized Signature on behalf of Firm

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

\_\_\_\_\_  
Title, (Authorized on behalf of Firm)

\_\_\_\_\_  
Date

**DOCUMENT H-2**

Page 1 of 8

**CONFLICT OF INTEREST AND CONTACTS**

**Lead Attorney Submission**     **Name of Firm:** \_\_\_\_\_

**Date:** \_\_\_\_\_ **Lead Attorney Completing Form:** \_\_\_\_\_

**Complete another set if there is a co-lead assigned to the TPSF Team**

Person	Description	Personal/Social Contact	Business Contact	No Prior Relationship
<b>SBOE Members</b>				
Lawrence A. Allen Jr.,	District 4 Houston	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mary Helen Berlanga, Secretary	District 2 Corpus Christi	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Bradley	District 7 Beaumont	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Barbara Cargill, Chair	District 8 The Woodlands	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
George M. Clayton	District 12 Richardson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Craig, Vice Chair	District 15 Lubbock	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marsha Farney	District 10 Georgetown	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carlos "Charlie" Garza	District 1 El Paso	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Patricia Hardy	District 11 Fort Worth	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mavis B. Knight	District 13 Dallas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gail Lowe	District 14 Lampasas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Terri Leo	District 6 Spring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ken Mercer	District 5 San Antonio	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Thomas Ratliff	District 9 Mount Pleasant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Michael Soto	District 3 San Antonio	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Committee of Investment Advisors to SBOE Members</b>				
T. Hardie Bowman		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Walter Davis		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Eric McDonald		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
John Osborn		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**DOCUMENT H-2  
CONTINUED  
Page 2 of 8**

**CONFLICT OF INTEREST AND CONTACTS**

Person	Description	Personal/Social Contact	Business Contact	No Prior Relationship
<b>Investment Counsels, Advisors and Service Providers</b>				
Andrews Kurth, L.L.P.-Gregg Jones,	Legal counsel for Bond Guarantee Program - IRS Tax matters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
McCall, Parkhurst & Horton L.L.P. Dan Culver	Legal counsel for Bond Guarantee Program - Disclosure and SEC Compliance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Andrews Kurth, L.L.P.-Carmelo Gordian	Contracting Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Graves, Dougherty , Hearon & Moody PC – Cliff Ernst	Contracting Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Graves, Dougherty , Hearon & Moody PC – Rod Edens	Contracting Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reinhart Boerner Van Deuren sc – Keith Johnson	Contracting Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reinhart Boerner Van Deuren sc – Jussi Snellman	Contracting Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Strasburger & Price, - Gary Lawson	Fiduciary Legal Counsel for SBOE and contracting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Strasburger & Price– Gus Fields	Fiduciary Legal Counsel for SBOE and contracting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courtland Partners, Ltd - Michael Humphrey	Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courtland Partners, Ltd - Steven Novick	Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courtland Partners, Ltd – Benjamin Blakney	Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courtland Partners, Ltd – Dan Moore	Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NEPC – Rhett Humphreys	General Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NEPC – Jeff Markarin	General Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NEPC – Keith Stronkowsky	General Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NEPC – Tim McCusker	General Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BNYMellon Asset Servicing	Global Custodian, Securities Lender & Performance Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Deutsche Bank	Futures Commission Merchant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bank of America Merrill Lynch	Futures Commission Merchant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blackrock Investment Mgmt LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**DOCUMENT H-2  
CONTINUED  
Page 3 of 8**

**CONFLICT OF INTEREST AND CONTACTS**

Person	Description	Personal/Social Contact	Business Contact	No Prior Relationship
<b>Investment Counsels, Advisors and Service Providers continued</b>				
Blackstone Alternative Asset Management, LP	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
GAM, USA	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Grosvenor Capital Management, L.P.	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
K2 Advisors, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mesirow Advanced Strategies, Inc.	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DLJ Fund Partners II, LP	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NB Alternatives Advisers, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Angelo Gordon Core Plus III LLC	Investment General Partner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Angelo Gordon Realty Fund VIII LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blackstone Real Estate Partners VII LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cornerstone Real Estate Fund VIII GP LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Invesco Mortgage Recovery Master Associates LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Invesco Realty Inc. Core-GP, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
L&B Core Income Partners GP LP	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mesa West Real Estate Income Fund II GP LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Oaktree Real Estate Opportunities Fund V GP, LP	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prudential Real Estate Investors	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Realty Associates Fund X, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Realty Fund Associates X REIT GP, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senior Housing Partnership Fund IV, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trumbull Property Fund GP, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
AQR Capital Management LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bridgewater Associates, LP	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**DOCUMENT H-2  
CONTINUED  
Page 4 of 8**

**CONFLICT OF INTEREST AND CONTACTS**

<b>TPSF Senior Staff and TEA Legal Staff</b>				
B. Holland Timmins	Chief Investment Officer and Executive Administrator	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carlos Veintemillas	Deputy Chief Investment Officer, Director of Fixed Income	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Catherine A. Civiletto	Deputy Executive Administrator	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
John Grubenman	Director of Private Market Alternatives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kathryn Gernert	Investment Analyst, Pvt Mkts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Karim Hirani	Director of Equities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
James Hubbard	Director of Public Market Alternatives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Anderson	TEA General Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Joan Allen	TEA Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Maska	TEA Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jeff Armstrong	TEA Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



**DOCUMENT H-2  
CONTINUED  
Page 6 of 8**

**RECORD OF ALL CONTACT WITH THE SBOE, TEA STAFF AND TPSF CONSULTANTS**

All proposers shall provide a listing of all substantive contacts, concerning this or any other procurement of the TPSF, with the members of the SBOE, the TEA/TPSF Staff and TPSF consultants and legal counsel for the six months prior to the posting of this RFQ. Please include all phone conversations or personal meetings held with persons named above

No, no contact has been made  Yes, contact has been made. Details listed below

Date	Person Contacted	Nature of Contact/Topic

Warrant and represent that the firm or its affiliates have not paid and will not pay, have not given and will not give, any remuneration or thing of value directly or indirectly to members of the SBOE, Committee of Investment Advisors to the SBOE, the TEA Commissioner of Education, the TPSF Chief Investment Officer, or any State of Texas Employee, or any third-party for the benefit of the aforementioned, except as disclosed below, including but not limited to: cash, carried interest (or other form of value), a finder's fee, cash solicitation fee, or a fee for consulting, lobbying, or otherwise.

- I have read the above and I warrant and represent that I have no disclosures to report.
- I have read the above, and I warrant and represent that all disclosures are as follows:

Person For Whom A Benefit was Conferred	Person, Corporation, or Legal Entity Providing the Benefit	Description of the Benefit	Dollar Value of the Benefit	Date

DOCUMENT H-2

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Page 7 of 8

**DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND GIFTS TO  
CANDIDATES AND MEMBERS OF THE STATE BOARD OF EDUCATION**

In accordance with Section 4.3 of the State Board of Education Operating Rules, amended January 19, 2011, Disclosure of Campaign Contributions and Gifts.

- d. Any person, corporation or other legal entity which proposes to enter into a contract with or applies for a grant, contract, or charter which may be granted by the State Board of Education shall disclose whether, at any time in the preceding four years, the person, corporation, or other legal entity has made a campaign contribution to a candidate for or member of the State Board of Education. Disclosure shall be made in writing to the commissioner of education 14 calendar days prior to consideration by the board or any committee of a contract, grant or charter.
- e. Candidates for the 2012 Election for State Board of Education are listed in **EXHIBIT F**.

