

STATE OF TEXAS §
COUNTY OF TRAVIS §

Division Number: 210	Program Name: Career Development Resources
Org. Code: 711P	Legal/Funding Authority: TGC 771; Public Law 109-270, Carl D Perkins Career & Technical Education Improvement Act of 2006
Speed Chart: 6P458	ISAS Contract #: <u>3259</u>
Payee Name: Texas Workforce Commission	PO #: <u>35332</u>
Payee ID: 33203203203	

INTERAGENCY CONTRACT

Section 1.0 PARTIES AND AUTHORITY

This Interagency Contract (IAC) is entered into by and between the Texas Education Agency (TEA) (Receiving Party) and Texas Workforce Commission (Performing Party) pursuant to the authority granted and in compliance with the provisions of the Interagency Cooperation Act, Chapter 771, of the Texas Government Code which enables state agencies to contract with other state agencies for governmental functions and services.

Section 2.0 STATEMENT OF SERVICES TO BE PERFORMED

Texas Workforce Commission will provide a toll-free career hotline and provide career development resources, see Appendix One, Scope of Work, attached hereto, hereby incorporated by reference and made a part of this IAC.

Section 3.0 TERM OF CONTRACT

The IAC will begin September 1, 2015 and terminate on August 31, 2016. Contract may be renewed for two (2) additional one-year terms thereafter by mutual agreement of the parties in the form of a written amendment.

Section 4.0 AMOUNT

The total amount of this IAC shall not exceed \$149,940 for the original term of the IAC. Appendix Two, Budget 9/1/15 – 8/31/16, attached hereto, is hereby incorporated by reference and made, therefore, a part of this IAC.

Section 5.0 PAYMENT FOR SERVICES

TEA shall reimburse Texas Workforce Commission for actual costs incurred in providing the services and/or resources described in this IAC. TEA shall pay for services received from the appropriation item or account from which the TEA would ordinarily make expenditures for similar services or resources. Payments received by the Texas Workforce Commission shall be credited to its current appropriation item(s) or account(s) from which the expenditure for the services or resources were made.

Texas Workforce Commission shall bill TEA monthly for services rendered in accordance with the provisions of the IAC. Texas Workforce Commission may submit invoices electronically to the following email address: TEAAccountsPayable@tea.texas.gov or the Texas Workforce Commission can direct invoices to:

Texas Education Agency
Attn: Accounting Department
1701 N. Congress Ave., Ste. 2-125
Austin, Texas 78701-1494

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 Texas Workforce Commission and approved (prior to expenditures occurring) by TEA. This applies to both federally and state funded Contracts.

Texas Workforce Commission 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. Texas Workforce Commission 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/textravel/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 seven (7) 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.

Section 6.0 CONTRACT MANAGEMENT

6.1 Notices: Any notice relating to this IAC, which is required or permitted to be given under this IAC by one party to the other party shall be in writing and shall be addressed to the other party at the address specified below. The notice shall be deemed to have been given immediately if delivered in person to the recipient's address specified below. It shall be deemed to have been given on the date of certified receipt if placed in the United States mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the TEA at the address specified below. Registered or certified mail with return receipt is not required for copies.

6.2 Points of Contact: Parties shall direct all correspondence and notices related to the contract to:

TEA
(Receiving Agency):

Dale Fowler
Program Coordinator
Curriculum Division
Texas Education Agency
1701 N. Congress Avenue
Austin, Texas 78701-1494

Email: Dale.Fowler@tea.texas.gov

Texas Workforce Commission
(Performing Agency):

Doyle Fuchs
Texas Workforce Commission
Labor Market and Career Information
101 E. 15th Street
Annex Building, Room 0252
Austin, Texas 78778

Email: Doyle.Fuchs@twc.state.tx.us

Section 7.0 CONTRACT AMENDMENT

Any modifications, additions, or deletions, to the terms and conditions of this IAC, including the allocation of additional funds to the current list of proposed activities, or any extensions of the IAC shall be processed through a written amendment and executed by both parties.

Section 8.0 ENTIRE CONTRACT

This contract together with the documents mentioned herein and which are incorporated herein by this 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.

8.1 Appendixes:

- 8.1.1** Appendix One, Scope of Work
- 8.1.2** Appendix Two, Budget

8.2 Attachments:

Attached hereto and made a part hereof by reference are the documents indicated below with an "X" beside each:

- ☒ General Provisions
- ☐ 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)

Section 9.0 CERTIFICATIONS

RECEIVING PARTY further certifies that it has the authority to receive the above services by authority granted in: Texas Government Code, Chapter 771, Interagency Cooperation Act

PERFORMING PARTY further certifies that it has authority to perform the above services by authority granted in: Texas Government Code, Chapter 771, Interagency Cooperation Act.

SUBJECT TO APPROVAL, the authorized representatives of the undersigned parties bind themselves to the faithful performance of this IAC. It is mutually understood that this IAC will be effective on the earliest date shown in Section 3.0.

RECEIVING PARTY

TEXAS EDUCATION AGENCY

Name

By:



Shirley Beaulieu

Associate Commissioner Finance/ CFO

6-3-16

Date

PERFORMING PARTY

TEXAS WORKFORCE COMMISSION

Name

By:



Larry E. Temple
Executive Director

5/4/16

Date

Return three (3) copies with original signature to:

Norma Barrera, Purchasing and Contracts
Texas Education Agency
1701 North Congress Avenue, Room 2-125
Austin, Texas 78701-1494

Submit Electronic Copies:

TEAContracts@tea.texas.gov

Appendix One Scope of Work

Statement of Services to be Performed
September 1, 2015 – August 31, 2016

The Texas Workforce Commission (TWC) will provide career development resources and services to fulfill Section 118 of the Perkins Act (Occupational and Employment Information).

