



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

REQUEST FOR PROPOSAL (RFP)

RFP No.: 701-16-010

Student Success Initiative Support Programs (Texas SUCCESS)

Authorized by General Appropriations Act, Rider 46, 84th Texas Legislature

<p>PROPOSAL DELIVERY LOCATION:</p> <p>Purchasing, Contracts and Agency Services Division Texas Education Agency 1701 N. Congress Ave., Rm. 2-125 Austin, TX 78701-1494 (512) 463-9041</p>	<p>REFER INQUIRIES TO:</p> <p>Norma Barrera TEAContracts@tea.texas.gov</p>
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WITHOUT EXCEPTION - PROPOSAL MUST BE TIME AND DATE STAMPED BY THE TEA PURCHASING, CONTRACTS AND AGENCY SERVICES DIVISION OFFICE BEFORE:

Thursday, September 17, 2015 - 2:00 P.M., C.T.

Pursuant to the Provisions of the Texas Government Code §§2156.121 – 2156.127, sealed proposals will be received until the date and time established for receipt. After receipt, names, prices and other proposal details may only be divulged after award of a contract, if a contract is awarded. The award notice will be posted to the electronic state business daily at <http://esbd.cpa.state.tx.us/>.

Pursuant to Texas Government Code §§2151.004(d) and 2155.131, the Office of the Comptroller of Public Accounts has delegated authority to the Texas Education Agency (TEA) to conduct this Solicitation and to award a contract for the purposes stated herein.

Proposer understands and agrees that no public disclosures or news releases pertaining to this Solicitation, negotiations, subsequent award, or any results or findings based on information provided or obtained to fulfill requirements of this Solicitation shall be made without prior written approval of TEA.

NOTE: Failure to formalize the terms of the proposal by signing the *Contract Terms and Conditions, Affirmations and Proposal Preferences* will result in disqualification of the offer contained within the proposal. TEA will not consider any terms and conditions unless the Respondent specifically and prominently refers to each one of them in the Transmittal Letter and offers alternative language with the Proposal response. Proposer terms and conditions that may violate Texas law applicable to the specific procurement or may be unacceptable to TEA will not be negotiated. If a proposal is signed and submitted without including a specific identification of all Contract Terms and Conditions to which Proposer takes exception, TEA will not negotiate the Contract Terms and Conditions and reserves the right to commence negotiations with other proposers.

TABLE OF CONTENTS

	<u>Page</u>
<u>SECTION ONE INTRODUCTION AND PURPOSE</u>	
1.1 PURPOSE OF THE REQUEST FOR PROPOSAL (RFP)	3
1.2 BACKGROUND INFORMATION	5
1.3 CONTRACT TERM/OPTION TO EXTEND	5
1.4 BUDGET	5
1.5 PROJECT DESCRIPTION AND REQUIREMENTS	6
<u>SECTION TWO GENERAL INSTRUCTIONS AND STANDARD PROPOSAL REQUIREMENTS</u>	
2.1 PROPOSAL SUBMISSION, DATE, AND TIME	8
2.2 EXPECTED SEQUENCE OF EVENTS/CRITICAL DATES	9
2.3 QUESTIONS RECEIVED PRIOR TO OPENING OF PROPOSALS	9
2.4 STANDARD PROPOSAL REQUIREMENTS	10
2.5 STATE NOT RESPONSIBLE FOR PREPARATION COSTS	10
2.6 DISCLOSURE OF PROPOSAL CONTENT	10
2.7 HISTORICALLY UNDERUTILIZED BUSINESS (HUB) SUBCONTRACTING PLAN	10
2.8 CONFLICT OF INTERESTS	12
<u>SECTION THREE PROPOSAL FORMAT AND CONTENT</u>	
3.1 PROPOSAL FORMAT AND CONTENT	13
3.2 UNDERSTANDING OF THE PROJECT AND METHODOLOGY	13
3.3 MANAGEMENT PLAN FOR THE PROJECT	14
3.4 TASK ACTIVITY PLAN	14
3.5 COST PROPOSAL	14
3.6 PROPOSER'S FINANCIAL RESPONSIBILITY	15
<u>SECTION FOUR REVIEW OF PROPOSALS</u>	
4.1 REVIEW OF PROPOSALS	16
4.2 SELECTION CRITERIA	16
<u>SECTION FIVE CONTRACTUAL REQUIREMENTS</u>	
5.1 CONTRACTOR'S PROPOSAL	18
5.2 PROJECT REVIEW REQUIREMENT	18
5.3 PAYMENT	18
<u>SECTION SIX ATTACHMENTS</u>	
ATTACHMENT A – NOTICE OF INTENT TO SUBMIT A PROPOSAL	
ATTACHMENT B – EXECUTION OF OFFER, CONTRACT TERMS AND CONDITIONS, AFFIRMATIONS AND PROPOSAL PREFERENCES	
ATTACHMENT C – HUB SUBCONTRACTING PLAN (HSP) – SEPARATE DOCUMENT	
ATTACHMENT D – FORMAT FOR PROPOSAL COVER PAGE	
ATTACHMENT E – SUGGESTED FORMAT FOR BUDGET SUMMARY AND EXPENDITURE REPORT	
ATTACHMENT F – SCHEDULE OF TASK COMPLETION	

SECTION ONE INTRODUCTION AND PURPOSE

1.1 PURPOSE OF THE REQUEST FOR PROPOSAL (RFP)

It is the intent of the Texas Education Agency (TEA) to solicit proposals for the Student Success Initiative Support Programs (Texas SUCCESS) in accordance with all requirements stated herein.

This solicitation is for selected providers to provide scientifically validated and research-based online programs that target the prevention of academic failure in mathematics and reading. Each program must include diagnostic tool(s) and other tools with which the impact and effectiveness of the program may be assessed.

The programs must provide an opportunity for supplemental computer-based reading and mathematics instruction to all students in grades or courses for which accelerated instruction is required. The selected providers must serve students statewide in one or more of the following service categories:

- a. Grades 3–5 mathematics
- b. Grades 6–8 mathematics
- c. Algebra I
- d. Grades 3–5 reading
- e. Grades 6–8 reading
- f. English I
- g. English II

Through this Request for Proposal (RFP) process, TEA will provide statewide licenses to support reading and mathematics for use by educators, students, and parents.

Eligible proposers include nonprofit organizations, institutions of higher education, private companies, individuals, and regional education service centers.

For each service category that the vendor is proposing to serve (e.g., grades 3–5 mathematics, grades 6–8 reading, Algebra I), proposers must be able to provide the following:

Instruction and Student Support

- Scientifically validated and research-based instruction for students at varied levels of proficiency in mathematics and/or reading
- Proof that the content of the online program is aligned to the Texas Essential Knowledge and Skills (TEKS) and the English Language Proficiency Standards (ELPS)
- Demonstrations of how schools may effectively use the program to provide accelerated instruction within a response to intervention (RtI) model
- Evidence of how the program provides immediate student-level feedback and enables a teacher to deliver targeted instruction
- Instruction and support to diverse populations, including English language learners, students with disabilities, and traditionally underserved students who are struggling in mathematics and/or reading
- A means for districts, campuses, and teachers to monitor participating students in order to measure individual progress and to adjust use of the online program as needed
- Evidence of experience and quantifiable success working with elementary, middle school, and/or high school students at risk of not achieving academic success in mathematics and/or reading
- Assurance that personnel who have direct contact with students are in compliance with state requirements for a criminal background check (Please see Attachment B, provisions 34 and 35 for TEA's required compliance.)

- Examples of services and/or resources that will be provided to English language learners to facilitate their successful participation in the program
- Examples of services and/or resources that will be provided to students with learning disabilities to facilitate their successful participation in the program

Training, Support, and Quality of Implementation

- A plan and sample materials for face-to-face training and, as appropriate, online training on how to effectively use the online materials and resources provided
- Evidence of and a plan for communicating with and supporting teachers to ensure effective implementation and use of the program
- A plan for building successful relationships with and encouraging active participation from parents and school personnel
- Evidence of the ability to effectively communicate with and deliver services to parents and school personnel
- A communication and marketing plan for making parents and school personnel aware of services offered to them by the proposer, including a clear description of online materials and resources available
- A plan for modifying services or delivery mechanisms if there are indications that use of the program and/or services is low or failing to meet districts' needs
- Credentials for qualified staff who will operate and manage the delivery and quality of services offered
- Quantifiable evidence that the proposer has successful experience in working with districts to provide accelerated instruction to elementary, middle school, and/or high school students at risk of academic failure in mathematics and/or reading

Reporting

- A means for districts, campuses, and/or teachers to generate reports on participating students.
- Demonstration of the ability to track district use and student participation and progress and provide reports to TEA
- Demonstration of the ability to provide ad hoc reports as requested for statewide program evaluation
- Samples of proposed weekly and/or monthly reports to TEA and samples of reports districts, campuses, and teachers may generate

Technical and Operational Considerations

- Evidence of the ability and capacity to provide online interactive materials and resources statewide to all Texas public school students in grades or courses for which the proposer is submitting a proposal
- Evidence of proficiency and experience with interactive online development, maintenance, and updates
- Proof of compliance with the Family Educational Rights and Privacy Act (FERPA)
- Proof of compliance with the Children's Online Privacy Protection Act (COPPA)
- Proof of compliance with the Americans with Disabilities Act (ADA).
- Proof that the online program follows Web Content Accessibility Guidelines (WCAG) 2.0 AA standards, through a report from a third party with expertise and a proven track record in accessibility testing

- The URL where the online program will be accessed, multiple user logins, and required passwords for TEA review purposes
- A description of how students will be enrolled in the proposer's program
- A description of proposed data to be collected during the student enrollment process and during the students' use of the program
- A description of how data collected during the program will be secured. Description should include both physical and technical security and should address both the transmission and storage of that data
- A demonstration of the willingness and ability to enroll students using TEA's unique student identifier

Note: TEA is required to follow the 1 Texas Administrative Code (TAC) Chapter 206, State Websites; 1 TAC Chapter 213, Electronic and Information Resources; and the Federal Section 508 standards. This adherence applies to the website as well as any electronic information resources (such as Word documents, PDF files, spreadsheets) that are available to users of the site.

1.2 BACKGROUND INFORMATION

Enacted by the 76th Texas Legislature in 1999 and modified by subsequent Texas Legislatures, the goal of the Student Success Initiative (SSI) is to ensure that all students receive the instruction and support they need to meet or exceed the proficiency standards on state assessment instruments administered under the Texas Education Code (TEC) §39.023. In the early years of SSI, programming and funding provided districts with additional financial resources to provide targeted instruction to students who demonstrated difficulty in reading and/or mathematics. More recently, the Texas Legislature has appropriated SSI funds to provide professional development to teachers statewide to assist them in helping students succeed in meeting or exceeding standards of proficiency identified in the Texas Essential Knowledge and Skills and measured by statewide assessments.

The SSI Support Program is a major component of a larger initiative designed to ensure that academic interventions are provided to students as soon as skills and knowledge deficiencies are identified. Those deficiencies may be identified through local measures (e.g., screeners, diagnostics, formative/summative assessments) or through statewide assessments. This larger initiative includes requirements in TEC §28.0211 for accelerated instruction for students who fail to perform successfully on statewide assessments.

Through this RFP, TEA will contract with one or more qualified providers to provide scientifically validated and research-based online programs that target the prevention of academic failure in mathematics and reading to all students in grades or courses for which accelerated instruction is required.

1.3 CONTRACT TERM/OPTION TO EXTEND

The term of any contract resulting from this RFP shall be from contract award until August 31, 2017. TEA, at its own discretion, may extend any contract awarded pursuant to this RFP for up to two additional fiscal years under the same or different terms subject to appropriation of funds by the Texas Legislature for this project. If renewed, the 1st renewal period shall be from September 1, 2017, through August 31, 2018 and the 2nd renewal period shall be September 1, 2018, through August 31, 2019. .

1.4 BUDGET

The final number of providers selected will depend on the quality of the proposals submitted, the service categories to be served, and the cost of each statewide license. TEA may award the contract to one or multiple providers.

Proposals must include a detailed budget in accordance with the requirements of Section 3.5 of this RFP. The contract will be a cost reimbursement contract. A payment plan will be developed based on deliverables met including quantitative evidence of student achievement. The budget should include an explanation of the methodology used to develop the cost proposal.

1.5 PROJECT DESCRIPTION AND 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.

The RFP is designed to accomplish the following objectives:

1. Provide scientifically validated and research-based online programs that target the prevention of academic failure in mathematics and reading
2. Provide supplemental computer-based reading and mathematics instruction that is available to students in grades or courses for which accelerated instruction is required

Specifically, the project must accomplish the following:

1. Serve students statewide in one or more of the following service categories:
 - a. Grades 3–5 mathematics
 - b. Grades 6–8 mathematics
 - c. Algebra I
 - d. Grades 3–5 reading
 - e. Grades 6–8 reading
 - f. English I
 - g. English II
2. Ensure online interactive materials and services are available statewide from the contract start date through August 31, 2017.
3. Ensure materials and services are accessible to participating students in multiple environments (e.g., school, classroom, library, home).
4. Ensure that the online interactive program is platform neutral and available for use on multiple devices, including mobile devices such as smart phones and tablets.
5. Meet the TEA standards for security, accessibility, and privacy (see section on Security, Data, and Reporting).
6. Provide assurance through a Service Level Agreement that the online, interactive program(s) will deliver a 99.9% monthly uptime.
7. Update the online interactive program(s) with new content as appropriate.
8. Provide website analytics on a weekly basis and in ad hoc reports as requested and read access to the web analytics tool for TEA use.
9. Ensure that the application is regularly performance tested to verify that the performance meets the metrics described in the requirements and provide the results of these tests to TEA.
10. Provide face-to-face and, as appropriate, online training to all teachers on how to effectively use the online materials and resources. Training should include monitoring students' progress as they complete lessons/activities within the online program and providing targeted instruction to students who are not making progress within the program.
11. Provide a minimum of 60 training-of-trainers (TOT) sessions to school district and ESC personnel across the state at locations to be identified by TEA.

12. Provide TOT training materials so training may be replicated in districts across the state.
13. Provide support materials for districts to facilitate the startup and implementation of the resources.
14. Provide a diagnostic tool or tools that districts, campuses, and/or teachers may use to measure student progress and other tools to assess the impact and effectiveness of the program.
15. Provide capability for districts and parents to monitor their students' use of and progress with materials and resources offered.
16. Provide access to the online interactive program for parents to monitor their student's progress.
17. Provide a mechanism for districts, students, and parents to voluntarily provide periodic input on the quality of the services offered and effectiveness of the delivery mechanisms used.
18. Provide qualified staff to operate and manage the delivery and quality of services offered.

Contract Monitoring

In accordance with Senate Bill 20, subsequent contracts as a result of the RFP will be monitored by a designated contract manager. The contract manager will use a risk-based approach to monitor compliance with financial and performance requirements and ensure that all costs continue to be allowable, reasonable, and necessary to achieve the program objectives. The contract manager may perform either an on-site visit, desk review, or billing review throughout the term of the Contract.