**No, no campaign contributions have been made.**

**Yes, campaign contributions have been made. Details listed below:**

<b>Person For Whom A Campaign Contribution was Made (Candidate or SBOE Member)</b>	<b>Person, Corporation, or Legal Entity Making the Contribution</b>	<b>Dollar Value of the Contribution</b>	<b>Date</b>

- f. A person, corporation or other legal entity which proposes to enter into a contract with or applies for a grant, contract, or charter which may be granted by the State Board of Education shall disclose in the same manner any benefit conferred on a candidate for or member of the State Board of Education during the preceding four years. A benefit need not be disclosed if the aggregate value of benefits conferred on a member of the State Board of Education during the preceding four years does not exceed \$250, or a different limit set by Section 572.023(b)(7), Texas Government Code. This requirement applies whether or not the person, corporation, or other legal entity is required to report the expenditure to the Texas Ethics Commission. For purposes of this section, a benefit is not conferred if the State Board member has paid for the member's own participation, as well as any participation by other persons for the direct benefit of any business in which the member has a substantial interest as defined under Texas Government Code Section 572.005 (1) - (7).

**No, no benefit has been conferred.**

**Yes, benefit has been conferred. Details listed below:**

<b>Person For Whom A Benefit was Conferred (Candidate or SBOE Member)</b>	<b>Person, Corporation, or Legal Entity Providing the Benefit</b>	<b>Dollar Value of the Benefit</b>	<b>Date</b>

**DOCUMENT H-2**

**CONTINUED**

**Page 8 of 8**

**DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND GIFTS TO STATEWIDE ELECTED OFFICIALS AND MEMBERS OF THE TEXAS STATE LEGISLATURE**

b. Any person, corporation or other legal entity which proposes to enter into a contract with or applies for a grant, contract, or charter which may be granted by the State Board of Education shall disclose whether, at any time in the preceding four years, the person, corporation, or other legal entity has made a campaign contribution to a statewide elected official or member of the Texas State Legislature.

**No, no campaign contributions have been made.**

**Yes, campaign contributions have been made. Details listed below:**

<b>Person For Whom A Campaign Contribution was Made (Statewide Elected Official or Member of State Legislature)</b>	<b>Person, Corporation, or Legal Entity Making the Contribution</b>	<b>Dollar Value of the Contribution</b>	<b>Date</b>

**ACCESS TO CONFIDENTIAL INFORMATION**

I understand that any unauthorized disclosure of confidential, sensitive and restricted student information is illegal as provided in the Family Educational Rights and Privacy Act of 1974 (FERPA) and in the implementing of federal regulation found in 34 CFR, Part 99.

I also understand that failure to observe these restrictions is prohibited by the Texas Government Code, Section 552.352 and that such an offense constitutes a Class A misdemeanor.

**SIGNATURE ATTESTATION**

I have disclosed any information of which I am aware that could be viewed as impairment to my independence in providing the service as described in the RFQ. I certify that all disclosures contained in this document set are accurate and I have read and I understand the above statement as it applies to my response.

\_\_\_\_\_  
Authorized Signature on behalf of Firm

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

\_\_\_\_\_  
Title, (Authorized on behalf of Firm)

\_\_\_\_\_  
Date

**DOCUMENT H-3**

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**CONFLICT OF INTEREST AND CONTACTS**

**Key Legal Professional Submission**  **Name of Firm:** \_\_\_\_\_

**Date:** \_\_\_\_\_ **Key Person Completing Form:** \_\_\_\_\_

**Complete a set for each legal professional assigned to the TPSF team**

Person	Description	Personal/Social Contact	Business Contact	No Prior Relationship
<b>SBOE Members</b>				
Lawrence A. Allen Jr.,	District 4 Houston	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mary Helen Berlanga, Secretary	District 2 Corpus Christi	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Bradley	District 7 Beaumont	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Barbara Cargill, Chair	District 8 The Woodlands	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
George M. Clayton	District 12 Richardson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Craig, Vice Chair	District 15 Lubbock	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marsha Farney	District 10 Georgetown	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carlos "Charlie" Garza	District 1 El Paso	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Patricia Hardy	District 11 Fort Worth	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mavis B. Knight	District 13 Dallas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gail Lowe	District 14 Lampasas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Terri Leo	District 6 Spring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ken Mercer	District 5 San Antonio	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Thomas Ratliff	District 9 Mount Pleasant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Michael Soto	District 3 San Antonio	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Committee of Investment Advisors to SBOE Members</b>				
T. Hardie Bowman		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Walter Davis		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Eric McDonald		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
John Osborn		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**DOCUMENT H-3  
CONTINUED  
Page 2 of 8**

**CONFLICT OF INTEREST AND CONTACTS**

Person	Description	Personal/Social Contact	Business Contact	No Prior Relationship
<b>Investment Counsels, Advisors and Service Providers</b>				
Andrews Kurth, L.L.P.-Gregg Jones,	Legal counsel for Bond Guarantee Program - IRS Tax matters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
McCall, Parkhurst & Horton L.L.P. Dan Culver	Legal counsel for Bond Guarantee Program - Disclosure and SEC Compliance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Andrews Kurth, L.L.P.-Carmelo Gordian	Contracting Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Graves, Dougherty , Hearon & Moody PC – Cliff Ernst	Contracting Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Graves, Dougherty , Hearon & Moody PC – Rod Edens	Contracting Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reinhart Boerner Van Deuren sc – Keith Johnson	Contracting Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reinhart Boerner Van Deuren sc – Jussi Snellman	Contracting Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Strasburger & Price, - Gary Lawson	Fiduciary Legal Counsel for SBOE and contracting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Strasburger & Price– Gus Fields	Fiduciary Legal Counsel for SBOE and contracting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courtland Partners, Ltd - Michael Humphrey	Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courtland Partners, Ltd - Steven Novick	Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courtland Partners, Ltd – Benjamin Blakney	Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courtland Partners, Ltd – Dan Moore	Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NEPC – Rhett Humphreys	General Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NEPC – Jeff Markarin	General Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NEPC – Keith Stronkowsky	General Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NEPC – Tim McCusker	General Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BNYMellon Asset Servicing	Global Custodian, Securities Lender & Performance Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Deutsche Bank	Futures Commission Merchant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bank of America Merrill Lynch	Futures Commission Merchant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blackrock Investment Mgmt LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**DOCUMENT H-3  
CONTINUED  
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**CONFLICT OF INTEREST AND CONTACTS**

Person	Description	Personal/Social Contact	Business Contact	No Prior Relationship
<b>Investment Counsels, Advisors and Service Providers continued</b>				
Blackstone Alternative Asset Management, LP	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
GAM, USA	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Grosvenor Capital Management, L.P.	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
K2 Advisors, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mesirow Advanced Strategies, Inc.	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DLJ Fund Partners II, LP	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NB Alternatives Advisers, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Angelo Gordon Core Plus III LLC	Investment General Partner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Angelo Gordon Realty Fund VIII LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blackstone Real Estate Partners VII LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cornerstone Real Estate Fund VIII GP LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Invesco Mortgage Recovery Master Associates LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Invesco Realty Inc. Core-GP, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
L&B Core Income Partners GP LP	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mesa West Real Estate Income Fund II GP LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Oaktree Real Estate Opportunities Fund V GP, LP	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prudential Real Estate Investors	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Realty Associates Fund X, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Realty Fund Associates X REIT GP, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senior Housing Partnership Fund IV, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trumbull Property Fund GP, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
AQR Capital Management LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bridgewater Associates, LP	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**DOCUMENT H-3  
CONTINUED  
Page 4 of 8**

