

Texas Higher Education Coordinating Board
VI. Contract Provisions and Assurances
Tech Prep Implementation
Program Year 2009-2010
General Contract Provisions and Assurances

Statement of provisions and assurances for the program(s) in this application:

- A. Terms defined:** As used in these Provisions and Assurances, Contract means the entire document, and all of CB'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 CB means the Texas Higher Education Coordinating Board; Contractor means the party or parties to this contract other than Agency; 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 person representing Agency 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 of which these Provisions and Assurances are a part; Applicant means the same as Contractor; "Application" means the entire package submitted by the Applicant including the schedules contained in the application and so indicated on the General Information page of the application package; Amendment means an application that is revised in budget categories and/or in program activities. It includes both the original application and any subsequent amendments; or extensions thereto; Works means all tangible or intangible material, products, ideas, documents or works of authorship prepared or created by Contractor for or on behalf of the CB at any time after the beginning date of the Contract (Works includes but is not limited to computer software, data, information, images, illustrations, designs, graphics, drawings, educational materials, assessment forms, testing materials, logos, trademarks, patentable materials, etc.); and, *Intellectual Property Rights* means the worldwide intangible legal rights or interests evidenced by or embodied in: (a) any idea, design, concept, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (b) any work of authorship, including any copyrights, moral rights or neighboring rights; (c) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (d) domain name registrations; and (e) any other similar rights. The Intellectual Property Rights of a party include all worldwide intangible legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses. Grant means the same as Contract; Grantee means the same as Contractor; Grantor means the same as Agency; and
- B. Contingency:** This contract is executed by Agency subject to the availability of funds appropriated by legislative act for the purposes stated. All amendments and/or extensions or subsequent contracts entered into for the same or continued purposes are executed contingent upon the availability of appropriated funds. Notwithstanding any other provision in this contract or any other document, this contract is void upon appropriated funds becoming unavailable. In addition, this contract may be terminated by Agency 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 Agency. This contract may be extended or otherwise amended

only by formal written amendment properly executed by both Agency and Contractor. No other agreement, written or oral, purporting to alter or amend this contract shall be valid.

- C. Contractor's Application:** Furnished to Agency in response to a request for application, is incorporated in this contract by reference for all necessary purposes. It is specifically provided, however, that the provisions of this contract shall prevail in all cases of conflict arising from the terms of Contractor's application whether such application is a written part of this contract or is attached as a separate document.
- D. Requirements, Terms, Conditions, and Assurances:** Which are stated in the Request for Application, in response to which Applicant is submitting this application, are incorporated herein by reference for all purposes.
- E. Signature Authority:** Applicant certifies that the person signing this application 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 CB and Contractor.
- F. State of Texas Laws:** In the conduct of the contract project, Contractor shall be subject to Texas State Board of Education and Commissioner 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 Agency 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.
- G. Monitoring:** Desk reviews or on-site monitoring reviews may be conducted by Agency to determine compliance with the approved application and the applicable statute(s), law(s), regulations, and guidelines.
- H. Sanctions for Failure to Perform or for Noncompliance:** If Contractor, in Agency's sole determination, fails or refuses for any reason to comply with or perform any of its obligations under this contract, Agency 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 Agency.
- I. Contract Cancellation, etc.:** If this contract is canceled, terminated, or suspended by Agency 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 Agency and paid to Contractor as soon as reasonably possible.
- J. Indemnification: For local educational agencies (LEAs), regional education service centers (ESCs), and institutions of higher education (IHEs) and state agencies:**

Contractor, to the extent permitted by law, shall hold Agency harmless from and shall indemnify Agency 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, its agents, employees, and subcontractors, done in the conduct of the contract project. **For all other grantees, subgrantees, contractors, and subcontractors, including nonprofit organizations and for-profit businesses:** Contractor shall hold Agency harmless from and shall indemnify Agency 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, its agents, employees, and subcontractors, done in the conduct of the contract project.