1. TWC will operate a toll-free career resource hotline that teachers, counselors, students, and parents use to request reliable career information and resources through the Labor Market and Career Information Department (LMCI). Promotion of this resource will happen at all LMCI education training events.
2. TWC will provide career development resources to prepare students with the information to make wise choices regarding college and career.
 - Offer no cost online career and college materials to students, along with printed brochures and guidance materials
 - Provide counselor packets to teachers and counselors which include one of each of LMCI educational publications
 - Video hosting services for Texas CARES (Career Alternative Resource Evaluation System)
 - Promote the Reality Check application
 - Promote TWC Help Wanted Online database that links current job listings by ESC regions with occupations identified in CTE TEKS; research linking job listings to career clusters and add to the application if determined to be feasible
 - TWC, in concert with the TEA CTA program staff, will develop a crosswalk between Standard Occupational Classification (SOC) occupations and the new PEIMS courses (SOC to PEIMS); TEA will provide detailed descriptions and TEKS for each PEIMS course to facilitate the cross-walk process
 - Publish the results of the data collection efforts for Workplace Basics – Detailed Work Activities

Appendix Two
Budget 9/1/15 – 8/31/16

<u>Cost Categories</u>		<u>Budgeted Amount</u>
A. <u>Services</u>		
1. Payroll	Subtotal	\$ 85,000.00
Hotline Operator	\$20,000.00	
Programmer	\$65,000.00	
3. Fringe Benefits (40%) 0.40		\$ 34,000.00
3. Contracted Services		\$ 4,000.00
Video hosting	\$4000.00	
	<u>Subtotal of Services</u>	<u>\$ 123,000.00</u>
B. <u>Resources</u>		
1. Equipment		\$ 200.00
2. Supplies and Materials	Subtotal	\$ 14,600.00
Consumable supplies	\$ 2,000.00	
Communication costs	\$ 500.00	
Printing	\$ 12,100.00	
3. Other operating costs	Subtotal	\$ 5,000.00
	<u>Subtotal of Resources</u>	<u>\$ 19,800.00</u>
	<u>Direct Costs</u>	\$ 142,800.00
	Indirect Costs (5%)	\$ 7,140.00
	Total	\$ 149,940.00

<p>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.</p>

Appendix Two Budget Summary

Texas Workforce Commission will not be reimbursed for any expenditure which exceeds the amount approved for each object of expenditure.

*Texas Workforce Commission must submit written amendment to TEA to request revisions to the budget prior to incurring any expenditure which exceed the amount approved for each object of expenditure. Costs will not be reimbursed for line items not in the approved budget.

Reimbursement of Travel Costs:

The State of Texas Travel Guidelines specifies reimbursement rates for lodging, meals, and mileage. Refer to the current rates located at CPA's State of Texas Travel Guidelines website: <https://fm.x.cpa.state.tx.us/fmx/travel/texttravel/index.php> for areas not listed, the rates are as follows:

- a) Lodging: Actual lodging expense not to exceed the federal rate for that city; Cities that are not listed may not exceed \$85/day.
- b) Meal Cost: Actual meal expense not to exceed the federal rate for that city. Cities that are not listed may not exceed \$36/day. Meal expenses will only be reimbursed if the travel requires an overnight stay.
- c) Mileage: Actual miles may not to exceed the official mileage allowed in the CPA Texas Mileage Guide. Effective January 1, 2014 the rate is 56¢. The State of Texas has adopted the federal travel reimbursement rates and the new rates may be accessed from the CPA website listed above or the federal GSA website: <http://www.gsa.gov/portal/category/21287>.

Note: In addition to the state mileage guide, the agency uses **MapQuest.com** to report the mileage between duty points. Travelers must attach a copy of the MapQuest showing the miles and directions between two duty points as supporting documentation.

Contract personnel or subcontractors shall make a good faith effort to comply with the State of Texas Travel Guidelines. 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.

No expenditures will be reimbursed for costs related to:

- a) Food/refreshments (except while on travel status)
- b) Gifts or items that appear to be gifts
- c) Souvenirs, memorabilia, or promotional items

A. Definitions as used in these Contract Terms and Conditions:

- *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, Party, Owner or TEA* means the Texas Education Agency;
- *Proposer or Respondent* may be used interchangeably in the competitive solicitation. Proposer and Respondent infer pre RFP award status and Contractor infers to post RFP award status.
- *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;
- *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;
- *Major Contract* means any contract over \$10 million cumulative over the life of the contract.
- *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,
- *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.

D. 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 the Agency HUB Coordinator before staffing changes are initiated. Substitutions are not permitted without written approval of the TEA Project Manager.

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 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 the 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 the 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, or the to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the 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 the 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.

- 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.

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. **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.

- K. **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 the Contractor's security policy to ensure that any data that is on the 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 the 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:

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

No later than sixty (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 Comptroller all sanitization documentation.

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 Comptroller information ("Security Incident"). Within twenty-four (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:

- (1) Description of the nature of the Security Incident;
- (2) The type of TEA information involved;
- (3) Who may have obtained the information;
- (4) What steps Contractor has taken or will take to investigate the Security Incident;
- (5) What steps Contractor has taken or will take to mitigate any negative effect of the Security Incident; and
- (6) 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:

- (1) Who is known or suspected to have gained unauthorized access to TEA information;
- (2) Whether there is any knowledge if TEA information has been abused or compromised;
- (3) What additional steps Contractor has taken or will take to investigate the Security Incident;
- (4) What steps Contractor has taken or will take to mitigate any negative effect of the Security Incident; and
- (5) 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 thirty (30) days of TEA's written request, then TEA shall have the right to collect such costs.