**CONFLICT OF INTEREST AND CONTACTS**

<b>TPSF Senior Staff and TEA Legal Staff</b>				
B. Holland Timmins	Chief Investment Officer and Executive Administrator	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carlos Veintemillas	Deputy Chief Investment Officer, Director of Fixed Income	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Catherine A. Civiletto	Deputy Executive Administrator	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
John Grubenman	Director of Private Market Alternatives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kathryn Gernert	Investment Analyst, Pvt Mkts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Karim Hirani	Director of Equities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
James Hubbard	Director of Public Market Alternatives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Anderson	TEA General Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Joan Allen	TEA Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Maska	TEA Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jeff Armstrong	TEA Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



**DOCUMENT H-3  
CONTINUED  
Page 6 of 8**

**RECORD OF ALL CONTACT WITH THE SBOE, TEA STAFF AND TPSF CONSULTANTS**

All proposers shall provide a listing of all substantive contacts, concerning this or any other procurement of the TPSF, with the members of the SBOE, the TEA/TPSF Staff and TPSF consultants and legal counsel for the six months prior to the posting of this RFQ. Please include all phone conversations or personal meetings held with persons named above

No, no contact has been made  Yes, contact has been made. Details listed below

Date	Person Contacted	Nature of Contact/Topic

Warrant and represent that the firm or its affiliates have not paid and will not pay, have not given and will not give, any remuneration or thing of value directly or indirectly to members of the SBOE, Committee of Investment Advisors to the SBOE, the TEA Commissioner of Education, the TPSF Chief Investment Officer, or any State of Texas Employee, or any third-party for the benefit of the aforementioned, except as disclosed below, including but not limited to: cash, carried interest (or other form of value), a finder's fee, cash solicitation fee, or a fee for consulting, lobbying, or otherwise.

- I have read the above and I warrant and represent that I have no disclosures to report.
- I have read the above, and I warrant and represent that all disclosures are as follows:

Person For Whom A Benefit was Conferred	Person, Corporation, or Legal Entity Providing the Benefit	Description of the Benefit	Dollar Value of the Benefit	Date

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Page 7 of 8

**DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND GIFTS TO  
CANDIDATES AND MEMBERS OF THE STATE BOARD OF EDUCATION**

In accordance with Section 4.3 of the State Board of Education Operating Rules, amended January 19, 2011, Disclosure of Campaign Contributions and Gifts.

- g. Any person, corporation or other legal entity which proposes to enter into a contract with or applies for a grant, contract, or charter which may be granted by the State Board of Education shall disclose whether, at any time in the preceding four years, the person, corporation, or other legal entity has made a campaign contribution to a candidate for or member of the State Board of Education. Disclosure shall be made in writing to the commissioner of education 14 calendar days prior to consideration by the board or any committee of a contract, grant or charter.
- h. Candidates for the 2012 Election for State Board of Education are listed in **EXHIBIT F**.

**No, no campaign contributions have been made.**

**Yes, campaign contributions have been made. Details listed below:**

<b>Person For Whom A Campaign Contribution was Made (Candidate or SBOE Member)</b>	<b>Person, Corporation, or Legal Entity Making the Contribution</b>	<b>Dollar Value of the Contribution</b>	<b>Date</b>

- i. A person, corporation or other legal entity which proposes to enter into a contract with or applies for a grant, contract, or charter which may be granted by the State Board of Education shall disclose in the same manner any benefit conferred on a candidate for or member of the State Board of Education during the preceding four years. A benefit need not be disclosed if the aggregate value of benefits conferred on a member of the State Board of Education during the preceding four years does not exceed \$250, or a different limit set by Section 572.023(b)(7), Texas Government Code. This requirement applies whether or not the person, corporation, or other legal entity is required to report the expenditure to the Texas Ethics Commission. For purposes of this section, a benefit is not conferred if the State Board member has paid for the member's own participation, as well as any participation by other persons for the direct benefit of any business in which the member has a substantial interest as defined under Texas Government Code Section 572.005 (1) - (7).

**No, no benefit has been conferred.**

**Yes, benefit has been conferred. Details listed below:**

<b>Person For Whom A Benefit was Conferred (Candidate or SBOE Member)</b>	<b>Person, Corporation, or Legal Entity Providing the Benefit</b>	<b>Dollar Value of the Benefit</b>	<b>Date</b>

**DOCUMENT H-3**

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**Page 8 of 8**

**DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND GIFTS TO STATEWIDE ELECTED OFFICIALS AND MEMBERS OF THE TEXAS STATE LEGISLATURE**

c. Any person, corporation or other legal entity which proposes to enter into a contract with or applies for a grant, contract, or charter which may be granted by the State Board of Education shall disclose whether, at any time in the preceding four years, the person, corporation, or other legal entity has made a campaign contribution to a statewide elected official or member of the Texas State Legislature.

**No, no campaign contributions have been made.**

**Yes, campaign contributions have been made. Details listed below:**

<b>Person For Whom A Campaign Contribution was Made (Statewide Elected Official or Member of State Legislature)</b>	<b>Person, Corporation, or Legal Entity Making the Contribution</b>	<b>Dollar Value of the Contribution</b>	<b>Date</b>

**ACCESS TO CONFIDENTIAL INFORMATION**

I understand that any unauthorized disclosure of confidential, sensitive and restricted student information is illegal as provided in the Family Educational Rights and Privacy Act of 1974 (FERPA) and in the implementing of federal regulation found in 34 CFR, Part 99.

I also understand that failure to observe these restrictions is prohibited by the Texas Government Code, Section 552.352 and that such an offense constitutes a Class A misdemeanor.

**SIGNATURE ATTESTATION**

I have disclosed any information of which I am aware that could be viewed as impairment to my independence in providing the service as described in the RFQ. I certify that all disclosures contained in this document set are accurate and I have read and I understand the above statement as it applies to my response.

\_\_\_\_\_  
Authorized Signature on behalf of Firm

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

\_\_\_\_\_  
Title, (Authorized on behalf of Firm)

\_\_\_\_\_  
Date

**DOCUMENT H-4**

Page 1 of 8

**CONFLICT OF INTEREST AND CONTACTS**

**Proposing Firm Affiliate Submission**  **Name of Firm:** \_\_\_\_\_

**Date:** \_\_\_\_\_ **AFFILIATE Completing Form:** \_\_\_\_\_

Submit one set for each affiliate firm and person.

