

STATE OF TEXAS §

COUNTY OF TRAVIS §

<b>Division/Org Code:</b>	906	<b>Program Name:</b>	Educator Certification
<b>Speed Chart:</b>		<b>Legal/Funding Authority:</b>	TEC 21.003
<b>Payee Name:</b>	Educational Testing Service	<b>Contract #:</b>	2842
<b>Payee ID ISAS:</b>	1210634479	<b>PO #:</b>	30192

### TEXAS EDUCATION AGENCY STANDARD CONTRACT

#### ARTICLE I. PARTIES TO CONTRACT

This agreement is entered into by and between the Texas Education Agency ("TEA"), a Texas State Agency and Educational Testing Service ("Contractor").

#### ARTICLE II. PERIOD OF CONTRACT

TEA shall pay Contractor for the reasonable and approved costs incurred by Contractor in connection with the Contract Project during the period beginning September 1, 2011 and ending August 31, 2016, unless extended or terminated as otherwise provided for this contract. TEA, at its own discretion, may extend the contract awarded for two (2) additional fiscal years under the same or different terms subject to appropriation of funds by the Texas Legislature for this project. If renewed, the first renewal period shall be from September 1, 2016 through August 31, 2017 and the second renewal period shall be from September 1, 2017 through August 31, 2018.

#### ARTICLE III. PURPOSES OF CONTRACT

Contractor shall perform all of the functions and duties set described herein and in the appendices to this Contract, which are attached hereto and incorporated by reference.

#### ARTICLE IV. PAYMENT UNDER CONTRACT

Subject to the availability to TEA of funds for the purpose(s) of this contract, TEA shall pay to Contractor by State of Texas warrant(s) the amount of approximately \$91,350,423.00 for the performance, satisfactory to the TEA, of Contractor's functions and duties under this Contract. Fees for examinations are currently set at \$120.00 and the agency estimates 166,000 exams will be administered per year for an estimated total of \$18,200,000.00 per year. The actual number of exams is contingent on the number of educators registering for the exams. Payment to Contractor by TEA will be made in accordance with the Description of Services / Budget, which is attached hereto and incorporated herein by reference.

#### ARTICLE V. GENERAL AND SPECIAL PROVISIONS OF CONTRACT

Attached hereto and incorporated herein by reference are the General Provisions and the Special Provisions indicated below with an "X" beside each:

- Special Provisions A, Program Specific
- Special Provisions B, Debarment (required if utilizing federal funds)
- Special Provisions C, Lobbying (required if utilizing federal funds & over \$100,000)
- Special Provisions D, Historically Underutilized Business Subcontracting Plan (HSP) (required for projects over \$100,000.00)

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

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

Contractor shall be an independent contractor for matters relating to this Contract. Contractor and its employees are not employees of TEA for any purpose and shall not be entitled to participate in any plan, arrangement, or distribution by TEA pertaining to or in connection with any pension, bonus, or other benefit extended to TEA employees.

ARTICLE VI. ENTIRE CONTRACT

This contract together with the documents including but not limited to Appendices, Attachments, Exhibits, Proposal Responses, mentioned herein and incorporated by reference, contains the entire agreement between the parties relating to the rights granted and the obligations assumed in it. Any oral representations or modifications concerning this contract shall be of no force or effect unless contained in a subsequent amendment executed by both parties.

AGREED and accepted on behalf of Contractor effective beginning on the date of the Contract as specified above and as indicated by signature below of a person authorized to bind Contractor.

Typed name: Stephen Lazer  
Typed title: Vice President, Student and Teacher Assessments

  
Authorized Signature

**This section reserved for TEA use.**

I, an authorized official of the Texas Education Agency hereby certify that this contract is in compliance with the authorizing program statute and applicable regulations and authorize the services to be performed as written above.

AGREED and accepted on behalf of Agency on 5-19-11 (month/day/year) by a person authorized to bind Agency.

Return three (3) copies with original signature to:  
Norma Barrera  
Texas Education Agency  
Purchasing and Contracts Division  
1701 North Congress Avenue Rm. 2-125  
Austin, Texas 78701-1494

  
Shirley Beaulieu, Associate Commissioner  
Finance/ CFO

## APPENDIX 1

- A. The definitions of terms in the General Provisions are incorporated herein.
- B. The attached proposal entitled Request for Proposal #701-11-024, Development and Administration of the Texas Educator Certification Examinations, is incorporated herein by reference and is therefore made a part of this contract.
- C. The terms, conditions, and requirements contained in the Request for Proposal entitled "Development and Administration of the Texas Educator Certification Examinations," with a closing date of January 19, 2011, and identified as RFP #701-11-024 are incorporated herein by reference, although in the event of conflict the Special Provisions to Standard Contract shall control.
- D. If there is a conflict or ambiguity between or among the terms of the documents that constitute this Contract, and if that conflict or ambiguity cannot be resolved by construing the terms so as to harmonize all their terms, then the conflict or ambiguity shall be resolved with the following Contract documents prevailing in the following order of priority:
- Special Provisions
  - General Provisions of the Standard Contract;
  - The Standard Contract, inclusive of all appendices;
  - Contractor's Best and Final Offer dated March 11, 2011;
  - Contractors Response to Clarification Questions dated March 4, 2011;
  - Contractor's Proposal to the Texas Education Agency entitled Development and Administration of the Texas Educator Certification Examinations, submitted January 19, 2011; and
  - The Request for Proposal entitled "Development and Administration of the Texas Educator Certification Examinations" November 29, 2010.

E. Description of Services and Budget:

The Cost Proposal, labeled (Exhibit A – ETS Cost Proposal and Budget Summary) is attached. Payment shall be monthly upon completion of scoring the exams.

F. Fee Reporting to TEA

Contractor will work with TEA to develop a process and format for reporting fees and preparing invoices for services rendered. TEA reserves the right to audit and verify the Contractor's financial data relating to exams administered versus the exams invoiced to establish accuracy of the "fee reports". In the event the data cannot be attested by TEA, Contractor shall contract with a third party for the purposes of an additional, independent verification of all associated examination fees at no cost to TEA.

