

STATE OF TEXAS §  
COUNTY OF TRAVIS §

SOAH Contract # 14-701-086-IDEA

|                         |                |                                 |                       |
|-------------------------|----------------|---------------------------------|-----------------------|
| <b>Division Number:</b> | <u>160-006</u> | <b>Program Name:</b>            | <u>IDEA B Formula</u> |
| <b>Org. Code:</b>       | <u></u>        | <b>Legal/Funding Authority:</b> | <u>20 USC</u>         |
| <b>Speed Chart:</b>     | <u></u>        |                                 | <u>1400 et Seq</u>    |
| <b>Payee Name:</b>      | <u>SOAH</u>    | <b>Payee ID:</b>                | <u>3360360360</u>     |
| <b>ISAS Contract #:</b> | <u>3081</u>    | <b>PO #:</b>                    | <u>32287</u>          |

## INTERAGENCY CONTRACT

### Section 1.0 PARTIES AND AUTHORITY:

This Interagency Contract (IAC or contract) is entered into by and between the Texas Education Agency (TEA or Receiving Party) and the State Office of Administrative Hearings (SOAH or 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 and Texas Government Code § 2003.021(b)(4).

### Section 2.0 STATEMENT OF SERVICES TO BE PERFORMED:

Appendix One, Description of Services, attached hereto, is hereby incorporated by reference and made, therefore, a part of this IAC.

### Section 3.0 TERM OF CONTRACT:

This IAC is to begin **September 1, 2013** and shall terminate on **August 31, 2014**. The IAC may be extended for up to four (4) 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: \$400,000.00 for the original term of the IAC.

### Section 5.0 PAYMENT UNDER CONTRACT:

TEA shall reimburse SOAH for actual costs incurred in conducting the services and/or resources described in this IAC. TEA shall pay for services received from the appropriation item or account from which TEA would ordinarily make expenditures for similar services or resources. Payments received by SOAH shall be credited to its current appropriation items or accounts from which the expenditure for the services or resources were made.

- 5.1 TEA will pay SOAH the fee of \$100.00 per hour for time spent performing hearing officer functions and traveling to and from a hearing. TEA will pay up to three hours for actual time that a hearing officer spent on the organization of files, papers, exhibits, or other documents for the preparation of the final file that will be returned to TEA. TEA will not compensate SOAH for time spent preparing billing invoices. Because TEA will pay SOAH from funding sources other than general revenue (e.g., federal funds), TEA will also pay SOAH for SOAH's employee benefit costs for salaries and wages, to be paid in reimbursement of the General Revenue Fund (General Appropriations Act, Article IX, Section 6.08(b)). These costs will be itemized separately on SOAH's invoices.
- 5.2 In cases where return travel is delayed due to inclement weather, canceled flights, or other unforeseen circumstances, TEA will consider on a case-by-case basis and in accordance with state and TEA travel rules whether SOAH should be compensated for all of the time expended as a result of the delay.

- 5.3 TEA will pay SOAH \$100.00 per hour for the time that a hearing officer spent in training sessions sponsored by TEA.
- 5.4 Copying costs will be reimbursed at 10 cents per page or the amount invoiced if service was contracted to another vendor, whichever is less. Telephone and long distance charges will be reimbursed at the actual cost incurred. Facsimile (fax) costs will be reimbursed at 10 cents per page.
- 5.5 SOAH shall obtain translation and sign language interpreter services, if required, in accordance with state purchasing rules.
- 5.6 TEA will reimburse SOAH up to \$1,500.00 per hearing officer for tuition to attend seminars for continuing legal education (CLE) credit hours. The travel expenses related to attending such seminars will be reimbursed at the current state rate, except that TEA will only reimburse SOAH for the travel expenses for one out-of-state seminar per hearing officer per fiscal year. SOAH must seek TEA's approval to attend a seminar before the expiration of the early registration deadline, if any, or at least 30 days before the date on which the seminar begins. Tuition reimbursement for seminars offering an early registration discount will be limited to the amount of the early registration tuition.
- 5.7 Lodging and meal expenses to conduct hearings will be reimbursed at the current state approved rates. Meal expenses are reimbursed only for travel requiring overnight stay. (Tips and alcoholic beverages will not be reimbursed.)
- 5.8 Mileage will be reimbursed at the current state rate. Car rentals, when required, will be reimbursed at the current state rate. Mileage is not reimbursed for car rentals; however, gasoline will be reimbursed at actual cost.
- 5.9 For air travel, a receipt must be provided from the airline showing the class of airfare purchased. Airfare will be reimbursed at the actual cost incurred except that first class, business class, or similar upgraded airfare will not be reimbursed without documentation that the upgraded airfare was the only available fare.
- 5.10 SOAH should ensure that all travel expenses incurred are the most cost effective considering all relevant circumstances.