Person	Description	Personal/Social Contact	Business Contact	No Prior Relationship
<b>SBOE Members</b>				
Lawrence A. Allen Jr.,	District 4 Houston	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mary Helen Berlanga, Secretary	District 2 Corpus Christi	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Bradley	District 7 Beaumont	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Barbara Cargill, Chair	District 8 The Woodlands	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
George M. Clayton	District 12 Richardson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Craig, Vice Chair	District 15 Lubbock	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marsha Farney	District 10 Georgetown	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carlos "Charlie" Garza	District 1 El Paso	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Patricia Hardy	District 11 Fort Worth	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mavis B. Knight	District 13 Dallas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gail Lowe	District 14 Lampasas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Terri Leo	District 6 Spring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ken Mercer	District 5 San Antonio	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Thomas Ratliff	District 9 Mount Pleasant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Michael Soto	District 3 San Antonio	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Committee of Investment Advisors to SBOE Members</b>				
T. Hardie Bowman		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Walter Davis		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Eric McDonald		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
John Osborn		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**DOCUMENT H-4  
CONTINUED  
Page 2 of 8**

**CONFLICT OF INTEREST AND CONTACTS**

Person	Description	Personal/Social Contact	Business Contact	No Prior Relationship
<b>Investment Counsels, Advisors and Service Providers</b>				
Andrews Kurth, L.L.P.-Gregg Jones,	Legal counsel for Bond Guarantee Program - IRS Tax matters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
McCall, Parkhurst & Horton L.L.P. Dan Culver	Legal counsel for Bond Guarantee Program - Disclosure and SEC Compliance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Andrews Kurth, L.L.P.-Carmelo Gordian	Contracting Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Graves, Dougherty , Hearon & Moody PC – Cliff Ernst	Contracting Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Graves, Dougherty , Hearon & Moody PC – Rod Edens	Contracting Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reinhart Boerner Van Deuren sc – Keith Johnson	Contracting Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reinhart Boerner Van Deuren sc – Jussi Snellman	Contracting Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Strasburger & Price, - Gary Lawson	Fiduciary Legal Counsel for SBOE and contracting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Strasburger & Price– Gus Fields	Fiduciary Legal Counsel for SBOE and contracting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courtland Partners, Ltd - Michael Humphrey	Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courtland Partners, Ltd - Steven Novick	Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courtland Partners, Ltd – Benjamin Blakney	Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courtland Partners, Ltd – Dan Moore	Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NEPC – Rhett Humphreys	General Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NEPC – Jeff Markarin	General Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NEPC – Keith Stronkowsky	General Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NEPC – Tim McCusker	General Investment Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BNYMellon Asset Servicing	Global Custodian, Securities Lender & Performance Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Deutsche Bank	Futures Commission Merchant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bank of America Merrill Lynch	Futures Commission Merchant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blackrock Investment Mgmt LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**DOCUMENT H-4  
CONTINUED  
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**CONFLICT OF INTEREST AND CONTACTS**

Person	Description	Personal/Social Contact	Business Contact	No Prior Relationship
<b>Investment Counsels, Advisors and Service Providers continued</b>				
Blackstone Alternative Asset Management, LP	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
GAM, USA	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Grosvenor Capital Management, L.P.	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
K2 Advisors, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mesirow Advanced Strategies, Inc.	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DLJ Fund Partners II, LP	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NB Alternatives Advisers, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Angelo Gordon Core Plus III LLC	Investment General Partner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Angelo Gordon Realty Fund VIII LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blackstone Real Estate Partners VII LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cornerstone Real Estate Fund VIII GP LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Invesco Mortgage Recovery Master Associates LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Invesco Realty Inc. Core-GP, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
L&B Core Income Partners GP LP	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mesa West Real Estate Income Fund II GP LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Oaktree Real Estate Opportunities Fund V GP, LP	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prudential Real Estate Investors	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Realty Associates Fund X, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Realty Fund Associates X REIT GP, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senior Housing Partnership Fund IV, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trumbull Property Fund GP, LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
AQR Capital Management LLC	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bridgewater Associates, LP	Investment Manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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**CONFLICT OF INTEREST AND CONTACTS**

<b>TPSF Senior Staff and TEA Legal Staff</b>				
B. Holland Timmins	Chief Investment Officer and Executive Administrator	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carlos Veintemillas	Deputy Chief Investment Officer, Director of Fixed Income	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Catherine A. Civiletto	Deputy Executive Administrator	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
John Grubenman	Director of Private Market Alternatives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kathryn Gernert	Investment Analyst, Pvt Mkts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Karim Hirani	Director of Equities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
James Hubbard	Director of Public Market Alternatives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Anderson	TEA General Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Joan Allen	TEA Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Maska	TEA Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jeff Armstrong	TEA Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



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CONTINUED  
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**RECORD OF ALL CONTACT WITH THE SBOE, TEA STAFF AND TPSF CONSULTANTS**

All proposers shall provide a listing of all substantive contacts, concerning this or any other procurement of the TPSF, with the members of the SBOE, the TEA/TPSF Staff and TPSF consultants and legal counsel for the six months prior to the posting of this RFQ. Please include all phone conversations or personal meetings held with persons named above

No, no contact has been made  Yes, contact has been made. Details listed below

Date	Person Contacted	Nature of Contact/Topic

Warrant and represent that the firm or its affiliates have not paid and will not pay, have not given and will not give, any remuneration or thing of value directly or indirectly to members of the SBOE, Committee of Investment Advisors to the SBOE, the TEA Commissioner of Education, the TPSF Chief Investment Officer, or any State of Texas Employee, or any third-party for the benefit of the aforementioned, except as disclosed below, including but not limited to: cash, carried interest (or other form of value), a finder's fee, cash solicitation fee, or a fee for consulting, lobbying, or otherwise.

- I have read the above and I warrant and represent that I have no disclosures to report.
- I have read the above, and I warrant and represent that all disclosures are as follows:

Person For Whom A Benefit was Conferred	Person, Corporation, or Legal Entity Providing the Benefit	Description of the Benefit	Dollar Value of the Benefit	Date

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**DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND GIFTS TO  
CANDIDATES AND MEMBERS OF THE STATE BOARD OF EDUCATION**

In accordance with Section 4.3 of the State Board of Education Operating Rules, amended January 19, 2011, Disclosure of Campaign Contributions and Gifts.

- j. Any person, corporation or other legal entity which proposes to enter into a contract with or applies for a grant, contract, or charter which may be granted by the State Board of Education shall disclose whether, at any time in the preceding four years, the person, corporation, or other legal entity has made a campaign contribution to a candidate for or member of the State Board of Education. Disclosure shall be made in writing to the commissioner of education 14 calendar days prior to consideration by the board or any committee of a contract, grant or charter.
- k. Candidates for the 2012 Election for State Board of Education are listed in **EXHIBIT F**.

**No, no campaign contributions have been made.**

**Yes, campaign contributions have been made. Details listed below:**

<b>Person For Whom A Campaign Contribution was Made (Candidate or SBOE Member)</b>	<b>Person, Corporation, or Legal Entity Making the Contribution</b>	<b>Dollar Value of the Contribution</b>	<b>Date</b>

- l. A person, corporation or other legal entity which proposes to enter into a contract with or applies for a grant, contract, or charter which may be granted by the State Board of Education shall disclose in the same manner any benefit conferred on a candidate for or member of the State Board of Education during the preceding four years. A benefit need not be disclosed if the aggregate value of benefits conferred on a member of the State Board of Education during the preceding four years does not exceed \$250, or a different limit set by Section 572.023(b)(7), Texas Government Code. This requirement applies whether or not the person, corporation, or other legal entity is required to report the expenditure to the Texas Ethics Commission. For purposes of this section, a benefit is not conferred if the State Board member has paid for the member's own participation, as well as any participation by other persons for the direct benefit of any business in which the member has a substantial interest as defined under Texas Government Code Section 572.005 (1) - (7).