No funds shall be used to pay for food costs (i.e., refreshments, banquets, group meals, etc.) unless requested as a specific line item in the budget by the Contractor and approved (prior to expenditures occurring) by TEA. This applies to both federally and state funded Contracts.

Contractor will make a good faith effort to comply with the State of Texas Travel Guidelines. TEA may at its discretion approve requests for reimbursement of travel which exceed the State of Texas Travel Guidelines. Contractor shall maintain receipts in accordance with item H of the General Provisions. The Comptroller's website for travel rules and regulations – **tExtravel**: <https://fmx.cpa.state.tx.us/fmx/travel/texttravel/index.php>. Receipts must be 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 five (5) years.

State travel expense reimbursement is not a per diem. Employees and contractors must claim the actual expenses incurred for meals and lodging not to exceed the maximum allowable rates. The maximum should not be claimed unless the actual expenditures equal or exceed the maximum allowable rate.

## **Exhibit A Statement of Work**

This State of Work incorporates several key tasks or functions and is intended as an overview of the project. Please refer to the Attachments labeled Contractor's Best and Final Offer, Response to Clarification Questions, and Contractor's Proposal for further details of the project tasks and activities.

### Administration of Exams.

- Contractor shall administer examinations for educator certification from September 1, 2011 through August 31, 2016. This includes statewide administration of examinations both by pencil and paper and on computer. Contractor shall begin administering the current TExES, TExMaT and TASC/TASC-ASL examinations in September 2011. At a minimum, contractor shall plan for three (3) large-scale statewide paper-based administrations in 2011-2012 and two (2) per year thereafter with ongoing computer-administered testing (CAT) and recommend an alternate structure that provides increased access and cost efficiency while maintaining program quality and meeting other considerations beneficial to TEA and Texas stakeholders. Contractor shall offer the ability to retest within a thirty (30) day window during peak school district hiring months. Regular examination administrations must be located within 50 miles of educator preparation programs.
- Examination administration, includes but not limited to candidate and client support and services; information dissemination; secure materials production and shipping; selection of site staff (including procedures to preclude illegal discrimination in the selection of site staff), staff training and use (e.g., number of proctors per candidate), testing of individuals needing modifications or language examination with individual testing, and site management including on-site examination security to include on-site identity assurance and verification (i.e., thumb scans) of all candidates and problem resolution; candidate registration and on-site identity assurance and documentation; examination site characteristics such as proposed specifications and geographical locations; scoring processes (including holistic and analytic scoring, and reporting performance by domain and competency) and quality assurance; maintenance of historical and future examination records, candidate data, and documentation; and the implementation of technology for accessibility, accuracy, and cost-effectiveness.
- Administrations should occur, at minimum, during peak times (e.g., March through July) in Texas urban areas with registration available up to twenty-four (24) hours prior to the examination. Regular examination administrations must be located within fifty (50) miles of educator preparation programs.
- Register candidates for testing with both an online and phone registration system, except for that required to assist candidates with disabilities. Registration for CAT exams shall be available up to 24 hours prior to the CAT test date.

### Scoring Exams

- Scores shall be available to candidates and educator preparation programs through the Contractor's website no later than twenty-one (21) days following the examination administration. Contractor will provide score reporting within fourteen (14) days following examination administration for examinations comprising selected-response items only; performance on examinations which also include a constructed-response component should be reported no later than 21 days after the examination administration.

### Project Plan

- Contractor will provide a Project Plan (plan) that will be developed and provided each year of this contract. This plan will be developed by ETS with TEA involvement and approval and this plan will describe in detail the activities required for the upcoming assessment year. A list of Assessments and Data Bank Items to be developed during each year of the contract will be identified. Monthly project meetings shall be scheduled to review the status of the development. The Assessment Schedule for each year shall be developed and approved by TEA project manager for publication no later than April 1, of each year to the upcoming school year. The plan will also include a detailed schedule of activities, deliverables required from both ETS and TEA, dependencies, and responsible parties. The project plan will also include a test development plan, a test administration plan (including registration, administration, scoring and reporting), a customer service plan, a client relations plan, a risk assessment plan, and a quality plan. The plan will be developed and approved by both parties no later than September 1st of each contract year. ETS will work with TEA in meeting the requirements of the Title II Higher Education Act, which is conducted yearly.

### Collection of Fees

- Contractor will collect examination and other approved fees identified in the proposal through the online registration and by mail. Fees must be submitted to TEA within three (3) days of on collection and send a

monthly comprehensive revenue and invoice file which can be downloaded to the "Examination Database" that TEA uses to track the fees, revenues and invoices.

- Refunds requested by candidates will be reported to reflect at a minimum the candidate's name/ valid ID and at which stage the refund was requested and issued so that Agency staff can reconcile daily deposits.

#### Reports

- Additional reports citing activity and progress must be written by the contractor every six months in narrative form of all documents developed during that six-month period. This report must be submitted electronically to TEA.
- An annual technical report will document all activities conducted by the contractor for the examination program in the previous year. Additional ad-hoc reports may be requested by TEA during the term of the contract. TEA reserves the right to determine the exact contents of any report and the method of submission (paper or electronic).
- Report scores to TEA, then to the candidate's educator preparation program before releasing scores to candidates.
- Report aggregate and individual scores to TEA and educator preparation programs for use in program analysis and accountability statistics.

#### New Exams

- Contractor shall develop additional examinations for computer-administered testing (CAT), annually increasing the number of available examinations given by computer, until all appropriate examinations are available by CAT. CAT testing under this RFP shall be available on all of the regular workdays during the year and at least 50% of weekend days.
- Develop new examination items for all existing TExES, TExMaT, and other examinations to maintain currency of content and alignment with Texas Essential Knowledge and Skills (TEKS) and increase item banks used for operational forms, including CAT.