- 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 thirty (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. 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.
- O. 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, 81, 82, 99, 104, 47 CFR 0 and 64, 2 CFR Part 3485, OMB Uniform Guidance, 2 CFR Part 200; 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.
- P. Point of Contact and Escalation:** 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. Within thirty (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.
- | | |
|--|---|
| <p>TEA</p> <p>Dale Fowler
 Program Coordinator
 Curriculum Division
 Texas Education Agency
 William B. Travis Building
 1701 N. Congress Avenue
 Austin, Texas 78701</p> | <p>TWC</p> <p>Jane Herrmann
 Texas Workforce Commission
 Labor Market & Career Information
 101 E. 15th Street
 Annex Building, Room 0252
 Austin, Texas 78778
 Email: (512) 936-3109</p> |
|--|---|
- Q. 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.
- R. 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.
- S. 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 TGC 2161, Contractors shall maintain business records documenting compliance with the HUB subcontracting plan (HSP) and shall submit a compliance report to the contracting agency monthly, in the format required by the Agency. The compliance report submission shall be required as a condition for payment. If the Contractor subcontracts any part of the contract in a manner that is not consistent with its HUB subcontracting plan, the selected respondent must submit a revised HUB

subcontracting plan before subcontracting any of the work under the contract. If the Contractor subcontracts any of the work without prior authorization and without complying with this section, the Contractor is deemed to have breached the contract and is subject to any remedial actions provided by Government Code, Chapter 2161, other applicable state law.

- T. **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.
- U. **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.
- V. **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.
- W. **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.
- X. **Education Service Center:** No funds transferred to Regional Education Service Centers or to school districts may be used to hire a registered lobbyist.
- Y. **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.
- Z. **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.

The 83rd Legislature recently passed SB 1368, which amended Section 2252.907 of the Texas Government Code to require that a contract between a state governmental entity and a nongovernmental Contractor involving the exchange or creation of public information, as defined by Section 552.002. Contractor is required 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. The TEA Project Manager will provide the specific format by which the Contractor is required to make the information accessible by the public.

- AA. Gratuities:** By signing this Contract, Contractor represents and warrants that the 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.
- BB. 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.
- CC. 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 written protest is submitted within ten (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 Agency'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 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
- DD. 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.
- EE. 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.
- FF. 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, Contractor warrants that goods and services are suitable for and will perform in accordance with the purposes for which they are intended.
- GG. 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.
- HH. 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.
- II. Assignment of Contract:** This Contract may not be assigned, sold, or transferred without the express written consent of the TEA Purchasing, Contracts, and Agency Services (PCAS) Division. An attempted assignment after Contract award without the TEA approval will constitute a material breach of contract.
- JJ. 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.
- KK. Excluded Parties List System:** The Texas Education Agency and the 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/news/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>.

LL. Suspension and Debarment: Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal, state or local government entity 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.

MM. 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.

Section 508 of the US Rehabilitation Act of 1973 is in the final stages of revision and most likely will be adopted sometime in FY 2014. Therefore, all current and potential Contractors are hereby notified of the requirement. 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, DIR will be modifying the TAC rules to synchronize 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:

1. It could be technically difficult and expensive to bring these websites/applications to WCAG 2.0 AA later.
2. WG 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 Contractor s 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](#)

NN. 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.

OO. 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 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 to TEA within thirty (30) days of project completion. An authorized officer of the company must certify that ALL records have either been properly destroyed or returned to the Agency in order to close out the contract.

PP. 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 this RFP ("Confidential Information") shall be and remain Confidential Information and shall not be released or disclosed by Contractor without the prior written consent of the 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 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.

QQ. Contractor Performance: All state agencies must report unsatisfactory Contractor performance on purchases over \$25,000. Contractor s 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 Contractor'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. Contractor s may fail this selection criterion for any of the following conditions: A score of less than 90% in the 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 the 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 Contractor.

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.window.state.tx.us/procurement/prog/contractor_performance/

RR. 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 fifteen (15) 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, properly performed 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.
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.
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. The 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 the TEA Project Manager and the New Contractor.

SS. Amendments: All Amendments to this Contract will be in a manner as prescribed by the Agency Contracting Process and are, subject to Paragraph B of the General Provisions and will be made on AMENDMENT TO TEXAS EDUCATION AGENCY STANDARD CONTRACT form. All Amendments will be initiated by the TEA Contracts 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 \$10M 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. 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 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 the TEA Project Manager for approval. Once approved, the documents must be submitted to the Contracts office 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 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 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.

TT. 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 an Agency must be transmitted electronically to the Contractor no later than 30 days after the later of:

- (1) Day on which the Agency received the goods;
- (2) Date the performance of the service under the contract is completed; or
- (3) Day on which the Agency received the complete and correct invoice for goods or services.

Invoices must be submitted to TEAAccountsPayable@tea.state.tx.us and the TEA Project Manager. Additional information and a Direct Deposit Authorization application may be found at: <https://fmxcpa.state.tx.us/fm/payment/index.php>.