**No, no benefit has been conferred.**

**Yes, benefit has been conferred. Details listed below:**

<b>Person For Whom A Benefit was Conferred (Candidate or SBOE Member)</b>	<b>Person, Corporation, or Legal Entity Providing the Benefit</b>	<b>Dollar Value of the Benefit</b>	<b>Date</b>

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**CONTINUED**

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**DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND GIFTS TO STATEWIDE ELECTED OFFICIALS AND MEMBERS OF THE TEXAS STATE LEGISLATURE**

d. Any person, corporation or other legal entity which proposes to enter into a contract with or applies for a grant, contract, or charter which may be granted by the State Board of Education shall disclose whether, at any time in the preceding four years, the person, corporation, or other legal entity has made a campaign contribution to a statewide elected official or member of the Texas State Legislature.

**No, no campaign contributions have been made.**

**Yes, campaign contributions have been made. Details listed below:**

<b>Person For Whom A Campaign Contribution was Made (Statewide Elected Official or Member of State Legislature)</b>	<b>Person, Corporation, or Legal Entity Making the Contribution</b>	<b>Dollar Value of the Contribution</b>	<b>Date</b>

**ACCESS TO CONFIDENTIAL INFORMATION**

I understand that any unauthorized disclosure of confidential, sensitive and restricted student information is illegal as provided in the Family Educational Rights and Privacy Act of 1974 (FERPA) and in the implementing of federal regulation found in 34 CFR, Part 99.

I also understand that failure to observe these restrictions is prohibited by the Texas Government Code, Section 552.352 and that such an offense constitutes a Class A misdemeanor.

**SIGNATURE ATTESTATION**

I have disclosed any information of which I am aware that could be viewed as impairment to my independence in providing the service as described in the RFQ. I certify that all disclosures contained in this document set are accurate and I have read and I understand the above statement as it applies to my response.

\_\_\_\_\_  
Authorized Signature on behalf of Firm

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

\_\_\_\_\_  
Title, (Authorized on behalf of Firm)

\_\_\_\_\_  
Date

## DOCUMENT I

### EXECUTION OF OFFER, AFFIRMATION OF TERMS AND CONDITIONS, AND PROPOSAL PREFERENCES

This "Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences" is entered into by and between the State Board of Education and the Texas Education Agency, hereinafter referred to as "TEA" and the "Proposer". By signing this instrument, Proposer or Proposer's legally authorized agent affirms that the all statements within the proposal are true and correct. Proposer understands and acknowledges that discovery of any false statement in the proposal is a material breach and shall void the submitted proposal or any resulting contracts and that Proposer shall also be removed from all vendor lists maintained by the state of Texas. By signature hereon affixed, Proposer hereby acknowledges and certifies that Proposer shall be subject to the following specific affirmations, general provisions, and special provisions if the proposal is awarded a contract:

1. Proposer expressly makes the following specific affirmations in response to this RFQ:
  - A. Proposer understands that any proposal or bond signed by an agent or attorney-in-fact shall be accompanied by evidence of authority.
  - B. Proposer understands that any proposal may be withdrawn in writing prior to the date and time set for receipt of proposals. Any proposal not so withdrawn shall constitute an irrevocable offer, for a period of 90 days from the RFQ closing date, to provide the commodity or service set forth in the attached specifications, or until a selection has been made by the agency.
  - C. Proposer has fully complied with all of the terms and conditions for submission of proposal expressly stated throughout this RFQ.
  - D. Proposer has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or services to a public servant in connection with the submitted proposal or bid.
  - E. Pursuant to 15 U.S.C. Sec.1, et seq. and Tex. Bus. & Comm Code sec 15.01, et seq. neither Proposer or the firm, corporation, partnership, limited liability company, or other business entity represented by Proposer, or anyone acting for such firm, corporation, partnership, limited liability company, or other business entity has violated the antitrust laws of this State or the Federal Antitrust Laws, nor communicated directly or indirectly the proposal or bid made to any competitor or any other person engaged in such line of business.
  - F. Pursuant to Section 2155.004 of the Texas Government Code, Proposer has not received compensation for participation in the preparation of the specifications for this RFQ or Invitation for Bid. Proposer certifies that the individual or business entity named in its proposal, bid, or contract is not ineligible to receive the specified contract and acknowledges that any contract awarded from this RFQ may be terminated and payment withheld if this certification is inaccurate.
  - G. Pursuant to Section 669.003 of the Texas Government Code, relating to contracting with a former executive head of a state agency. If this provision of the Government Code applies, Proposer shall provide the following information in order for the proposal to be evaluated: (a) Name of the former executive, (b) name of the state agency where that executive worked, (c) date of separation from that agency, (d) that former executive's current position with the proposing business entity, and (e) the beginning date of employment with the proposing business entity.
  - H. Pursuant to Texas Family Code, Title 5, Subtitle D, Section 231.006 (d) regarding child support, the proposer certifies that the individual or business entity named in this proposal is not ineligible to receive specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate, the proposal includes the names and social security numbers of each person with at least a 25% ownership of the business entity submitting the proposal or bid. If this information is not included in the proposal, it will be provided prior to execution of any contract resulting from this RFQ.

- I. Pursuant to Section 2252.901 of the Texas Government Code, Proposer certifies that it is not a former employee of TEA or that Proposer has not been an employee of TEA for twelve (12) months prior to the beginning date of any contract awarded from this RFQ.

Proposer must make full disclosure of intent to employ any subcontractor who is a former employee/retiree of TEA. Within the first twelve months of leaving employment at TEA, a former employee/retiree selected by the Proposer for a subcontract, shall not perform services on a project or fill a position that the former employee/retiree worked on while employed at TEA.

- J. Proposer agrees to purchase and maintain at its expense insurance as required for the work being performed and furnished pursuant to any contract awarded from this RFQ. Such insurance will protect TEA from all claims from bodily injury, death, or property damage which may arise out of or result from the performance or furnishing by the Proposer and Proposer's other obligations under the Contract Documents, whether it is performed or furnished by Proposer, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any one of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable.
  - i. Specific insurance coverage required by TEA is as follows:
    - Worker's Compensation and Employer's Liability* coverage with limits consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Art. 8308-1.01 et. seq. Tex. Rev. Civ. Stat.) and minimum policy limits for employers Liability of \$500,000.00.
    - Comprehensive General Liability Insurance* with minimum Bodily Injury limits of \$500,000.00 for each occurrence, and Property Damage limits of \$500,000.00 for each occurrence to include Premises-Operations, Broad Form Property Damage, Personal Injury and Contractual Liability Coverage.
  - ii. TEA reserves the right to terminate the Contract or stop the Work in progress for substantial failure to submit the required evidence of insurance or cancellation of an active policy as agreed upon by TEA and Proposer during contract negotiations.
- K. Proposer agrees that all Subcontractors performing work under a contract from this RFQ will obtain insurance which will protect TEA and its employees from the risk associated with the work performed under the Agreement. The Proposer will maintain written evidence of such coverage for its Subcontractors. If the Subcontractor fails to demonstrate and/or obtain such insurance or the Subcontractor's insurance expires and is no longer available, the Proposer agrees to indemnify the Subcontractor for Work under this Agreement.
- L. Prior to the award of a contract, TEA may require that the successful proposer file a performance bond in an amount reasonable and necessary to protect the state's interest. The bond must be conditioned on the successful proposer's faithful performance of the terms of the contract.
- M. During negotiations, TEA and the proposer may negotiate a liquidated damages clause.
- N. Terms and conditions beyond those stated in this RFQ may be grounds for disqualification of a submitted proposal. TEA will have sole discretion to consider for inclusion any terms and conditions not stated in this RFQ.
- O. Contractor understands and agrees that no public disclosures or news releases pertaining to any results or findings based on research conducted to fulfill requirements of this RFQ shall be made without prior written approval of TEA.
- P. Proposer affirms that they have not been convicted of a Hurricane Katrina related felony.