#### Additional Requirements

- During the term of this contract, contractor to be prepared to modify or broaden the scope, subject area certifications, and examination development or to implement other changes in this project as required by legislation or action by SBEC Board, the State Board of Education (SBOE), or the Commissioner of Education.
- Ongoing initiatives must be considered, planned, and implemented to provide more opportunities and administration sites for computer-based testing. Additional sites should be considered, but not limited to, colleges, universities, community colleges, and education service centers. These plans include examinations already developed, new examinations that may be developed, and all examinations that may be required. The RFP and the contract both include additional requirements for computer-based testing and reporting, which could lead to further changes with respect to how examinations are administered to candidates during the contract period.

**SPECIAL PROVISIONS – A**  
Program Specific

1. To the extent that they are inconsistent with the General provisions, the Special Provisions supersede the General Provisions
2. Unless otherwise indicated by TEA, payment under this Contract is only by reimbursement upon satisfactory performance of administration and scoring of examinee assessments. Payment will be made upon submission of properly prepared and certified invoices *according* to specifications provided by TEA which list the examinee assessments administered and scored based on the relevant reports and database information provided by Contractor to the Agency. The contractor shall include the contract number, purchase order number, and the Texas Comptroller of Public Accounts Payee Identification Number (PIN) on all invoices. Payments will be made, after approval by TEA's Project Administrator of the Contractors Report and corresponding invoice verification.
3. The budgeted amount for this Contract is contingent on the number of assessments administered and scored. Assessment fees are set by the SBEC Board or their successor. Assessment fees for Fiscal Year 2011 are set at \$120.00 per exam. Agency will receive \$10.00 per exam. Fees may be re-evaluated after year (3) of the Contract. Any increase to the total budgeted amount requires a revised budget document unless the increase is a result of an increase in the fee for examinations, which requires a formal written amendment to this agreement.
4. Contractor will keep all Pass Thru Fees identified in Exhibit A – ETS Cost Proposal and Budget Summary Page 3. Contractor will provide TEA a Report identifying the Pass Thru Fees when the Assessment Funds are transmitted to TEA.

No federal funds will be used for this Contract. Accordingly, paragraphs M and R in the General Provisions do not apply to this Contract.

**D. Subcontracting:** Except as specified in Contractor's proposal in response to RFP #701 -11 -024. 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.

**H. Records Retention:** Contractor shall maintain its records and accounts in a manner which shall assure a full accounting for all funds received 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 five (5) 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.

**I. Intellectual Property,** is further clarified to confirm that Contractor will continue to own any software or systems it provides to the project (e.g. IBT). TEA will not own any items produced under this Contract that come from preexisting materials either owned by Contractor or licensed to Contractor from some other entity. However, if Contractor leases or licenses any items from other entities, TEA will hold the license and have the right to use the license or licensed materials as long as the exams are being used by TEA. All other assessment items produced for TEA during the term of this Contract are owned by TEA

**J. Sanctions for Failure to Perform or for Noncompliance:** If Contractor, in TEA's sole determination, fails or refuses for any reason to comply with or perform any of its obligations under this Contract, TEA may impose such sanctions as it may deem appropriate. This includes but is not limited to the withholding of payments to Contractor until Contractor complies; the cancellation, termination, or suspension of this Contract in whole or in part; and the seeking of other remedies as may be provided by this Contract or by law. Any cancellation, termination, or suspension of this Contract, if imposed, shall become effective at the close of business on the day of Contractor's receipt of written notice thereof from TEA. Neither party will be liable to the other for any breach under this Contract except for actual damages (including, but not limited to, reasonable outside counsel legal fees and other out of pocket external costs). In no event shall either party be liable for consequential, incidental, punitive or other indirect damages.

**K. Contract Cancellation, etc.:** If this Contract is cancelled, terminated, or suspended by TEA prior to its expiration date ("End Date"), then TEA shall calculate the reasonable monetary value of services properly performed by or for Contractor in accordance with this Contract as of and through such End Date, and shall pay Contractor as soon as

reasonably possible such amounts which shall also include, applicable examinee refunds due to Contractor through the date the contract is cancelled.

**ZZ. Force Majeure:** Except as otherwise provided, neither Contractor nor TEA nor any agency of the State of Texas, shall be liable to the other for any delay in, or failure of performance, of a requirement contained in this Contract caused by *force majeure*. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. *Force majeure* is defined as acts of God, war, strike, fires, explosions, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing with proof of receipt within three (3) business days of the existence of such *force majeure* or otherwise waive this right as a defense.

## GENERAL PROVISIONS

- A. As used in these General Provisions:
- *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;
  - *Receiving Agency or Party or TEA* means the Texas Education Agency;
  - *Performing Agency or Contractor* means the party or parties to this Contract other than TEA, including its or their officers, directors, employees, agents, representatives, consultants and subcontractors, and subcontractors' officers, directors, employees, agents, representatives and consultants;
  - *Project Manager/Administrator* means the respective person(s) representing TEA or Contractor, as indicated by the Contract, for the purposes of administering the Contract Project;
  - *Contract Project* means the purpose intended to be achieved through the Contract;
  - *Amendment* means a Contract that is revised in any respect, and includes both the original Contract, and any subsequent amendments or extensions thereto;
  - *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.); and,
  - *Intellectual Property Rights* means the worldwide intangible legal rights or interests evidenced by or embodied in: (a) any idea, design, concept, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (b) any work of authorship, including any copyrights, moral rights or neighboring rights; (c) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (d) domain name registrations; and (e) any other similar rights. The Intellectual Property Rights of a party include all worldwide intangible legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- B. **Contingency:** The Contract(s), including any amendments, extensions or subsequent contracts, are executed by TEA contingent upon the availability of appropriated funds by legislative act. Notwithstanding any other provision in this Contract or any other document, this Contract is void upon the insufficiency (in TEA's discretion) or unavailability of appropriated funds. In addition, this Contract may be terminated by TEA at any time for any reason upon notice to Contractor. Expenditures and/or activities for which Contractor may claim reimbursement shall not be accrued or claimed subsequent to receipt of such notice from TEA.
- C. **Indemnification:**  
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.  
For all other contractors, including nonprofit organizations and for-profit businesses: Contractor shall indemnify, hold harmless, and defend TEA and the State, all of its officers, agents, and employees from any and all claims, actions, suits, 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 or omissions of the Contractor or any agent, employee, subcontractor, or supplier of Contractor in performance of the Contract Project.
- D. **Subcontracting:** 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. 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 the Agency HUB Coordinator before staffing changes are initiated.
- E. **Encumbrances/Obligations:** All encumbrances, accounts payable, and expenditures shall occur on or between the beginning and ending dates of this Contract. All goods must have been received and all services rendered during the Contract period in order for Contractor to recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.
- F. **Contractor's Proposal:** Contractor's proposal that was furnished to TEA in response to a request for proposal is incorporated in this Contract by reference. The provisions of this Contract shall prevail, however, in all cases of conflict arising from the terms of Contractor's proposal whether such proposal is a written part of this Contract or is attached as a separate document.