SECTION TWO GENERAL INSTRUCTIONS AND STANDARD PROPOSAL REQUIREMENTS

2.1 PROPOSAL SUBMISSION, DATE, AND TIME

WITHOUT EXCEPTION - PROPOSAL MUST BE TIME AND DATE STAMPED BY THE TEA PURCHASING, CONTRACTS AND AGENCY SERVICES DIVISION OFFICE BEFORE:

Thursday, September 17, 2015 - 2:00 P.M., Central Time (CT)

Proposals must be submitted in a sealed envelope (or box as appropriate) with the proposer's name, RFP number, and closing date prominently visible on the envelope/package. If multiple envelopes/boxes are used, the proposer should indicate on the package "*specific item # of total # of items.*"

Facsimile transmissions (FAX) of proposals will not be accepted under any circumstances. Proposers must sign the "Execution of Offer, Contract Terms and Conditions, Affirmations, and Proposal Preferences" instrument (Attachment B). By signing, the Proposer or the Proposer's legally authorized agent affirms that the all statements within the proposal are true and correct. 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 contractor 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 Purchasing, Contracts, and Agency Services (PCAS) Division Office before 2:00 P.M. (Central Time) on the closing date as specified in the Request for Proposal. In establishing the time and date of receipt, the Commissioner of Education will rely solely on the time/date stamp of the PCAS Division Office.

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 PCAS Division Office before 2:00 P.M. (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 RFP.

2.1.2 Proposal Delivery

TEA is open Monday through Friday, 8:00 A.M. to 5:00 P.M., excluding holidays. Proposals will not be considered if received in PCAS Office after 2:00 P.M. (Central Time) on the closing date. The PCAS Office is located on the 2nd floor of the William B. Travis Bldg., 1701 N. Congress (at 17th St. and N. Congress, two blocks north of the Capitol) in Rm. 2-125, Austin, TX 78701-1494. Please note that all TEA visitors must register with the TEA Receptionist Desk and receive a visitors badge to visit any area of the agency. In addition, all visitors must be escorted by a TEA employee to the respective area. Be sure to incorporate time for traffic, parking and the reception desk when delivering proposals in person. The mailing address is:

Purchasing, Contracts and Agency Services Division, Room 2-125
Texas Education Agency
William B. Travis Building
1701 North Congress Avenue
Austin, Texas 78701-1494

2.1.3 **Number of Copies of Proposal**

Nine (9) copies of the proposal must be submitted. The required number of copies of the proposal must be received in the TEA PCAS Division Office before 2:00 P.M. on the established deadline date. Failure to meet this condition shall result in disqualification of the 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 PCAS Division Office of the Texas Education Agency.

2.1.4 **Intent to Submit Proposal**

All prospective proposers should notify the Texas Education Agency in writing of their intent to submit a proposal (Attachment A) by August 21, 2015, to the TEA PCAS Division Office via email TEAContracts@tea.texas.gov or by FAX (512) 475-1706. Failure to notify the Agency of the intent to submit a proposal will not disqualify the proposer from submitting a proposal.

2.2 **EXPECTED SEQUENCE OF EVENTS/CRITICAL DATES**

DATE	EVENT
Monday, August 3, 2015	Publication of Request for Proposals in the Electronic State Business Daily at http://esbd.cpa.state.tx.us/
Friday, August 21, 2015	Notice of Intent to submit a proposal is due in the TEA Purchasing, Contracts and Agency Services (PCAS) Division Office by the specified date & time
Monday, August 31, 2015	Last day to submit written questions about the RFP to PCAS Division, no later than 5:00 P.M., CT
Thursday, September 3, 2015	Publication of Questions and Answers document in the Electronic State Business Daily at http://esbd.cpa.state.tx.us/
Thursday, September 17, 2015	Proposal is due in the TEA PCAS Division before 2:00 P.M., CT
September 18 – October 9, 2015	Evaluation process, product demonstrations, oral presentations, and negotiations
October 12, 2015	Selection of Proposer
October 19, 2015	Beginning date of contract and commencement of work
August 31, 2017	Ending date of contract and final 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 **QUESTIONS RECEIVED PRIOR TO OPENING OF PROPOSALS**

Any person wishing to obtain clarifying information about this Request for Proposal may contact:

Norma Barrera

TEAContracts@tea.texas.gov

(Written documentation of all contractor interaction is required.)

2.3.1 **Requests for Additional Information**

In order to ensure order that no prospective proposer may obtain a competitive advantage because of acquisition of information unknown to other prospective proposers, any additional information, that is different from or in addition to, information provided in the Request for Proposal or at the Proposer's Conference will be provided only in response to written inquiries. Copies of all such inquiries and the written answers will be posted as an addendum to the Request for Proposal at the Electronic State Business Daily (ESBD) at <http://esbd.cpa.state.tx.us/> and the TEA website. The addendum will be updated as needed on a weekly basis while the RFP is advertised. The proposer's failure to periodically check the ESBD will in no way release the

selected contractor from “addenda or additional information” resulting in additional cost to meet the requirements of the RFP. **NO PHONE INQUIRIES WILL BE ACCEPTED.**

Any Amendment to this procurement solicitation will be posted as an addendum on the ESBD. If proposers do not have Internet access, copies may be obtained through the point of contact listed in this RFP. Upon publication of this RFP, besides written inquiries as described above, employees and representatives of TEA will not answer questions or otherwise discuss the contents of the RFP with any potential contractor or their representatives. If a Proposer fails to observe this restriction, that Proposer’s response to this RFP will be disqualified. This restriction does not preclude discussions for the purpose of conducting business unrelated to this RFP.

TEA will not be bound by any communication with Proposer’s other than the written addenda issued by the Agency.

2.4 STANDARD PROPOSAL REQUIREMENTS

1. Proposals that address only part of the requirements contained in this Request for Proposal may be considered non-responsive.
2. Texas Education Agency reserves the right to reject any and all proposals and to negotiate portions thereof including the submitted cost proposals/budget.
3. Texas Education Agency reserves the right to select the proposal based on the best value to the state of Texas and the agency. The proposer shall furnish additional information that the evaluation team may require in order to complete the evaluation of the proposals submitted. Failure to provide the requested material or information may disqualify the proposal.
4. The Contractor must work with the Agency staff to clarify the design of the materials, project design, project activities, and/or other products, and modify these items if necessary.

2.5 STATE NOT RESPONSIBLE FOR PREPARATION COSTS

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

2.6 DISCLOSURE OF PROPOSAL CONTENT

After award, Proposals will be subject to the Texas Public Information Act (the Act), located in Chapter 552 of the Texas Government Code and may be disclosed to the public upon request. Subject to the Act, respondents may protect trade secret and confidential information from public release. If the respondent asserts that information provided in the proposal is trade secrets or other confidential information, it must be clearly marked such information in boldface type and include the words “confidential” or “trade secret” at top of the page.

Furthermore, the respondent must identify trade secret or confidential information, and provide an explanation of why the information is exempt from public disclosure, on the Proposal Cover Sheet or the Transmittal Letter.

2.7 HISTORICALLY UNDERUTILIZED BUSINESS (HUB) SUBCONTRACTING PLAN

It is the policy of the TEA to promote and encourage contracting and subcontracting opportunities for HUBs in all contracts. Accordingly, TEA has adopted the Policy on Utilization of HUBs. If the TEA determines that subcontracting opportunities are probable, then a HUB Subcontracting Plan (HSP) is a required element of the Proposal.

Statement of Probability – TEA has determined that subcontracting opportunities are probable in connection with this procurement. Therefore, ALL proposers must submit the HSP as a part of the response. The proposer shall develop and administer the HSP as a part of the proposer’s proposal in accordance with the TEA Policy on Utilization of HUB and state law. Proposer must make a good faith effort and solicit a minimum of three Texas certified historically underutilized businesses from the state’s Centralized Master Bidders List (CMBL)/HUB Directory for work that they cannot complete with their own staff and resources. Proposers must also notify minority or women trade organizations or

development centers of subcontracting opportunities. Additional requirements are listed in the HSP (Attachment C).

1. All Proposers are required to submit a HUB Subcontracting Plan (HSP) for this RFP.
2. If the Proposer is a HUB, a HSP is still required in order to identify the percentage of the work to be performed by subcontractors.
3. If the Proposer (HUB or non-HUB) is not subcontracting any portion of the work, the Self Performance portion of the HSP must be completed and returned with the proposal response.

The HUB Subcontracting goal for this procurement is **26.0%** minority, woman-owned and/or veteran service disabled owned business participation. In the event proposals have equal scores, the proposal with the highest percentage of HUB subcontracting will be awarded the contract.

The HSP will be incorporated into the contract between the TEA and the selected Proposer. Contractors are encouraged to collaborate with TEA to develop mentor protégé opportunities. Under TAC Title 34, §20.14, a proposer's participation in a Mentor Protégé Program under TGC §2161.065, and the submission of a protégé as a subcontractor in the HUB subcontracting plan constitutes a good faith effort for the particular area to be subcontracted with the protégé.

Proposals that are required to submit a HSP and fail to submit the HSP will be rejected for non-compliance with the advertised contract specifications.

The Contractor awarded the contract will be responsible for maintaining business records documenting compliance with HUB Program requirements. The selected Proposer shall submit a Progress Assessment Report (PAR) monthly documenting all subcontractor payments made in the preceding month. Submission of the PAR is a condition for payment. The selected Contractor shall also report all 2nd and 3rd Tier subcontracting in the monthly PAR. PAR's are due no later than the 10th day of the following month. The PAR is required to be submitted monthly, even if no activity occurred for the month. Reports shall be submitted electronically to the HUBOffice@tea.texas.gov.

2.7.1 How to Find Texas Certified HUBs for Subcontracting Opportunities

Use the Comptroller's Centralized Master Bidders List (CMBL) / HUB Directory (make sure to check both "HUBs on the CMBL" and "HUBs only" or use "All Contractors").

1. Open <https://mycpa.cpa.state.tx.us/tpasscmlsearch/index.jsp>
2. Search: ☉ HUBs on CMBL & HUBs only
3. Selection 1:
 - Class Code: # 924 – 05, 18 Educational Services
 - Class Code: # 920 – 03, 37 Web Based Hosted Education Software Application Service Provider / Networking Services
 - Class Code: # 208- 43 Educational Software
 - Class Code: # 209- 44 Computer Educational Software
 - Class Code: # 966 - 57 Printing Manuals, Brochures etc.

The class codes indicate subcontracting opportunities possible under the project.

To see the items associated with any particular class, click on the Class number in the Commodity Book at: http://www.window.state.tx.us/procurement//com_book/index.html

District Number. (Texas is divided into 25 geographical districts. District **14** is specific to: Bastrop, Blanco, Burnet, Caldwell, Gillespie, Hays, Lee, Llano, Mason, **Travis**, Williamson counties.)

4. Click **Submit Search**

Proposers who are certified as a HUB with the State of Texas are encouraged to submit a proposal for the services requested in this RFP.

2.8 CONFLICT OF INTEREST

A proposer will not be selected if it has a conflict of interest that will or may arise during the performance of its obligations under the contract. For this reason, Proposer's response to this RFP must disclose any existing or potential conflicts of interest or possible issues that might create appearances of impropriety relative to the submission of a proposal from Proposer and its proposed subcontractors', possible selection as Successful Proposer, or its performance of the Contract.

As part of this disclosure requirement, each Proposer must include in its proposal all past and present contractual, business, financial or personal relationships between Proposer and TEA and between Proposer's proposed subcontractors, if any, and TEA. For purposes of this disclosure requirement, (i) "past" is defined as within the two (2) calendar years prior to the deadline for submission of proposals in response to this RFP; (ii) TEA is defined as the statewide elected official who heads the agency as well as the agency's employees or recent former employees; and (iii) "recent former employees" are defined as those TEA employees who have terminated agency employment within the two (2) calendar years prior to the deadline for submission of proposals in response to this RFP. For each item, Proposer must provide a detailed explanation of why Proposer does or does not believe such item poses a conflict of interest, potential conflict of interest, or appearance of impropriety issue relative to Proposer's submission of a proposal, possible selection as Successful Proposer or its performance of the Contract.

For purposes of this RFP, "personal relationship" is defined as a current or past connection other than a clearly contractual, business, financial, or similar relationship and includes family relationships or other connections outside simply providing a response to this RFP. For this purpose, "family relationship" means a relationship within the third degree of consanguinity or second degree of affinity (see Chapter 573 of the Texas Government Code) which defines these degrees of consanguinity and affinity.

Connections other than such family relationships fall within this definition and must be disclosed if a reasonable person could expect the connection to diminish Proposer's independence of judgment or effectiveness in the performance of Proposer's responsibilities to TEA or the State under the Contract. Connections also fall within this definition if a reasonable person could expect the connection, within the overall context of Proposer's submission of a proposal, possible selection as Successful Proposer, or its performance of the Contract, to create an issue for the agency's consideration relative to a potential appearance of impropriety or conflict of interest.

Proposer certifies that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003 of the Government Code, relating to contracting with executive head of a state agency. If Section 669.003 applies, proposer will complete the following information in order for the bid to be evaluated:

Name of Former Executive; Name of State Agency; Date of Separation from State Agency; Position with Bidder; and Date of Employment with Bidder.

If the circumstances certified by Proposer change or additional information are obtained subsequent to submission of proposals, by submitting a response Proposer agrees that it is under a continuing duty to supplement its response under this provision and that the duty to disclosure of any conflicts of interest is an ongoing obligation throughout the term of the contract. Proposer shall submit updated information as soon as reasonably possible upon learning of any change to their affirmation.

SECTION THREE PROPOSAL FORMAT AND CONTENT

3.1 PROPOSAL FORMAT AND CONTENT

Proposals must be written entirely on 8 ½" X 11" white paper and must be limited to 100 pages not including appendices and attachments. Proposals should be stapled in the top left corner or if bound may be bound in no more than a 3-ring binder. Proposals must be submitted in a manner which does not carry any benefit, keepsake, or value for members of the review panel.

3.1.1 Transmittal Letter

Proposers must specifically and prominently refer to each term and condition and provide alternative language for review by the TEA staff. Required only if taking exception to the terms and conditions.

3.1.2 Proposal Cover Page

Proposals should include a cover page, which clearly states the name of the firm or organization and the name, position, and telephone number of the Proposer's Project Administrator who may be contacted regarding the proposal (Attachment D).