- K. Encumbrances/Obligations: For Discretionary Programs:** All encumbrances shall occur on or between the beginning and ending dates of the contract. All goods must be received and services rendered and subsequently liquidated (recorded as an expenditure or accounts payable) within the contract dates. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures. Obligations that are liquidated and recognized as expenditures must meet the allowable cost principles in OMB Circular A-87, A-21, or A-122 (as applicable) and program rules, regulations, and guidelines contained elsewhere.
- L. Financial Management and Accounting:** Grantee assures it will maintain a financial management system that provides for accurate, current, and complete disclosure of the financial results of each grant project. The financial management system records will identify adequately the source and application of funds and will contain information pertaining to grant awards, authorizations, obligations, unobligated balances, assets, outlays (i.e., expenditures), income, and interest. Fiscal control and accounting procedures will permit the tracing of funds to a level of expenditure adequate to establish that funds have been used in accordance with the approved grant application. The applicant agrees to maintain effective control over and accountability for all funds, property, and other assets.
- M. Expenditure Reports:** Contractor shall submit expenditure reports in the time and manner requested by Agency as specified in the Schedule 1- Reporting Requirements section. Unless otherwise specified, quarterly reports are due to CB within 15 days after the end of each reporting period. The final expenditure report is due within 30 days after the ending date of the grant. Revised expenditure reports, where the grantee is claiming additional expenditures beyond that originally requested, must be submitted within 60 days after the ending date of the grant.
- N. Refunds Due to CB:** If Agency determines that Agency is due a refund of money paid to Contractor pursuant to this contract, Contractor shall pay the money due to Agency within 30 days of Contractor's receipt of written notice that such money is due to Agency. If Contractor fails to make timely payment, Agency 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.
- O. 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 project. These records and accounts shall be retained by

Contractor and made available for programmatic or financial audit by Agency and by others authorized by law or regulation to make such an audit for a period of not less than five years from the date of completion of the contract project or the date of the receipt by Agency of Contractor's final claim for payment or final expenditure report in connection with this contract, whichever is later. If an audit has been announced, the records shall be retained until such audit has been completed. Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's office, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirements to cooperate is included in any subcontract it awards.

- P. Time and Effort Recordkeeping:** For those personnel whose salaries are prorated between or among different funding sources, time and effort records will be maintained by Applicant that will confirm the services provided within each funding source. Applicant must adjust payroll records and expenditures based on this documentation. This requirement applies to all projects, regardless of funding source, unless otherwise specified. For federally funded projects, time and effort records must be in accordance with the requirements in the applicable OMB cost principles.
- Q. Forms, Assurances, and Reports:** Contractor shall timely make and file with the proper authorities all forms, assurances and reports required by federal laws and regulations. Agency shall be responsible for reporting to the proper authorities any failure by Contractor to comply with the foregoing laws and regulations coming to Agency's attention, and may deny payment or recover payments made by Agency to Contractor in the event of Contractor's failure so to comply.
- R. Intellectual Property Ownership:** Contractor agrees that all Works are, upon creation, works made for hire and the sole property of the Texas Education Agency ("TEA.") If the Works are, under applicable law, not considered works made for hire, Contractor hereby assigns to TEA all worldwide ownership of all rights, including the Intellectual Property Rights, in the Works, without the necessity of any further consideration, and TEA can obtain and hold in its own name all such rights to the Works. Contractor agrees to maintain written agreements with all officers, directors, employees, agents, representatives and subcontractors engaged by Contractor for the Contract Project, granting Contractor rights sufficient to support the performance and grant of rights to TEA by Contractor. Copies of such agreements shall be provided to TEA promptly upon request. Contractor warrants that (i) it has the authority to grant the rights herein granted, (ii) it has not assigned or transferred any right, title, or interest to the Works or Intellectual Property Rights that would conflict with its obligations under the Contract, and Contractor will not enter into any such agreements, and (iii) the Works will be original and will not infringe any intellectual property rights of any other person or entity. These warranties will survive the termination of the Contract. If any preexisting rights are embodied in the Works, Contractor grants to CB and TEA the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such preexisting rights and any derivative works thereof and (ii) authorize others to do any or all of the foregoing. Contractor agrees to notify CB on delivery of the Works if they include any such preexisting rights. On request, Contractor

will provide CB with documentation indicating a third party's written approval for Contractor to use any preexisting rights that may be embodied or reflected in the Works.

