

STATE OF TEXAS §

COUNTY OF TRAVIS §

Division/Org Code: 611	Program Name: Oracle (PeopleSoft) Maintenance, Support and Enhancement
Speed Chart:	Legal/Funding Authority:
Payee Name: Sierra-Cedar, Inc.	Contract #:
Payee ID ISAS: 1582548193	PO #:

### TEXAS EDUCATION AGENCY STANDARD CONTRACT

#### ARTICLE I. PARTIES TO CONTRACT

This agreement is entered into by and between the Texas Education Agency ("TEA"), a Texas State Agency and Sierra-Cedar, Inc. ("Contractor").

#### ARTICLE II. PERIOD OF CONTRACT

TEA shall pay Contractor for the reasonable and approved costs incurred by Contractor in connection with the Contract Project during the period beginning November 1, 2014 and ending August 31, 2016 unless extended or terminated as otherwise provided for this contract. TEA, at its own discretion, may extend the contract awarded for up to three (3) additional fiscal years under the same or different terms subject to appropriation of funds by the Texas Legislature for this project. If renewed, the first renewal period shall be from September 1, 2016 through August 31, 2017, the second renewal period shall be from September 1, 2017 through August 31, 2018 and the third renewal period shall be from September 1, 2018 through August 31, 2019.

#### ARTICLE III. PURPOSES OF CONTRACT

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

#### ARTICLE IV. PAYMENT UNDER CONTRACT

Subject to the availability to TEA of funds for the purpose(s) of this contract, TEA shall pay to Contractor by State of Texas warrant(s) the amount of \$1,746,350.00 for the performance, satisfactory to the TEA, of Contractor's functions and duties under this Contract. Payment to Contractor by TEA will be made in accordance with the Description of Services / Budget, which is attached hereto and incorporated herein by reference.

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

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

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

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

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

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

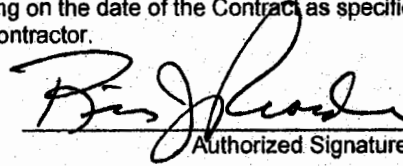
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ARTICLE VI. ENTIRE CONTRACT

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

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

Typed name: Rick Riordan  
Typed title: Executive Vice President


  
Authorized Signature

**This section reserved for TEA use.**

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

AGREED and accepted on behalf of Agency on 11-20-14 (month/day/year) by a person authorized to bind Agency.

Return three (3) copies with original signature to  
Norma Barrera  
Texas Education Agency  
Purchasing and Contracts Division  
1701 North Congress Avenue, Room 2423  
Austin, Texas 78701  
Electronic version may be submitted to  
TEAContracts@tea.state.tx.us

  
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 Statement of Work (SOW) for DBITS #701-15-009, Maintenance, Support, and Enhancement of Oracle (PeopleSoft) Financial Application and Custom Developed Modules is incorporated herein by reference and is therefore made a part of this contract.
- C. The terms, conditions, and requirements contained in the Statement of Work entitled "Maintenance, Support, and Enhancement of Oracle (PeopleSoft) Financial Application and Custom Developed Modules," with a closing date of July 22, 2014, and identified as SOW #701-15-009, 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:
- Special Provisions A;
  - General Provisions of the Standard Contract;
  - The Standard Contract, inclusive of all appendices;
  - Contractor's Best and Final Offer dated November 3, 2014;
  - Contractor's Proposal to the Texas Education Agency entitled Maintenance, Support, and Enhancement of Oracle (PeopleSoft) Financial Application and Custom Developed Modules submitted on July 22, 2014; and
  - Statement of Work entitled "Maintenance, Support, and Enhancement of Oracle (PeopleSoft) Financial Application and Custom Developed Modules" released July 3, 2014.

E. Description of Services/Activities:

See (Exhibit A).

F. Budget:

The Pricing Proposal, labeled (Exhibit B) is attached. Payment shall be monthly upon completion of designated tasks/activities.

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

Contractor will make a good faith effort to comply with the State of Texas Travel Guidelines. TEA may at its discretion approve requests for reimbursement of travel which exceed the State of Texas Travel Guidelines. Contractor shall maintain receipts in accordance with Item H of the General Provisions. The Comptroller's website for travel rules and regulations – [texttravel: https://fmxcpa.state.tx.us/fmxcpa/travel/texttravel/index.php](https://fmxcpa.state.tx.us/fmxcpa/travel/texttravel/index.php). Receipts must be made available for programmatic or financial audit by TEA and by others authorized by law or regulation to make such an audit, for a period of not less than five (5) years.