1. Payment for service(s) described in this Contract is contingent upon satisfactory completion of the Deliverables and Services Review and Acceptance Process. The 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 the 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 the Contractor for quality and alignment to the deliverable definition agreed to under the "Deliverables and Services Definition Process". TEA will have fifteen (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 the 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", the Contractor will have ten (10) working days to address the quality or other compliance requirement and resubmit the deliverable. Additional costs incurred by the Contractor that result from repeated submissions and revising of substandard deliverables will be borne solely by the 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 the 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 the 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 the 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. The 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.
2. 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.
3. 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.
4. 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.
5. 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 https://fm.xcpa.state.tx.us/fm/pubs/purchase/restricted/index.php?section=indebted&page=persons_indebted

- UU. 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.

SPECIAL PROVISIONS – B
Debarment and Suspension Certification
(Required for all federally-funded contracts)

- VV. Force Majeure:** Neither Contractor nor Texas Education Agency shall be liable to the other for any delay in, or 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 (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.
- WW. Drug Free Workplace Policy:** The 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 the Contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.
- XX. Abandonment or Default:** If the 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 Contractor. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by the Agency based on the seriousness of the default.

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)

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 2 CFR Part 3485, 2 CFR Subpart C§, Participants' Responsibilities. *The regulations may be viewed and downloaded from the website:* <http://www.sba.gov/sites/default/files/files/SBA%201624.pdf>

SPECIAL PROVISIONS – B
Debarment and Suspension Certification
(Required for all federally-funded contracts)

READ INSTRUCTIONS ON NEXT PAGE BEFORE COMPLETING CERTIFICATION

CERTIFYING STATEMENT


- (1) The prospective lower tier participant certifies, by submission of this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this Contract.

Texas Workforce Commission

Organization Name

Larry E Temple, Executive Director

Name and Title of Authorized Representative

Signature  _____ Date 5/14/16

Dept. of Education Form ED GCS-009

12/88

GENERAL INSTRUCTIONS FOR SPECIAL PROVISIONS - B DEBARMENT AND SUSPENSION CERTIFICATION

Definitions:

Lower Tier Participant - Any organization or person receiving a grant or contract. This also includes subsequent subgrants and subcontracts.

Covered Transaction - The act of applying for federal funds or submitting a contract for federal funds.

Lower Tier Transaction - The making of a (1) subgrant to another entity or person or (2) procurement contract by a Lower Tier Participant to some other entity or person for goods or services, regardless of type, expected to equal or exceed a cumulative value of \$25,000.

Principals - An administration head, key project/grant management person, officer, director within the Lower Tier Participant's organization or within a suborganization or subcontractor (i.e., superintendents and the key person in the school district who will exert control or management influence over this project. At a university, it would be the president and principal investigator).

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this Contract, the prospective lower tier participant is stating that it is neither debarred nor suspended.
2. This certification is a material representation of fact upon which reliance was placed when this certification was signed. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment from federal funds participation.
3. The prospective lower tier participant shall provide immediate written notice to the organization to which this Contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "contract," and "voluntarily excluded," as used in this certification, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the organization to which this Contract is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this Contract that it will include the two-paragraph "CERTIFYING STATEMENT" without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

SPECIAL PROVISIONS – C

Part A

Lobbying Certification

(Required for all federally-funded contracts greater than \$100,000)

Submission of this certification is required by the U.S. Department of Education and Section 1352, Title 31 of the United States Code. It is a prerequisite for making or entering into a contract, subcontract, or subgrant over \$100,000 with any organization. (See next page of this schedule for further instructions.)

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, Special Provisions D Part B "Disclosure of Lobbying Activities," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact on which the U.S. Department of Education and the Texas Education Agency relied when it made or entered into this grant or Contract. Any organization that fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Texas Workforce Commission

Organization Name

Larry E. Temple, Executive Director

Name and Title of Authorized Representative

Signature

Date

Dept. of Education Form ED 80-0008

11/89

GENERAL INSTRUCTIONS FOR SPECIAL PROVISIONS - C
PART A
Lobbying Certification

This is a Congress of the United States and the U. S. Department of Education requirement. The Contractor must submit this schedule to TEA for a federal-funded contract(s) with an approved amount in excess of \$100,000. TEA will be unable to pay for any obligations established by the Contractor unless this schedule is submitted.

In addition, if the Contractor makes a subgrant or subcontract in excess of \$100,000 to another organization of any type, then the Contractor shall require this form to be filed with and retained by the Contractor. According to federal law, failure to obtain the certification subjects the Contractor to civil penalties.

- (1) This certification states that the Contractor is prohibited from using federal funds for influencing or attempting to influence any member of Congress or its employees or any federal agency employee concerning the making or awarding of a federal grant.
- (2) This certification states that the Contractor is prohibited from using federal funds for influencing or attempting to influence any member of Congress or its employees or any federal agency employee concerning the making or awarding of a federal grant.
- (3) This certification also states that if the Contractor pays or has paid any funds other than federal funds to any one person or organization for influencing or attempting to influence any member of Congress or its employees, or any federal agency employee concerning the making or awarding of a federal grant, that the Contractor will disclose to whom payments were made, how much money was involved and the type of work involved. The Contractors must use Special Provisions D Part B, Disclosure of Lobbying Activities for complying with this disclosure requirement. The Contractor shall require this form to be filed with the Contractor on any subgrants or subcontracts it makes in excess of \$100,000 if funds have been spent as stipulated in this paragraph. The Contractor will then forward a legible copy of Special Provisions D Part B, Disclosure of Lobbying Activities to the Texas Education Agency.

Additionally, this certification requires the Contractor to incorporate the language of this certification into any award or Contract documents for awarding subgrants or subcontracts that exceed \$100,000 and that subgrantees and subcontractors shall certify and disclose accordingly.

