

STATE OF TEXAS §
COUNTY OF TRAVIS §

Division Number: 210	Program Name: Help Desk
Org. Code: 711P	Legal/Funding Authority: Title I, Part C, 84.011A
	P.L. 107-110, Elementary and Secondary Education Act of 1965 as amended by the No Child Left Behind Act of 2001 (NCLB); RFO #701-14-018, TGC Title 10 Subtitle D § 2155.137
Speed Chart: Northrop Grumman	
Payee Name: Systems Corporation	ISAS Contract #: 3106
Payee ID: 1951055798	PO #:

Amendment # 2

**AMENDMENT TO
STANDARD CONTRACT
BETWEEN
TEXAS EDUCATION AGENCY
AND**

Northrop Grumman Systems Corporation

NAME OF CONTRACTOR

It is mutually understood and agreed by and between the undersigned contracting parties of the above numbered contract to amend said Contract beginning September 1, 2015 as follows:

ARTICLE II. PERIOD OF CONTRACT

TEA is exercising the option to renew the New Generation System Support Help Desk Contract, second renewal, from the effective start date of staff and programmers of September 23, 2015 to December 21, 2015 as allowed in the Contract term, per emergency extension.

ARTICLE III. PURPOSE OF CONTRACT

The purpose of this Amendment is to continue the project management services, technical support, and help desk services for the New Generation System, revised Description of Services, Attachment 1, and Appendix 1, is attached.

ARTICLE IV. PAYMENT UNDER CONTRACT

A revised Pricing Proposal, Attachment 2, is attached.

Contract Amount to Date:	\$ 578,248.68
Amendment Amount FY16:	\$ 88,179.54
Contract Total:	\$ 666,428.22

Texas Government Code §2252.901 prohibits the agency into entering into an employment contract, a professional services contract, or a consulting services contract with a former or retired TEA employee before the first anniversary of their last date of regular employment. If TEA enters into a "professional services" contract with a corporation, firm, or other business entity that employs a former or retired employee during the first year of the past employee's departure from the agency, the former or retired employee is restricted from performing services on projects that the employee worked on while employed at TEA.

Texas Government Code §572.069. CERTAIN EMPLOYMENT FOR FORMER STATE OFFICER OR EMPLOYEE RESTRICTED. A former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the officer's or employee's service or employment with the state agency ceased.

All other terms and conditions of the original contract remain the same and are hereby reinstated and attached hereto. It is agreed and accepted by a person authorized to bind Contractor that all Terms and Conditions of this Amendment are effective commencing on the above date.

Typed Name: Kristen Walls
Typed Title: Contract Administrator

Kristen Walls
Authorized Signature

This section reserved for Agency use.

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

AGREED and accepted on behalf of Agency this 1st day of October 2015 (month/year) by a person authorized to bind Agency.

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

Or
Send electronic copies to:
TEAContracts@tea.state.tx.us

Shirley Beaulieu
Shirley Beaulieu
Associate Commissioner Finance/ CFO

Appendix 1

- A. The definitions of terms in the General Provisions are incorporated herein.
- B. The attached proposal entitled Northrop Grumman Systems Corporation Response to RFO #701-14-018 is incorporated herein by reference and is therefore, made a part of this contract.
- C. The terms, conditions, and requirements contained in the Request for Offer entitled "New Generation System (NGS) Help Desk", with a closing date of September 25, 2013, and identified as RFO #701-14-018, are incorporated herein by reference, although in the event of conflict the General Provisions to Standard Contract shall control.
- D. If there is a conflict or ambiguity between or among the terms of the documents that constitute this Contract, and if that conflict or ambiguity cannot be resolved by construing the terms so as to harmonize all their terms, then the conflict or ambiguity shall be resolved with the following Contract documents prevailing in the following order of priority:
 - General Provision of the TEA Standard Contract;
 - TEA Standard Contract Provision, Appendix 1 herein, inclusive of all appendices;
 - Contractor's Proposal to the Texas Education Agency entitled Northrop Grumman Systems Corporation Response to RFO #701-14-018 submitted September 20, 2013 inclusive of all appendices and cover letter of assumptions as amended herein.
 - Request for Offer entitled "New Generation System (NGS) Help Desk" released August 23, 2013.
- E. Description of Services/Activities:

Northrop Grumman will provide Project Management services, Technical Support services, and Help Desk services for the New Generation System and required reports as outlined in Attachment 1.
- F. Budget:

The revised Pricing Proposal, labeled Attachment 2, is attached.
- G. Invoicing

Contractor shall submit two copies of the invoice via mail or electronically, one copy shall be submitted to the Texas Education Agency, Attention: Accounts Payable, 1701 N. Congress Avenue, Room 2-130, Austin, Texas 78701-1484, or to TEAAccountsPayable@tea.texas.gov . The second copy shall be submitted to the Attention: Susie Coultress, Division of Curriculum, Susie.Coultress@tea.texas.gov. Payment under this Contract is contingent upon satisfactory services. The final invoice is due within forty-five days of the project completion. The monthly invoice shall include the Contractor's mailing address, telephone number, Contractor's Point of Contact to answer questions regarding invoices, Contract number, Purchase Order number, and Service period.

Description of Services
September 23, 2015 – December 21, 2015

I. Project Management

- a) Provide help desk services out of the current NGS office which will give Contractor the ability to provide full time project oversight and compliance for TEA and NGS Consortium Help Desk requirements
- b) Meet with the TEA designee twice a month to provide project status and regular project related communication
- c) Validate that data being entered into the NGS application is being monitored on a daily basis via the NGS Help Desk operators running SQL queries directly on the NGS production database
- d) Work closely with the NGS Help Desk staff to generate and fine tune the queries so that critical data can be monitored by creating processes that run on a daily basis
- e) Provide a toll-free telephone number and a FAX number
- f) Provide a digital telephone system that is capable of handling multiple phone lines as well as two analog ports for a conference phone and FAX machine
- g) Provide call tracking software that resides on a computer system within the NGS office that will track incoming and outgoing Help Desk call information
- h) Create monthly help desk reports that provide the statistical information regarding the monthly contact by end users to the help desk as well as call and resolution detail for each help desk ticket
- i) Have an email mailbox to the current NGS Microsoft Exchange Mail system that automatically forwards all email received to all NGS staff in the NGS office
- j) Ensure the NGS Help Desk Operational Policies are in place

II. Technical Support

- a) Provide full time support for the Help Desk hardware and software infrastructure during normal business hours, 8:00 a.m. – 5:00 p.m. Central Time
- b) Run queries on the NGS production database and produce Ad-Hoc reports as required by TEA and/or NGS end users
- c) Assist end users with the use of the Report Generator
- d) Provide complete beta testing of NGS application changes and new build items
- e) Identify and merge duplicate NGS records
- f) Assist TEA with user account maintenance for NGS

III. Help Desk Services

- a) Provide full-time Help Desk services during normal business hours, 8:00 a.m. – 5:00 p.m. Central Time
- b) Provide an NGS State Trainer to conduct on-site trainings, as needed, training webinars and recorded training videos
- c) Answer end user questions regarding the NGS application via telephone, fax and/or email
- d) Assist in the resolution of end user issues with the NGS system
- e) Assist TEA and the Texas MSIX Specialist with reviewing MSIX webinars and training videos
- f) Assist TEA and the MSIX Specialist with MSIX end user questions regarding the MSIX application and resolve MSIX application issues to the extent possible
- g) Escalate unresolved NGS and MSIX application problems to the NGS Programmer development team
- h) Escalate unresolved Migrant issues to the appropriate TEA Migrant staff
- i) Develop, maintain and update the NGS training manual
- j) Develop, maintain and update the NGS Alerts, communication on the NGS User Forum, FAQs, Monthly Schedule of Events, etc.
- k) Perform other related duties as they arise

Pricing Proposal
Revised
September 23, 2015 – December 21, 2015

Category	FY16 Price Per Month
Help Desk	\$ 24,367.77
Project Management	\$ 3,210.77
Technical Support	\$ 718.87
Other – Phone Lines, Desktops, Trainer Travel, misc.	\$ 1,095.77
Monthly Total:	\$ 29,393.18
FY2016 Total:	\$ 88,179.54