- G. **Requirements, Terms, Conditions, and Assurances:** The terms, conditions, and assurances, which are stated in the Request for Proposal, in response to which Contractor submitted a proposal, are incorporated herein by reference for all purposes, although the current General Provisions shall prevail in the event of conflict.
- H. **Records Retention:** Contractor shall maintain its records and accounts in a manner which shall assure a full accounting for all funds received and expended by Contractor in connection with the Contract 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 five (5) 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.

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

- I. **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, Contractor grants to TEA the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such preexisting rights and any derivative works thereof and (ii) authorize others to do any or all of the foregoing. Contractor agrees to notify 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 Legal Division.

**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.

- J. **Sanctions for Failure to Perform or for Noncompliance:** If Contractor, in TEA's sole determination, fails or refuses for any reason to comply with or perform any of its obligations under this Contract, TEA may impose such sanctions as it may deem appropriate. This includes but is not limited to the withholding of payments to Contractor until Contractor complies; the cancellation, termination, or suspension of this Contract in whole or in part; and the seeking of other remedies as may be provided by this Contract or by law. Any cancellation, termination, or suspension of this Contract, if imposed, shall become effective at the close of business on the day of Contractor's receipt of written notice thereof from TEA.
- K. **Contract Cancellation, etc.:** If this Contract is cancelled, terminated, or suspended by TEA prior to its expiration date, the reasonable monetary value of services properly performed by Contractor pursuant to this Contract prior to such cancellation, termination or suspension shall be determined by TEA and paid to Contractor as soon as reasonably possible.
- L. **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.
- M. **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.
- N. **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.
- O. **State of Texas Laws:** In the conduct of the Contract Project, Contractor shall be subject to Texas State Board of Education rules pertaining to this Contract and the Contract Project, and to the laws of the State of Texas governing this Contract and the Contract Project. This Contract constitutes the entire agreement between TEA and Contractor for the accomplishment of the Contract Project. This Contract shall be interpreted according to the laws of the State of Texas except as may be otherwise provided for in this Contract.
- P. **Federal Regulations Applicable to All Federally Funded Contracts:**
1. For Local Education Agencies (LEAs): 28 CFR 35 Subparts A-E, 28 CFR 36 Subparts C & D, Appendix A, 29 CFR 1630, 34 CFR 75 or 76 as applicable, 77, 79, 80, 81, 82, 85, 99, 104, 47 CFR 0 and 64, and OMB Circulars A-87 (Cost Principles) and A-133 (Audits);
  2. For Education Service Centers (ESCs): 28 CFR 35 Subparts A-E, 28 CFR 36 Subparts C & D, Appendix A, 29 CFR 1630, 34 CFR 75 or 76 as applicable, 77, 79, 80, 81, 82, 85, 99, 104, 47 CFR 0 and 64, and OMB Circulars A-87 (Cost Principles) and A-133 (Audits);
  3. For Institutions of Higher Education (IHEs): 28 CFR 35 Subparts A-E, 28 CFR 36 Subparts C & D, Appendix A, 29 CFR 1630, 34 CFR 74, 77, 79, 81, 82, 85, 99, 104, OMB Circular A-21 (Cost Principles), 47 CFR 0 and 64, OMB Circular A-133 (Audits), and OMB Circular A-110 (Uniform Administrative Requirements);
  4. For Nonprofit Organizations: 28 CFR 35 Subparts A-E, 28 CFR 36 Subparts C & D, Appendix A, 29 CFR 1630, 34 CFR 74, 77, 79, 81, 82, 85, 99, 104, 47 CFR 0 and 64, OMB Circulars A-122 (Cost Principles) and A-133 (Audits), and OMB Circular A-110 (Uniform Administrative Requirements);
  5. For State Agencies: 28 CFR 35 Subparts A-E, 28 CFR 36 Subparts C & D, Appendix A, 29 CFR 1630, 34 CFR 76, 80, 81, 82, 85, 99, 104, 47 CFR 0 and 64, OMB Circulars A-87 (Cost Principles) and A-133 (Audits), and OMB Circular A-110 (Uniform Administrative Requirements); and
  6. For Commercial (for-profit) Organizations: 29 CFR 1630 and 48 CFR Part 31.
  7. For American Recovery and Reinvestment Act funded projects: FAR 52.204-11, 52.212-5, 52.214-26, 52.215-2, and OMB Guidance Memo M-09-15.