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TEXAS EDUCATION AGENCY

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities for lobbying services procured (pursuant to Title 31 U.S.C. §1352). This disclosure form is required for any federal grant/contract received in excess of \$100,000 and on any subgrant/subcontract made by the grantee/contractor. (Read the instructions for this schedule for further information.) **Do not complete and sign this disclosure form unless lobbying activities are being disclosed.**

Federal Program Name: _____

1. Type of Federal Action: <input type="checkbox"/> Contract <input type="checkbox"/> Grant	2. Status of Federal Action <input type="checkbox"/> Bid/Offer/Application <input type="checkbox"/> Initial Award <input type="checkbox"/> Post-award	3. Report Type <input type="checkbox"/> Initial Filing <input type="checkbox"/> Material Change For Material Change Only: Year _____ Quarter _____ Date of Last Report: _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known: _____.		5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Texas Education Agency 1701 N. Congress Avenue Austin, Texas 78701 Congressional District: 10
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____	
10. A) Name and Address of Lobbying Registrant <i>(If individual, Last name, First name, MI):</i>	B) Individuals Performing Services (include address, if different from 10 A) <i>(Last name, First name, MI):</i>	
11. Information requested through this form is authorized by Title 31 U.S.C. §1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to Title 31 U.S.C. §1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		Signature: _____ Print Name: _____ Title: _____ Telephone No: _____ Date: _____
Federal Use Only:		Authorized for Local Reproduction Standard Form—LLL

(STCONT)

GENERAL INSTRUCTIONS FOR SPECIAL PROVISIONS - C
PART B
Disclosure of Lobbying Activities

The filing of this form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

Each organization shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such organization. An event that materially affects the accuracy of the information reported includes:

- (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (b) A change in the organization(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - (c) A change in the officer(s), employee(s), or Member(s) of Congress contacted to influence or attempt to influence a covered Federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include congressional district, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards, include but are not limited to, subcontracts, subgrants and contract awards under grants.
 5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state and zip code of the prime Federal recipient. Include congressional district, if known.
 6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
 7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
 8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
 9. For a covered Federal action where there has been an award by the Federal agency, enter the Federal amount of the award for the prime entity identified in item 4 or 5.
 10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
 11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.


TWC Contract - Amendment Number: 2916PER043

CONTRACT/AMENDMENT LANGUAGE CHANGE CERTIFICATION FORM

Please check the appropriate box and sign below:

- ☒ **No Changes.** I hereby certify that no changes have been made to documents contained in this Contract/Amendment package.
- ☐ **Changes to Demographic Information.** I hereby certify that changes in demographic information items only (such as contact or signatory) have been made to documents contained in this Contract/Amendment package. Pen and ink corrections have been entered, initialed and the revised areas have been flagged.
- ☐ **Changes to Contract/Amendment Terms and Conditions.** I hereby certify that changes to the contract/amendment terms and conditions have been proposed. The proposed changes have been entered on all copies of the documents in pen and ink, initialed, and the revised areas have been flagged. I understand that I am to sign and then send all copies of the contract/amendment back to TWC for evaluation of the proposed changes. If the proposed changes are approved by the TWC signatory, they will be initialed and my copy (and the fiscal agent's copy, if applicable) will be returned to me. I understand that if there are any questions or issues regarding the proposed pen and ink changes that I will be contacted by a TWC representative to discuss them.

Texas Education Agency


Shirley Beaulieu
Associate Commissioner Finance/CFO

6-3-16
Date



Texas Education Agency
Purchase Order # TEA 0000035332

Payment Terms: **30 Days** Freight Terms: **FOB Destination** Ship Via: **Common** PCC: **0** Date: **09/01/15** PO Method: **IA** Dispatch: **Dispatch Via Print** Rev Dt: **0-**

PLEASE NOTE: ADDITIONAL TERMS AND CONDITIONS ARE LISTED AT THE END OF THE PURCHASE ORDER.

Vendor: TEXAS WORKFORCE COMMISSION
 CONTROLLER
 101 E 15TH ST RM 218
 AUSTIN TX 78778-0001
 United States

Ship To: 002
 TEXAS EDUCATION AGENCY
 ATTN: CENTRAL REC., RM. G-102B
 1701 N. CONGRESS AVE.
 AUSTIN TX 78701-1494
 United States

Vendor ID: 3320320320

Purchaser: Virginia Turrubiarce - 514
Email: Virginia.Turrubiarce@tea.texas.gov

Bill To: TEXAS EDUCATION AGENCY
 Att: Agency Accounting
 1701 N. CONGRESS AVE.
 AUSTIN TX 78701-1494
 United States

Fax:
Email: teaaccountspayable@tea.texas.gov

PO Information:

Tx Gov't Code Title 7, Ch 771, IAC Act. Accounting Policy Statement 014 - Interagency Payments and Receipts.

HB 1, 84th Leg (AY16-17), R.S., Article IX, Sec 8.02 or SB 1, 83rd Leg. (AY14-15), R.S., Art. IX, Sec. 8.03 - Interagency Reimbursements and Payments.