TEA Contract General Provisions

A. As used in these General Provisions:

- *Contract* means the entire document, and all of TEA's attachments, appendices, schedules (including but not limited to the General Provisions and the Special Provisions), amendments and extensions of or to the Standard Contract; and Northrop Grumman Systems Corporation Response to RFO #701-14-018 and all appendices as amended herein.
- *Receiving Agency or Party or TEA* means the Texas Education Agency;
- *Performing Agency or Contractor* means the party or parties to this Contract other than TEA, including its or their officers, directors, employees, agents, representatives, consultants and subcontractors, and subcontractors' officers, directors, employees, agents, representatives and consultants;
- *Project Manager/Administrator* means the respective person(s) representing TEA or Contractor, as indicated by the Contract, for the purposes of administering the Contract Project;
- *Contract Project* means the purpose intended to be achieved through the Contract;
- *Amendment* means a Contract that is revised in any respect, and includes both the original Contract, and any subsequent amendments or extensions thereto;
- *Works* means all tangible or intangible material, products, ideas, documents or works of authorship prepared or created by Contractor for or on behalf of TEA at any time after the beginning date of the Contract ("Works" includes but is not limited to computer software, data, information, images, illustrations, designs, graphics, drawings, educational materials, assessment forms, testing materials, logos, trademarks, patentable materials, etc.); and,
- *Intellectual Property Rights* means the worldwide intangible legal rights or interests evidenced by or embodied in: a United States registered (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 for convenience as provided for elsewhere in the contract at any time for any reason upon notice to Contractor. Expenditures and/or activities for which Contractor may claim reimbursement shall not be accrued or claimed subsequent to receipt of such notice from TEA.

C. Indemnification:

Contractor shall indemnify and hold harmless the State of Texas and Texas Education Agency and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees, from and against any and all liability, actions, claims, demands, or suits, and all related costs, attorney fees and expenses (the "Damages") arising out of, or resulting from any acts or omissions of the Contractor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. Should the State of Texas or the Texas Education Agency or any other third party be wholly or partially at fault for any Damages, Contractor shall be obligated to indemnify only to the extent it is determined to be at fault. The foregoing will not limit or delay Contractor's obligations to defend the State of Texas and TEAs, and to reimburse the State of Texas and TEAs for Damages as they are incurred. To the extent that the State of Texas or TEAs have actually incurred expenses, Contractor's obligations to indemnify and hold harmless the State of Texas and TEAs will not be delayed by any allegation of contributory negligence, or by appeal. CONTRACTOR'S OBLIGATIONS SET FORTH ABOVE WILL NOT BE PRECLUDED, AVOIDED, OR LIMITED BY ANY CLAIM OF CONTRIBUTORY NEGLIGENCE. Contractor shall pay all costs of defense including attorneys' fees or, in the case of proportionate responsibility, a pro-rata share of the costs consistent with its share of responsibility. The defense shall be coordinated by the Office of the Attorney General for Texas State Agency TEAs and by TEA's legal counsel for non-state agency TEAs. Contractor will not be required to indemnify or hold harmless for its nonwrongful, non-negligent performance of written directives of TEAs under this Contract or any purchase order issued under it.

- 1) Contractor shall indemnify and hold harmless the State of Texas and The Texas Education Agency, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees, from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the performances or actions of Contractor pursuant to this Contract. Contractor and the TEA agree to

TEA Contract General Provisions

furnish timely written notice to each other of any such claim. Contractor shall be liable to pay all costs of defense including attorneys' fees. The defense shall be coordinated by the Office of the Attorney General for the Texas State Agency TEAs and by TEA's legal counsel for non-state agency TEAs.

- 2) Contractor shall have no liability if the alleged infringement is caused by: (i) use of the service in combination with services not provided under the Contract, (ii) any intellectual property right owned by or licensed to TEA other than those conferred under this Agreement, and to which TEA has expressly agreed in writing, or (iii) any use of service by TEA that is not in conformity with the terms of any applicable license agreement to which TEA has expressly agreed in writing.
 - 3) If Contractor becomes aware of an actual or potential claim, or TEA provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against TEA, shall), at Contractor's sole option and expense: (i) procure for the TEA the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that TEA's use is noninfringing.
- D. Limitation of Liability:** For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State of Texas, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Contractor's liability for damages of any kind to the TEA shall be limited to the total amount paid to Contractor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Contractor's liability shall not apply to claims of patent, trademark, or copyright infringement.
- E. 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.
- F. 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.
- G. 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.
- H. 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.
- I. 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 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.

TEA Contract General Provisions

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.