- Q. **Point of Contact:** All notices, reports and correspondence required by this Contract shall be in writing and delivered to the TEA project manager listed below or their successors in office:

**TEA**

Janice Lopez  
Director, Educator Standards & Certification  
Texas Education Agency  
William B. Travis Building  
1701 N. Congress Avenue  
Austin, Texas 78701

**CONTRACTOR**

Rick Cullors  
Program Director  
Texas Educator Certification Program  
Educational Testing Service  
10999 IH 10 West, Suite 400  
San Antonio, TX 78230

- R. **Time and Effort Recordkeeping:** For those personnel whose salaries are prorated between or among different funding sources, time and effort records will be maintained by Contractor that will confirm the services provided within each funding source. Contractor must adjust payroll records and expenditures based on this documentation. This requirement applies to all projects, regardless of funding source, unless otherwise specified. For federally funded projects, time and effort records must be in accordance with the requirements in the applicable OMB cost principles.
- S. **Federal Rules, Laws, and Regulations That Apply to all Federal Programs:** Contractor shall be subject to and shall abide by all federal laws, rules, and regulations, pertaining to the Contract Project, including, but not limited to:
1. Americans With Disabilities Act, P.L. 101-336, 42 U.S.C. sec. 12101, and the regulations effectuating its provisions contained in 28 CFR Parts 35 and 36, 29 CFR Part 1630, and 47 CFR Parts 0 and 64;
  2. Title VI of the Civil Rights Act of 1964, as amended (prohibition of discrimination by race, color, or national origin), and the regulations effectuating its provisions contained in 34 CFR Part 100;
  3. Title IX of the Education Amendments of 1972, as amended (prohibition of sex discrimination in educational institutions) and the regulations effectuating its provisions contained in 34 CFR Part 106, if Contractor is an educational institution;
  4. Section 504 of the Rehabilitation Act of 1973, as amended (nondiscrimination on the basis of handicapping condition), and the regulations effectuating its provisions contained in 34 CFR 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.
- T. **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.
- U. **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.
- V. **Antitrust:** By signing this Contract, Contractor, represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has, (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the Proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

- W. **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.
- X. **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 the agency 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 the agency 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. The agency's participation in mediation or any other dispute resolution process shall not waive any of the agency's contractual or legal rights and remedies, including but not limited to sovereign immunity.
- Y. **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, the TEA Contract and its General Provisions, Appendices and Special Provisions shall take precedence over all other documents which are a part of this contract.
- Z. **Education Service Center:** No funds transferred to Regional Education Service Centers or to school districts may be used to hire a registered lobbyist.
- AA. **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 the Agency, Contractor shall furnish TEA with satisfactory proof of its compliance with this provision.
- BB. **Public Information:** The TEA is subject to the provisions of the Texas Public Information Act. If a request for disclosure of this Contract or any information related to the goods or services provided under the Contract or information provided to the TEA under this Contract constituting a record under the Act is received by the TEA, the information must qualify for an exception provided by the Texas Public Information Act in order to be withheld from public disclosure. Contractor authorizes the TEA to submit any information contained in the Contract, provided under the Contract, or otherwise requested to be disclosed, including information Contractor has labeled as confidential proprietary information, to the Office of the Attorney General for a determination as to whether any such information may be exempt from public disclosure under the Act. If the TEA does not have a good faith belief that information may be subject to an exception to disclosure, the TEA is not obligating itself by this Contract to submit the information to the Attorney General. It shall be the responsibility of the Contractor to make any legal argument to the Attorney General or appropriate court of law regarding the exception of the information in question from disclosure. The Contractor waives any claim against and releases from liability the TEA, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by the Contractor and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act.
- CC. **Gratuities:** By signing this Contract, Contractor represents and warrants that the Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.
- DD. **Venue and Jurisdiction:** Subject to and without waiving any of the Agency's rights, including sovereign immunity, this Contract is governed by and construed under and in accordance with the laws of the State of Texas. Venue for any suit concerning this solicitation and any resulting contract or purchase order shall be in a court of competent jurisdiction in Travis County, Texas.
- EE. **Protests:** Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of this or any other contract by the Texas Education Agency may submit a formal protest to the Director of the Agency's Contracts and Purchasing Division. This protest procedure shall be the exclusive method by which anyone may make a challenge to any aspect of the Agency's contracting

process. The Agency will not be required to consider the merits of any protest unless the protest is submitted timely, in a sworn written protest petition, and in strict compliance with all requirements in applicable law and Agency's rules (Title 19 of the Texas Administrative Code, at § 30.2002, or any amendment or successor rules).

If the protest procedure results in a final determination by the Agency that a violation of law has occurred in its contracting process in a case in which a contract has been awarded, then the Agency 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 the Agency.

- FF. **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.
- GG. **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.
- HH. **Conformance:** The 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, respondent warrants that goods and services are suitable for and will perform in accordance with the purposes for which they are intended.
- II. **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.
- JJ. **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 Agency before serving in assignments on behalf of the Agency. This requirement applies to all individuals who currently serve or will serve in Agency assignments that have the possibility of direct contact with students. Assignments are contingent upon meeting Agency 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.
- KK. **Assignment of Contract:** This Contract may not be assigned, sold, or transferred without the express written consent of the TEA Purchasing and Contracts Division. An attempted assignment after Contract award without the TEA approval will constitute a material breach of contract.
- LL. **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.
- MM. **Excluded Parties List System:** The Texas Education Agency is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's Excluded Parties List System (EPLS, <http://www.epls.gov>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list. Contractor certifies that they are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.
- NN. **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. If Contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this contract.