For School Districts and Nonprofit Organizations: The foregoing Intellectual Property Ownership provisions apply to any school districts, nonprofit organizations, and their employees, agents, representatives, consultants and subcontractors. If a school district or nonprofit organization or any of its subcontractor(s) wish to obtain a license agreement to use, advertise, offer for sale, sell, distribute, publicly display, publicly perform or reproduce the Works, or make derivative works from the Works, then express written permission must first be obtained from the TEA Copyright Office.

For Education Service Centers (ESCs): The foregoing Intellectual Property Ownership provisions apply to an Education Service Center (ESC) and its employees, agents, representatives, consultants, and subcontractors. If an ESC or any of its subcontractor(s) wish to obtain a license agreement to use, advertise, offer for sale, sell, distribute, publicly display, publicly perform or reproduce the Works, or make derivative works from the Works, then express written permission must first be obtained from the TEA Copyright Office.

For Colleges and Universities: The foregoing Intellectual Property Ownership provisions apply to any colleges and universities and their employees, agents, representatives, consultants, and subcontractors; provided, that for all Works and derivative works created or conceived by colleges or universities under the Contract, they are granted a non-exclusive, non-transferable, royalty-free license to use the Works for their own academic and educational purposes only. The license for academic and educational purposes specifically excludes advertising, offering for sale, selling, distributing, publicly displaying, publicly performing, or reproducing the Works, or making derivative works from the Works that are created or conceived under this Contract and colleges and universities and their employees, agents, representatives, consultants, and subcontractors are prohibited from engaging in these uses and activities with regard to the Works unless the prior express written permission of the TEA Copyright Office is obtained.

- S. Unfair Business Practices: Unfair Business Practices:** By signing this Contract, Contractor, if other than a state agency, certifies that Contractor, within the preceding 12 months, has not been found guilty, in a judicial or state agency administrative proceeding, of unfair business practices. Contractor, if other than a state agency, also certifies that no officer of its company has, within the preceding 12 months, served as an officer in another company which has been found, in a judicial or state agency administrative proceeding, to be guilty of unfair business practices. Contractor, whether a state agency or not a state agency, certifies that no funds provided under this Contract shall be used to purchase supplies, equipment, or services from any companies found to be guilty of unfair business practices within 12 months from the determination of guilt.
- T. Subcontracting:** Contractor shall not assign or subcontract any of its rights or responsibilities under this contract, except as may be otherwise provided for in this application, without prior formal written amendment to this contract properly executed by both Agency and Contractor.
- U. Use of Consultants:** Notwithstanding any other provision of this application, Applicant shall not use or pay any consultant in the conduct of this application if the services to be rendered by any such consultant can be provided by Applicant's employees.
- V. Capital Outlay:** If Contractor purchases capital outlay (furniture and/or equipment) to accomplish the objective(s) of the project, title will remain with Contractor for the period of

the contract. Agency reserves the right to transfer capital outlay items for contract noncompliance during the contract period or as needed after the ending date of the contract. This provision applies to any and all furniture and/or equipment regardless of unit price and how the item is classified in Contractor's accounting record.