SOAH must prepare and submit to TEA by the 20th day of each month a standard invoice (on a template provided by TEA) detailing the activities and expenses by case. SOAH may submit invoices electronically to [teaaccountspayable@tea.state.tx.us](mailto:teaaccountspayable@tea.state.tx.us) or mail invoices to:

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

**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 TEA 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 TEA at the address specified below. Registered or certified mail with return receipt is not required for copies.
- 6.2 Points of Contact:** The parties shall direct all correspondence and notices related to the contract to:

For TEA (Receiving Agency):  
Margaret Baker  
Associate Deputy Counsel  
Office of Legal Services  
Texas Education Agency  
1701 N. Congress Ave., Ste.2-150D  
Austin, Texas 78701-1494

For SOAH (Performing Agency):  
Tom Walston  
General Counsel  
State Office of Administrative Hearings  
PO BOX 13025  
Austin, TX 78711-3025

**Section 7.0 CONTRACT AMENDMENT:**

Any modifications, additions, or deletions, to the terms and conditions of this IAC, including the current list of designated hearing officers, 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 Appendices**

Appendix One, Description of Services

**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, Debarment and Suspension Certification
- ☒ Special Provisions B, Lobbying Certification

**Section 9.0 CERTIFICATIONS:**

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

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

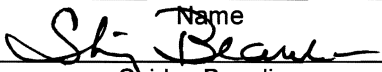
SUBJECT TO APPROVAL, the authorized representatives of the undersigned parties bind themselves to the faithful performance of this IAC. It is mutually understood that this IAC will be effective on the earliest date shown in Section 3.0.

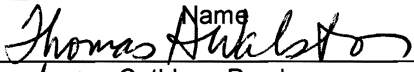
Receiving Party

Performing Party

TEXAS EDUCATION AGENCY

STATE OFFICE OF ADMINISTRATIVE  
HEARINGS

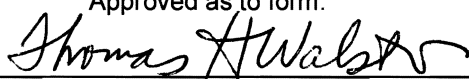
By:   
Name  
Shirley Beaulieu  
Associate Commissioner Finance/ CFO

By:   
Name  
for Cathleen Parsley  
Chief Administrative Law Judge

10-17-13  
Date

10/15/13  
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

Approved as to form:  
By:   
Thomas H. Walston  
General Counsel for SOAH  
10/15/13  
Date

**APPENDIX ONE  
DESCRIPTION OF SERVICES**

**I. Purpose and Objectives:**

- A. The Texas Education Agency (TEA) is responsible for conducting due process hearings on issues arising under the Individuals with Disabilities Education Act (IDEA). To conduct these hearings, TEA must appoint impartial hearing officers who meet the minimum qualifications in IDEA. TEA currently contracts with multiple private practice attorneys to provide special education hearing officer services.
- B. The State Office of Administrative Hearings (SOAH) conducts contested case hearings for various state agencies in Texas and employs licensed attorneys as administrative law judges (ALJs) to preside over hearings.
- C. The parties agree that the following SOAH ALJs will serve as special education hearing officers and conduct a portion of the hearings filed with TEA under IDEA:  
  
Craig Bennett  
Hunter Burkhalter  
Shannon Kilgore  
Renee Rusch
- D. The parties agree that the SOAH ALJs listed in "C." above (hereafter referred to as "designated hearing officers" or "hearing officers") will conduct hearings in accordance with all applicable federal and state special education requirements and the terms of this contract.

**II. Timeline of Major Activities:**

- A. Promptly after the effective date of this contract, the designated hearing officers must attend orientation training sponsored by TEA and observe at least one special education due process hearing before being assigned a case by TEA.
- B. TEA generally assigns cases to hearing officers based on an alphabetical rotation. After a designated hearing officer completes the required training and observations, TEA will add that hearing officer's name to the alphabetical rotation.
- C. When a designated hearing officer comes up in the alphabetic rotation, TEA will promptly contact SOAH to confirm the hearing officer's availability to preside over the case. SOAH shall notify TEA within one business day whether the hearing officer accepts the case. If the hearing officer is unable to accept the case but the next designated SOAH hearing officer in the alphabetical rotation is available to take the case, TEA will assign the case to that hearing officer.
- D. Promptly after a designated hearing officer is appointed, TEA will provide the parties and the hearing officer with written notice of the hearing request.
- E. SOAH shall comply with all legal and contractual timelines, including but not limited to the following.
  - 1. Promptly after being assigned a case, the hearing officer shall forward to the parties a scheduling order which sets the time, date, and location of the hearing and contains the timelines for the following actions, as applicable:
    - a. Response to Request for a Due Process Hearing (34 Code of Federal Regulations (C.F.R.) § 300.508(f));
    - b. Resolution Meeting (34 C.F.R. § 300.510(a));
    - c. Contesting Sufficiency of the Complaint (34 C.F.R. § 300.508(d));
    - d. Resolution Period (34 C.F.R. § 300.510(b));