- Q. Contractor or Contractor's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under any PO resulting from this RFQ. Contractor or Contractor's employees, representatives, agents and any subcontractors shall not be employees of TEA. Should Contractor subcontract any of the services required in this RFQ, Contractor expressly understands and acknowledges that in entering into such subcontract(s), TEA is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve bidder of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this RFQ.
- R. 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. TEA shall not be liable for any taxes resulting from this Contract.
- S. 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.
- T. In accordance with Texas Government Code, §2155.074 and 2155.075, vendor performance may be used as a factor in award of a Contract.
- U. Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in the TAC, Rule 111.4. The Rule outlines the ethical standards required of public purchasers, agency employees, and vendors who interact with public purchasers in the conduct of state business. Specifically, a TEA employee may not have an interest in, or in any manner be connected with a contract or bid for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Entities who are interested in seeking business opportunities with the state must be mindful of these restrictions when interacting with public purchasers of TEA or purchasers of other state agencies.
- V. The Texas Education Agency is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's Excluded Parties List System (EPLS, <http://www.epls.gov>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list. Contractor certifies that they 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 Respondent 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>.
2. Proposer has read, understands, and agrees to be bound to the terms and conditions stated in the TEA's "General Provisions" if a contract is awarded to Proposer pursuant to this RFQ. The following General Provisions which will be included in the contractual terms for any contract awarded under this RFQ are included in this instrument and are stated as follows:
- A. As used in these General Provisions:
- *Contract* means TEA's Standard Contract, and all of TEA's attachments, appendices, schedules (including but not limited to the General Provisions and the Special Provisions), amendments and extensions of or to the Standard Contract;
  - *Agency or TEA* means the Texas Education Agency;

- *Contractor* means the party or parties to this Contract other than TEA, including its or their officers, directors, employees, agents, representatives, consultants and subcontractors, and subcontractors' officers, directors, employees, agents, representatives and consultants;
  - *Project Administrator* means the respective person(s) representing TEA or Contractor, as indicated by the Contract, for the purposes of administering the Contract Project;
  - *Contract Project* means the purpose intended to be achieved through the Contract;
  - *Amendment* means a Contract that is revised in any respect, and includes both the original Contract, and any subsequent amendments or extensions thereto;
- B. **Contingency:** The Contract(s), including any amendments, extensions or subsequent contracts, are executed by TEA contingent upon the availability of appropriated funds by legislative act. Notwithstanding any other provision in this Contract or any other document, this Contract is void upon the insufficiency (in TEA's discretion) or unavailability of appropriated funds. In addition, this Contract may be terminated by TEA at any time for any reason upon notice to Contractor. Expenditures and/or activities for which Contractor may claim reimbursement shall not be accrued or claimed subsequent to receipt of such notice from TEA.
- C. **Indemnification:** Contractor shall hold TEA harmless from and shall indemnify TEA against any and all claims, demands, and causes of action of whatever kind or nature asserted by any third party and occurring or in any way incident to, arising from, or in connection with, any acts of Contractor in performance of the Contract Project.
- D. **Subcontracting:** Contractor shall not assign or subcontract any of its rights or responsibilities under this Contract without prior formal written amendment to this Contract properly executed by both TEA and Contractor. The TEA Contract Manager must pre-approve any changes in key personnel throughout the contract term. Any changes to the HUB Subcontracting Plan (HSP) must be approved by the Agency HUB Coordinator before staffing changes are initiated.
- E. **Encumbrances/Obligations:** All encumbrances, accounts payable, and expenditures shall occur on or between the beginning and ending dates of this Contract. All goods must have been received and all services rendered during the Contract period in order for Contractor to recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.
- F. **Contractor's Proposal:** Contractor's proposal that was furnished to TEA in response to a request for proposal is incorporated in this Contract by reference. The provisions of this Contract shall prevail, however, in all cases of conflict arising from the terms of Contractor's proposal whether such proposal is a written part of this Contract or is attached as a separate document.
- G. **Requirements, Terms, Conditions, and Assurances:** The terms, conditions, and assurances, which are stated in the Request for Proposal, in response to which Contractor submitted a proposal, are incorporated herein by reference for all purposes, although the current General Provisions shall prevail in the event of conflict.
- H. **Records Retention:** Contractor shall maintain its records and accounts in a manner which shall assure a full accounting for all funds received and expended by Contractor in connection with the Contract.
- I. **Sanctions for Failure to Perform or for Noncompliance:** If Contractor, in TEA's sole determination, fails or refuses for any reason to comply with or perform any of its obligations under this Contract, TEA may impose such sanctions as it may deem appropriate. This includes but is not limited to the withholding of payments to Contractor until Contractor complies; the cancellation, termination, or suspension of this Contract in whole or in part; and the seeking of other remedies as may be provided by this Contract or by law. Any cancellation, termination, or

suspension of this Contract, if imposed, shall become effective at the close of business on the day of Contractor's receipt of written notice thereof from TEA.

- J. **Contract Cancellation, etc.:** If this Contract is cancelled, terminated, or suspended by TEA prior to its expiration date, the reasonable monetary value of services properly performed by Contractor pursuant to this Contract prior to such cancellation, termination or suspension shall be determined by TEA and paid to Contractor as soon as reasonably possible.
- K. **Refunds Due to TEA:** If TEA determines that TEA is due a refund of money paid to Contractor pursuant to this Contract, Contractor shall pay the money due to TEA within 30 days of Contractor's receipt of written notice that such money is due to TEA. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset, counterclaim, cancellation, termination, suspension, total withholding, and/or disapproval of all or any subsequent applications for said funds.
- L. **State of Texas Laws:** In the conduct of the Contract Project, Contractor shall be subject to Texas State Board of Education rules pertaining to this Contract and the Contract Project, and to the laws of the State of Texas governing this Contract and the Contract Project. This Contract constitutes the entire agreement between TEA and Contractor for the accomplishment of the Contract Project. This Contract shall be interpreted according to the laws of the State of Texas except as may be otherwise provided for in this Contract.
- M. **Signature Authority; Final Expression; Superseding Document:** Contractor certifies that the person signing this Contract has been properly delegated this authority. The Contract represents the final and complete expression of the terms of agreement between the parties. The Contract supersedes any previous understandings or negotiations between the parties. Any representations, oral statements, promises or warranties that differ from the Contract shall have no force or effect. The Contract may be modified, amended or extended only by formal written amendment properly executed by both TEA and Contractor.
- N. **Antitrust:** By signing this Contract, Contractor, represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has, (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the Proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract.
- O. **Family Code Applicability:** By signing this Contract, Contractor, if other than a state agency, certifies that under Section 231.006, Family Code, that Contractor is not ineligible to receive payment under this Contract and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate. TEA reserves the right to terminate this Contract if Contractor is found to be ineligible to receive payment. If Contractor is found to be ineligible to receive payment and the Contract is terminated, Contractor is liable to TEA for attorney's fees, the costs necessary to complete the Contract, including the cost of advertising and awarding a second contract, and any other damages or relief provided by law or equity.
- P. **Dispute Resolution:** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by TEA and Contractor to attempt to resolve all disputes arising under this Contract.
- Q. **Interpretation:** In the case of conflicts arising in the interpretation of wording and/or meaning of various sections, parts, Appendices, General Provisions, , Exhibits, and Attachments or other documents, the TEA Contract and its General Provisions, Appendices and Special Provisions shall take precedence over all other documents which are a part of this contract.