J. Intellectual Property Ownership:

Definitions

- 1) "Work Product" means any and all deliverables produced by Contractor for TEA under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to TEA under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of TEA in connection with this Contract or a Statement of Work, or with funds appropriated by or for TEA or TEA's benefit: (a) by any Contractor personnel or TEA personnel, or (b) any TEA personnel who then became personnel to Contractor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Contractor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with TEA.
- 2) "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- 3) "Statement of Work" means a document signed by TEA and Contractor describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights that Contractor is to provide TEA, issued pursuant to the Contract.
- 4) "Third Party IP" means the Intellectual Property Rights of any third party that is not a party to this Contract, and that is not directly or indirectly providing any goods or services to TEA under this Contract.
- 5) "Contractor IP" shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Contractor (a) prior to providing any Services or Work Product to TEA and prior to receiving any documents, materials, information or funding from or on behalf of TEA relating to the Services or Work Product, or (b) after the Effective Date of the Contract if such tangible or intangible items or things were independently developed by Contractor outside Contractor's provision of Services or Work Product for TEA hereunder and were not created, prepared, developed, invented or conceived by any Contractor personnel or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Contractor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with TEA.

Ownership.

As between Contractor and TEA, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by TEA, and not Contractor. Contractor specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon creation, be owned exclusively by TEA. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Contractor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to TEA all world wide right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and TEA shall be entitled to obtain and hold in its own name all such rights to the Works. Contractor agrees to maintain written agreements with all Intellectual Property Rights in and to the Work

TEA Contract General Provisions

Product. Contractor acknowledges that Contractor and TEA do not intend Contractor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. TEA shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Contractor, to all Contractor materials, premises and computer files containing the Work Product. Contractor and TEA, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Contractor.

Further Actions.

Contractor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by TEA to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to TEA to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by TEA. In the event TEA shall be unable to obtain Contractor's signature due to the dissolution of Contractor or Contractor's unreasonable failure to respond to TEA's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Contractor hereby irrevocably designates and appoints TEA and its duly authorized officers, directors, employees, and agents as Contractor's agent and Contractor's attorney-in-fact to act for and in Contractor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Contractor, provided however that no such grant of right to TEA is applicable if Contractor fails to execute any document due to a good faith dispute by Contractor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. TEA shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Contractor shall cooperate, at TEA's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

Sanctions for Failure to Perform or for Noncompliance: If Contractor, in TEA's sole determination, fails or refuses for any reason to comply with or perform a material obligation 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 31st day of Contractor's receipt of written notice thereof from TEA. TEA shall provide Contractor written notice of any noncompliance and a period of 30 days to cure any issue of noncompliance. **Time Delays and Suspension: 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.

- K. Refunds Due to TEA:** If TEA determines that TEA is due a refund of money paid to Contractor pursuant to this Contract, Contractor shall pay the money due to TEA within 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.
- L. 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.
- M. TEA Property (terms):** In the event of loss, damage or destruction of any property owned by or loaned by TEA while in the custody or control of Contractor, Contractor shall indemnify TEA and pay to TEA the full book value of or the full cost of repair of such property, whichever is the greater, within thirty (30) days of Contractor's receipt of written notice of TEA's determination of the amount due. This applies whether the property is developed or purchased by Contractor pursuant to this Contract or is provided by TEA to Contractor for use in the Contract Project. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset or counterclaim against any money otherwise due to Contractor by TEA.

TEA Contract General Provisions

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

TEA
Susie Coultriss
State Director, Bilingual/ESL/Title III/Migrant
Curriculum Division
Texas Education Agency
William B. Travis Building
1701 N. Congress Avenue
Austin, Texas 78701

CONTRACTOR
Cherie Elkins
Program Manager
Northrop Grumman Systems Corporation, acting through
Northrop Grumman Information Systems Sector
Civil Division
7745 Chevy Chase, Bldg. 5, Suite 100
Austin, Texas 78752

P. Time and Effort Recordkeeping: For those personnel whose salaries are prorated between or among different funding sources, time and effort records will be maintained by 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.