Texas Government Code, Subtitle D, Section 2155.140

Legal/Funding Authority: TGC 771 Public Law 109- 270 Carl D Perkins Career Technical Education Improvement Act of 2006

Line-Sch	Line Description	Class/Item	Quantity	UOM	Unit Price	Extended Amt	Due Date
1- 1	Labor Market and Career Information Project	924/18	1.00	LOT	25,000.00	25,000.00	06/15/2016
						Schedule Total	25,000.00
						<u>Contract ID:</u> 0000000000000000000000003510	<u>ReqID:</u> 0000040707
						Service Period 9/1/2015 - 8/31/2016	
						Item Total for Line # 1	25,000.00
2- 1	Labor Market and Career Information Project	924/18	1.00	LOT	125,000.00	125,000.00	06/15/2016
						Schedule Total	125,000.00
						<u>Contract ID:</u> 0000000000000000000000003510	<u>ReqID:</u> 0000040707
						Labor Market and Career Information Project. Contract#3257 9/1/2015 - 8/31/2016 Vendor: Texas Workforce Commission	
						Texas Workforce Commission will provide career development resources and services to fulfill Section 118 of the Perkins IV law, requiring products and services for making informed career choices. Requester: Dale Fowler	
						Item Total for Line # 2	125,000.00

Total PO Amount **150,000.00**



Texas Education Agency
Purchase Order # TEA 0000035332

Service To begin 9/1/15 end 8/31/16; Option to renewal for two (2) additional one year terms.

Terms and Conditions:

FAILURE TO DELIVER. If the contractor fails to deliver these supplies by the promised delivery date or a reasonable time thereafter, without giving acceptable reasons for delay, or if supplies are rejected for failure to meet specifications, the state reserves the right to purchase specified supplies elsewhere, and charge the increase in price and cost of handling, if any, to the contractor. No substitutions nor cancellations permitted without prior approval of the Texas Education Agency. The State of Texas is exempt from all Federal Excise Taxes. **STATE AND CITY SALES TAX EXEMPTION CERTIFICATE:** The undersigned claims an exemption from taxes under Chapter 20, Title 122A, Revised Civil Statutes of Texas, for purchase of tangible personal property described on this numbered order, purchased from contractor and/or shipper listed above, as this property is being secured for the exclusive use of the State of Texas.

All shipments, shipping papers, invoices, and correspondence must be identified with our Purchase Order Number. Overshipments will not be accepted unless authorized by Buyer prior to shipment. By acceptance and fulfillment of this purchase order, the awarded vendor agrees that any payments due this vendor will be applied towards their debt with the State of Texas or any tax liabilities until paid in full.

Authorized Signature

By

A handwritten signature in black ink, appearing to read "Dyma B. Guerra", is written over a horizontal line.

Purchasing, Contracts and Agency Service

PO Terms and Conditions

1. **AWARD OF CONTRACT:** A response to a TEA solicitation is an offer to contract based upon the terms, conditions and specifications contained in the response. Bids or responses do not become contracts until they are accepted through a Purchase Order (PO). The Contract shall be governed, construed and interpreted under the laws of the State of Texas. The factors listed in Texas Government Code, Title 10, Subtitle D, Sections 2155.074, 2156.007 and 2157.003 shall also be considered in making an award when specified. Any legal actions must be filed in Travis County, Texas.
2. **ACCEPTANCE OF PURCHASE ORDER:** Contractor's fulfillment of the Purchase Order constitutes Contractor's acceptance of the PO and its terms and conditions.
3. **NEW AND UNUSED:** Unless otherwise specified, items ordered shall be new and unused and of current production. Items shall be free from all material defects and shall conform to the requirements of its intended purpose.
4. **SUBSTITUTIONS:** No substitutions or cancellations are permitted without written approval of TEA's Purchasing, Contracts and Agency Services Division.
5. **TRANSPORTATION CHARGES:** F.O.B. Destination Freight prepaid and allowed unless delivery terms are specified otherwise. If the quoted delivery terms do not include transportation costs, TEA shall reimburse Contractor for transportation costs in the amount specified in the Contractor's bid, or actual costs, whichever is lower. If transportation costs are based on actual costs, a copy of the freight bill showing actual charges for the shipment must be attached to the invoice. TEA will have the right to designate the method of transportation to be used to ship the goods.
6. **TITLE AND RISK OF LOSS:** Title and risk of loss of the goods shall not pass to TEA until TEA actually receives and takes possession of the goods at the place of delivery referred to on the PO.
7. **DELIVERY:**
 - 7.1 Unless specified in bid, Contractor is obligated to deliver order within fourteen (14) calendar days.
 - 7.2 Delivery shall be made during normal working hours only, unless prior approval has been obtained from TEA.
 - 7.3 Goods and materials shall be properly packaged. Damaged goods and materials will not be accepted. If the damage is not readily apparent at the time of delivery, the goods shall be returned to the Contractor at no cost to TEA within three (3) business days of identifying the damage and notification of Contractor.
 - 7.4 Partial shipments are not acceptable without prior approval from TEA's Purchasing, Contracts and Agency Services Division.
8. **ACCEPTANCE:** Receipt of goods and services does not constitute acceptance.
 - 8.1 "Acceptance" for goods means the point at which TEA accepts the goods in accordance with the terms set forth in the PO. The goods shall be deemed to have been Accepted (i) in the absence of written notification of non-Acceptance by TEA to Contractor within a reasonable period of time, but not less than two (2) business days from the Delivery Date, or (ii) upon timely delivery of the goods identified herein to the shipping address specified on the face of the PO.
 - 8.2 "Acceptance" of services shall be based on attainment of performance in accordance with specifications and the PO.