- R. **Public Information:** The TEA is subject to the provisions of the Texas Public Information Act. If a request for disclosure of this Contract or any information related to the goods or services provided under the Contract or information provided to the TEA under this Contract constituting a record under the Act is received by the TEA, the information must qualify for an exception provided by the Texas Public Information Act in order to be withheld from public disclosure. Contractor authorizes the TEA to submit any information contained in the Contract, provided under the Contract, or otherwise requested to be disclosed, including information Contractor has labeled as confidential proprietary information, to the Office of the Attorney General for a determination as to whether any such information may be excepted from public disclosure under the Act. If the TEA does not have a good faith belief that information may be subject to an exception to disclosure, the TEA is not obligating itself by this Contract to submit the information to the Attorney General. It shall be the responsibility of the Contractor to make any legal argument to the Attorney General or appropriate court of law regarding the exception of the information in question from disclosure. The Contractor waives any claim against and releases from liability the TEA, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by the Contractor and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act.
- S. **Venue and Jurisdiction:** Subject to and without waiving any of the Agency's rights, including sovereign immunity, this Contract is governed by and construed under and in accordance with the laws of the State of Texas. Venue for any suit concerning this solicitation and any resulting contract or purchase order shall be in a court of competent jurisdiction in Travis County, Texas.
- T. **Protests:** Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of this or any other contract by the Texas Education Agency may submit a formal protest to the Director of the Agency's Contracts and Purchasing Division. This protest procedure shall be the exclusive method by which anyone may make a challenge to any aspect of the Agency's contracting process. The Agency will not be required to consider the merits of any protest unless the protest is submitted timely, in a sworn written protest petition, and in strict compliance with all requirements in applicable law and Agency's rules (Title 19 of the Texas Administrative Code, at § 30.2002, or any amendment or successor rules).
- U. **Severability:** In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, the invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein. 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.
- V. **Excluded Parties List System:** The Texas Education Agency is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's Excluded Parties List System (EPLS, <http://www.epls.gov>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list. Contractor certifies that they 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 Respondent 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>.
- W. **Suspension and Debarment:** Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal, state or local government entity. If Contractor is

unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this contract.

- X. **Collusion:** Contractor certifies and represents that Contractor has not colluded with, nor received any assistance from, any person who was paid by TEA to prepare specifications or a solicitation on which a respondent's bid or proposal is based and will not allow any person who prepared the respective specifications or solicitation to participate financially in any contract award.
- Y. **Proprietary or Confidential Information:** Contractor will not disclose any information to which it is privy under this Contract without the prior consent of the agency. Contractor will indemnify and hold harmless the State of Texas, its officers and employees, and TEA, its officers and employees for any claims or damages that arise from the disclosure by Contractor or its contractors of information held by the State of Texas.
- Z. **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 or agents of the State of Texas.
- AA. **Termination:** This contract shall terminate upon full performance of all requirements contained in this contract, unless otherwise extended or renewed as provided in accordance with the contract terms and conditions.
  - 1. **Termination for Convenience:** Either Party may terminate this Contract at any time, in whole or in part, without penalty, by providing thirty (30) calendar days advance written notice to the other Party. In the event of such a termination, the Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TEA shall be liable for reimbursing only those expenses incurred by the Contractor that are permitted under this Contract and were incurred prior to the effective termination date.
  - 2. **Termination for Cause/Default:** If the Contractor fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any of the terms or conditions of the Contract, TEA may, upon written notice of default to the Contractor, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the Contract.

TEA may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless TEA notifies the Contractor in writing prior to the exercise of such remedy.

The Contractor shall remain liable for all covenants and indemnities under the Contract. The Contractor shall be liable for all costs and expenses, including court costs, incurred by TEA with respect to the enforcement of any of the remedies listed herein.
  - 3. **Termination Due to Changes in Law:** If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either Party cannot reasonably fulfill this Contract and if the Parties cannot agree to an amendment that would enable substantial continuation of the Contract, the Parties shall be discharged from any further obligations under this Contract.
  - 4. **Rights upon Termination or Expiration of Contract:** In the event that the Contract is terminated for any reason, or upon its expiration, TEA shall retain ownership of all associated work products and documentation obtained from the Contractor under the Contract.

5. **Survival of Terms:** Termination of the Contract for any reason shall not release the Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.
- BB. **Audit:** Pursuant to Section 2262.003 of the Texas Government Code, Contractor understands and agrees that (1) the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract; (2) acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds; and (3) under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- CC. **Force Majeure:** Except as otherwise provided, neither Contractor nor TEA nor any agency of the State of Texas, shall be liable to the other for any delay in, or failure of performance, of a requirement contained in this Contract caused by *force majeure*. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. *Force majeure* is defined as acts of God, war, strike, fires, explosions, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. 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.
- DD. **Abandonment or Default:** If the contractor defaults on the contract, *agency name* reserves the right to cancel the contract without notice and either re-solicit or re-award the contract to the next best responsive and responsible respondent. The defaulting contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by the agency based on the seriousness of the default.
- EE. **Payment for service(s)** described in this Contract is contingent upon satisfactory completion of the service(s). Satisfaction will be determined by TEA's Project Administrator, in his sole discretion but in accordance with reasonable standards and upon advice of his superiors in TEA, if necessary. The Project Administrators of this Contract for TEA and Contractor shall be the following persons or their successors in office:

**TEA**  
 B. Holland Timmins  
 Permanent School Fund  
 Texas Education Agency  
 William B. Travis Building  
 1701 N. Congress Avenue  
 Austin, Texas 78701

**CONTRACTOR**  
 (Name)  
 (Organization Name)  
 (Address)  
 (City, State, Zip)  
 (Phone)  
 (Fax)

- FF. **Notices:** All notices, reports, and correspondence required by this Contract shall be in writing and delivered to the following representatives of TEA and Contractor or their successors in office:

**TEA**  
 B. Holland Timmins  
 Permanent School Fund  
 Texas Education Agency  
 William B. Travis Building  
 1701 N. Congress Avenue  
 Austin, Texas 78701

**CONTRACTOR**  
 (Name)  
 (Organization Name)  
 (Address)  
 (City, State, Zip)  
 (Phone)  
 (Fax)

3. Proposer has read, understands, and agrees to be bound to the terms and conditions stated in the following "Special Provisions – A" if a contract is awarded to Proposer pursuant to this RFQ. The following "Special Provisions – A" which will be included in the contractual terms for any contract awarded under this RFQ are included in sample format as follows:

- A. The definitions of terms in the General Provisions shall apply to these Special Provisions - A.
- B. Contractor shall provide to Agency, Contractor's nine (9) digit Federal Employer's Identification Number (FEI#) or Social Security Number (SSN) if Contractor is an individual, or Contractor's fourteen (14) digit State of Texas Vendor's Identification Number (VIN). If Contractor is incorporated, Contractor shall also provide to Agency the corporation's charter number issued by the Texas Secretary of State's office. Information provided by the contractor will be verified by the Agency.