Q. Federal Rules, Laws, and Regulations That Apply to all Federal Programs: Contractor shall be if applicable to and shall abide by all federal laws, rules, and regulations, pertaining to the Contract Project, including, but not limited to:

1. Americans With Disabilities Act, P.L. 101-336, 42 U.S.C. sec. 12101, and the regulations effectuating its provisions contained in 28 CFR Parts 35 and 36, 29 CFR Part 1630, and 47 CFR Parts 0 and 64;
2. Title VI of the Civil Rights Act of 1964, as amended (prohibition of discrimination by race, color, or national origin), and the regulations effectuating its provisions contained in 34 CFR Part 100;
3. Title IX of the Education Amendments of 1972, as amended (prohibition of sex discrimination in educational institutions) and the regulations effectuating its provisions contained in 34 CFR Part 106, if Contractor is an educational institution;
4. Section 504 of the Rehabilitation Act of 1973, as amended (nondiscrimination on the basis of handicapping condition), and the regulations effectuating its provisions contained in 34 CFR Parts 104 and 105.
5. The Age Discrimination Act of 1975, as amended (prohibition of discrimination on basis of age), and the implementing regulations contained in 34 CFR, Part 110;
6. Family Educational Rights and Privacy Act of 1975, as amended, and the implementing regulations contained in 34 CFR, Part 99, if Contractor is an educational institution;
7. Section 509 of H.R. 5233 as incorporated by reference in P.L. 99-500 and P.L. 99-591 (prohibition against the use of federal grant funds to influence legislation pending before Congress);
8. P.L. 103-227, Title X, Miscellaneous Provisions of the GOALS 2000: Educate America Act; P.L. 103-382, Title XIV, General Provisions of the Elementary and Secondary Education Act, as amended; and
9. General Education Provisions Act, as amended.

R. 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.

S. 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.

TEA Contract General Provisions

- T. 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.
- U. 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.
- V. Dispute Resolution:** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by TEA and Contractor to attempt to resolve all disputes arising under this Contract. The parties may agree to mediation of their dispute at any time. However, if all issues in dispute are not completely resolved through direct negotiations between the parties within 180 days after the agency receives Contractor's notice of claim, then the parties must submit the dispute to mediation before a mutually acceptable mediator in Travis County, Texas. The mediation must be completed on or before 270 days after the agency receives Contractor's notice of claim. Completion of the mediation is a condition precedent to the filing of a contested case hearing under Chapter 2260. The agency's participation in mediation or any other dispute resolution process shall not waive any of the agency's contractual or legal rights and remedies, including but not limited to sovereign immunity.
- W. Interpretation:**
- 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 applicable 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.
- AA. Gratuities:** By signing this Contract, Contractor represents and warrants that the Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.
- 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.

TEA Contract General Provisions

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 terminate for convenience as provided for elsewhere in the contract. 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. As per Section 151.309, Texas Tax Code, Contractor under this Contract is exempt from the assessment of State sales, use and excise taxes. Further, Contractor under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j)

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, respondent 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: The Contractor, Northrop Grumman Systems Corporation has not been convicted of a felony criminal offense. Northrop Grumman is responding for the past ten years, the employees directly working on the TEA effort that is defined in this Contract have certified to Northrop Grumman that they have not been convicted of a felony offense., **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.

HH. Assignment of Contract: This Contract may not be assigned, sold, or transferred without the express written consent of the TEA Purchasing and Contracts, and Agency Services (PCAS) Division. An attempted assignment after Contract award without the TEA approval will constitute a material breach of contract.

II. 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.

JJ. 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>

TEA Contract General Provisions

KK. 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.

LL. Electronic and Information Resources Accessibility Standards: Effective September 1, 2006, state agencies and institutions of higher education 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 Contractors should already be familiar with designing to this standard, and their ability to meet these standards should be a strong consideration in the selection process.

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

[WCAG 2.0 at a glance](#)

[IBM Developer Guidelines Web Checklist](#)

[Webaim.org Accessibility Checklist](#)

MM. Collusion: Contractor certifies and represents that Contractor has not colluded with, nor received any assistance from, any person who was paid by TEA to prepare specifications or a solicitation on which a respondent's bid or proposal is based and will not allow any person who prepared the respective specifications or solicitation to participate financially in any contract award.

NN. 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.

OO. Proprietary or Confidential Information: Contractor, its employees and subcontractors, agree that in executing tasks on behalf of the TEA, they will not use any student-identifying information in any way that violates the provisions of FERPA, and will destroy or return all student-identifying information within thirty (30) days of project completion. Contractor also agrees not to disclose any information to which it is privy under this Contract without the prior consent of the agency. Contractor will indemnify and hold harmless the State of Texas, its officers and employees, and TEA, its officers and employees for any claims or damages that arise from the disclosure by Contractor or its contractors of information held by the State of Texas.