- W. Agency Property (terms):** In the event of loss, damage or destruction of any property owned by or loaned by Agency while in the custody or control of Contractor, its employees, agents, consultants or subcontractors, Contractor shall indemnify Agency and pay to Agency the full value of or the full cost of repair or replacement of such property, whichever is the greater, within 30 days of Contractor's receipt of written notice of Agency's determination of the amount due. This applies whether the property is developed or purchased by Contractor pursuant to this contract or is provided by Agency to Contractor for use in the contract project. If Contractor fails to make timely payment, Agency may obtain such money from Contractor by any means permitted by law, including but not limited to offset or counterclaim against any money otherwise due to Contractor by Agency.
- X. Travel Costs: For State Agencies -** Amounts authorized for maximum recovery for travel and per diem costs against any state or federal funding source are restricted to those amounts which are approved in the State of Texas General Appropriations Act in effect for the particular funding period.
- For Non State Agencies –** Amounts authorized for maximum recovery shall be subject to published federal regulation as indicated in paragraph CC.
- Y. Funds for Religious Worship, Instruction:** No funds will be used to pay for religious worship, instruction, or proselytization, or for any equipment or supplies for such, or for any construction, remodeling, repair, operation, or maintenance of any facility or part of a facility to be used for religious worship, instruction, or proselytization (34 CFR 76.532 and P. L. 107-110, section 9505).
- Z. Disclosure of Gifts and Campaign Contributions:** The grantee shall file disclosures of gifts and campaign contributions as required by State Board of Education Operating Rule 4.3, which is incorporated as if set out in full. The grantee has a continuing obligation to make disclosures through the term of the contract. Failure to comply with State Board of Education Operating Rule 4.3 is grounds for canceling the grant.
- AA. Submission of Audit Reports to CB: Grantees which are public school districts and open enrollment charter schools** agree to submit the required annual audit report, including the reporting package required under OMB Circular A-133, if an audit is required to be conducted in accordance with OMB Circular A-133, in the time and manner requested by the CB.

Grantees which are **nonprofit organizations (other than charter schools) and universities/colleges** that expend \$500,000 or more total in federal awards in any fiscal year and are thus required to conduct a Single Audit or program-specific audit in accordance with the requirements in OMB Circular A-133, agree to submit a copy of such audit to CB when the schedule of findings and questioned costs disclosed audit findings relating to any federal awards provided by CB. A copy of such audit shall also be submitted to the CB if the summary schedule of prior audit findings reported the status of any audit findings relating to any federal awards provided by the CB.

A nonprofit organization or university/college grantee shall provide written notification to the CB that an audit was conducted in accordance with OMB Circular A-133 when the schedule of findings and questioned costs disclosed no audit findings related to any federal awards provided by CB or when the summary schedule of prior audit findings did not report on the status of any prior audit findings related to any federal awards provided by the CB. Nonprofit organizations (other than charter schools) and universities/colleges shall submit the audit report to the CB Division of Fiscal Services. Audit reports must be submitted to CB within 30 days of receipt of the report from the auditor. Failure to submit a copy of the audit to CB could result in a reduction of funds paid to the grantee, a refund to CB, termination of the grant, and/or ineligibility to receive additional grant awards from CB.

BB. Federal Rules, Laws, and Regulations That Apply to all Federal Programs:

Contractor shall be subject to and shall abide by all federal laws, rules and regulations pertaining to the contract project, including but not limited to:

1. **Americans With Disabilities Act**, P. L. 101-336, 42 U.S.C. sec. 12101, and the regulations effectuating its provisions contained in 28 CFR Parts 35 and 36, 29 CFR Part 1630, and 47 CFR Parts 0 and 64;
2. **Title VI of the Civil Rights Act of 1964**, as amended (prohibition of discrimination by race, color, or national origin), and the regulations effectuating its provisions contained in 34 CFR Part 100;
3. **Title IX of the Education Amendments of 1972**, as amended (prohibition of sex discrimination in educational institutions) and the regulations effectuating its provisions contained in 34 CFR Part 106, if Contractor is an educational institution;
4. **Section 504 of the Rehabilitation Act of 1973**, as amended (nondiscrimination on the basis of handicapping condition), and the regulations effectuating its provisions contained in 34 CFR Part 104 and 105;
5. the **Age Discrimination Act of 1975**, as amended (prohibition of discrimination on basis of age), and any regulations issued thereunder, including the provisions contained in 34 CFR Part 110;
6. the **Family Educational Rights and Privacy Act (FERPA) of 1975**, as amended (ensures access to educational records for students and parents while protecting the privacy of such records), and any regulations issued thereunder, including **Privacy Rights of Parents and Students** (34 CFR Part 99), if Contractor is an educational institution (20 USC 1232g);
7. Section 509 of H.R. 5233 as incorporated by reference in P. L. 99-500 and P. L. 99-591 (**prohibition against the use of federal grant funds to influence legislation pending before Congress**);
8. **Pro-Children Act of 2001**, which states that no person shall permit smoking within any indoor facility owned or leased or contracted and utilized for the provision of routine or regular kindergarten, elementary, or secondary education or library services to children [P. L. 107-110, Section 4303(a)]. In addition, no person shall permit smoking within any indoor facility (or portion of such a facility) owned or leased or contracted and utilized for the provision of regular or routine health care or day care or early childhood development (Head Start) services [P. L. 107-110, Section 4303(b)(1)]. Any failure to comply with a prohibition in this Act shall be considered to be a violation of this Act and any person subject to such prohibition who commits such violation may be liable to the United States for a civil penalty, as determined by the Secretary of Education (P. L. 107-110, Section 4303(e)(1)).
9. **Fair Labor Standards Act (29 USC 207), Davis Bacon Act (40 USC 276(a), and Contract Work Hours and Safety Standards Act (40 USC 327 et seq.)**, as

applicable, and their implementing regulations in 29 CFR 500-899, 29 CFR Parts 1,3,5, and 7, and 29 CFR Parts 5 and 1926, respectively.

10. **Buy America Act:** Contractor certifies that it is in compliance with the Buy America Act in that each end product purchased under any federally funded supply contract exceeding \$2,500 is considered to have been substantially produced or manufactured in the United States. End products exempt from this requirement are those for which the cost would be unreasonable, products manufactured in the U. S. that are not of satisfactory quality, or products for which the agency head determines that domestic preference would be inconsistent with the public interest. Contractor also certifies that documentation will be maintained that documents compliance with this requirement (FAR 25.1-.2).
11. P.L. 103-227, Title X, Miscellaneous Provisions of the GOALS 2000: Educate America Act; P.L. 103-382, Title XIV, General Provisions of the Elementary and Secondary Education Act, as amended; and General Education Provisions Act, as amended.

CC. Federal Regulations Applicable to All Federal Programs:

1. **For Local Educational Agencies (LEAs):** 28 CFR 35 Subparts A-E, 28 CFR 36 Subparts C & D, Appendix A, 29 CFR 1630, 34 CFR 75 or 76 as applicable, 77, 79, 80, 81, 82, 85, 99, 104, 47 CFR 0 and 64, and OMB Circulars A-87 (Cost Principles), A-133 (Audits), and A-102 (Uniform Administrative Requirements);
2. **For Education Service Centers (ESCs):** 28 CFR 35 Subparts A-E, 28 CFR 36 Subparts C & D, Appendix A, 29 CFR 1630, 34 CFR 75 or 76 as applicable, 77, 79, 80, 81, 82, 85, 99, 104, 47 CFR 0 and 64, and OMB Circulars A-87 (Cost Principles), A-133 (Audits), and A-102 (Uniform Administrative Requirements);
3. **For Institutions of Higher Education (IHEs):** 28 CFR 35 Subparts A-E, 28 CFR 36 Subparts C & D, Appendix A, 29 CFR 1630, 34 CFR 74, 77, 79, 81, 82, 85, 86, 99, 104, 47 CFR 0 and 64, and OMB Circulars A-21 (Cost Principles), A-133 (Audits), and A-110 (Uniform Administrative Requirements);
4. **For Nonprofit Organizations:** 28 CFR 35 Subparts A-E, 28 CFR 36 Subparts C & D, Appendix A, 29 CFR 1630, 34 CFR 74, 77, 79, 81, 82, 85, 99, 104, 47 CFR 0 and 64, and OMB Circulars A- 122 (Cost Principles), A-133 (Audits), and A-110 (Uniform Administrative Requirements);
5. **For State Agencies:** 28 CFR 35 Subparts A-E, 28 CFR 36 Subparts C & D, Appendix A, 29 CFR 1630, 34 CFR 76, 80, 81, 82, 85, 99, 104, 47 CFR 0 and 64, OMB Circulars A-87 (Cost Principles), A-133 (Audits), and A-102 (Uniform Administrative Requirements); and
6. **For Commercial (for-profit) Organizations:** 29 CFR 1630 and 48 CFR Part 31.