By way of clarification, TEA hereby retains the right to reject any non-conforming goods or services and shall not be obligated to accept any non-conforming goods or services.
9. **IDENTIFICATION OF SHIPMENT:** Each shipment must be accompanied with a complete packing slip. Each package must be clearly marked with the TEA PO number and complete destination address.
10. **DELAY:** Time is of the Essence. If a delay is foreseen, Contractor shall give written notice to TEA. TEA has the right to extend delivery or service date if TEA determines, in its sole discretion, that the Contractor has established valid reasons to justify the delay. Contractor shall keep TEA advised at all times of status of order. In the absence of TEA's written approval, the Contractor's default or delay in promised delivery, failure to meet the promised service date, or failure to meet specifications authorizes TEA to purchase goods or services elsewhere and charge full increase, if any, in cost and handling to defaulting Contractor.
11. **INSPECTION AND TESTS:**
 - 11.1 All goods will be subject to inspection and test by the TEA. Authorized TEA personnel shall have access to Contractor's place of business for the purpose of inspecting merchandise.
 - 11.2 Samples, when requested, must be furnished at no cost to TEA. Do not enclose or attach a sample unless the solicitation instructs Contractor to do so. The TEA may perform test on samples submitted with the bid or on samples taken from regular shipment. If not destroyed in testing, they will be returned to the Contractor on request, at Contractor's expense. In the event samples tested fail to meet all conditions and requirements of the specification, the cost of the sample used and the cost of the testing shall be borne by the Contractor. Goods which have been delivered and rejected in whole or in part may, at the TEA's option, be returned to the Contractor or held for disposition at Contractor's risk and expense. Latent defects may result in revocation of acceptance.
12. **INVOICES:**
 - 12.1 Contractor shall submit one original copy of an itemized invoice showing the TEA PO number, description of each item, quantity, unit of measure and price of each item. Transportation costs shall be included in the invoice, if applicable, and a copy of the freight bill shall be included if transportation costs are based on actual cost. Contractor shall forward the invoice to the following address:

Texas Education Agency ATTN:
Accounting Department
1701 N. Congress Avenue, Room 2-125
Austin, Texas 78701
 - 12.2 Contractor can email invoices to: TEAAccountsPayable@tea.texas.gov
13. **PAYMENT:** Payments shall be made within thirty (30) days from receipt and approval of a complete and correct invoice in accordance with the Prompt Payment Act provided in Texas Government Code, Title 10, Subtitle D, Section 2251.
14. **TAXES:** TEA is exempt from the State Sales tax and Federal Excise tax. Do not include tax in your invoice. Excise Tax Exemption Certificates are available upon request.
15. **WARRANTIES:**
 - 15.1 **PRICE.** The prices to be paid by TEA shall be those contained in Contractor's bid or, if no bid, in Contractor's quotation, and Contractor warrants that such prices are valid for a minimum of sixty (60) days from the date of the bid and are no higher than Contractor's current prices on orders by other Purchasers for products of the kind and specifications covered by this agreement for similar quantities under similar or like conditions and methods of purchase. If Contractor breaches this warranty, the prices of the items shall be reduced to the Contractor's current prices on orders by other Purchasers, or TEA may cancel this contract without liability to Contractor.
 - 15.2 **PRODUCT CONFORMANCE.** Contractor shall not limit or exclude any implied warranties and any attempt to do so shall render this Contract voidable at the option of TEA. Contractor warrants to the TEA that all goods and services furnished shall conform in all respects to the terms of this PO, including the specifications, any drawings, standards, and descriptions incorporated herein, and shall be free from any defects in materials, workmanship, and free from such defects in design. In the event of a conflict between the specifications, drawings, standards, and descriptions, the specifications shall govern. In addition, Contractor warrants that goods and services are suitable for and will perform in accordance with the purposes for which they are intended. Manufacturer's standard warranty shall apply unless otherwise specified.
 - 15.3 **SAFETY.** All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA. Contractor warrants the goods conform to any standards promulgated by the U.S. Department of Labor under the Occupational Health and Safety Act of 1970 or other applicable standards.
 - 15.4 **PATENTS OR COPYRIGHTS.** Contractor agrees, at its expense, to indemnify, hold harmless and defend the TEA and the State of Texas from claims involving infringement of third parties' licenses, trademarks, copyrights, patents, or other intellectual property.
 - 15.5 **WARRANTY OF TITLE.** Contractor warrants that the title to all material, supplies and equipment furnished is free of liens and encumbrances.
16. **VENDOR PERFORMANCE:** All state agencies must report unsatisfactory Vendor performance in accordance with Texas Government Code, §2155.074 and §2155.75. Vendor performance may be used as a factor in future awards.
 - 16.1 **FAILURE TO PERFORM.** If Contractor fails to comply with or perform any of its obligations under this PO, 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 the PO in whole or in part; and the seeking of other remedies as may be provided by this PO 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.
 - 16.2 **CANCELLATION OF PO, ETC.** If this PO or Contract is cancelled, terminated, or suspended by TEA, the reasonable monetary value of services properly performed by Contractor pursuant to this PO prior to such cancellation, termination or suspension shall be determined by TEA and paid to Contractor as soon as reasonably possible. The cancellation date shall be the date the Contractor is notified by TEA of such cancellation.
17. **FORCE MAJEURE:** The TEA may grant relief, for time of performance only, if the Contractor is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the Contractor. The burden of proof for the need of such relief shall rest upon the Contractor. To obtain relief based on force majeure, the Contractor shall file a written request with the TEA describing the events, dates and effect of the events on Contractor's ability to perform according to the PO.
18. **ASSIGNMENT OF PURCHASE ORDER OR CONTRACT:** PO or Contract may not be assigned, sold, or transferred without the express written consent of the TEA Purchasing, Contracts and Agency Services Division. An attempted assignment after PO/Contract award without the TEA approval will constitute a material breach of Contract.
19. **FUNDING:** All PO's or Contracts are contingent upon the continued availability of lawful appropriations by the Texas Legislature and is subject to cancellation or termination,