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

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## 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;
  - **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.) this does not include any pre-existing materials of Contractor, or any licensed third party materials provided by Contractor; and,
  - **Intellectual Property Rights** means the worldwide intangible legal rights or interests evidenced by or embodied in: (a) any idea, design, concept, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (b) any work of authorship, including any copyrights, moral rights or neighboring rights; (c) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (d) domain name registrations; and (e) any other similar rights. The Intellectual Property Rights of a party include all worldwide intangible legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- B. **Contingency:** The Contract(s), including any amendments, extensions or subsequent contracts, are executed by TEA contingent upon the availability of appropriated funds by legislative act. Notwithstanding any other provision in this Contract or any other document, this Contract is void upon the insufficiency (in TEA's discretion) or unavailability of appropriated funds. In addition, this Contract may be terminated by TEA at any time for any reason upon notice to Contractor. Expenditures and/or activities for which Contractor may claim reimbursement shall not be accrued or claimed subsequent to receipt of such notice from TEA.
- C. **Indemnification:** CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AGENTS AND EMPLOYEES, AND THE TEXAS EDUCATION AGENCY, ITS OFFICERS, AND EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT. CONTRACTOR SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY TEA.
- THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TEA FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF TEA OR ITS EMPLOYEES.
- For local educational agencies (LEAs), regional education service centers (ESCs), institutions of higher education (IHEs), and state agencies: Contractor, to the extent permitted by law, shall hold TEA harmless from and shall indemnify TEA against any and all claims, demands, and causes of action of whatever kind or nature asserted by any third party and occurring or in any way incident to, arising from, or in connection with, any acts of Contractor in performance of the Contract Project.
- D. **Subcontracting and Substitutions:** Contractor shall not assign, transfer or subcontract any of its rights or responsibilities under this Contract without prior formal written amendment to this Contract properly executed by both TEA and Contractor. TEA reserves the right to request changes in personnel assigned to the project. The TEA Project Manager must pre-approve any changes in key personnel throughout the contract term. Any changes to the HUB Subcontracting Plan (HSP) must be approved by the Agency HUB Coordinator before staffing changes are initiated. Substitutions are not permitted without written approval of the TEA Project Manager.
- E. **Encumbrances/Obligations:** All encumbrances, accounts payable, and expenditures shall occur on or between the beginning and ending dates of this Contract. All goods must have been received and all services rendered during the Contract period in order for Contractor to recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.

- F. **Contractor's Proposal:** Contractor's proposal that was furnished to TEA in response to a request for proposal is incorporated in this Contract by reference. The provisions of this Contract shall prevail, however, in all cases of conflict arising from the terms of Contractor's proposal whether such proposal is a written part of this Contract or is attached as a separate document.
- G. **Requirements, Terms, Conditions, and Assurances:** The terms, conditions, and assurances, which are stated in the Request for Proposal, in response to which Contractor submitted a proposal, are incorporated herein by reference for all purposes, although the current General Provisions shall prevail in the event of conflict.
- H. **Records Retention and the Right to Audit:** Contractor shall maintain its records and accounts in a manner which shall assure a full accounting for all funds received and expended by Contractor in connection with the Contract Project. These records and accounts shall be retained by Contractor and made available for programmatic or financial audit by TEA and by others authorized by law or regulation to make such an audit for a period of not less than 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 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 Respondent will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the vendor and the requirement to cooperate is included in any subcontract it awards.

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

- I. **Intellectual Property Ownership:** Contractor agrees that all Works are, upon creation, works made for hire and the sole property of TEA. If the Works are, under applicable law, not considered works made for hire, Contractor hereby assigns to TEA all worldwide ownership of all rights, including the Intellectual Property Rights, in the Works, without the necessity of any further consideration, and TEA can obtain and hold in its own name all such rights to the Works. Contractor agrees to maintain written agreements with all officers, directors, employees, agents, representatives and subcontractors engaged by Contractor for the Contract Project, granting Contractor rights sufficient to support the performance and grant of rights to TEA by Contractor. Copies of such agreements shall be provided to TEA promptly upon request.