3.1.3 Response Checklist

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 RFP for detailed information on the following:

<input type="checkbox"/>	Transmittal Letter	RFP Cover Page/Sec. 3.1.1
<input type="checkbox"/>	RFP Cover Sheet	Sec. 3.1.2/Attachment D
<input type="checkbox"/>	Understanding of the Project and Methodology	Sec. 3.2
<input type="checkbox"/>	Management Plan	Sec. 3.3
<input type="checkbox"/>	Task Activity Plan	Sec. 3.4/Attachment F
<input type="checkbox"/>	Cost Proposal	Sec. 3.5/Attachment E
<input type="checkbox"/>	Proposer's Financial Responsibility	Sec. 3.6
<input type="checkbox"/>	Signed Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences	Attachment B
<input type="checkbox"/>	HUB Subcontracting Plan (HSP)	Attachment C

3.2 UNDERSTANDING OF THE PROJECT AND METHODOLOGY

The proposal must communicate an understanding of prior studies and research in the areas of the project, describe the tasks to be performed, and identify potential problems in the conduct of the project and methods to identify and solve such problems.

The Proposer must describe clearly, specifically, and as completely as possible, the methodology for carrying out the objectives and requirements of the project as described in this RFP. (If applicable, the proposer must also describe the training program, staff development, and curriculum design.)

The proposal must describe the project design, project activities, materials, and other products, services, and reports to be generated during the contract period and relate them to the stated purposes and specifications described in the Request for Proposal. Technical evidence relating to the proposer's ability to perform the proposed services must be appended to the proposal.

Failure to meet these conditions shall result in disqualification of proposal and the proposal shall receive no further consideration.

3.3 MANAGEMENT PLAN FOR THE PROJECT

The Proposer must provide satisfactory evidence of capability to manage and coordinate the types of activities described in the RFP and to produce the specified product or service on time. To provide information on qualifications to accomplish the described tasks, proposers must include in this section the following information:

1. Structure of the organization
2. Indications of the ability to perform the tasks described in section 1.5
3. Evidence that the Proposer has experience through working on similar projects
4. Three (3) current references that include the name of the Agency or entities, the nature of the project, kinds of activities that were performed by the proposer must be described, and the name and phone number of a contact person from each employing agency/entity must be provided. Names given as references will not affect the scoring. In addition, no employees of TEA can be listed in the proposal as references. They may be listed in a memo transmitting the proposal, but not in the proposal. If the proposer plans to use external consultants or subcontractors, a staff organization and resumes of consultants and/or subcontractors must be included.
5. Name of the Proposer's Project Manager who will direct the overall project throughout the duration of the contract as well as those of staff members who will coordinate major activities during each phase of the contract, and the time allocations that the personnel described will devote to fulfillment of the contract. Proposers must also identify the next level of authority within the organization to escalate issues throughout the term of the contract. The information will be required during the contract kick-off meeting. (Resumes of all project staff members shall be submitted as an appendix.) If the resumes include references, the references will not be considered in the review.

3.4 TASK/ACTIVITY PLAN

Proposer must plan for a project starting date of October 12, 2015, and an ending date of August 31, 2017 if selected as the contractor. The proposer must submit a task/activity plan specifying to the degree possible the tasks and activities which are to be undertaken. Timelines showing beginning and ending dates for each major task are to be included, as well as the name(s) of person(s) responsible for each task. Activities must be sufficiently designed and outlined in the task/activity plan that will provide evidence of satisfactory delivery of services and products. Time frames must be logical and appropriate to complete all activities within the beginning and ending dates of the contract. Failure to meet this condition shall result in disqualification of proposal and the proposal shall receive no further consideration.

3.5 COST PROPOSAL

The Proposer must submit a budget detailing costs necessary to accomplish the project objectives and activities outlined in the task/activity plan (Attachment E, Suggested Format for Budget Summary and Expenditure Report). It is recommended that budget detail be submitted in Excel compatible or Excel format.

Objects of expenditure used in the budget summary may vary depending on the project. Costs must be justified in terms of activities and objects of expenditure and must be reasonable (i.e., consistent with current market price) and necessary to accomplish the objectives of the project. The budget must evidence that financial resources are adequately and appropriately allocated among cost categories in a cost-effective and prudent business manner to accomplish project objectives and activities. Services to be purchased from other agencies, subcontractors, including any amounts subcontracted to HUBs, consultants, and others must be specified.

This section of the proposal must also contain a proposed Schedule of Task Completion (Attachment F) which ensures completion of tasks and the delivery of products by specified dates. Payment will

be made upon satisfactory performance of services, receipt by the Texas Education Agency of specified deliverables, and receipt of properly prepared and certified invoices/expenditure reports.

Failure to meet these conditions shall result in disqualification of proposal and the proposal shall receive no further consideration.

3.6 PROPOSER'S FINANCIAL RESPONSIBILITY

All Proposer's selected for oral presentations, product demonstrations, or negotiations will be required to submit indicators of financial stability. For example:

1. Private companies may be asked to submit their most recent audited financial statement or a certified public accountant-compiled financial report;
2. Nonprofits may be asked to submit an audited financial statement, a certified public accountant-compiled financial report, or similar document; and
3. Individuals may be asked to submit those documents which depict their financial stability, such as an audited proprietorship financial statement, statement from a certified public accountant or banker, or a statement from contractors or suppliers.

Nonprofit organizations will also be required to submit proof of nonprofit status if selected for oral presentations, product demonstrations, or negotiations. A proposer may show that it is a nonprofit organization by any of the following means:

1. A copy of a letter from the Internal Revenue Service recognizing that contributions to the organization are tax deductible under Section 501(c)(3) of the Internal Revenue Code;
2. A statement from a state taxing body or the state attorney general certifying that the organization is a nonprofit organization operating within the state and that no part of its net earnings may lawfully benefit any private shareholder or individual;
3. A certified copy of the proposer's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the proposer; or
4. Any item described above if that item applies to a state or national parent organization, together with a statement by the parent organization that it is a local nonprofit affiliate.

Failure to meet this condition, when requested, shall result in a non-award. TEA will commence negotiations with the next high point proposer.

SECTION FOUR REVIEW OF PROPOSALS

4.1 REVIEW OF PROPOSALS

Review of proposals will begin as soon as practical after receipt. The Proposers receiving the most favorable ratings during the first round of selection will be asked to send a representative to Austin, Texas, at a time and place to be arranged for oral presentation of proposals. Proposals will be rated again following oral presentations. The evaluation team shall consist of TEA staff knowledgeable in the content area, and may also include reviewers from outside the Agency with expertise in the area. The recommendations of the review panel will be assembled and presented to senior executive agency staff 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.

By law, the Agency may not disclose any information until a contract is executed by both parties. Upon contract award, TEA will post the contract award notice to the Electronic State Business Daily (ESBD) at: <http://esbd.cpa.state.tx.us/>. Additional copies of proposals **not selected for funding** will be destroyed in accordance with the agency approved records retention policy.

4.2 SELECTION CRITERIA

Proposals will be selected based on the ability of each Proposer to carry out all of the requirements contained in this Request for Proposal. A proposer who is in default or otherwise not in good standing under any other current or prior contract with TEA at the time of selection will not be eligible for award of this contract. TEA will base its selection on, among other things, best value criteria, demonstrated competence, qualifications of the proposer, past contractor performance, and the proposed budget/cost. All state agencies report unsatisfactory contractor performance on purchases over \$25,000. Agencies report satisfactory and exceptional contractor performance to assist in determining best value. In accordance with Texas Government Code, §2155.074 and §2155.75, contractor performance shall be used as a factor in future contract awards.

Following are the criteria and the total number of points of each portion of the RFP that will be applied in selecting a Contractor:

CATEGORIES	POSSIBLE POINTS
A. Quality of Technical Component <ol style="list-style-type: none"> 1. Clear description of the online interactive program that demonstrates compliance with required technical features (5 pts) 2. Clear delineation of grade levels and subjects to be addressed (5 pts) 3. Accessibility to special populations and in multiple environments (5 pts) 4. Quality of diagnostic tool (5 pts) 5. Quality of other tool(s) with which the impact and effectiveness of the program may be measured (5 pts) 6. Quality of data security provisions (5 pts) 	30
B. Quality of Management Component <ol style="list-style-type: none"> 1. Quality of teacher training and support plan (10 pts) 2. Quality of plan for ensuring implementation fidelity (5 pts) 3. Quality of personnel qualifications of staff assigned to project including appropriate background working with parents and districts (5 pts) 4. Adequacy of plan for communicating and building effective, collaborative relationships with schools and communities (5 pts) 5. Activities of sufficient scope and detail to provide evidence of satisfactory delivery of services and products (5 pts) 	30

<p>C. Quality of Task/Activity Plan</p> <ol style="list-style-type: none"> 1. Quality of interactive online materials and resources to be offered to all students in the service categories selected statewide (10 pts) 2. Ability to demonstrate that the instruction of and strategies employed are evidence-based and proven to work with academically struggling students (13 pts) 3. Ability to demonstrate knowledge of and program alignment to the Texas Essential Knowledge and Skills (TEKS) in reading and/or mathematics (5 pts) 4. Ability to demonstrate knowledge of and program alignment to the English Language Proficiency Standards (ELPS) (2 pts) 	30
<p>D. Cost-Effectiveness and Appropriateness of Financial Resources Dedicated to Project</p> <ol style="list-style-type: none"> 1. Appropriateness of costs based on services provided (10 pts) 2. Appropriateness of economy of scale for providing statewide license and service (5 pts) 	30
<p>E. Quality of Evaluation Component</p> <ol style="list-style-type: none"> 1. Ability to provide districts and parents a means to track students' use of and progress with materials (5 pts) 2. Quality of plan for modifying services or delivery mechanisms if the program is not meeting district needs (5 pts) 3. Quality of reports to TEA on student usage and progress (5 pts) 4. Quality of reports to districts, campuses, and teachers on student use and progress (10 pts) 	25
Sub Total	145 points
<p>Priority Points: Materials and instruction are also provided in Spanish. 0 pts: No materials and instruction are provided in Spanish. 5 pts: The majority of materials and instruction are also in Spanish. 10 pts: All materials and instruction are also in Spanish.</p>	Possible 10 Points
TOTAL	155 points

4.2.1 Preference(s)

The Agency shall also give preference, among proposals that are otherwise comparable, to a proposal submitted by a Texas Resident Bidder (TX based company) and / or a HUB. In the event of a tie, the proposer with the highest percentage of HUB subcontracting will be awarded the contract.

SECTION FIVE CONTRACTUAL REQUIREMENTS

5.1 CONTRACTOR'S PROPOSAL

The selected proposal will be incorporated into the contract prepared by the TEA for signature by the contracting parties.

5.2 PROJECT REVIEW REQUIREMENTS

TEA reserves the right to review any materials, and/or products developed or adapted by the Contractor. Upon completion of the contract period, all documents will be returned to TEA or destroyed accordingly. This requirement includes all student data compiled under this Contract. All documents created at any time during the contract period belong to TEA. The TEA Project Manager will establish procedures for communicating phase out and transition of the deliverable(s).

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 is contingent upon submission of properly prepared and certified invoices.. The information provided on each detailed status report must coincide with the tasks outlined in the approved budget, as negotiated by the TEA. The TEA Project Manager will approve invoices based upon project progress, task completion, deliverables received, inspected, tested and approved and satisfactory performance of services as outlined in the progress report. The invoice shall note the period of time payment is for, the agreed upon monthly amount, contract number, purchase order number, and the Texas Comptroller of Public Accounts Payee Identification Number (TIN).

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 from TEA 30-days from receipt of a correct and complete invoice.

TEA will not release the final invoice until all "works" which includes materials, documents, source code, data bank, and website links etc, are returned to TEA or their designee and all terms and conditions have been satisfied.

NOTICE OF INTENT TO SUBMIT A PROPOSAL
RFP # 701-16-010
Student Success Initiative Support Programs (Texas SUCCESS)

The undersigned organization hereby files a notice of intent to submit a proposal:

Name of Organization:	
Mailing Address:	
Contact Person:	
E-Mail:	
Phone Number:	
FAX:	

- Filing of this notice is not mandatory; however, it will assist the Texas Education Agency in anticipating the volume of proposals in order to better expedite the review process and finalize contract awards.
- The information from the Notice of intent may also be provided to HUB contractors (if requested) to help establish subcontracting relationships for this solicitation as well as future solicitations with the agency.
- Filing this notice in no way binds the organization to submit a proposal for this RFP.
- Proposers who do not file this notice are still eligible to submit a proposal.

PLEASE SUBMIT THIS NOTICE BY E-MAIL OR FAX AS SOON AS POSSIBLE AFTER RECEIPT OF THE RFP, BUT NOT LATER THAN, August 21, 2015 TO:

TEAContracts@tea.texas.gov

Texas Education Agency

Attention to: Norma Barrera

Purchasing, Contracts and Agency Services (PCAS) Division

FAX (512) 475-1706

**EXECUTION OF OFFER
CONTRACT TERMS AND CONDITIONS, AFFIRMATION AND PROPOSAL PREFERENCES**

1. Definitions as used in these Contract Terms and Conditions:
 - A. *Contract* means the entire document, 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;
 - B. *Receiving Agency, Party, Owner or TEA* means the Texas Education Agency;
 - C. *Bidder, Proposer or Respondent* may be used interchangeably in the competitive solicitation. Proposer and Respondent infer pre-solicitation award status and Contractor infers post-award status;
 - D. *Bid package, proposal, or response may be used interchangeably*;
 - E. *Contractor or Performing Agency* 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;
 - F. *Project Manager/Administrator* means the respective person(s) representing TEA or Contractor, as indicated by the Contract, for the purposes of administering the Contract Project;
 - G. *Contract Project* means the purpose intended to be achieved through the Contract;
 - H. *Amendment* means a Contract that is revised in any respect, and includes both the original Contract, and any subsequent amendments or extensions thereto;
 - I. *Major Contract* means any contract over \$10 million cumulative over the life of the contract;
 - J. *Works* means all tangible or intangible material, products, ideas, documents or works of authorship prepared or created by Contractor for or on behalf of TEA 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.) this does not include any pre-existing materials of Contractor, or any licensed third party materials provided by Contractor; and,
 - K. *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;
 - L. *TEA Confidential Information* means information that is confidential under the provisions of the Family Educational Rights and Privacy Act (FERPA), the Texas Public Information Act, or other applicable state or federal laws. Examples of TEA Confidential Information include: (a) personally identifiable student information; (b) social security numbers; (c) driver's license numbers; (d) criminal background checks; (e) e-mail address of a member of the public, unless the individual waives his or her right to e-mail confidentiality by affirmatively consenting to disclose the e-mail address or the individual seeks to contract or has a contract with TEA; (e) certain personnel information concerning a TEA employee including home address, home telephone number, emergency contact information, and family member information (if the employee elects in writing to keep this information confidential), personal medical information, and information reflecting personal financial decisions such as the employee's choice of insurance carrier or choice to contribute money to a 401(k); (f) biometric identifiers such as fingerprints; (g) information about security vulnerabilities in TEA systems; and (h) SAS data sets.

2. **Contingency:** The contracts, 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.