- without penalty or cost to TEA, if legislative action of any kind causes TEA not to have the authority, sufficient appropriated funds, or the need to continue or complete the Contract.
20. **DISPUTE RESOLUTION:** The dispute resolution process provided for TGC Chapter 2260 must be used by TEA and Contractor to attempt to resolve all disputes arising under this Contract.
 21. **RIGHT TO AUDIT:** Pursuant to §2262.003 of the Government Code, the State Auditor may conduct an audit or investigation of any entity receiving funds from the state, either directly under a Contract or indirectly under a subcontract. Contractor understands that acceptance of funds under this Contract or under a subcontract acts as acceptance of the authority of the State Auditor's, or any successor agency, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. If subject to an audit or investigation, Contractor agrees to cooperate fully with the State Auditor or its successor and to provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. Contractor agrees to ensure that this provision concerning the State Auditor's authority to audit or investigate subcontractors receiving funds indirectly through Contractor is included in any Contractor subcontract.
 22. **PUBLIC INFORMATION:** Information, documentation, and other material in connection with this solicitation or any resulting Contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act").
 23. **ANTI-TRUST:** Contractor hereby assigns to TEA any and all claims for overcharges associated with this Contract arising under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq., (1973), and the antitrust laws of the State of Texas, TEX. Bus. & Comm. Code Ann. Sec. 15.01, et seq. (1967).
 24. **AFFIRMATIONS:**
 - 24.1 **ANTITRUST LAWS.** The Contractor affirms that it has not violated the antitrust laws of this state or the Federal Antitrust Laws (see section 23 above).
 - 24.2 **DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES.** Contractor affirms and warrants that it has not been the subject of allegations of deceptive trade practices violations under Business & Commerce Code Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that the Contractor has not been found to be liable for such practices in such proceedings.
 - 24.3 **FALSE STATEMENTS.** Submitting a bid with a false statement is a material breach of contract and shall void the submitted bid or any resulting Contracts, and may result in removal of the submitting Contractor from the Centralized Master Bidders List.
 - 24.4 **GRATUITIES.** The Contractor affirms that it 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 bid.
 - 24.5 **INELIGIBILITY UNDER FAMILY CODE.** Pursuant to Family Code Section 231.006(d), Family Code, re: child support, the Contractor certifies that the individual or business entity named in this PO or Contract is not ineligible to receive payments under this Contract and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
 - 24.6 **CERTAIN BIDS AND CONTRACTS PROHIBITED.** Pursuant to Government Code Section 2155.004, Contractor affirms that it did not receive compensation for participation in the preparation of the specifications for this PO and certifies that the individual or business entity named in this PO or Contract is eligible to receive the specified Contract and acknowledges that this Contract may be terminated or payment withheld if this certification is inaccurate. The Contractor also certifies that it did not collude with, nor received any assistance from, any person who was paid by the TEA to prepare specifications or a solicitation on which a Contractor's award was based and did not allow any person who prepared the respective specifications or solicitation to participate financially in any contract awarded.
 - 24.7 **DEBT TO THE STATE.** Contractor agrees that any payments due under this PO or Contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.
 - 24.8 **PREFERENCE UNDER SERVICE CONTRACTS.** Contractor affirms that it will comply with Government Code 2155.4441, pertaining to use of products produced in the State of Texas in the performance of services, to the extent that provisions applies.
 - 24.9 **INDEMNITY.** Contractor shall indemnify, hold harmless, and defend TEA and the State of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of Contractor or any agent, employee, subcontractor, or supplier of these entities in the execution or performance of this Contract.
 - 24.10 **EXCLUDED PARTIES LIST.** Contractor affirms that it and its principals are eligible to participate in this transaction and have not been subject to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity, and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement, and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at: <http://www.Sam.gov>. Contractor also affirms that it has not been convicted of a felony in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, Katrina or subsequent disasters.
 - 24.11 **LIABILITY FOR AND PAYMENT OF TAXES.** Contractor affirms that it shall pay all taxes, including, but not limited to, any federal, State, or local income, sales, or excise taxes of Contractor or similar amounts resulting from this PO.
 - 24.12 **DRUG FREE WORKPLACE.** Contractor affirms that it will 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.
 25. **ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS:** TEA 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.
 26. **VENUE:** This PO is governed by and construed under and in accordance with the laws of the State of Texas. Venue for any suit concerning this PO shall be in a court of competent jurisdiction in Travis County, Texas.
 27. **FEDERAL RULES, LAWS, AND REGULATIONS:** Contractor shall be subject to and shall abide by all applicable federal laws, rules, and regulations, including, but not limited to:
 - 27.1 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;
 - 27.2 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;
 - 27.3 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;
 - 27.4 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.
 - 27.5 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;
 - 27.6 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;
 - 27.7 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);
 - 27.8 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
 - 27.9 General Education Provisions Act, as amended.
 28. **BUY TEXAS:** Pursuant to Government Code Section 2155.444, Contractor shall purchase products and materials produced in the State of Texas when available at comparable price to products and materials produced outside the state.
 29. **PREVAILING ORDER:** If there is a conflict or ambiguity between or among the terms of the documents that constitute a license, Contract, or agreement and this PO, the terms of the license, Contract, or agreement shall prevail over the terms of this PO. TEA reserves the right to supplement the DIR Cooperative Contract Terms & Conditions with the Agency's Terms and Conditions as applicable.
 30. **PROHIBITION OF TEXT MESSAGING AND EMAILING:** Contractors and their employees and subcontractors are prohibited from texting messaging while driving their own privately owned vehicle when conducting business under this PO or Contract when the project is funded by a federal grant. This includes any 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.
 31. Contractor understands if they are awarded a Contract or PO 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 Contractor 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.