Contractor warrants that (i) it has the authority to grant the rights herein granted, (ii) it has not assigned or transferred any right, title, or interest to the Works or Intellectual Property Rights that would conflict with its obligations under the Contract, and Contractor will not enter into any such agreements, and (iii) the Works will be original and will not infringe any intellectual property rights of any other person or entity. These warranties will survive the termination of the Contract. If any preexisting rights are embodied in the Works, Contractor grants to TEA the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such preexisting rights and any derivative works thereof and (ii) authorize others to do any or all of the foregoing. Contractor agrees to notify TEA on delivery of the Works if they include any such preexisting rights. On request, Contractor will provide TEA with documentation indicating a third party's written approval for Contractor to use any preexisting rights that may be embodied or reflected in the Works.

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

**For School Districts and Nonprofit Organizations:** The foregoing Intellectual Property Ownership provisions apply to any school districts, nonprofit organizations, and their employees, agents, representatives, consultants and subcontractors.

**For Education Service Centers (ESCs):** The foregoing Intellectual Property Ownership provisions apply to an Education Service Center (ESC) and its employees, agents, representatives, consultants, and subcontractors. If an ESC or any of its subcontractor(s) wish to obtain a license agreement to use, advertise, offer for sale, sell, distribute, publicly display, publicly perform or reproduce the Works, or make

derivative works from the Works, then express written permission must first be obtained from TEA Legal Division.

**For Colleges and Universities:** The foregoing Intellectual Property Ownership provisions apply to any colleges and universities and their employees, agents, representatives, consultants, and subcontractors; provided, that for all Works created or conceived by colleges or universities under the Contract, they are granted a non-exclusive, non-transferable, royalty-free license to use the Works for their own academic and educational purposes only. Colleges and universities are prohibited, however, from advertising, offering for sale, selling, distributing, publicly displaying, publicly performing, or reproducing the Works, or making derivative works from the Works that are created or conceived under this Contract, without the express written permission of TEA Legal Division.

- J. **Sanctions for Failure to Perform or for Noncompliance:** If Contractor, in TEA's sole determination, fails or refuses for any reason to comply with or perform any of its obligations under this Contract, TEA may impose such sanctions as it may deem appropriate. This includes but is not limited to the withholding of payments to Contractor until Contractor complies; the cancellation, termination, or suspension of this Contract in whole or in part; and the seeking of other remedies as may be provided by this Contract or by law. Any cancellation, termination, or suspension of this Contract, if imposed, shall become effective at the close of business on the day of Contractor's receipt of written notice thereof from TEA.
- K. **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.
- L. **Refunds Due to TEA:** If TEA determines that TEA is due a refund of money paid to Contractor pursuant to this Contract, Contractor shall pay the money due to TEA within 30 days of Contractor's receipt of written notice that such money is due to TEA. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset, counterclaim, cancellation, termination, suspension, total withholding, and/or disapproval of all or any subsequent applications for said funds.
- M. **Capital Outlay:** If Contractor purchases capital outlay (furniture and/or equipment) to accomplish the Contract Project, title will remain with Contractor for the period of the Contract. TEA reserves the right to transfer capital outlay items for Contract noncompliance during the Contract period or as needed after the ending date of the Contract. This provision applies to any and all furniture and/or equipment regardless of unit price and how the item is classified in Contractor's accounting record. This provision is applicable when federal funds are utilized for the Contract.
- N. **TEA Property (terms):** In the event of loss, damage or destruction of any property owned by or loaned by TEA while in the custody or control of Contractor, Contractor shall indemnify TEA and pay to TEA the full value of or the full cost of repair or replacement of such property, whichever is the greater, within 30 days of Contractor's receipt of written notice of TEA's determination of the amount due. This applies whether the property is developed or purchased by Contractor pursuant to this Contract or is provided by TEA to Contractor for use in the Contract Project. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset or counterclaim against any money otherwise due to Contractor by TEA.
- O. **State of Texas Laws:** In the conduct of the Contract Project, Contractor shall be subject to 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.
- P. **Federal Regulations Applicable to All Federally Funded Contracts:**
1. For Local Education Agencies (LEAs): 28 CFR 35 Subparts A-E, 28 CFR 36 Subparts C & D, Appendix A, 29 CFR 1630, 34 CFR 75 or 76 as applicable, 77, 79, 80, 81, 82, 85, 99, 104, 47 CFR 0 and 64, and OMB Circulars A-87 (Cost Principles) and A-133 (Audits);
  2. For Education Service Centers (ESCs): 28 CFR 35 Subparts A-E, 28 CFR 36 Subparts C & D, Appendix A, 29 CFR 1630, 34 CFR 75 or 76 as applicable, 77, 79, 80, 81, 82, 85, 99, 104, 47 CFR 0 and 64, and OMB Circulars A-87 (Cost Principles) and A-133 (Audits);
  3. For Institutions of Higher Education (IHEs): 28 CFR 35 Subparts A-E, 28 CFR 36 Subparts C & D, Appendix A, 29 CFR 1630, 34 CFR 74, 77, 79, 81, 82, 85, 99, 104, OMB Circular A-21 (Cost Principles), 47 CFR 0 and 64, OMB Circular A-133 (Audits), and OMB Circular A-110 (Uniform Administrative Requirements);