DD. General Education Provisions Act (GEPA), as Amended, Applicable to All Federal Programs Funded or Administered Through or By the U. S. Department of Education:

1. **Participation in Planning:** Applicant will provide reasonable opportunities for the participation by teachers, parents, and other interested parties, organizations, and individuals in the planning for and operation of each program described in this application (20 USC 1232(e)).
2. **Availability of Information:** Any application, evaluation, periodic program plan, or report relating to each program described in this application will be made readily available to parents and other members of the general public (20 USC 1232(e)).
3. **Sharing of Information:** Contractor certifies that it has adopted effective procedures for acquiring and disseminating to teachers and administrators participating in each program described in this application significant information from educational research, demonstrations, and similar projects, and for adopting, where appropriate, promising educational practices developed through such projects (20 USC 1232(e)).

4. Prohibition of Funds for Busing: The applicant certifies that no federal funds (except for funds appropriated specifically for this purpose) will be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system (20 USC 1228).

5. Direct Financial Benefit: Contractor certifies that funds expended under any federal program will not be used to acquire equipment (including computer software) in any instance in which such acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity or its employees or any affiliate of such an organization [20 USC 1232(b)(8)].

EE. Payment for service(s) described in this Contract is contingent upon satisfactory completion of the service(s). Satisfaction will be determined by CB's Project Administrator, in his sole discretion but in accordance with reasonable standards and upon advice of his superiors, if necessary.

FF. 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. CB 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 the CB 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.

GG. Interpretation: In the case of conflicts arising in the interpretation of wording and/or meaning of various sections, parts, General Provisions, Special Provisions, Exhibits, and Attachments or other documents, the CB Contract and its General Provisions, Appendices and Special Provisions shall take precedence over all other documents which are a part of this contract.

HH. Registered Lobbyists: No state or federal funds transferred to a contractor/grantee may be used to hire a registered lobbyist.

**Texas Higher Education Coordinating Board
Special Contract Provisions and Assurances
Tech Prep Implementation
Program Year 2009-2010**

The following Special Provisions and Assurances apply to all projects funded under Public Law 109-270, the "Carl D. Perkins Career and Technical Education Improvement Act of 2006" (Perkins IV).

The Applicant agrees to:

- A. Establish salaries as compared with those paid for similar work in other activities at the institution. If there are no comparable activities, the salaries shall be considered reasonable to the extent they are comparable to those paid for similar work in the labor market. The Grantee's Chief Executive Officer may be required to provide certification of comparable salaries.
- B. Maintain job descriptions for each position supported in part or in whole by this project.
- C. Restrict travel to that which is required for purposes of the project activity. All out-of-state travel shall be specifically identified by purpose, location, date, and anticipated cost, and approved in the project budget, including travel by sub-grant recipients.
- D. Expenditures for acquisition of equipment and inventoried items shall be reasonable and necessary for the purpose of conducting a properly designed project or activity under Perkins IV. The utilization of such equipment and inventoried items shall be designated for technical programs and technical students. Technical programs and students shall have preemptive priority to the use of such equipment or inventoried items. Any other use of such equipment and inventoried items shall be incidental to the primary use and may not add to the cost, wear and tear, or operation of the equipment or inventoried item supported by Perkins IV.