- OO. **Web Accessibility Policy:** State law requires State Agencies and institutions of higher education to provide persons and employees with disabilities access comparable to access and use provided to the public and State employees without disabilities for the following: telephones and other telecommunications products, information kiosks, transaction machines, internet websites, and multimedia resources. TEA adheres to the standards set forth in TAC §206 State Web Sites, TAC §213 Electronic and Information Resources, and the Federal 508 requirements which may be viewed at <http://www.governor.state.tx.us/disabilities/resources/keylaws/access>. This policy is applicable to all TEA contractors who develop or provide any of the services or products listed above as a result of a TEA contract award or approved vendor list. All documents created or developed under this Contract must also be compliant with all state and federal regulations for web accessibility (i.e., Americans with Disabilities Act (ADA) compliance, [http://www.dir.state.tx.us/general\\_info/accessibility.htm](http://www.dir.state.tx.us/general_info/accessibility.htm)).
- PP. **Collusion:** Contractor certifies and represents that Contractor has not colluded with, nor received any assistance from, any person who was paid by TEA to prepare specifications or a solicitation on which a respondent's bid or proposal is based and will not allow any person who prepared the respective specifications or solicitation to participate financially in any contract award.
- QQ. **Social Security Numbers Withheld:** TEA will not provide Social Security Numbers (SSNs) to any Contractor under this contract. TEA, its contractors and their subcontractors, will not require or request school districts to provide SSNs under this contract.
- RR. **Proprietary or Confidential Information:** Contractor, its employees and subcontractors, agree that in executing tasks on behalf of the 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 thirty (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 the agency. Contractor will indemnify and hold harmless the State of Texas, its officers and employees, and TEA, its officers and employees for any claims or damages that arise from the disclosure by Contractor or its contractors of information held by the State of Texas.
- SS. **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.
- TT. **Vendor Performance:** All state agencies must report unsatisfactory vendor performance on purchases over \$25,000. Respondents 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. Agencies report satisfactory and exceptional vendor performance to assist in determining best value. In accordance with Texas Government Code, §2155.074 and §2155.75, vendor performance may be used as a factor in future contract awards.

Contractor performance information is located on the CPA web site at:  
[http://www.window.state.tx.us/procurement/prog/vendor\\_performance/](http://www.window.state.tx.us/procurement/prog/vendor_performance/)

- UU. **Termination:** This contract shall terminate upon full performance of all requirements contained in this contract, unless otherwise extended or renewed as provided in accordance with the contract terms and conditions.
1. **Termination for Convenience:** Either Party may terminate this Contract at any time, in whole or in part, without penalty, by providing thirty (30) calendar days advance written notice to the other Party. In the event of such a termination, the Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TEA shall be liable for reimbursing only those expenses incurred by the Contractor that are permitted under this Contract and were incurred prior to the effective termination date.
  2. **Termination for Cause/Default:** If the Contractor fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any of the terms or conditions of the Contract, TEA may, upon written notice of default to the Contractor, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the Contract.

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

The Contractor shall remain liable for all covenants and indemnities under the Contract. The Contractor shall be liable for all costs and expenses, including court costs, incurred by TEA with respect to the enforcement of any of the remedies listed herein.

3. **Termination Due to Changes in Law:** If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either Party cannot reasonably fulfill this Contract and if the Parties cannot agree to an amendment that would enable substantial continuation of the Contract, the Parties shall be discharged from any further obligations under this Contract.
4. **Rights upon Termination or Expiration of Contract:** In the event that the Contract is terminated for any reason, or upon its expiration, TEA shall retain ownership of all associated work products and documentation obtained from the Contractor under the Contract.
5. **Survival of Terms:** Termination of the Contract for any reason shall not release the Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.

**VV. Amendments:**

1. All amendments to this Contract will be in a manner as prescribed by the Project Administrator of TEA, subject to Paragraph B of the General Provisions and will be made on AMENDMENT TO TEXAS EDUCATION AGENCY STANDARD CONTRACT form supplied by TEA. Amendments must be mailed to the Purchasing and Contracts Division, Room 2-125, Texas Education Agency, William B. Travis Building, 1701 North Congress, Austin, Texas 78701. An amendment to this Contract will become effective on the date of signature of TEA.
2. The Contractor is permitted to rebudget among direct cost categories within the approved budget to meet unanticipated requirements and to make limited changes to the approved budget without submitting a written amendment. However, a revised budget document must be submitted to the TEA Project Manager for approval. Once approved, the documents must be submitted and Contracts office and will be incorporated into the Contract file. Failure to submit the documents may result in invoices being rejected or payment delayed.
3. 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 or objectives of the Contract (regardless of whether there is an associated budget revision requiring prior approval);
  - c. a request to extend the period of the Contract;
  - d. cumulative transfers among direct cost categories which exceed or are expected to exceed ten percent 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.

**WW. Payment:**

Payment for goods or services purchased with State-appropriated funds is made by warrant (check) or by electronic Direct Deposit from the State Treasury. Direct Deposit is the preferred method of payment. Any payment owed by an agency must be mailed or transmitted electronically to the vendor no later than thirty (30) days after the later of:

- (1) the day on which the agency received the goods;
  - (2) the date the performance of the service under the contract is completed; or
  - (3) the day on which the agency received the complete and correct invoice for goods or services.
1. Payment for service(s) described in this Contract is contingent upon satisfactory completion of the service(s). Satisfaction will be determined by TEA's Project Administrator, in his sole discretion but in accordance with reasonable standards and upon advice of his superiors in TEA, if necessary. 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 forty-five 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.

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

- XX. 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.

- YY. **IRS Withholding:** Certain payments by some governmental entities to contractors after December 31, 2011 are subject to a 3% federal withholding requirement. The Internal Revenue Service (IRS) has proposed regulations regarding the 3% withholding requirement. Contractors and potential contracts should review this website for more information: <http://www.irs.gov/govt/fslq/article/0,,id=204409,00.html>

If the TEA determines that any payments due under this contract are subject to the 3% withholding requirement, the TEA shall withhold such amounts consistent with the statute. It is the Contractor's sole responsibility to assert and establish to the satisfaction of the TEA the availability of any applicable exemption from withholding.