4. For Nonprofit Organizations: 28 CFR 35 Subparts A-E, 28 CFR 36 Subparts C & D, Appendix A, 29 CFR 1630, 34 CFR 74, 77, 79, 81, 82, 85, 99, 104, 47 CFR 0 and 64, OMB Circulars A-122 (Cost Principles) and A-133 (Audits), and OMB Circular A-110 (Uniform Administrative Requirements);
5. For State Agencies: 28 CFR 35 Subparts A-E, 28 CFR 36 Subparts C & D, Appendix A, 29 CFR 1630, 34 CFR 76, 80, 81, 82, 85, 99, 104, 47 CFR 0 and 64, OMB Circulars A-87 (Cost Principles) and A-133 (Audits), and OMB Circular A-110 (Uniform Administrative Requirements); and
6. For Commercial (for-profit) Organizations: 29 CFR 1630 and 48 CFR Part 31.
7. For American Recovery and Reinvestment Act funded projects: FAR 52.204-11, 52.212-5, 52.214-26, 52.215-2, and OMB Guidance Memo M-09-15.

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

**TEA**

Marsha Headley  
Project Manager  
Texas Education Agency  
William B. Travis Building  
1701 N. Congress Avenue  
Austin, Texas 78701

**CONTRACTOR**

Amy McClintic  
Sierra-Cedar, Inc.  
1255 Alderman Drive  
Alpharetta, GA 30005  
amy.mcclintic@sierra-cedar.com  
512-350-9639

**R. Time and Effort Recordkeeping:** For those personnel whose salaries are prorated between or among different funding sources, time and effort records will be maintained by Contractor that will confirm the services provided within each funding source. Contractor must adjust payroll records and expenditures based on this documentation. This requirement applies to all projects, regardless of funding source, unless otherwise specified. For federally funded projects, time and effort records must be in accordance with the requirements in the applicable OMB cost principles.

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

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

**T. Forms, Assurances, and Reports:** Contractor shall timely make and file with the proper authorities all forms, assurances and reports required by federal laws and regulations. TEA shall be responsible for reporting to the proper authorities any failure by Contractor to comply with the foregoing laws and regulations coming to TEA's attention, and may deny payment or recover payments made by TEA to Contractor in the event of Contractor's failure so to comply. Contractor who is indebted or owes delinquent taxes to the state will have any payments under the Contract applied toward the debt or delinquent taxes owed the state until the account is paid in full, regardless of when the debt or delinquency was incurred. This provision does not apply if the warrant or transfer results in payments being made in whole or in part with money paid to the state by the Federal Government.

**U. Signature Authority; Final Expression; Superseding Document:** Contractor certifies that the person signing this Contract has been properly delegated this authority. The Contract represents the final and complete expression of the terms of agreement between the parties. The Contract supersedes any previous understandings or negotiations between the parties. Any representations, oral statements, promises or warranties that differ from the Contract shall have no force or effect. The Contract may be modified, amended or extended only by formal written amendment properly executed by both TEA and Contractor.