Each budget detail under the Cost Category Schedule C: Capital Outlay/Equipment shall indicate only equipment \$5,000 and over per unit to be purchased with the project funds. These items shall be individually identified and approved within the budget or the budget shall be amended and approved before purchase.

Inventoried items, tangible property with a useful life of over one year that has an initial acquisition price under \$5,000 per unit and is inventoried, will be identified under the Cost Category F: Miscellaneous.

- E. Consultant fees shall only be paid upon execution of a detailed consultant contract and certification of rendering of a specific service by appropriate Grantee personnel. Consultant fees include payments for specified and detailed professional services that can not be performed by employees of the Grantee and partnering institutions. This includes speakers or presenters as well as those advising the Grantee. Fees may include reimbursement for materials, travel, and other actual costs associated with the service.
- F. Administrative Expenditures shall be limited to 5% of the total amount of the project's budget. Contractor shall maintain records and justification for all expenditures reported to the Coordinating Board. Prior to the contract ending date, the entire 5% may be charged to the project whether or not all project funds are expended during the project period, provided the

project objectives are substantially achieved. If approved budget identifies a Direct Charge allocation, Grantee shall maintain time and effort records, as specified in the General Contract Provisions and Assurances, Section VII. Grantee may include Administrative Costs as an Indirect Charge allocation only if it has a federally approved indirect cost rate, which exceeds 5%, or if it maintains calculations to demonstrate that related expenditures exceed the 5% limitation.

- G. Amusement, social activities, and incidental entertainment costs such as alcoholic beverages, gratuities, door prizes, and gifts are not allowable expenditures under this project. Meals are allowable only when business is being conducted during the meal and a reasonable argument can be made for such expenditure.

Contractor understands that acceptance of state funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to audit or investigate the expenditure of state funds under this contract. Contractor further agrees to cooperate fully with the State Auditor's Office or its successor, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit state funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.

- H. Advertising is allowed only for recruitment or promotion of specific program information and where specified in the project application. Allowable items are normally advertisements through media, pamphlets, posters, etc. Unallowable items include memorabilia, gifts, and souvenirs such as caps, coffee cups, flashlights, key chains, pencils, pens, rulers, tee shirts, tote bags, etc. All media announcements, public information, and final products generated with funds from this project shall acknowledge the support of the Texas Higher Education Coordinating Board under the auspices of the federal Carl D. Perkins Career and Technical Education Act of 2006
- I. Registration fees may be charged for meetings, conferences, and other activities sponsored or funded by the project. A fee or assessment may be charged to pay for specific activities other than those that are to be charged to this project. The Coordinating Board and attendees shall be informed of the purpose of the fee.
- J. A Grantee may generate program income in the operation of projects directly supported by federal funds administered by the Coordinating Board. In no case, however, may such income be generated from fees or charges to any person or institution that is intended to be a third-party beneficiary of such projects. The sub-recipient should establish budget and accounting control for such program income that is separate from the project proper. This accounting shall demonstrate that the program income is being used to further the objectives of the related project. No formal report is required. However, a brief narrative shall be included with quarterly and final reports. The narrative shall declare the existence of program income, its source(s), the amount generated, and a brief description of the use or planned use of the funds.
- K. No funds received under Perkins IV may be used to provide career and technical education programs to students prior to the seventh grade, except that equipment and facilities purchased with funds under Perkins IV may be used by such students.

- L. Advisory Committees are required for Tech Prep consortia projects. Tech Prep Advisory Committee/Governing Boards should have a composition that reflects the requirements in Subchapter T of the Texas Education Code.
- M. Funding provided under this project shall supplement and not supplant non-federal funds expended to carry out the activities of the project.