Contractor's FEI# \_\_\_\_\_  
 Contractor's SSN \_\_\_\_\_  
 Contractor's VIN \_\_\_\_\_  
 Contractor's charter # \_\_\_\_\_

- C. The Texas Education Agency is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's Excluded Parties List System (EPLS, <http://www.epls.gov>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list. Contractor certifies that they 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 Respondent 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>.
- D. TEA shall determine whether a payment law prohibits the Comptroller from issuing a warrant or initiating an electronic funds transfer to a person before the agency enters into a written contract with that person. Contractor who is indebted or owes delinquent taxes to the state will have any payments under the contract applied toward the debt or delinquent taxes owed the state until the amount is paid in full, regardless of when the debt or delinquency was incurred.

Contractor may verify their account status by accessing the Comptroller's website at: <http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html>. If the account status message is "on vendor hold," the contractor is advised to contact the Comptroller's Warrant Hold Section in the Division of Revenue Accounting at 1-800-531-5441 ext. 3-4561 for assistance in resolving the issue.

The undersigned is an authorized official for the Proposer and certifies that the proposal submitted with this "Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences" instrument is in

full compliance with the provisions expressly stated above. I further certify that the proposal submitted with this instrument is allowed to claim any of the Chapter 2155 Texas Government Code preferences checked below:

The proposer, if selected as the contractor, will be required to purchase products and materials produced in this state when they are available at a price and time comparable to products and materials produced outside of Texas (TX Govt. Code § 2155.4441).

Check below if claiming a preference included in Chapter 2155 of the Texas Government Code and in Rule 1 TAC 113.8

- § 2155.441 Products of persons with mental or physical disabilities
- HB 3560 Goods produced or offered by service-disabled veterans.
- § 2155.442 Energy efficient products
- HB 3560 Preference to manufacture that has recycle program for computer equipment.
- § 2155.443 Rubberized asphalt paving material
- § 2155.444 Texas produced supplies, materials, or equipment; or USA supplies, materials, or equipment over foreign products
- Rule 1 TAC 113.8 (b)(2D) Services offered by a Texas bidder
- § 2155.444 Texas agriculture products
- § 2155.444 Texas and United States products and Texas Services, (d) purchases for landscaping purposes including plants native to the region
- HB 3560 Texas Resident service-disabled veterans
- HB 3560 Preference to contractors providing foods of higher nutritional value.
- § 2155.445 Recycled, remanufactured, or environmentally sensitive products made of recycled materials
- § 2155.446 Paper containing recycled fibers
- § 2155.447 Recycled motor oil and lubricants
- § 2155.449 Products produced in facilities on rehabilitated property as certified by section 361.609 of the Texas Health and Safety Code
- § 2155.449 Products and services from economically depressed or blighted areas
- § 2155.449 Products and services from Historically Underutilized Business or small business pursuant to the goals and objectives stated in chapter 2161 of the Texas Government Code

In compliance with this RFQ, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all commodities or services at the prices quoted in the proposal or bid. By signing this proposal, the proposer signifies that if a Texas address is shown as the address of the proposer, the proposer qualifies as a Texas Resident Bidder as defined in Rule 1 TAC 111.2.

<b>PROPOSER/COMPANY NAME:</b>
<b>STREET ADDRESS:</b>
<b>CITY/STATE/ZIP:</b>
<b>TELEPHONE NO.:</b>
<b>FACSIMILE NO.:</b>
<b>EMAIL ADDRESS:</b>
<b>NAME OF PROPOSER'S AUTHORIZED AGENT:</b>
<b>TITLE OF PROPOSER'S AUTHORIZED AGENT:</b>
<b>SIGNATURE OF AUTHORIZED AGENT:</b>

DOCUMENT J

Texas Education Agency  
Historically Underutilized Business  
Subcontracting Plan (HSP)

In accordance with Texas Government Code § 2161.252, Texas Education Agency (TEA) 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 TGC § 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 34 TAC §20.13, are: **11.9% - for Heavy Construction other than building contracts, 26.1% - for all Building Construction, including general contractors and operative builders contracts, 57.2% - for all Special Trade Construction contracts, 20% - for Professional Services contracts, 33% - for all Other Service contracts and 12.6% - for Commodities contracts.**

-- Agency Special Instructions/Additional Requirements --

**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 OPPORTUNITIES**

TEA has identified probable subcontracting opportunities by NIGP Class and Item codes in the table below. However, TEA acknowledges there may be additional subcontracting opportunities. After having divided the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, the respondent must identify what portion(s) of work, including goods or services, will be subcontracted.

Note: In accordance with 34 TAC§20.12, 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 regarding the subcontracting opportunity(s):

- Yes, I will be subcontracting portion(s) of the contract.  
(If Yes, in the spaces provided below, list any additional portions of work, not identified by TEA, that you will be subcontracting\*, and go to SECTION 3)
- 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)- Class Code: #961 Miscellaneous Services Item: #49 Legal Services, Attorney	(6)-
(2)-	(7)-
(3)-	(8)-
(4)-	(9)-
(5)-	(10)-

\*To list additional subcontracting opportunities, a continuation page is available at <http://www.tea.state.tx.us/tea/hub/index.html>

Enter your company's _____	Solicitation #: _____
----------------------------	-----------------------

**IMPORTANT: You must complete a copy of this page for each portion of the contract that you will be subcontracting. You may photocopy this page or download copies at <http://www.tea.state.tx.us/tea/hub/index.html>.**

### **SECTION 3 – RESPONDENT SUBCONTRACTING OPPORTUNITIES**

Enter the line item number and description for the portion of work listed in SECTION 2, which you will be subcontracting.

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 TGC §2254.002, "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 a 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.cpa.state.tx.us/cmb1/cmb1hub.html> and its HUB Directory, found at <http://www2.cpa.state.tx.us/cmb1/hubonly.html> to identify available HUBs.<sup>1</sup>

- 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.window.state.tx.us/procurement/prog/hub/mwb-links-1/>.<sup>1</sup>
- c. Written notifications should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications and identify a contact person. Unless TEA 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 TEA.

**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.<sup>1</sup>

Company Name	VID #	Notice Date	Was Response
_____	_____	_____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No
_____	_____	_____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No
_____	_____	_____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No

**SECTION 8 – SUBCONTRACTOR SELECTION**

List the subcontractor(s) you selected to perform the portion of work (subcontracting opportunity) listed in SECTION 3. Also, specify the percentage of work to be subcontracted, the approximate dollar value of the work to be subcontracted and indicate if the company is a Texas certified HUB.

Company Name	VID #	Expected % of Contract	Approximate Dollar Amount	Texas Certified HUB?
_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No*
_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No*

\*If the subcontractor(s) you selected is a non HUB, provide written justification of your selection process below:


**SECTION 9 – SELF PERFORMANCE JUSTIFICATION**

(If you responded “No” to SECTION 2, you must complete SECTION 9 and 10)

Provide justification, in the space provided below, on how you intend to complete the entire contract using your own employees, materials, supplies and equipment. Attach any supporting documentation.



**SECTION 10 –  
AFFIRMATION**

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

- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report (PAR) to the TEA HUB Coordinator, verifying their compliance with the HSP, including the use/expenditures they have made to subcontractors.  
(The PAR is available at <http://www.tea.state.tx.us/tea/hub/index.html> )
- The respondent must seek approval from TEA prior to making any modifications to their HSP. If the HSP is modified without TEA's prior approval, respondent may be subject to debarment pursuant to TGC § 2161.253(d).
- The respondent must, upon request, allow TEA to perform on-site reviews of the company's headquarters and/or work-site where services are to be performed and must provide documents regarding staff and other resources.

<b>Signature</b>	<b>Printed Name</b>	<b>Title</b>	<b>Date</b>