3. **Indemnification:**

Acts or Omissions

Contractor shall indemnify and hold harmless the State of Texas and TEA, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS,

ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of Contractor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the contract and any purchase orders issued under the contract. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

Infringements

- A.** Contractor shall indemnify and hold harmless the State of Texas and the TEA, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.
- B.** Contractor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Contractor's written approval, (iii) any modifications made to the product by Contractor pursuant to TEA's specific instructions, (iv) any intellectual property right owned by or licensed to TEA, or (v) any use of the product or service by TEA that is not in conformity with the terms of any applicable license agreement.
- C.** If Contractor becomes aware of an actual or potential claim, or TEA provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against TEA, shall), at Contractor's sole option and expense; (i) procure for the TEA the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that TEA's use is non-infringing.

CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TEA AND/OR THE STATE SHALL NOT BE LIABLE TO CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS TEA, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

For local educational agencies (LEAs), regional education service centers (ESCs), institutions of higher education (IHEs), and state agencies: Contractor, to the extent permitted by law, 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.

4. **Subcontracting and Substitutions:** Contractor shall not assign, transfer 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. TEA reserves the right to request changes in personnel assigned to the project. The TEA Project 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 TEA HUB Coordinator before staffing changes are initiated. Substitutions are not permitted without written approval of TEA Project Manager.
5. **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.
6. **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.
7. **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.
8. **Records Retention and the Right to Audit:** 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 TEA and by others authorized by law or regulation to make such an audit for a period of not less than seven (7) years from the date of completion of the Contract Project or the date of the receipt by TEA 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.

Pursuant to Government Code, the state auditor may conduct an audit or investigation of Contractor or any other entity or person receiving funds from the state directly under this contract or indirectly through a subcontract under this contract. The acceptance of funds by Contractor or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Contractor or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.

Contractor further agrees that acceptance of funds under this contract acts as acceptance for TEA to conduct an audit or investigation in connection with those funds. Contractor, subcontractors, and any entities receiving funds through this contract shall cooperate fully with TEA in the conduct of the audit or investigation, including providing all records pertaining to this contract that are requested.

9. **Intellectual Property Ownership:** Contractor agrees that all Works are, upon creation, works made for hire and the sole property of 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, or grants to TEA the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (a) use, execute, reproduce,

display, perform, distribute copies of, and prepare derivative works based upon such preexisting rights and any derivative works thereof and (b) authorize others to do any or all of the foregoing. Contractor agrees to notify TEA on delivery of the Works if they include any such preexisting rights. On request, Contractor will provide TEA 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.

Contractor agrees, at Contractor's expense, to indemnify, hold harmless and defend TEA and the State from claims involving infringement of third parties' licenses, trademarks, copyrights or patents.

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.

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 TEA's Office of Legal Services.

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 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. Colleges and universities are prohibited, however, from 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, without the express written permission of TEA Legal Division.

10. Time Delays; Suspension; Sanctions for Failure to Perform; Noncompliance:

Time is of the Essence.

Contractor's timely performance is essential to this contract.

Suspension

If this contract is suspended by TEA prior to its expiration date, the reasonable monetary value of services properly performed by Contractor pursuant to this contract prior to suspension shall be determined by TEA and paid to Contractor as soon as reasonably possible. TEA shall not be required to pay any standby hourly rates during a suspension of Work, if TEA suspends performance of the Work because the Work is defective, or Contractor fails to supply sufficiently skilled workers or suitable materials or equipment, or fails to provide required insurance coverage, or fails to furnish or perform the Work in such a way that the completed Work will conform to this contract.

Sanctions

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.

- 11. Information Security Requirements:** Access to Confidential TEA Information. Contractor represents and warrants that it will take all necessary and appropriate action within its abilities to safeguard TEA Confidential Information and to protect it from unauthorized disclosure. If Contractor discloses any TEA confidential information to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor. Whenever communications with Contractor necessitate the release of Confidential TEA Information, additional TEA Confidential forms will need to be signed by each individual who will require access to or may be exposed to that information. Contractor shall access TEA's systems or Confidential TEA Information only for the purposes for which it is authorized. TEA reserves the right to review Contractor's security policy to ensure that any data that is on Contractor's servers is secure. Contractor shall cooperate fully by making resources, personnel, and systems access available to TEA and TEA's authorized representative(s).

Contractor shall ensure that any TEA Confidential Information in the custody of Contractor is properly sanitized or destroyed when the information is no longer required to be retained by TEA or Contractor in accordance with this contract. Electronic media used for storing any Confidential TEA Information must be sanitized by clearing, purging or destroying in accordance with such standards established by the National Institute of Standards and Technology and the Center for Internet Security. These standards are also required if Contractor is collecting, maintaining, or analyzing data gathered, collected, or provided under this contract. Contractor must maintain a record documenting the removal and completion of all sanitization procedures with the following information:

- A. Date and time of sanitization/destruction;
- B. Description of the item(s) and serial number(s) if applicable;
- C. Inventory number(s); and
- D. Procedures and tools used for sanitization/destruction.

No later than 60 days from contract expiration or termination or as otherwise specified in this contract, Contractor must complete the sanitization and destruction of the data and provide to TEA documentation that the sanitization has been completed. The documents must be certified by an authorized agent of the company.

Access to Internal TEA Network and Systems

As a condition of gaining remote access to any internal TEA network and systems, Contractor must comply with TEA's policies and procedures. TEA's remote access request procedures will require Contractor to submit TEA Applicable Access Request forms for TEA's review and approval. Remote access technologies provided by Contractor must be approved by TEA's Information Security Officer. TEA, in its sole discretion, may deny network or system access to any individual that does not complete the required forms. Contractor must secure its own connected systems in a manner consistent with TEA's requirements. TEA reserves the right to audit the security measures in effect on Contractor's connected systems without prior warning. TEA also reserves the right to immediately terminate network and system connections not meeting such requirements.

Disclosure of Security Breach

Contractor shall provide notice to TEA's Project Manager and TEA's Information Security Officer as soon as possible following Contractor's discovery or reasonable belief that there has been unauthorized use, exposure, access, disclosure, compromise, modification, or loss of sensitive or confidential TEA information ("Security Incident"). Within 24 hours of the discovery or reasonable belief of a Security Incident, Contractor shall provide a written report to TEA's Information Security Officer detailing the circumstances of the incident which includes at a minimum:

- A. Description of the nature of the Security Incident;
 - B. The type of TEA information involved;
 - C. Who may have obtained the information;
 - D. What steps Contractor has taken or will take to investigate the Security Incident;
 - E. What steps Contractor has taken or will take to mitigate any negative effect of the Security Incident;
- and
- F. A point of contact for additional information.

Each day thereafter until the investigation is complete, Contractor shall provide TEA's Information Security Officer with a written report regarding the status of the investigation and the following additional information as it becomes available:

- A. Who is known or suspected to have gained unauthorized access to TEA information;
 - B. Whether there is any knowledge if TEA information has been abused or compromised;
 - C. What additional steps Contractor has taken or will take to investigate the Security Incident;
 - D. What steps Contractor has taken or will take to mitigate any negative effect of the Security Incident;
- and
- E. What corrective action Contractor has taken or will take to prevent future similar unauthorized use or disclosure.

Contractor shall confer with TEA's Chief Information Security Officer regarding the proper course of the investigation and risk mitigation. TEA reserves the right to conduct an independent investigation of any Security Incident, and should TEA choose to do so, Contractor shall cooperate fully by making resources, personnel, and systems access available to TEA and TEA's authorized representative(s). Subject to review and approval of TEA's Information Security Officer, Contractor, at its own cost, shall provide notice that satisfies the requirements of applicable law to individuals whose personal, confidential, or privileged data were compromised or likely compromised as a result of the Security Incident. If TEA, in its sole discretion, elects to send its own separate

notice, then all costs associated with preparing and providing notice shall be reimbursed to TEA by Contractor. If Contractor does not reimburse such costs within 30 days of TEA's written request, then TEA shall have the right to collect such costs.

- 12. **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.
- 13. **Capital Outlay:** If Contractor purchases capital outlay (furniture and/or equipment) to accomplish the contract Project, title will remain with Contractor for the period of the contract. TEA 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. This provision is applicable when federal funds are utilized for the contract.
- 14. **TEA Property (terms):** In the event of loss, damage or destruction of any property owned by or loaned by TEA while in the custody or control of Contractor, Contractor shall indemnify TEA and pay to TEA 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 TEA'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 TEA to Contractor for use in the contract Project. 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 or counterclaim against any money otherwise due to Contractor by TEA.
- 15. **State of Texas Laws:** In the conduct of the Contract Project, Contractor shall be subject to laws or rules of the State of Texas pertaining to and or 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.
- 16. **Point of Contact and Escalation:** All notices, reports and correspondence required by this contract shall be in writing and delivered to TEA Project Manager listed below or their successors in office. Within 30 days of execution of a contract, the respective Parties will designate the next level of personnel within each organization to address conflicts or ambiguity that cannot be resolved at the Project Manager level.

TEA

CONTRACTOR

Kerry Ballast
 Educational Technology Division
 Texas Education Agency
 William B. Travis Building
 1701 N. Congress Avenue
 Austin, Texas 78701

- 17. **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 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 Parts 104 and 105;

5. The Age Discrimination Act of 1975, as amended (prohibition of discrimination on basis of age), and the implementing regulations contained in 34 CFR, Part 110;
 6. Family Educational Rights and Privacy Act of 1975, as amended, and the implementing regulations contained in 34 CFR, Part 99, if Contractor is an educational institution;
 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. 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
 9. General Education Provisions Act, as amended.
- 18. Federal Regulations Applicable to All Federally Funded Contracts:** The **Code of Federal Regulations (CFR)** annual edition is the codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government produced by the Office of the Federal Register (OFR) and the Government Publishing Office. Website: http://www.ecfr.gov/cgi-bin/text-idx?SID=6214841a79953f26c5c230d72d6b70a1&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl
- 19. 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. TEA shall be responsible for reporting to the proper authorities any failure by Contractor to comply with the foregoing laws and regulations coming to TEA's attention, and may deny payment or recover payments made by TEA to Contractor in the event of Contractor's failure so to comply. 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 account is paid in full, regardless of when the debt or delinquency was incurred. This provision does not apply if the warrant or transfer results in payments being made in whole or in part with money paid to the state by the Federal Government. Pursuant to 34 TAC §201.14 -18 and Texas Government Code, Chapter 2161, Contractors shall maintain business records documenting compliance with the HUB subcontracting plan (HSP) and shall submit a compliance report to TEA monthly, in the format required by TEA. The compliance report submission shall be required as a condition for payment. If Contractor subcontracts any part of the contract in a manner that is not consistent with its HSP, the selected respondent must submit a revised HSP before subcontracting any of the work under the contract. If Contractor subcontracts any of the work without prior authorization and without complying with this section, Contractor is deemed to have breached the contract and is subject to any remedial actions provided by Government Code, Chapter 2161, and other applicable state law.
- 20. 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.
- 21. 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 Texas Business and Commerce 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.
- 22. Family Code Applicability:** By signing this contract, Contractor, if other than a state party, certifies that under Section 231.006, Family Code, that Contractor is not ineligible to receive specified grant, loan, or 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.
- 23. 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. The parties may agree to mediation of their dispute at any time. However, if all issues in dispute are not completely resolved through direct negotiations between the parties within 180 days after TEA receives Contractor's notice of claim, then the parties must submit the dispute to mediation before a mutually acceptable mediator in Travis County, Texas. The mediation must be completed on or before 270 days after TEA receives Contractor's notice

of claim. Completion of the mediation is a condition precedent to the filing of a contested case hearing under Chapter 2260. TEA's participation in mediation or any other dispute resolution process shall not waive any of TEA's contractual or legal rights and remedies, including but not limited to sovereign immunity.

- 24. Interpretation:** In the case of conflicts arising in the interpretation of wording and/or meaning of various sections, parts, Appendices, General Provisions, Special Provisions, Exhibits, and Attachments or other documents, TEA contract and its General Provisions, Appendices and Special Provisions shall take precedence over all other documents which are a part of this contract.
- 25. Education Service Center:** No funds transferred to Regional Education Service Centers or to school districts may be used to hire a registered lobbyist.
- 26. Compliance with Laws:** Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting Contractor's performance, including if applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations. For the entire duration of the contract, Contractor shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this contract. When required or requested by TEA, Contractor shall furnish TEA with satisfactory proof of its compliance with this provision.
- 27. Public Information:** 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 TEA under this Contract constituting a record under the Act is received by TEA, the information must qualify for an exception provided by the Act in order to be withheld from public disclosure. Contractor authorizes 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 exempt from public disclosure under the Act. If TEA does not have a good faith belief that information may be subject to an exception to disclosure, TEA is not obligating itself by this contract to submit the information to the Attorney General. It shall be the responsibility of 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. Contractor waives any claim against and releases from liability 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 Contractor and determined by the Attorney General or a court of law to be subject to disclosure under the Act.
- Under Section 2252.907 of the Texas Government Code, a contract between a state governmental entity and a non-governmental contractor involving the exchange or creation of public information, as defined by the Texas Government Code Section 552.002, must require the non-governmental contractor to make any information created or exchanged with the state pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state. TEA Project Manager will provide the specific format by which Contractor is required to make the information accessible by the public.
- 28. Gratuities:** By signing this contract, Contractor represents and warrants that Contractor has not given, offer to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.
- 29. Venue and Jurisdiction:** Subject to and without waiving any of TEA'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.
- 30. Protests:** Any actual or prospective Bidder, Respondent, or Contractor who is aggrieved in connection with the solicitation, evaluation, or award of this or any other contract by TEA may submit a formal protest to the Director of TEA's Contracts, Purchasing and Agency Services (PCAS) Division. This protest procedure shall be the exclusive method by which anyone may make a challenge to any aspect of TEA's contracting process. TEA will not be required to consider the merits of any protest unless the written protest is submitted within 10 working days after such aggrieved person knows, or reasonably should have known, of the occurrence of the action which is protested. The protest document must meet with all requirements in applicable law and TEA's rules (Title 19 of the Texas Administrative Code, at § 30.2002) <http://ritter.tea.state.tx.us/rules/tac/index.html>.