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://info.sos.state.tx.us/pls/pub/readtac\\$ext.viewtac](http://info.sos.state.tx.us/pls/pub/readtac$ext.viewtac)

**SPECIAL PROVISIONS - D**  
**Historically Underutilized Business Subcontracting Plan (HSP)**  
(insert HSP here)

- A. Contractor's HSP is attached and incorporated herein.
- B. Any changes to the HUB Subcontracting Plan (HSP) must be approved by the Agency HUB Coordinator before staffing changes are initiated.
- C. Contractor must submit monthly compliance reports (Prime Contractor Progress Assessment Report (PAR) to the TEA HUB Coordinator, verifying their compliance with the HSP, including the use/expenditures they have made to all subcontractors. (The PAR is available at <http://www.tea.state.tx.us/index2.aspx?id=7038> )



## Texas Education Agency HUB Subcontracting Plan (HSP)

In accordance with Texas Government Code § 2161.252, Texas Education Agency (TEA) has determined that subcontracting opportunities are probable under this contract. Therefore, respondents including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit a State of Texas HUB Subcontracting Plan (HSP) with their solicitation response.

**NOTE: Responses that do not include a completed HSP shall be rejected pursuant to TGC § 2161.252 (b)**

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the State of Texas Disparity Study. The HUB goals defined in 1 TAC §111.13, are: **11.9% - for Heavy Construction other than building contracts, 26.1% - for all Building Construction, including general contractors and operative builders contracts, 57.2% - for all Special Trade Construction contracts, 20% - for Professional Services contracts, 33% - for all Other Service contracts and 12.6% - for Commodities contracts.**

**– Agency Special Instructions/Additional Requirements –**

**SECTION 1 – RESPONDENT AND SOLICITATION INFORMATION**

- a. Respondent (Company) Name: Educational Testing Service State of Texas VID #: 1210634479401  
 Point of Contact: Beverle Beyer Phone #: (609) 734-1318
- b. Is your Company a State of Texas certified HUB?  - Yes  - No
- c. Solicitation #: 701-11-024

**SECTION 2 – SUBCONTRACTING OPPORTUNITIES**

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

Note: In accordance with 1 TAC §111.12, a "Subcontractor" means a person who contracts with a vendor to work, to supply commodities, or contribute toward completing work for a governmental entity.

Check the appropriate box regarding the subcontracting opportunity(s):

- Yes, I will be subcontracting portion(s) of the contract.  
 (If Yes, in the spaces provided below, list any additional portions of work, not identified by TEA, that you will be subcontracting\*, and go to SECTION 3)
- No, I will not be subcontracting any portion of the contract, and will be fulfilling the entire contract with my own resources. (If No, complete SECTION 9 and 10)

Line Item # - Subcontracting Opportunity Description	Line Item # - Subcontracting Opportunity Description
(1)- CR Scoring, Recruitment, & Meeting Logistics	(6)-
(2)- Computer Based Test Centers	(7)-
(3)- Processing-Registration, Data Processing, Score Reports	(8)-
(4)-	(9)-
(5)-	(10)-

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

Enter your company's name: Educational Testing Service

Solicitation #:701-11-024

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

**SECTION 3 – RESPONDENT SUBCONTRACTING OPPORTUNITIES**

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

Line Item # 1 Description: CR Scoring, Recruitment, and Meeting Logistics

**SECTION 4 – MENTOR-PROTÉGÉ PROGRAM**

If respondent is participating as a Mentor in a State of Texas Mentor-Protégé Program, submitting their Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the portion of work (subcontracting opportunity) listed in SECTION 3, constitutes a Good Faith Effort towards that specific portion of work.

Will you be subcontracting the portion of work listed in SECTION 3 to your Protégé?

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

**SECTION 5 – PROFESSIONAL SERVICES CONTRACTS ONLY**

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

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

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

*In accordance with TGC §2254.002, "Professional Services" means services: (A) within the scope of the practice, as defined by state law of accounting; architecture; landscape architecture; land surveying; medicine; optometry; professional engineering; real estate appraising; or professional nursing; or (B) provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified or state licensed real estate appraiser; or a registered nurse.*

**SECTION 6 – NOTIFICATION OF SUBCONTRACTING OPPORTUNITY**

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

- Provide written notification of the subcontracting opportunity listed in SECTION 3 to **three (3)** or more HUBs. Use the State of Texas' Centralized Master Bidders List (CMBL), found at <http://www.tbpc.state.tx.us/cmbll/cmbllhub.html> and its HUB Directory, found at <http://www.tbpc.state.tx.us/cmbll/hubonly.html> to identify available HUBs.<sup>1</sup>
- Provide written notification of the subcontracting opportunity listed in SECTION 3 to a minority or women trade organization or development center to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. A list of trade organizations and development centers may be accessed at <http://www.tbpc.state.tx.us/hub/minoritywomenbuslinks.htm>.<sup>1</sup>
- Written notifications should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications and identify a contact person. Unless TEA has specified a different time period, you must allow the HUBs no less than **five (5) working days** from their receipt of notice to respond **and** provide notice of your subcontracting opportunity to a minority or women trade organization or development center no less than **five (5) working days** prior to the submission of your response to TEA.

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

List three (3) State of Texas certified HUBs you notified regarding the portion of work (subcontracting opportunity) listed in SECTION 3. Specify the vendor ID number, date you provided notice and if you received a response.<sup>1</sup>

Company Name	VID #	Notice Date	Was Response Received
Oak Hill Technologies	1742861021000	12/21/2010	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No
Media Riders, Inc.	1900041824400	12/21/2010	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No
Parasoft Testing, LLC	1742908572700	12/20/2010	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No

**SECTION 8 – SUBCONTRACTOR SELECTION**

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

Company Name	VID #	Expected % of Contract	Approximate Dollar Amount	Texas Certified HUB
Oak Hill Technologies	1742861021000	4.11	\$3,756,846	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No* <input type="checkbox"/> - Yes <input type="checkbox"/> - No*

<sup>1</sup> NOTE: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc demonstrating evidence of the Good Faith Effort performed.

Enter your company's name: Educational Testing Service Solicitation #:701-11-024

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

**SECTION 3 – RESPONDENT SUBCONTRACTING OPPORTUNITIES**

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

Line Item # 2 Description: Computer Based Test Centers

**SECTION 4 – MENTOR-PROTÉGÉ PROGRAM**

If respondent is participating as a Mentor in a State of Texas Mentor-Protégé Program, submitting their Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the portion of work (subcontracting opportunity) listed in SECTION 3, constitutes a Good Faith Effort towards that specific portion of work.