- e. Five-Business Day Disclosure (34 C.F.R. § 300.512(a)(3)); and
  - f. Date by which the final decision of the hearing officer shall be issued (34 C.F.R. § 300.515 and § 300.532(c)(2)).
2. The hearing officer shall schedule a prehearing conference to be held at a time reasonably convenient to the parties to the hearing.
  3. For hearings conducted under 34 C.F.R. §§ 300.507 through 300.513, the hearing officer shall render a final decision no later than 45 days after the expiration of the 30-day period under 34 C.F.R. § 300.510(b), or the adjusted time periods described in 34 C.F.R. § 300.510(c), unless the deadline for a final decision has been extended by the hearing officer at the request of a party as provided by 34 C.F.R. § 300.515(c).
  4. If a request for an extension of the decision deadline is granted, the hearing officer shall render a written order stating the good cause grounds for the extension and the specific date by which the final decision is due. The hearing officer shall mail the written order to the parties within one business day of the date on which it is rendered.
  5. A hearing officer shall email all orders extending the timeline for rendering a final decision and all dispositive orders (e.g., orders of dismissal, summary judgment orders, orders following a hearing, etc.), to TEA on the day that the order is rendered.
  6. For hearings held under 34 C.F.R. § 300.532, the hearing officer shall conduct the hearing in an expedited matter within 20 school days of the date the complaint requesting the hearing is filed and rendering a decision within 10 school days after the hearing as provided by 34 C.F.R. § 300.532(c). The hearing officer shall not grant any extensions of time in a hearing requested under 34 C.F.R. § 300.532.
  7. The hearing officer shall mail a final written decision or any dispositive order to the parties on the date the decision or order is rendered.
  8. The hearing officer shall mail the parties the "Due Process Hearing Questionnaire" along with any final written decision or any dispositive orders that disposes of all of the issues in the hearing.
  9. The hearing officer shall return individual case files to TEA within 30 days of rendering a final decision or a dispositive order that disposes of all of the issues in a hearing.
  10. Upon notification that TEA or SOAH has received a request for a document or other information pursuant to the Texas Public Information Act, TEA and SOAH shall cooperate in responding to the request in accordance with the Texas Public Information Act.
- F. A hearing officer shall travel to the school district or charter school involved in a hearing to conduct the hearing.
  - G. A hearing officer shall arrange for the attendance of a TEA contracted court reporter to record verbatim testimony at the hearing.
  - H. TEA may assign or reassign all or part of a hearing to another hearing officer. In these situations, the hearing officers must work cooperatively with each other.
  - I. Hearing officers shall comply with the standards of neutrality, confidentiality, and conduct required by IDEA, the Family Educational Rights and Privacy Act (FERPA), and the State Bar of Texas Rules.
  - J. Hearing officers shall organize and maintain individual case files along with detailed records of activity on each case, such as travel, administrative expenses, research, drafting of orders, decisions, and correspondence.