If the protest procedure results in a final determination by TEA that a violation of law has occurred in its contracting process in a case in which a contract has been awarded, then TEA may declare the contract void at inception. In that event, the party who had been awarded the contract shall have no rights under the contract and no remedies under the law against TEA

31. **Liability for and Payment of Taxes:** Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this contract, including, but not limited to, any federal, state, or local income, sales or excise taxes of Contractor or its employees. TEA shall not be liable for any taxes resulting from this contract.
32. **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.
33. **Conformance:** Contractor warrants that all goods and services furnished shall conform in all respects to the terms of this contract, including any drawings, specifications or standards incorporated herein, and any defects in materials, workmanship, and free from such defects in design. In addition, Contractor warrants that goods and services are suitable for and will perform in accordance with the purposes for which they are intended.
34. **Felony Criminal Convictions:** Contractor represents and warrants that Contractor has not and Contractor's employees assigned to TEA projects have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised TEA as to the facts and circumstances surrounding the conviction.
35. **Criminal Background Checks:** If during the term of this Contract, Contractor, and/or Contractor staff, or subcontractor have access to Texas public school campuses, all Contractor and/or Contractor's staff must submit to a national criminal history record information review (includes fingerprinting) and meet all eligibility standards and criteria as set by TEA before serving in assignments on behalf of TEA. This requirement applies to all individuals who currently serve or will serve in TEA assignments that have the possibility of direct contact with students. Assignments are contingent upon meeting TEA eligibility standards. Contractor and/or any staff member of Contractor who may perform services under this contract must complete this criminal history review before the beginning of an assignment. If said individuals have not completed this requirement or the review results in a determination that Contractor is not eligible for assignment, this contract will be terminated effective immediately or the date of notice of non-eligibility, whichever is earliest.
36. **Assignment of Contract:** This contract may not be assigned, sold, or transferred without the express written consent of TEA Purchasing, Contracts, and TEA Services (PCAS) Division. An attempted assignment after contract award without TEA approval will constitute a material breach of contract.
37. **Buy Texas:** In accordance with Government Code, Section 2155.444, the State of Texas requires that during the performance of a contract for services, Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside the state. This provision does not apply if Contractor receives any federal funds under this contract.
38. **Excluded Parties List System:** TEA and Contractor must adhere to the directions provided in the President's Executive Order (EO) 13224, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, which may be viewed at <http://www.whitehouse.gov/briefing-room/presidential-actions/executive-orders>. That Executive Order prohibits any transaction or dealing by United States persons, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed in the General Services Administration's Excluded Parties List System (EPLS) which may be viewed on the System for Award Management (SAM) site at <http://www.sam.gov>.
39. **Suspension and Debarment:** Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntary excluded from participation in this transaction by any federal, state or local government entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement. If Contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this contract.
40. **Electronic and Information Resources Accessibility Standards:** State agencies shall procure products which comply with the State of Texas Accessibility requirements for Electronic Information Resources specified in 1TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

Regulations updating the accessibility requirements for entities covered by Section 508 of the Rehabilitation Act of 1973 were adopted in 2015. Therefore, all current and potential contractors are hereby notified of the changes. The current technical requirements for accessibility contained within this regulation form the basis for our Texas TAC rules on EIR Accessibility.

This refresh of 508 will be using the [WCAG 2.0 AA Accessibility Guidelines](#) (also ISO/IEC standard 40500) as the new technical standard that federal agencies will be required to meet when procuring products and services. Once the 508 refresh is adopted, the Texas Department of Information Resources will be modifying the TAC rules to align with it.

Given this coming change, all Texas agencies and institutions of higher education should begin using or specifying WCAG 2.0 AA guidelines for the design of new websites or web applications. The rationale is twofold:

- A. It could be technically difficult and expensive to bring these websites/applications to WCAG 2.0 AA later.
- B. WCAG 2.0 AA is a superior, more flexible standard and is in use all over the world. If a website is compliant with WCAG 2.0 AA, it will, by default comply with our current TAC rules on EIR Accessibility.

Web development Contractors should already be familiar with designing to this standard, and their ability to meet these standards should be a strong consideration in the selection process.

The free online resources listed below are available to assist developers and content producers in transitioning to these guidelines.

[WCAG 2.0 at a glance](#)

[IBM Developer Guidelines Web Checklist](#)

[Webaim.org Accessibility Checklist](#)

41. **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 Contractor'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.
42. **Social Security Numbers Withheld:** TEA will not provide Social Security Numbers (SSNs) to any Contractor under this contract unless specifically specified as part of the project requirements. TEA, its Contractors and their subcontractors, will not require or request school districts to provide SSNs under this contract. Contractor agrees that in executing tasks on behalf of TEA, they will not use any student-identifying information in any way that violates the provisions of FERPA, and will destroy or return all student-identifying information to TEA within 30 days of project completion. An authorized officer of the company must certify that ALL records have either been properly destroyed or returned to TEA in order to close out the contract.
43. **Proprietary; Confidential Information; Nondisclosure; Press Releases:** All information gathered, produced, derived, obtained, analyzed, controlled or Accessed by Contractor in connection with a contract resulting from a solicitation. This also includes the open solicitation period. "Confidential Information" shall be and remain Confidential Information and shall not be released or disclosed by Contractor without the prior written consent of TEA, which consent must specifically identify the Confidential Information to be disclosed by Contractor and the nature of the disclosure for which consent is sought. Contractor, its employees and subcontractors, agree that in executing tasks on behalf of TEA, they will not use any student-identifying information in any way that violates the provisions of FERPA, and will destroy or return all student-identifying information within 30 days of project completion. Contractor also agrees not to disclose any information to which it is privy under this contract without the prior consent of TEA. 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. Except when defined as part of the Work under this contract. Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of TEA.
44. **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.
45. **Contractor Performance:** All state agencies must report unsatisfactory Contractor performance on purchases over \$25,000. Proposers who are in default or otherwise not in good standing under any other current or prior contract with TEA at the time of selection will not be eligible for award of this contract. A Proposer's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of

§§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Proposers may fail this selection criterion for any of the following conditions: A score of less than 90% in Contractor Performance System, currently under a Corrective Action Plan, having repeated negative Contractor performance reports for the same reason, having purchase orders that have been cancelled in the previous 12 months for non-performance (i.e. late delivery, etc.). TEA may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through Contractor Performance Tracking System (as authorized by 34 Texas Administrative Code §20.108), TEA may examine other sources of Contractor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of TEA, and any negative findings, as determined by TEA, may result in non-award to the Proposer.

Agencies report satisfactory and exceptional Contractor performance to assist in determining best value. In accordance with Texas Government Code, §2155.074 and §2155.75, Contractor performance may be used as a factor in future contract awards.

Contractor performance information is located on the CPA website at http://www.cpa.state.tx.us/procurement/prog/vendor_performance/

46. 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:** TEA may terminate this contract at any time, in whole or in part, without penalty, by providing 15 calendar days advance written notice to Contractor. In the event of such a termination, 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 Contractor that are permitted, properly performed under this contract and were incurred prior to the effective termination date.
2. **Termination for Cause/Default:** If 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 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 Contractor in writing prior to the exercise of such remedy.

Contractor shall remain liable for all covenants and indemnities under the contract. 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 Contractor under the contract.
5. **Survival of Terms:** Termination of the contract for any reason shall not release 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, invoice and fees verification.
6. **Contract Transition:** In the event a subsequent competitive solicitation is awarded to a New Contractor, the Outgoing Contractor shall hand-over to the New Contractor all "Works" including but not limited to the following: data, materials, database access, intellectual property, source code, training materials, access to websites, asset transfer, and maintenance of service commitments. The purpose of transition planning is to ensure a seamless and continuous service when changing from one contract

to another. The Outgoing Contractor will begin shipping, transmitting or providing access to all appropriate materials and data to the New Contractor within 10 days of announcement of award at the New Contractor's expense for data processing and production, packing and shipping. The Outgoing Contractor will be responsible for providing the services identified in the contract until all records have been completely transferred to the New Contractor. The Outgoing Contractor is responsible for performing due diligence to ensure that all the transition activities are identified and completed during the contract transition.

The Outgoing Contractor shall submit to TEA requested reports and data. TEA will not release the final invoice until all materials are returned to TEA or their designee. TEA Project Manager shall approve the Transition Plan prior to its implementation. The Transition Plan must minimize the impacts on continuity of operations and maintain communication with TEA Project Manager and the New Contractor.

- 47. Amendments:** All amendments to this contract will be in a manner as prescribed by TEA Contracting Process and are, subject to Paragraph B of the General Provisions and will be made on AMENDMENT TO TEA STANDARD CONTRACT form. All amendments will be initiated by TEA PCAS staff. An Amendment to this contract will become effective on the date of signature of TEA or the effective date shown on the amendment document whichever is first.

If the initial major contract (defined as expected value of \$10 million or more) solicitation document submitted to the CPA Contract Advisory Team (CAT) changes substantially, agencies are required to resubmit their solicitation documents(s) for CAT review. Changes in the major contract solicitation are considered substantial when: 1) the solicitation change caused the estimated value for the original term of the contract, not including renewal periods, to increase by 25% or more; 2) or there are significant revisions, deletions and/or additions to the specifications, statement of work (SOW), set(s) of deliverables, performance measures, payment methodology, etc.

1. Contractor is permitted to re-budget among direct cost categories within the approved budget to meet unanticipated requirements and to make limited changes to the approved budget without the issuance of a written Amendment as long as the total budget amount does not change. However, a revised budget document must be submitted to TEA Project Manager for approval. Once approved, the documents must be submitted to the PCAS Division for incorporation into the contract file. Failure to submit the budget documents will result in invoices being rejected or payment delayed.
2. Written Amendments are required for the following contract changes:
 - a. Any revision which would result in the need for additional funding;
 - b. Any revision to the scope of work, deliverables, or objectives of the contract (regardless of whether there is an associated budget revision requiring prior approval) additionally increases of 25% or more for major contracts must be approved by the Texas Comptroller;
 - c. A request to extend the period of the contract;
 - d. Cumulative transfers among direct cost categories which exceed or are expected to exceed 25% of the current total approved budget category;
 - e. Any reduction of funds or reduction in the scope of work;
 - f. Whenever a line item within a class/object code is added;
 - g. An increase in the quantity of capital outlay item(s) requested; and
 - h. An increase or decrease in the number of positions charged to contract.

All Amendments must be signed by both parties.

- 48. Payment:** Payment for goods or services purchased with state-appropriated funds will be issued by electronic Direct Deposit from the State Treasury. Direct Deposit is the preferred method of payment. Any payment owed by TEA must be transmitted electronically to Contractor no later than 30 days after the later of:
- (1) Day on which TEA received the goods;
 - (2) Date the performance of the service under the contract is completed; or
 - (3) Day on which TEA received the complete and correct invoice for goods or services.

Invoices must be submitted to TEAAccountsPayable@tea.texas.gov and TEA Project Manager.

Additional information and a Direct Deposit Authorization application may be found at: <https://fm.xcpa.state.tx.us/fm/payment/index.php>.

- A. Payment for service(s) described in this contract is contingent upon satisfactory completion of the Deliverables and Services Review and Acceptance Process. Contractor must submit final deliverables to TEA for review and approval prior to invoicing. These include test items developed under the contract. "Final" deliverable means a deliverable that, in the belief and testimony of Contractor, is in final completed form and in compliance with all required specifications as defined by project documentation and this contract. TEA will review each deliverable, including test items, submitted by Contractor for quality and alignment to the deliverable definition agreed to under the "Deliverables and Services Definition Process". TEA will have 15 working days to approve a deliverable or request revisions to the deliverable. TEA must review and approve any deliverable before it may be invoiced by Contractor. If TEA finds a submitted deliverable to be substandard or not in compliance with the deliverable definition agreed to under the "Deliverables and Services Definition Process" in the Service Level Agreement or the Contract Monitoring Tool, Contractor will have 10 working days to provide a Corrective Action Plan and address the quality or other compliance requirement and resubmit the deliverable. Additional costs incurred by Contractor that result from repeated submissions and revising of substandard deliverables will be borne solely by Contractor and not charged against the contract or to TEA. This process will apply to all deliverables and requirements of the Contract, including test items developed. This does not preclude an arrangement that allows Contractor to bill against a deliverable as progress is made toward completing that deliverable, so long as documentation of such progress in a form and nature satisfactory to TEA is provided and is approved by TEA. It is up to Contractor to request incremental billing based on progress towards a deliverable, and such a request must be approved by TEA prior to submission of any invoice by Contractor. TEA reserves the right to reject and not provide payment for deliverables found to be substandard or not in compliance with the deliverable definition agreed to under the "Deliverables and Services Definition Process", including test items developed under the contract. Contractor is strongly encouraged to collaborate with TEA on draft versions of any deliverables or services and request review(s) of such draft versions before submitting a final version.
- B. Retainage: TEA may withhold 5% or less of each payment as retainage for certain projects. Retainage fees shall be documented in the contract and may not be arbitrarily imposed after execution of the Contract. The release of retainage may be requested in the final invoice.
- C. Unless otherwise stated, payment under this contract will be made upon performance of services based upon submission of an expenditure report/invoice, properly prepared and certified, outlining expenditures by cost category. Include the contract number, purchase order number, and the Texas Comptroller of Public Accounts Texas Identification Number (TIN) on all invoices/expenditure reports. The cost categories provided in the expenditure report/invoice must coincide with the cost categories detailed in the approved budget. A list of tasks/activities performed during the invoice period must accompany the expenditure report/invoice. The final expenditure report/invoice is due within 45 days after the end of the contract. Payment on the final expenditure report is contingent upon receipt of all reports/products required by this contract.
- D. An encumbrance, accounts payable, and expenditure, as with all other contract accounting terms, will be as defined in the *Financial Accounting and Reporting Module of TEA Financial Accountability System Resource Guide*. All goods must have been received and all services rendered by the ending date of this contract in order for Contractor to include these costs as either expenditures or as accounts payable and, thereby, recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.
- E. 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. TEA shall determine whether a payment law prohibits the Comptroller from issuing a warrant or initiating an electronic funds transfer to a person before TEA enters into a written contract with that person.

Contractor may verify its account status by accessing the Texas Comptroller's website at https://fm.x.cpa.state.tx.us/fm/pubs/purchase/restricted/index.php?section=indebted&page=persons_indebted

- 49. Prohibition of text messaging and emailing while driving during official federal grant business:** Federal grant recipients and their grant personnel are prohibited from texting messaging while driving a government owned vehicle or while driving their own privately owned vehicle during official grant business, or from using government supplied electronic equipment to text message or email while driving. Recipients must comply with

these conditions under Executive Order 13513, "Federal Leadership On Reducing Text Messaging While Driving," effective October 1, 2009.

- 50. Insurance:** Contractor represents and warrants that it will, within five business days of being requested by TEA, provide TEA with current certificates of insurance or other proof acceptable to TEA of the following insurance coverage:

Workers Compensation & Employers Liability: Contractor must maintain Workers' Compensation insurance coverage in accordance with statutory limits.

Workers Compensation: Statutory Limits
Employers Liability: Each Accident \$1,000,000
Disease- Each Employee \$1,000,000
Disease-Policy Limit \$1,000,000

This state of Texas website (Coverage starts with 406 of the Labor code) addresses what Texas requires may be found at: <http://www.tdi.texas.gov/wc/act/index.html>

Commercial General Liability: Occurrence based:
Bodily Injury and Property Damage
Each occurrence limit: \$1,000,000;
Aggregate limit: \$2,000,000;
Medical Expense each person: \$5,000;
Personal Injury and Advertising Liability: \$1,000,000;
Products /Completed Operations Aggregate Limit: \$2,000,000; and
Damage to Premises Rented to You: \$50,000

Contractor represents and warrants that all of the above coverage is with companies licensed in the state of Texas, with "A" rating from A.M. Best, and authorized to provide the corresponding coverage. Contractor also represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least 30 days prior written notice to TEA. Contractor represents and warrants that it shall maintain the above insurance coverage during the term of this contract, and shall provide TEA with an executed copy of the policies immediately upon request.