Will you be subcontracting the portion of work listed in SECTION 3 to your Protégé?

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

**SECTION 5 – PROFESSIONAL SERVICES CONTRACTS ONLY**

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

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

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

*In accordance with TGC §2254.002, "Professional Services" means services: (A) within the scope of the practice, as defined by state law of accounting; architecture; landscape architecture; land surveying; medicine; optometry; professional engineering; real estate appraising; or professional nursing; or (B) provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified or state licensed real estate appraiser; or a registered nurse.*

**SECTION 6 – NOTIFICATION OF SUBCONTRACTING OPPORTUNITY**

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

- a. Provide written notification of the subcontracting opportunity listed in SECTION 3 to **three (3)** or more HUBs. Use the State of Texas' Centralized Master Bidders List (CMBL), found at <http://www.tbpc.state.tx.us/cmb/cmbhub.html> and its HUB Directory, found at <http://www.tbpc.state.tx.us/cmb/hubonly.html> to identify available HUBs.<sup>1</sup>
- b. Provide written notification of the subcontracting opportunity listed in SECTION 3 to a minority or women trade organization or development center to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. A list of trade organizations and development centers may be accessed at <http://www.tbpc.state.tx.us/hub/minoritywomenbuslinks.htm> .<sup>1</sup>
- c. Written notifications should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications and identify a contact person. Unless TEA has specified a different time period, you must allow the HUBs no less than **five (5) working days** from their receipt of notice to respond **and** provide notice of your subcontracting opportunity to a minority or women trade organization or development center no less than **five (5) working days** prior to the submission of your response to TEA.

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

List three (3) State of Texas certified HUBs you notified regarding the portion of work (subcontracting opportunity) listed in SECTION 3. Specify the vendor ID number, date you provided notice and if you received a response.<sup>1</sup>

Company Name	VID #	Notice Date	Was Response Received
Dream Catchers Inc	1470878707300	1/7/2011	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No
Consulting solutions. Net	1710997729200	1/7/2011	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No
Corporate Concerns, Inc.	1742597244900	1/7/2011	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No

**SECTION 8 – SUBCONTRACTOR SELECTION**

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

Company Name	VID #	Expected % of Contract	Approximate Dollar Amount	Texas Certified HUB
Prometric, Inc.	1260416596400	26.73%	\$24,421,063.00	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No* <input type="checkbox"/> - Yes <input type="checkbox"/> - No*

<sup>1</sup> NOTE: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc demonstrating evidence of the Good Faith Effort performed.

Enter your company's name: Educational Testing Service Solicitation #:701-11-024

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

**SECTION 3 – RESPONDENT SUBCONTRACTING OPPORTUNITIES**

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

Line Item # 3 Description: Processing-Registration, Data Processing, Score Reports

**SECTION 4 – MENTOR-PROTÉGÉ PROGRAM**

If respondent is participating as a Mentor in a State of Texas Mentor-Protégé Program, submitting their Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the portion of work (subcontracting opportunity) listed in SECTION 3, constitutes a Good Faith Effort towards that specific portion of work.

Will you be subcontracting the portion of work listed in SECTION 3 to your Protégé?

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

**SECTION 5 – PROFESSIONAL SERVICES CONTRACTS ONLY**

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

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

*In accordance with TGC §2254.002, "Professional Services" means services: (A) within the scope of the practice, as defined by state law of accounting; architecture; landscape architecture; land surveying; medicine; optometry; professional engineering; real estate appraising; or professional nursing; or (B) provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified or state licensed real estate appraiser; or a registered nurse.*

**SECTION 6 – NOTIFICATION OF SUBCONTRACTING OPPORTUNITY**

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

- a. Provide written notification of the subcontracting opportunity listed in SECTION 3 to **three (3)** or more HUBs. Use the State of Texas' Centralized Master Bidders List (CMBL), found at <http://www.tbpc.state.tx.us/cmb/cmbhub.htm> and its HUB Directory, found at <http://www.tbpc.state.tx.us/cmb/hubonly.htm> to identify available HUBs.<sup>1</sup>
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- c. Written notifications should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications and identify a contact person. Unless TEA has specified a different time period, you must allow the HUBs no less than **five (5) working days** from their receipt of notice to respond **and** provide notice of your subcontracting opportunity to a minority or women trade organization or development center no less than **five (5) working days** prior to the submission of your response to TEA.

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

List three (3) State of Texas certified HUBs you notified regarding the portion of work (subcontracting opportunity) listed in SECTION 3. Specify the vendor ID number, date you provided notice and if you received a response.<sup>1</sup>

Company Name	VID #	Notice Date	Was Response Received
Rockhaven Learning Center	1223967464600	1/5/2011	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No
Live Oak Logic	1202978982800	1/5/2011	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No
Linda A Hardman Consulting, Inc.	1203142956100	1/5/2011	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No

**SECTION 8 – SUBCONTRACTOR SELECTION**

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

Company Name	VID #	Expected % of Contract	Approximate Dollar Amount	Texas Certified HUB
Alchemy Systems, LP	143203020200	3.84%	\$3,510,414.00	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No*
				<input type="checkbox"/> - Yes <input type="checkbox"/> - No*

<sup>1</sup> NOTE: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc demonstrating evidence of the Good Faith Effort performed.

Enter your company's name: Educational Testing Service

Solicitation #: 701-11-024

**SECTION 8 (CON'T) – SUBCONTRACTOR SELECTION**

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

All of the HUB vendors that were solicited did not have the capabilities needed for the service or did not respond to the notice in the minority, women trade organization or development centers.

**SECTION 9 – SELF PERFORMANCE JUSTIFICATION**

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

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

[Lined area for justification text]

**SECTION 10 – AFFIRMATION**

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

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

 Signature	Beverle Beyer Printed Name	SD Program Specialis Title	1/14/2011 Date
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