- K. Hearing officers shall attend all training sessions held at TEA (typically two or three each fiscal year). In addition, each hearing officers must earn at least 10 hours of CLE in subject areas directly applicable to the duties of a hearing officer.
- L. Hearing officers shall comply with the decision format requirements set by TEA pursuant to the rules governing special education due process hearings. Specifically, decisions must include the following:
  - 1. Findings of fact that are clear and concise, supported by the evidence, and necessary to resolve an issue properly before the hearing officer;
  - 2. Conclusions of law that accurately apply the law to the findings of fact and that are necessary to resolve an issue properly before the hearing officer;
  - 3. Discussion to explain a rationale not otherwise apparent from the findings and conclusions;
  - 4. An order that rules on all requests for relief and that does not require the parties to refer to any other part of the decision to implement the mandates in the order; and
  - 5. A synopsis of the case that includes each issue decided, the prevailing party on that issue, and a supporting citation to a provision of the IDEA regulations in 34 C.F.R. Part 300, the Texas Education Code, or the Texas Commissioner of Education's Rules for special education.
- M. Hearing officers shall provide updates on case activities for each case file in the manner specified by TEA, including but not limited to entering direct updates into TEA's electronic docket system.
- N. SOAH staff who will have access to Texas public school campuses shall submit to a national criminal history record information review (including fingerprinting) and meet all eligibility standards and criteria set by TEA before serving in assignments on behalf of TEA. If SOAH has not completed this requirement or the review results in a determination that a designated hearing officer is not eligible for assignment, the designated hearing officer will be immediately removed from the list of designated hearing officers and not allowed to conduct additional work for TEA related to the contract.
- O. If TEA determines that SOAH and/or one of its designated hearing officers has failed to comply with the requirements of IDEA or the terms of this contract, TEA shall promptly notify SOAH.
- P. SOAH acknowledges that TEA is responsible for ensuring that hearings are conducted in accordance with the federal and state special education requirements and for ensuring that any identified noncompliance is corrected as soon as possible and in no case later than one calendar year from when it was identified. In the event that TEA finds that a hearing officer has failed to perform his or her duties in accordance with federal or state requirements or the terms of this contract, SOAH agrees that it will cooperate with TEA in resolving the noncompliance. Furthermore, SOAH acknowledges that a hearing officer's noncompliance may result in that hearing officer not being assigned additional hearings by TEA for a period of time determined by TEA.

## 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;
- *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; and
- *Amendment* means a Contract that is revised in any respect, and includes both the original Contract, and any subsequent amendments or extensions thereto.

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. **Subcontracting:** Contractor shall not assign, transfer or subcontract any of its rights or responsibilities under this Contract.

D. **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.

E. **Contractor's Proposal:** Contractor's proposal that was furnished to TEA in response to a Request for Qualifications 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.

F. **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 five (5) years from the date of completion of the Contract Project or the date of the receipt by TEA of Contractor's final claim for payment or final expenditure report in connection with this Contract, whichever is later. If an audit has been announced, the records shall be retained until such audit has been completed.

Pursuant to the Texas 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 Respondent 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 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 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.

G. **Failure to Perform or Noncompliance:** If either TEA or SOAH determines that the other party has failed or refused to comply with or perform any of its obligations under this Contract, TEA or SOAH will consult with each other to resolve the issue. If the issue cannot be resolved to the parties' satisfaction, either party may terminate the contract.



**Time is of the Essence.** Contractor's timely performance is essential to this Contract. If this Contract is terminated by TEA or SOAH prior to its expiration date, TEA shall pay SOAH for services provided by SOAH prior to termination of the contract.

- H. **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.

I. **Federal Regulations Applicable to All Federally Funded Contracts:**

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

- J. **Points 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**

Margaret Baker  
Office of Legal Services  
Texas Education Agency  
William B. Travis Building  
1701 N. Congress Avenue  
Austin, Texas 78701-1494

**CONTRACTOR**

Tom Walston  
State Office of Administrative Hearings  
P.O. Box 13025  
Austin, TX 78711-3025

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

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

9. General Education Provisions Act, as amended.

- L. **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.
- M. **Dispute Resolution:** The dispute resolution process provided for in Chapter 2009 of the Texas Government Code must be used by TEA and Contractor to attempt to resolve all disputes arising under this Contract, except that a dispute arising out of alleged errors in a monthly invoice shall be conducted in accordance with Texas Government Code §771.008.
- N. **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.
- O. **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.
- P. **Public Information:** Upon notification that TEA or SOAH has received a request for a document or other information pursuant to the Texas Public Information Act, TEA and SOAH shall cooperate in responding to the request in accordance with the Texas Public Information Act.
- Q. **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.
- R. **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.
- S. **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.
- T. **Assignment of Contract:** This Contract may not be assigned, sold, or transferred.
- U. **Excluded Parties List System:** TEA 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>.
- V. **Social Security Numbers Withheld:** TEA will not provide Social Security Numbers (SSNs) to any Contractor under this Contract unless specifically specified as part of the project requirements. TEA, its contractors and their subcontractors, will not require or request school districts to provide SSNs under this Contract. Contractor agrees that in executing tasks on behalf of TEA, they will not use any student-identifying information in any way that violates the provisions of FERPA, and will destroy or return all student-identifying information to TEA within 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.