- 51. Force Majeure:** Neither Contractor nor the TEA shall be liable to the other for any delay in nor failure of performance, of any requirement included in any contract resulting from this RFP 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, fires, explosions, hurricanes, floods, failure of transportation, 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 business days of the existence of such force majeure, or otherwise waive this right as a defense.
- 52. Drug Free Workplace Policy:** Contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and Contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.
- 53. Abandonment or Default:** If Contractor defaults on the contract, TEA 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 Proposer. 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 TEA based on the seriousness of the default.
- 54. Most Favored Customer.** Contractor represents and warrants that all prices, charges, benefits, warranties, terms granted to TEA pursuant to any PO or other agreement resulting from the competitive solicitation is

comparable to, or more favorable to, TEA than the prices, charges, benefits, warranties, and terms that Successful Respondent has heretofore offered to any person or entity for the products and/or services covered under any other agreement. If at any time during the term of any PO or other agreement resulting from the solicitation, Successful Respondent shall contract with any other person or entity for prices, charges, benefits, warranties and terms more favorable to such person or entity, Successful Respondent must notify TEA of such more favorable terms and TEA, in its sole discretion, may require that such more favorable prices, charges, benefits, warranties or other terms be available to TEA under any PO or other agreement resulting from this RFP, and be retroactive to the date of such PO or other agreement.

55. Rolling Estoppel. If Successful Respondent is aware a problem exists and fails to report the problem to TEA, Contractor continues to be responsible for meeting the goals and timelines established in the final approved contract. Under these circumstances, TEA will not be liable for any detrimental consequences.

The Texas Government Code and Family Code sites referenced in this document may be viewed at: <http://www.statutes.legis.state.tx.us/>

The Texas Administrative Code site referenced in this document may be viewed at: [http://texreg.sos.state.tx.us/public/readtac\\$ext.viewtac](http://texreg.sos.state.tx.us/public/readtac$ext.viewtac)

AFFIRMATIONS:

Proposer has read, understands, and agrees to be bound to the terms and conditions stated in the RFP if a contract is awarded to Proposer pursuant to this RFP. By signature hereon, the Proposer certifies that:

All statements and information prepared and submitted in the response to this RFP are current, complete and accurate.

Proposer has not given, offered to give, not intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.

Pursuant to Texas Government Code, Title 10, Subtitle D, Section 2155.004(b), the Proposer certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

Contractor understands if they are awarded a contract that it will utilize and continue to utilize, for the term of the contract, the U.S. Department of Homeland Security's **E-Verify system** to determine eligibility of: 1. All persons employed to perform duties within Texas, during the term of the Contract; and 2. All persons (including subcontractors) assigned by the Proposer to perform work pursuant to the Contract, within the United States of America. Contractor shall provide, upon request of the TEA an electronic or hardcopy screen shot of the confirmation number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.

If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the state must undertake to replace the terminated Contract

Under Section 2155.006(b) of the Texas Government Code, a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

Proposer certifies that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003 of the Government Code, relating to contracting with executive head of a state agency. If Section 669.003 applies, Proposer will complete the following information in order for the bid to be evaluated.

Name of Former Executive: _____

Name of State Agency: _____

Date of Separation from State Agency: _____

Position with Bidder: _____ Date of Employment with Bidder: _____

Pursuant to Texas Government code, Title 10, Subtitle D, Section 2155.004(a), the bidder has not received compensation for participation in the preparation of specifications for this solicitation.

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 Payee Identification Number (TIN). 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 TEA.

Contractor's FEI#	
Contractor's SSN	
Contractor's TIN	
Contractor's charter #	

TEA has a policy of being a smoke-free agency. The policy reflects our commitment to providing a healthy environment for all our employees and visitors. This policy prohibits smoking within any state building or on the grounds. Contractor, by acceptance of this contract, agrees to abide by this policy when on the property of TEA.

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:

PROPOSAL PREFERENCES

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

<input type="checkbox"/>	§ 2155.441	Products of persons with mental or physical disabilities
<input type="checkbox"/>	§ 2155.442	Energy efficient products
<input type="checkbox"/>	§ 2155.443	Rubberized asphalt paving material
<input type="checkbox"/>	§ 2155.444	Texas produced supplies, materials, or equipment; or USA supplies, materials, or equipment over foreign products
<input type="checkbox"/>	TAC§ 2038 D	Preference to services offered by a Texas bidder
<input type="checkbox"/>	§ 2155.444	Texas agriculture products
<input type="checkbox"/>	§ 2155.445	Recycled, remanufactured, or environmentally sensitive products made of recycled materials
<input type="checkbox"/>	§ 2155.446	Paper containing recycled fibers
<input type="checkbox"/>	§ 2155.447	Recycled motor oil and lubricants
<input type="checkbox"/>	§ 2155.449	Products produced in facilities on rehabilitated property as certified by section 361.609 of the Texas Health and Safety Code
<input type="checkbox"/>	§ 2155.449	Products and services from economically depressed or blighted areas
<input type="checkbox"/>	§ 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
<input type="checkbox"/>	§ 2155.444	Goods produced or offered by service-disabled veterans.
<input type="checkbox"/>	§ 2155.445	Preference to manufacture that has recycle program for computer equipment.
<input type="checkbox"/>	§ 2155.452	Preference to contractors providing foods of higher nutritional value.

In compliance with this RFP, 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. When a Texas business address shown hereon that address is, in fact, the legal business address of Proposer and proposer qualifies as a Texas Resident Bidder Under TAC Title 34, Part 1, Chapter 20.

PROPOSER/COMPANY NAME:
STREET ADDRESS:
CITY/STATE/ZIP:
TELEPHONE #:
FACSIMILE #:
EMAIL ADDRESS:
NAME OF PROPOSER'S AUTHORIZED AGENT:
TITLE OF PROPOSER'S AUTHORIZED AGENT:
SIGNATURE OF AUTHORIZED AGENT:

THIS ATTACHMENT "B" MUST BE SIGNED AND RETURNED WITH YOUR PROPOSAL

Contractor acknowledges that under state law and TEA policy, they may not disclose any information during the solicitation process (upon opening the proposal and during negotiations). The solicitation process must remain confidential and is exempt from open records until such time that a contract is awarded. Failure to abide to this requirement will result in disqualification and will be reported under the vendor performance requirements.

Texas Education Agency Historically Underutilized Business Subcontracting Plan (HSP)

Separate document

Definition of a Historically Underutilized Business (HUB)

- At least 51% owned by an Asian Pacific American, Black American, Hispanic American, Native American and/or American woman,
- A for-profit entity that has not exceeded the size standards prescribed by [34 TAC §20.11](#), and has its principal place of business in Texas, and
- Has an owner residing in Texas with a proportionate interest that actively participates in the control, operations and management of the entity's affairs.
- Service Disabled Veteran, as defined by 38 United States Code (U.S.C.), Section 101(2) who have a service-connected disability as defined by 38 U.S.C. Section 101(16), and have a disability rating of 20 percent or more as determined by the Department of Veterans Affairs or the Department of Defense

*Note: Veterans are not required to be United States citizens; however, they must reside in Texas.

**Note: Sole proprietorships must be 100 percent owned and controlled by an individual meeting the Criteria above. In addition, each entity within a joint venture is required to be HUB certified.

The statewide HUB Program facilitates the use of HUBs in state procurement and provides information on the state's procurement process to minority, woman-owned and service disabled veteran owned businesses.

In accordance with [34 TAC §20.13](#), each state agency shall make a good faith effort to utilize HUBs in contracts for construction, services (including professional and consulting services) and commodities purchases.

Contractors seeking certification as a HUB are required to submit a completed HUB certification application and supporting documentation to the statewide HUB Program.

Questions regarding the TEA HUB Program or the HUB Subcontracting Plan may be directed to the TEA HUB Office: HUBOffice@tea.texas.gov.

(FORMAT FOR COVER PAGE)

PROJECT PROPOSAL
Submitted to the
Texas Education Agency
Purchasing, Contracts and Agency Services Division
RFP #: 701-16-010

TITLE OF PROPOSED PROJECT: Student Success Initiative Support Programs (Texas SUCCESS)

PROPOSER ORGANIZATION: Name and address of organization submitting proposal (include zip code)

PROPOSER ORGANIZATION IDENTIFICATION NUMBER: Show Proposer organization Federal Employer's Identification Number or Texas Identification Number (TINS)

PROPOSAL DEVELOPED BY: Name, position, email, and telephone number of person responsible for development of proposal

PROJECT ADMINISTRATOR: Name, position, email, and telephone number of person to be in charge of proposed project

PROPOSAL TRANSMITTED BY: Name, position, email, and telephone number of official committing the Proposer organization to the proposed project

CONTRACTING OFFICER: Name, position, email, and telephone number of official with authority to negotiate contracts for Proposer organization

DURATION OF PROJECT: Beginning and ending dates of proposed project

TOTAL BUDGET FOR PROPOSED PROJECT: Total of projected expenditures listed in budget section

CONTAINS PROPRIETARY INFORMATION: Check box if proposal being submitted contains proprietary information

ACCEPTANCE OF TERMS AND CONDITIONS: We hereby accept by the submission of the proposal the Execution of Offer, "Contract Terms and Conditions, Affirmations and Proposal Preferences"

DATE SUBMITTED: Date proposal is submitted to TEA

SUGGESTED FORMAT FOR BUDGET SUMMARY AND EXPENDITURE REPORT

State Fiscal Year/BY	2003
ISAS Contract	No. XXXX
ISAS PO	No. 00000XXXX
Vendor ID	XXXXXXXXXX
Project ID	XXXXXXXXXX
Billing Period	09/01/XX - 11/30/XX
Invoice Number	XXXXXX

The information in this expense summary report is true, correct, and unpaid. A schedule of itemized costs shall be submitted separately upon request of the TEA Contract Administrator.

Signature of Certifying Official (Contractor): _____ Date: _____

I am an employee of the TEA who has knowledge of the satisfactory delivery of services by the contractor, certify that these services were rendered to TEA or goods were received by TEA and that they correspond in every particular with the agreement under which they were procured and that this invoice is true, correct, and unpaid.

Signature of TEA Contract Administrator: _____ Date: _____

Task	Sub-Task	Task Description	Sub-Task/Activities	Est'd Start Date	Est'd End Date	Org'l Budget	TEA Approved Adjustments	Percent Change	Approved Adjusted Budget	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Year to Date	Bud Bal	
01	01.01					-		0.00%	-														-	-
01	01.02					-		0.00%	-														-	-
01	01.03					-		0.00%	-														-	-
02	02.01					-		0.00%	-														-	-
02	02.02					-		0.00%	-														-	-
02	02.03					-		0.00%	-														-	-
03	03.01					-		0.00%	-														-	-
03	03.02					-		0.00%	-														-	-
03	03.03					-		0.00%	-														-	-
04	04.01					-		0.00%	-														-	-
04	04.02					-		0.00%	-														-	-
04	04.03					-		0.00%	-														-	-
05	05.01					-		0.00%	-														-	-
05	05.02					-		0.00%	-														-	-
05	05.03					-		0.00%	-														-	-
06	06.01					-		0.00%	-														-	-
06	06.02					-		0.00%	-														-	-
06	06.03					-		0.00%	-														-	-
07	07.01					-		0.00%	-														-	-
07	07.02					-		0.00%	-														-	-
07	07.03					-		0.00%	-														-	-
TOTAL						-	-		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
01	N/A		Subtotal 01			-	-	0.00%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
02	N/A		Subtotal 02			-	-	0.00%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
03	N/A		Subtotal 03			-	-	0.00%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
04	N/A		Subtotal 04			-	-	0.00%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
05	N/A		Subtotal 05			-	-	0.00%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
06	N/A		Subtotal 06			-	-	0.00%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
07	N/A		Subtotal 07			-	-	0.00%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL						-	-		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
CHECK						-	-		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

SCHEDULE OF TASK COMPLETION

Title of Proposed Project:	
Proposer Organization (Name):	
Begin Date:	
Ending Date:	

Task/Activity Numbers	Projected Completion Date	Projected Cost
Task 1 (title or description)		
Activity 1.1		
Activity 1.2		
Total Task 1		
Task 2 (title or description)		
Activity 2.1		
Activity 2.2		
Total Task 2		
Task 3 (title or description)		
Activity 3.1		
Activity 3.2		
Total Task 3		
Total Budget		

Cost may also be by activity if feasible but must be shown, at a minimum, for task total.

Selected proposer will be reimbursed for actual expenditures upon satisfactory performance of services/completion of tasks and upon submittal of properly prepared and certified invoices/expenditure reports.

TEA RFP # 701-16-010

Student Success Initiative Support Programs (Texas SUCCESS)

Addendum 1

Questions Received thru 8/12/15

1. **Page 14:** I see where we need to respond to the items in section 1.5, for the “*Management Plan for the Project*”; however, do we also need to respond to the items in 1.1, pages 3-5 within our narrative response? If so, in which tab should that response be included?

Proposers should respond to all items in each section.

2. **Page 15:** Proposer’s Financial Responsibility – Please confirm that this is only needed once we are past the initial review phase and have been invited to participate in oral presentations, product demonstrations, etc. and that items are not to be included with this response.

All proposers selected for oral presentations, product demonstrations, or negotiations will be required to submit indicators of financial stability.

3. **Pages 34-36:** Where should we include Attachment B? Is it appropriate to include it in the same tab with the Transmittal Letter?

Attachment B must be signed and returned with the proposal. It is appropriate to include it in the same tab with the transmittal letter.

4. Is a vendor allowed to make more than one submission?

Yes, a vendor may make more than one submission.

5. Should the vendor submit separate proposals for specific content areas (i.e. one submission for reading and a separate submission for math)? Or, should a vendor include all content areas and grade levels within a unified submission?

The vendor should submit separate proposals.

6. If more than one program is suitable for the same content area, would TEA advise submitting separate proposals or one proposal submission for the same content area, inclusive of all programs?

This is up to the vendor, who could submit both ways if it chose.

7. Will TEA consider programs that include partial grade levels within a specific content area? For example, if a program covers grades 4-8 mathematics, is it appropriate to submit the program for both Grades 3-5 mathematics and Grades 6-8 mathematics?

It is permissible to submit proposals that cover part of a grade band. For example, a vendor may submit a grades 4–8 product to be considered in both the grades 3–5 and 6–8 reviews. If the vendor submits one product for review across two grade bands, the vendor may submit one proposal.

8. Does this RFP assume the online programs will be a culmination of existing resources available or the development of new resources?

The RFP calls for existing resources.

9. How do you envision the collection of specifications for the development of this website? Who would be involved?

The Texas SUCCESS Support Center will have primary responsibility for development and maintenance of the Texas SUCCESS website. Each selected vendor will provide website assets (e.g., copy, images, logo) to the support center.