PP. Independent Contractor: Contractor shall serve as an independent contractor in providing services under this Contract. Contractor's employees are not and shall not be construed as employees or agents of the State of Texas.

QQ. Contractor Performance: All state agencies must report unsatisfactory Contractor performance on purchases over \$25,000. Respondents who are in default or otherwise not in good standing under any other current or prior contract with TEA at the time of selection will not be eligible for award of this contract. A Respondent'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.

TEA Contract General Provisions

Respondents 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 Respondent.

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. In the event a Purchase Order or the Contract expires or is terminated for any reason other than non-appropriation, the Texas Education Agency shall pay all amounts due to Contractor for completed services performed through the effective date of such termination, work in progress, and reasonable severance costs incurred as a result of such termination and the unamortized hardware, software and lease costs.

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.

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

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

TEA Contract General Provisions

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 either party. 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. Effective September 1, 2013, if the initial major contract 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 (less than 10%) to the approved budget without submitting a written amendment. However, a revised budget document must be submitted to the TEA Project Manager for approval. Once approved, the documents must be submitted and Contracts office and will be incorporated into the Contract file. Failure to submit the 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 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 ten percent of the current total approved budget category;
 - e. Any reduction of funds or reduction in the scope of work;
 - f. Whenever a line item within a class/object code is added;
 - g. An increase in the quantity of capital outlay item(s) requested; and
 - h. An increase or decrease in the number of positions charged to Contract

All amendments must be signed by both parties.

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) the day on which the agency received the goods;
- (2) the date the performance of the service under the contract is completed; or
- (3) the day on which the agency received the complete and correct invoice for goods or services.

Invoices must be submitted to TEAAccountsPayable@tea.state.tx and the TEA Project Manager.

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

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

TEA Contract General Provisions

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 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 10 working days to address the quality or other compliance requirement and resubmit the deliverable. TEA shall provide a definitive list of all non compliance project changes and will be only one revision to any one deliverable under this contract. If TEA fails to approve in writing the deliverable is deemed accepted. 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. 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. 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.
3. An encumbrance, accounts payable, and expenditure, as with all other contract accounting terms, will be as defined in the *Financial Accounting and Reporting Module of the TEA Financial Accountability System Resource Guide*. All goods must have been received and all services rendered by the ending date of this Contract in order for Contractor to include these costs as either expenditures or as accounts payable and, thereby, recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.
4. Contractor who is indebted or owes delinquent taxes to the state will have any payments under the contract applied toward the debt or delinquent taxes owed the state until the amount is paid in full, regardless of when the debt or delinquency was incurred. TEA shall determine whether a payment law prohibits the Comptroller from issuing a warrant or initiating an electronic funds transfer to a person before TEA enters into a written contract with that person.

Contractor may verify their account status by accessing the Comptroller's website at https://fmxcpa.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.

VV. Insurance: Contractor represents and warrants that it will, within five (5) business days of being requested by the TEA, provide TEA with current certificates of insurance or other proof acceptable to TEA of the following insurance coverage:

Workers Compensation & Employers Liability Contractor must maintain Workers' Compensation insurance coverage in accordance with statutory limits. Workers Compensation: Statutory Limits Employers Liability: Each Accident \$1,000,000 Disease- Each Employee \$1,000,000 Disease-Policy Limit \$1,000,000.

This state of Texas website (Coverage starts with 405 of the Labor code) addresses what Texas requires: <http://www.tdi.texas.gov/wc/act/index.html>

TEA Contract General Provisions

Commercial General Liability: Occurrence based:

Bodily Injury and Property Damage

Each occurrence limit: \$1,000,000

Aggregate limit: \$2,000,000

Medical Expense each person: \$5,000

Personal Injury and Advertising Liability: \$1,000,000

Products / Completed Operations Aggregate Limit: \$2,000,000

Damage to Premises Rented to You: \$50,000

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

WW. Force Majeure

Neither Contractor nor TEA shall be liable to the other for any delay in, or failure of performance, of any requirement included in any PO 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.

XX. 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.

YY. Abandonment or Default

If the Contract is terminated for any reason other than non-appropriation, termination shall be in accordance with the Termination clause set forth herein.

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)

TEA Contract General Provisions

Contract Terms and Conditions required by the 84th Texas Legislative session that are different from the Terms and Conditions of the Contract dated December 1, 2013.

- I. **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 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.

- 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.

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.