- W. **Proprietary or Confidential Information:** Contractor and its employees agree that in executing tasks on behalf of TEA, they will not use any student-identifying information in any way that violates the provisions of FERPA, and will destroy or return all student-identifying information within thirty (30) days of project completion.
- X. **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.
- Y. **Termination for Convenience:** Either Party 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.
- Z. **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.
- AA. **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.
- BB. **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, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.
- CC. **Payment:** Payments shall be executed according to the guidelines established by the Texas Comptroller of Public Accounts' Accounting Policy Statement Number 14 (entitled "Interagency Payments and Receipts for Goods and Services"), or successor guidelines, under the Uniform Statewide Accounting System (USAS).
- DD. **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.
- EE. **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 Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, 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.
- FF. **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.

**SPECIAL PROVISIONS – A**  
**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY**  
**EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

Per Title 34, Code of Federal Regulations, 80.35, —Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, —Debarment and Suspension.¶

Required for all federal grants regardless of the dollar amount.

This certification is required by US Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 2 CFR Part 3485, for all lower-tier transactions meeting the threshold and tier requirements stated at Section 85.11.

**Terms defined:** As used in this Contract

- *Lower-Tier Covered Transaction:* (1) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction; (2) any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the federal procurement small purchase threshold of \$25,000; (3) any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount
- *Participant:* Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction, including an agent or representative of another participant
- *Principal (per 2 CFR 180.995):* An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or a consultant or other person, whether or not employed by the participant or paid with federal funds, who (1) is in a position to handle federal funds; (2) is in a position to influence or control the use of those funds; or (3) occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction
- *Debarment:* Action taken by a debarring official (federal agency) to exclude a person (recipient) from participating in covered transactions
- *Suspension:* An action taken that immediately prohibits a person from participating in covered transactions for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue
- *Ineligible:* In general, a person who is either excluded or disqualified
- *Person:* Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government-owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities
- *Voluntarily Excluded:* A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

1. By signing this Contract, the lower-tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. 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.
3. The lower-tier participant shall provide immediate written notice to the Agency to whom this Contract is submitted if at any time the 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 clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The 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 lower-tier participant further agrees by submitting this Contract that it will include the clause titled *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 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 by this clause. 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 section, 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.

#### CERTIFYING STATEMENT

- (1) The 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 lower tier participant is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this Contract.

STATE Office of ADMINISTRATIVE HEARINGS  
Organization or Person's Name

THOMAS H. WALSTON, GENERAL COUNSEL  
Name and Title of Authorized Representative (if applicable)

Thomas H Walston 10/15/13  
Signature Date

**SPECIAL PROVISIONS- B**  
**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 subgrant or subcontract 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.**

STATE Office of ADMINISTRATIVE HEARINGS  
Organization or Person's Name

THOMAS H. WALSTON, GENERAL COUNSEL  
Name and Title of Authorized Representative (if applicable)

Thomas H. Walston 10/15/13  
Signature Date

**GENERAL INSTRUCTIONS FOR SPECIAL PROVISIONS - B**  
**PART B**  
**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.

**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: \_\_\_\_\_

|   |   |   |
|---|---|---|
| <b>1. Type of Federal Action:</b><br><input type="checkbox"/> Contract<br><input type="checkbox"/> Grant  | <b>2. Status of Federal Action</b><br><input type="checkbox"/> Bid/Offer/Application<br><input type="checkbox"/> Initial Award<br><input type="checkbox"/> Post-award | <b>3. Report Type</b><br><input type="checkbox"/> Initial Filing<br><input type="checkbox"/> Material Change<br><br>For Material Change Only:<br>Year _____ Quarter _____<br>Date of Last Report: _____ |
| <b>4. Name and Address of Reporting Entity:</b><br><input type="checkbox"/> Subawardee<br>Tier _____, if known:<br><br>Congressional District, if known: _____  |   | <b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b><br>Texas Education Agency<br>1701 N. Congress Avenue<br>Austin, Texas 78701<br><br>Congressional District: 10    |
| <b>6. Federal Department/Agency:</b>  |   | <b>7. Federal Program Name/Description:</b><br><br>CFDA Number, if applicable: _____  |
| <b>8. Federal Action Number, if known:</b>  |   | <b>9. Award Amount, if known:</b><br>\$ _____   |
| <b>10. A) Name and Address of Lobbying Registrant</b><br><br>(If individual, Last name, First name, MI):  |   | <b>B) Individuals Performing Services (include address, if different from 10 A)</b><br><br>(Last name, First name, MI):   |
| <b>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.</b> |   | Signature: _____<br><br>Print Name: _____<br>Title: _____<br><br>Telephone No: _____<br><br>Date: _____   |
| <b>Federal Use Only:</b>  |   | Authorized for Local Reproduction<br>Standard Form—LLL  |

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**GENERAL INSTRUCTIONS FOR SPECIAL PROVISIONS - B**  
**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.