10. How many users do you believe may access this application at any one time?

Given the numerous variables (e.g., time of day, location, district adoption), concurrent usage is difficult to determine. The RFP calls for products for all students in grades and courses in which accelerated instruction is required and access for educators, students, and parents from the commencement of work to the end date of the contract. With such a large audience in mind, a vendor should have the capacity to provide reliable, uninterrupted, and optimal access to a product or products.

11. Do you already have the cloud infrastructure to install this application, or is this part of the RFP?

Each vendor is responsible for hosting its application or applications.

12. Is there an incumbent contract for this project?

TEA selected two contractors as a result of the previous RFP solicitation. The contract term will expire 8/31/15 which facilitated this new RFP solicitation. The deliverables and budget for each selected product will be finalized during contract negotiations.

13. Has funding been secured or will that be determined after RFP responses are reviewed?

Funding is provided through the General Appropriations Act, Rider 46, 84th Texas Legislature. The deliverables and budget for each selected product will be finalized during contract negotiations.

Questions Received 8/13/15

14. Is it the state's preference to award one provider for all subjects?

TEA does not have a preference and may award one or more contracts.

15. Is it the state's preference to award one provider for each grade band?

TEA does not have a preference and may award one or more contracts.

16. Is it the state's preference to award 100% digital programs?

The RFP specifically calls for online programs.

17. Will proposals with print materials be reviewed unfavorably?

Online programs may include print materials designed to support the implementation and use of the program. Print-based programs will not be reviewed.

18. May we bid partial grade bands (e.g., grade 5 only)?

It is permissible to submit proposals that cover part of a grade band.

19. If we are awarded in one of the grade bands (e.g., 6–8), could a district feasibly use our program in the 3–5 grade band, if appropriate for their needs?

Districts will have no-cost access to the products selected for a particular grade band or course. Whether a district chooses to use the selected product or purchase a different product is a local district decision.

20. Is the state calling for statewide licenses (i.e., a license for the entire state to source from), or is the state looking for per-user-based licenses?

TEA is calling for statewide licenses.

21. When does TEA anticipate that districts will select providers?

Districts may begin selecting providers upon TEA's announcement of the selected providers and the process for selection and enrollment. For a general timeline, please refer to page 9 of the RFP.

22. Is there a deadline by when districts must choose a provider?

There will be no deadline.

TEA RFP # 701-16-010

Student Success Initiative Support Programs (Texas SUCCESS)

Addendum 2

Questions Received thru 8/18/15

1. Will the TEA please provide clarification on the type of instruction required for this initiative? For example, is the state seeking instruction to be provided within the software, or can the instruction be done by a teacher as long as educational resources are provided?

The method by which instruction is delivered is a decision made by the vendor.

2. When you specify "Each program must include diagnostic tool(s) and other tools with which the impact and effectiveness of the program may be assessed," can you specify what is meant by **diagnostic tool**? Can this be a tool that diagnoses simultaneously while the students are in the program and after, or does it have to be a "pre-test?"

A diagnostic tool is used to identify a student's strengths and/or weaknesses in his understandings and learning. The design of the diagnostic tool and how it is used within a program is a decision made by the vendor.

3. For the transmittal letter, p. 13 reads "Required only if taking exception to the terms and conditions." Can you please clarify whether every response needs to include a transmittal letter, or just those taking exceptions?

The transmittal letter is needed if the proposer is taking exception to the terms and conditions.

4. Attachment B is quite lengthy, so I would like to ask if we should only include the final few pages which require information and a signature to be entered (the "Affirmations), or should we print and include the entirety of Attachment B in our response?

Either method is acceptable as long as the agency receives the pages requiring information and signature.

5. Regarding the bulleted items in section 1.1: would it be sufficient to address these items in section 3.2 of our response, "Understanding of the Project & Methodology"?

Yes

6. Does a separate response have to be submitted for each service category (a-g)? Or is your response to Addendum 1, #5 only regarding submitting separate proposals for Math and Reading? If our program cover all content areas and grade levels, are we still required to submit completely separate proposals? If so, is this in regard to each of the 7 categories or only to reading/math?

5. Should the vendor submit separate proposals for specific content areas (i.e. one submission for reading and a separate submission for math)? Or, should a vendor include all content areas and grade levels within a unified submission?

The vendor should submit separate proposals.

The vendor should submit separate proposals for reading and math.

7. Does TEA anticipate the same budget as last year's RFP (up to \$20 million)?

Funding is determined through the General Appropriations Act, Rider 46, 84th Texas Legislature. The budget proposed to TEA is a decision made by the vendor. Budgets for each selected product will be finalized during negotiations.

8. Follow up question to Q&A #20: So that we can get accurate state-wide pricing for products/services and gauge our technical capacity, how many students in each grade band will be able to access the materials? Should we assume all students in this grade band will use the program? Or a subset?

Rider 46 states, "The Commissioner shall issue a request for proposal for statewide licenses to provide supplemental computer-based reading and mathematics instruction to all students in grades for which accelerated instruction is required." It is possible that all eligible students in each grade band in which accelerated instruction is required will access a program. The number of students accessing a program will be determined by the number of products selected and the districts' or open-enrollment charters' adoption of a product.

9. Is there a limit to the number of students in Texas who can access our program? Or is it unlimited?

See above.

10. Follow up question to Q&A #15 and 16: Will the state review a web-based program that is teacher led and utilizes print components for support?

The method by which instruction is delivered is a decision made by the vendor. TEA will review all eligible proposals.

11. Follow up question to Q&A #19: If students in grade 5 wish to use a program that's only approved for grades 6-8, would the state provide the license to individuals in that grade level at no cost? Or would the students in grade 5 need to go to the vendor to buy the program (i.e., not part of the state contract)? Or, is it possible that all students in the state could log on to the resource at no cost (despite the grade categories)?

TEA will only purchase licenses for products selected specifically for each grade band and/or course.

12. On page 13, Section 3.2- Understanding of the Project and Methodology- can you provide examples of what "Technical evidence relating to the proposer's ability to perform the proposed services" would be? We initially thought to include references here, but I see that those are required in Section 3.3, Management Plan for the Project. How does this "evidence" differ from the references and the evidence requested on page 14 in Section 3.3?

The information provided in a proposal and how it is organized is a decision made by the vendor.

13. Who is the intended audience (what grade levels) for Algebra I and English I and II?

The intended audiences are students enrolled in Algebra I, English I, and English II. When referring to courses (e.g., Algebra I, English I), grade levels are not applicable.

14. Please confirm that this will be a statewide purchase and not a Commission's List from which schools can choose vendors.

TEA will purchase statewide licenses. While multiple products may be selected (e.g., two grades 3-5 math programs, two grades 3-5 reading programs), districts and open-enrollment charters will select one math and one reading product per grade band and/or course to implement.

15. Can you provide the number of students who have participated, by grade level (or grade band) and subject, over the past three years of the program?

This data (as requested by the proposer) is currently not available in an aggregated format. For information on the 2014–2015 program, please refer to the [Texas SUCCESS Comprehensive Evaluation Report](#).

16. How many trial logins should be included with the RFP response for TEA review purposes?

Previous reviews indicate that it is helpful to provide up to ten trial logins per product.

17. Do you plan to use a portal similar to the SSI portal used in the past where vendors will provide a link to a registration form?

Yes

18. Do students and parents know their student's unique student identifier?

It is highly likely that some students and parents know their unique identifier number, but not all.

19. Please provide penalties for failure to meet uptime requirements.

Penalties will be based on a percentage of the final budget and will be finalized during negotiations with TEA.

20. Please specify what web analytics you are seeking. Can you provide examples of the ad hoc reports you may request?

Examples of web analytics may include number of unique users, number of concurrent users, number of active users, average time on a page, activity per page, and users by region and/or city. Ad hoc reports are generally the result of a legislative or administrative request and typically require (but are not limited to) information regarding active users, number of lessons completed, and/or student progress. Given the fluid nature of ad hoc reports, vendors must be prepared to provide a variety of data within short periods of time.

21. Can you please clarify whether you are seeking training for teachers on how to monitor student progress or should one of the training deliverables provided be the actual monitoring of student progress?

The content and organization of teacher training is a decision made by the vendor.

22. What is the total budget allocated for this project?

Funding is determined through the General Appropriations Act, Rider 46, 84th Texas Legislature. The budget proposed to TEA is a decision made by the vendor. Budgets for each selected product will be finalized during negotiations.

23. Can you provide more information about the method and conditions surrounding payments? When is the first touchpoint for evidence of student achievement? How is student achievement defined? How does the TEA define "satisfactory performance of services"?

Methods and conditions for payments will be determined during negotiations between TEA and each selected vendor.

24. Please confirm that if we are not using any subcontractors, we do not need to meet the HUB requirements (but still need to complete the forms).

The HUB Subcontracting Plan (HSP) is required whether the proposer is subcontracting or self-performing (completing all the work with their own staff and resources).

25. Is this RFP only for student led online programs, or is teacher led curriculum is being considered? Meaning, does the student have to be able to sit at a computer and self-pace through the program with little teacher guidance, or can it be an online tool for teachers to use in the classroom that also has access for students when needed away from the classroom to continue their learning.

The method by which instruction is delivered is a decision made by the vendor.

26. Do we need to submit correlations to the TEKS and to the ELPS as part of our submission?

The information provided in a proposal is a decision made by the vendor.

27. Can you clarify the last bullet point on the bottom of page 4- what do you mean by "Proof that the online program follows Web Content Accessibility Guidelines (WCAG) 2.0 AA standards, through a report from a third party with expertise and a proven track record in accessibility testing?"

The vendor must contract with a reliable third party to verify that the product is fully accessible to students with disabilities.

28. Can you provide an estimate of how many students will be served by the statewide licenses as a result of this contract?

Rider 46 states, "The Commissioner shall issue a request for proposal for statewide licenses to provide supplemental computer-based reading and mathematics instruction to all students in grades for which accelerated instruction is required." It is possible that all eligible students in each grade band in which accelerated instruction is required will access a program. The number of students accessing a program will be determined by the number of products selected and the districts' or open-enrollment charters' adoption of a product.

29. The Selection Criteria rubric in section 4.2: for letter D, Cost Effectiveness and Appropriateness..., the point values listed only total 15, but the possible points column lists 30 points. Can you clarify?

The rubric was revised during the posting process. Part D totals 30 possible points with (1) Appropriateness of costs based on services provided (20 pts) and (2) Appropriateness of economy of scale for providing statewide license and service (10 pts).

30. On the previous addendum (see first question) do we need to respond to the items in section 1.1 and you answered yes. Can you clarify where in our proposal submission those responses should go/ in what tab?

The information provided in a proposal and how it is organized is a decision made by the vendor.

31. Will the contract resulting from the RFP be a statewide price agreement, and will vendor have the opportunity to establish terms with each district or school taking advantage of licenses under the statewide contract?

A contract resulting from the RFP will be a statewide agreement. Terms will be established between TEA and the vendor.

32. Who pays the vendor for use of assessment licenses, TEA or end user schools or districts?

The contract will be between TEA and the vendor. The vendor should not use its contract with TEA as an opportunity to sale additional services, tools, etc. to districts.

33. "Proof of compliance with the Family Educational Rights and Privacy Act (FERPA) Children's Online Privacy Protection Act (COPPA) Americans with Disabilities Act (ADA) Web Content Accessibility Guidelines (WCAG) 2.0 AA." The vendor assumes that a statement that the vendor complies is sufficient proof. Correct?

The information provided in a proposal and how it is organized is a decision made by the vendor. The agency is seeking proof of understanding the requirements and the ability to comply not just a statement.

34. Is TEA willing to consider the vendor's service level agreement, particularly its definition of performance measures like uptime?

The information provided in the proposal and how it is organized is a decision made by the vendor. TEA will review any SLA's and any subsequent contracts as a result of the RFP will also contain a SLA that address service level and security requirements.

35. Is TEA willing to take a license to Works that the vendor creates to benefit its broad licensee base, in lieu of taking title to Works?

Any "Works" created as a result of the contract between TEA and the vendor are the sole property of TEA. Works created and already owned by the respondent are not considered works for hire and will remain the property of the respondent or third party.

36. Would it be sufficient to have vendor's subcontractor's enter industry standard confidentiality and non-solicitation agreements to flow down TEA's requirement to the subcontractors?

The awarded vendors will be responsible to ensure their employees and their subcontractors comply with the agency's confidentiality standards. That assurance level is to be determined by the vendor.

37. "As a condition of gaining remote access to any internal TEA network and systems, Contractor must comply with TEA's policies and procedures." Please provide copies of the applicable policies and procedures.

This RFP does not require access to any internal TEA networks and systems.

TEA RFP # 701-16-010

Student Success Initiative Support Programs (Texas SUCCESS)

Addendum 3

Questions Received thru 8/26/15

1. On page 3 the RFP states that through the RFP process the TEA will provide statewide licenses “to all students in grades or courses for which accelerated instruction is required.” Since our online program is normally licensed as a subscription based upon the number of students, schools, or districts, can you provide or direct us to where we can find the number of students by grade level, school, and district, specifically for Grades 3-5 reading and Grades 6-8 reading so we can try to reconcile our pricing with TEA's needs?

Vendors may generate student enrollment reports at <http://ritter.tea.state.tx.us/adhocrpt/adste.html> and course enrollment reports at <http://ritter.tea.state.tx.us/adhocrpt/adfte.html>.

2. On page 4 the RFP requests including “samples of proposed weekly and/or monthly reports to TEA.” What data must be included in these reports for Reading 3-5 and 6-8 (that would be different than the District reports requirement)?

The content and schedule for weekly and/or monthly reports for each selected product will be finalized during negotiations with TEA.

3. On page 4 the RFP states "Demonstration of the ability to provide ad hoc reports as requested for statewide program evaluation." What data must be included in these reports for Reading 3-5 and 6-8, and at what summary level (State/District/School/Class/Student)?

Ad hoc reports are generally the result of a legislative or administrative request and typically require (but are not limited to) information regarding active users, number of lessons completed, and/or student progress. Given the fluid nature of ad hoc reports, vendors must be prepared to provide a variety of data within short periods of time.

4. On page 6 the RFP states “this contract will be a cost reimbursement contract. A payment plan will be developed based on deliverables met including quantitative evidence of student achievement.” Our online program is licensed on a subscription basis and requires payment up front for the length of subscription; typically there is no payment plan and the term is either 1, 2 or 3 years. We are unfamiliar with this payment terminology. Since this RFP suggests a payment plan and deliverables, can you please be more specific about the timing and percentage of payment due at specific time increments?

Payment plans for each selected product will be finalized during negotiations.

5. On page 13, Section 3.2, the RFP states: “The proposal must communicate an understanding of prior studies and research in the areas of the project, describe the tasks to be performed, and identify potential problems in the conduct of the project and methods to identify and solve such problems.” We don't understand the requirement outlined in this sentence. Can you provide further instruction?

The vendor should show knowledge and understanding of similar large-scale projects, including the potential problems encountered when making online resources available to large audiences of teachers, students, and parents and possible solutions. How the vendor provides evidence of that knowledge and understanding is a decision made by the vendor.

6. What type of web analytics is TEA looking for to meet the following requirement: “Provide website analytics on a weekly basis and in ad hoc reports as requested and read access to the web analytics tool for TEA use” (p. 6). Does TEA want usage type analytics like logins and time on task, or do you require more detailed analytics like page hits?

Website analytics for each selected product will be finalized during negotiations with TEA. Examples of web analytics may include number of unique users, number of concurrent users, number of active users, average time on a page, activity per page, and users by region and/or city.

7. Can you please clarify what is meant by “communicate an understanding of prior studies and research in the areas of the project”? Does TEA want vendors to communicate that we understand the project, understand any studies regarding TEA/Texas Success, or understand any of vendor program studies/research that may have been similar to the requirements of this RFP?

The vendor should show knowledge and understanding of similar large-scale projects, including the potential problems encountered when making online resources available to large audiences of teachers, students, and parents and possible solutions. How the vendor provides evidence of that knowledge and understanding is a decision made by the vendor.

8. Can TEA explain why the Conflict of Interest section has been changed so significantly since last year’s RFP?

The Conflict of Interest statement was revised to reflect new statutes passed by the Texas Legislature.

9. If proof of alignment to ELPS is not provided, does this disqualify the vendor or does this only subtract 2 points from the possible awarded points?

Vendors should strive to meet the requirements of the RFP. The information provided in a proposal and how it is organized is a decision made by the vendor.

10. With the addition of Algebra to the SSI program does that mean that a proposer should expect to be delivering services to high schools, as well as, schools covering grades 3-8?

Algebra I is typically offered at both middle school and high school campuses.

11. Can you identify the anticipated number of students who will be covered under this initiative?

Vendors may generate student enrollment reports at <http://ritter.tea.state.tx.us/adhocrpt/adste.html> and course enrollment reports at <http://ritter.tea.state.tx.us/adhocrpt/adfte.html>.

12. Pg. 3: Can you please define what “use” by parents means in this sentence: Through this Request for Proposal (RFP) process, TEA will provide statewide licenses to support reading and mathematics for use by educators, students, and parents.

Students should have access to reading and/or math programs before, during, and after regular school hours. If a student is expected to access a program while away from school, his parents should also have access to the program. How parents access the program and what they have access to is a decision made by the vendor. Vendors must be mindful of online privacy and protection laws when making these decisions.

13. Pg. 5: Will parents be allowed to enroll their children, or is all enrollment expected be initiated by a school?

Parents will be allowed to enroll their children in math and/or reading programs if their district opts not to participate in the Texas SUCCESS program.

14. Some clarification to my reasoning for asking a question about student numbers yesterday... on p. 3 of the RFP it states “the programs must provide an opportunity for supplemental computer based reading and math instruction to all students in grades or courses for which accelerated instruction is required.” However on p.4 it says: “evidence of the ability and capacity to provide online interactive materials and resources statewide to all Texas public school students in the grades or courses for which the proposer is submitting a proposal.”

Those two statements are conflicting—on the one hand, it looks like you want a bid for every student in those grades. On the other, it would be just a subset. Can you clarify?

- *What criteria will be used to determine which students require accelerated instruction using the SSI state-provided system?*

Districts will determine which students require accelerated instruction.

- *What is the estimated percentage or number of students per grade to be enrolled?*

Percentages or number of students per grade will be determined by each participating district. Vendors may generate student enrollment reports at <http://ritter.tea.state.tx.us/adhocrpt/adste.html> and course enrollment reports at <http://ritter.tea.state.tx.us/adhocrpt/adfte.html>.

15. Can you provide an estimate maximum number of students who would be served under this contract, so that we can scale our pricing accordingly?

Vendors may generate student enrollment reports at <http://ritter.tea.state.tx.us/adhocrpt/adste.html> and course enrollment reports at <http://ritter.tea.state.tx.us/adhocrpt/adfte.html>.

16. Please clarify the meaning of “prior studies and research in the areas of the project” (Section 3.2). Does “the project” mean the Student Success Initiative (e.g. the “Texas SUCCESS Comprehensive Evaluation Report”)? Or does “the project” mean our organization’s program (e.g. studies on the impact of our products)?

Texas SUCCESS or other similar large-scale projects

17. Our organization submitted an ELPS correlations document to Proclamation 2014. Are there updated ELPS correlation templates that we should use for this RFP? Or should we reuse the ELPS correlation template from Proclamation 2014?

The ELPS referenced in the Proclamation 2014 document have not changed. The information provided in a proposal and how it is organized is a decision made by the vendor.

18. What types of evidence are sufficient to demonstrate ability to comply with each of the following: (a) FERPA; (b) COPPA; and (c) ADA?

The information provided in a proposal and how it is organized is a decision made by the vendor.

19. Is there a listing of web development contractors with credentials or sufficient experience related to WCAG 2.0?

TEA does not have a list. The vendor must contract with a reliable third party to verify that the product is fully accessible to students with disabilities.

20. With respect to evaluation of the product’s accessibility, is it sufficient for proposers to commit to captioning videos in a timely manner after contract award, or must videos be captioned at the time of proposal submission in order to demonstrate ability to comply with WCAG 2.0 and to qualify for full points under the accessibility element of the selection rubric?

Vendors should strive to meet the requirements of the RFP. The information provided in a proposal and how it is organized is a decision made by the vendor.

21. Must all aspects of the product be available and complete for district use by October 19, 2015 (the date work under contract is to commence)?

Rollout plans and schedules for each selected vendor will be finalized during negotiations with TEA.

22. The RFP states: “TEA will contract with one or more qualified providers to provide scientifically validated and research-based online programs that target the prevention of academic failure in mathematics and reading to all students in grades or courses for which accelerated instruction is required.” Is it correct that TEA seeks to license products for use only by students who have previously failed the respective

state assessment or is it the intent of TEA to license the product for use by students who have not yet take the state assessment but are at risk of failure?

Districts will determine which students require accelerated instruction.

23. With respect to intellectual property rights, "Works" are defined in Appendix B as meaning "all tangible or intangible material, products, ideas, documents or works of authorship prepared or created by Contractor for or on behalf of TEA at any time after the beginning date of the Contract ... and does not include any pre-existing materials of Contractor, or any licensed third party materials provided by Contractor." Is it correct that the selected vendor will not be required to provide or transfer rights to source code and other material created prior to the beginning date of the contract?

Correct

24. The RFP calls for the license to encompass use by students, teachers, and parents. Is it permissible for parents and students to use the same access credentials or must parents be issued credentials that are independent of those issued to students?

How parents access the system and what they have access to is a decision made by the vendor. Vendors must be mindful of online privacy and protection laws when making these decisions.

25. In the context of an online discussion board accessible by all individuals encompassed by the statewide license, what types of interaction constitute "direct contact" with students necessitating background checks? Are moderators interacting in the community-wide discussion required to undergo background checks if they are unable to interact with students privately in a 1 to 1 context?

Moderators whose roles include communicating with students, whether in 1 to 1 or group contexts, must undergo background checks.

26. Is the practice of TEA to publish the full content, including appendices, of the winning proposal upon execution of the contract? Or, does TEA publish summary information such as a product description and budget?

Senate Bill 20, 84th Texas Legislature, 2015, effective September 1, 2015, requires the agency to post the contract document on the agency's website.

27. Is it permissible for appendices to include video content or links to videos?

Yes

28. With respect to evaluation of student progress during the course of the contract and determination of continuation at the end of the contract term, will product effectiveness and impact be measured primarily by student passage and performance level (above passing standard) on the STAAR Algebra I EOC?

The process for evaluating effectiveness and impact for each selected product will be finalized during negotiations with TEA.

29. Will a certain percentage of funding be allocated for literacy vs. math? If so, what will be the breakdown of those allocations?

TEA has not set aside certain percentages for reading and math.

30. How will districts order software licenses? Will they place orders with the state, who, in turn notifies the vendor?

Enrollment procedures for each selected product will be finalized during negotiations with TEA.

31. It is understood this contract is for statewide licenses. For product licenses traditionally based on per student costs, how does the Agency advise the vendor to budget? Reimbursement will be paid the vendor based on cost methodology (per student in this case) Or, the vendor must submit a flat-rate total statewide license budget.

The budget proposed to TEA is a decision made by the vendor.

32. To help in planning for the RFP's parent involvement items, is there a central parent portal that could be utilized for the dissemination of information at either the Texas or District levels?

TEA will launch a Texas SUCCESS website to serve as an enrollment and information hub for all selected products.

33. Can you provide an estimate of how many students you have in grades 3-8 and Algebra 1 for mathematics?

Vendors may generate student enrollment reports at <http://ritter.tea.state.tx.us/adhocrpt/adste.html> and course enrollment reports at <http://ritter.tea.state.tx.us/adhocrpt/adfte.html>.

TEA RFP 701-16-010
Student Success Initiative Support Programs (Texas SUCCESS)
Addendum #4

1. In connection with the note on Page 1, can we submit our suggested form(s) to identify the “alternative language” we suggest?

TEA will not consider any revisions to the terms and conditions unless the Respondent specifically and prominently refers to each one of them in the Transmittal Letter and offers alternative language with the Proposal response.

2. Section 1.3 –what does the “different terms” reference mean? If TEA wants to extend and requests “different terms” will those different terms only be effective if both parties agree to the changes?

Changes to the contract will be through a written amendment signed by both parties.

3. Section 1.5(11) identifies at least 60 TOT sessions. If more than 60 are requested, how long are each session and where will the locations be? Also, can vendor charge additional training session fees for any sessions above 60?

Schedules and locations for trainings will be finalized with selected vendors during negotiations with TEA. Contractor should not use the subsequent contract as an opportunity to sell additional services, tools, etc. to the districts.

4. In connection with Section 2.7, just to clarify, if we are confident that we can complete all obligations with our own staff and resources, we do not need to make a good faith effort of contacting any HUB subcontracting firms?

“Subcontractor” means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment, to include transportation and delivery), complete:

Section 1 - Respondent and Requisition Information

Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.

Section 3 - Self Performing Justification

Section 4 - Affirmation

5. Section 3.6(1) –when would we possibly be asked to provide audited financial statements? If we were asked and did provide them, what confidence will we have that TEA will keep them confidential?

RFP, section 2.6. Respondent must identify trade secret or confidential information, and provide an explanation of why the information is exempt from public disclosure.

6. Regarding Attachment B, Subsection 4 –what is the process of TEA pre-approving personnel changes? If someone quits how can we obtain preapproval for example?

Contractor must notify the TEA Project Manager of the key personnel changes. The TEA Project Manager will have to approve the change.

7. Regarding Attachment B, Subsection 8 – where in applicable law does it require that records are retained for 7 yrs following the expiration of the contract?

Senate Bill 20, 84th Leg Session. Texas Government Code Sec. 441.1855.

8. Regarding Attachment B, Subpart 10 – should probably ask in what situations would suspension occur? It appears from the contract that it could occur at any time and for no reason and that isn't appropriate.

TEA may suspend performance of the Work because the Work is defective, or Contractor fails to supply sufficiently skilled workers or suitable materials or equipment, or fails to provide required insurance coverage, or fails to furnish or perform the Work in such a way that the completed Work will conform to this contract. Contractor will be allowed to complete a corrective action plan.

9. TEA policies and procedures are referenced in several sections as being required to be complied with. When will we be provided the applicable policies and procedures so we can review them?

This RFP does not require access to any internal TEA systems.

10. Can TEA provide us with the policies and procedures that they are expecting compliance with?

See #9.

11. Regarding Attachment B, Subpart 19 – do you have an example of a monthly compliance report?

Contractor may propose a reporting format.

12. Regarding Attachment B, Subpart 35 – are the criminal background checks only applicable to those employees who have interaction with TEA teachers, administrators and students?

Any individual that may have direct access or potential access must complete and pass a background check prior to allowing them on a school campus. Verification is required for the contract file.

13. Our Standard Terms and Conditions will tell each district what governs the use... Is that ok?

TEA will need to review and approve the Terms and Conditions. Submit the information with the proposal response.

14. Is there a bid guarantee fee requirement for this RFP?

No

15. Section 3.3.4 of the RFP directs that “[i]f the proposer plans to use external consultants or subcontractors, a staff organization chart and resumes of consultants and/or subcontractors must be included.” If a proposer is subcontracting with another organization, must the proposer provide resumes for all employees of that organization, or is it sufficient to supply the resume for key personnel (president and project lead) of the subcontracting organization?

Submit resumes for all key personnel assigned to the project.

16. Are organizations providing in-kind donations, including services, included within the meaning of the term “subcontractor” for purposes of this RFP?

The definition of a subcontractor is identified in Q4.

17. In addendum 1, the agency commented that the RFP calls for existing (rather than new) resources. If an organization currently has an online program that fully built out but must create a limited amount of new material to fully cover Texas standards, is the program eligible provided that the modifications/additions can be completed within 30-60 days of contract award. What types of evidence may a proposer submit in order to demonstrate that the product will be fully complete with respect to Texas standards within 60 days of award?

Finalist will be asked to perform a product demonstration.

18. With respect to accommodations for visually impaired students, must all materials be provided in Braille?

The application must meet all ADA requirements.

19. What role will TEA and/or regional education service centers (ESCs) play in training school district personnel in the use of the program?

TEA and ESC staff will not play a role in training.

20. Is there a sample annual budget available for reference?

The budget proposed to TEA is a decision made by the contractor. Budgets for each selected product will be finalized during negotiations.

21. What is the scope of intellectual property that a proposer will be required to transfer to TEA under the contract, if awarded?

Works means all tangible or intangible material, products, ideas, documents or works of authorship prepared or created by Contractor for or on behalf of TEA 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.) this does not include any pre-existing materials of Contractor, or any licensed third party materials provided by Contractor;

22. Where may a proposer locate the proposals submitted by the two vendors whose products were selected in the previous RFP selection referenced in Addendum 1?

Copies of the previous proposals may be obtained through an open records request.

23. If a proposer is doing a bid purely for math, is the proposer required to demonstrate alignment with English Language Proficiency Standards? If so, what type of evidence is sufficient to demonstrate alignment in the context of a math program?

Contractor shall propose any information pertinent to the project.

24. Does TEA just want *samples* of vendor training materials included in our response or a copy of the entire training manual?

It is the contractor's choice.

25. Are the Algebra and English categories intended for students who are not passing the end-of-course exams?

Districts will determine the criteria for which students will participate in the algebra and English programs.

26. If our pricing model is one that includes all subjects, how does TEA suggest submitting our response? Does one price proposal suffice for both proposals?

Submit separate proposals for reading and math.

27. Does TEA intend to have individual schools contact our customer/call center support? Or will this be handled through ESCs?

Contractor shall propose options.

28. Please clarify how registration through the TEA SSI portal works.

Registration will be through the teacher, parents, and student directly through the Contractor's link.