- V. **Antitrust:** By signing this Contract, Contractor, represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has, (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the Proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract.
- W. **Family Code Applicability:** By signing this Contract, Contractor, if other than a state Party, certifies that under Section 231.006, Family Code, that Contractor is not ineligible to receive specified grant, loan, or payment under this Contract and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate. TEA reserves the right to terminate this Contract if Contractor is found to be ineligible to receive payment. If Contractor is found to be ineligible to receive payment and the Contract is terminated, Contractor is liable to TEA for attorney's fees, the costs necessary to complete the Contract, including the cost of advertising and awarding a second contract, and any other damages or relief provided by law or equity.
- X. **Dispute Resolution:** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by TEA and Contractor to attempt to resolve all disputes arising under this Contract. The parties may agree to mediation of their dispute at any time. However, if all issues in dispute are not completely resolved through direct negotiations between the parties within 180 days after the agency receives Contractor's notice of claim, then the parties must submit the dispute to mediation before a mutually acceptable mediator in Travis County, Texas. The mediation must be completed on or before 270 days after the agency receives Contractor's notice of claim. Completion of the mediation is a condition precedent to the filing of a contested case hearing under Chapter 2260. The agency's participation in mediation or any other dispute resolution process shall not waive any of the agency's contractual or legal rights and remedies, including but not limited to sovereign immunity.
- Y. **Interpretation:** In the case of conflicts arising in the interpretation of wording and/or meaning of various sections, parts, Appendices, General Provisions, Special Provisions, Exhibits, and Attachments or other documents, the TEA Contract and its General Provisions, Appendices and Special Provisions shall take precedence over all other documents which are a part of this contract.
- Z. **Education Service Center:** No funds transferred to Regional Education Service Centers or to school districts may be used to hire a registered lobbyist.
- AA. **Compliance with Laws:** Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting Contractor's performance, including if applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations. For the entire duration of the Contract, Contractor shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this Contract. When required or requested by the Agency, Contractor shall furnish TEA with satisfactory proof of its compliance with this provision.
- BB. **Public Information:** The TEA is subject to the provisions of the Texas Public Information Act. If a request for disclosure of this Contract or any information related to the goods or services provided under the Contract or information provided to the TEA under this Contract constituting a record under the Act is received by the TEA, the information must qualify for an exception provided by the Texas Public Information Act in order to be withheld from public disclosure. Contractor authorizes the TEA to submit any information contained in the Contract, provided under the Contract, or otherwise requested to be disclosed, including information Contractor has labeled as confidential proprietary information, to the Office of the Attorney General for a determination as to whether any such information may be exempt from public disclosure under the Act. If the TEA does not have a good faith belief that information may be subject to an exception to disclosure, the TEA is not obligating itself by this Contract to submit the information to the Attorney General. It shall be the responsibility of the Contractor to make any legal argument to the Attorney General or appropriate court of law regarding the exception of the information in question from disclosure. The Contractor waives any claim against and releases from liability the TEA, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by the Contractor and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act.
- CC. **Gratuities:** By signing this Contract, Contractor represents and warrants that the Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.
- DD. **Venue and Jurisdiction:** Subject to and without waiving any of the Agency's rights, including sovereign immunity, this Contract is governed by and construed under and in accordance with the laws of the State of Texas. Venue for any suit concerning this solicitation and any resulting contract or purchase order shall be in a court of competent jurisdiction in Travis County, Texas.



EE. **Protests:** Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of this or any other contract by the Texas Education Agency may submit a formal protest to the Director of the Agency's Contracts and Purchasing Division. This protest procedure shall be the exclusive method by which anyone may make a challenge to any aspect of the Agency's contracting process. The Agency will not be required to consider the merits of any protest unless the written protest is submitted within ten (10) working days after such aggrieved person knows, or reasonably should have known, of the occurrence of the action which is protested. The protest document must meet with all requirements in applicable law and Agency's rules (Title 19 of the Texas Administrative Code, at § 30.2002) <http://ritter.tea.state.tx.us/rules/tac/index.html>.

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

FF. **Liability for and Payment of Taxes:** Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. TEA shall not be liable for any taxes resulting from this Contract.

GG. **Severability:** In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, the invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein. The remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

HH. **Conformance:** The Contractor warrants that all goods and services furnished shall conform in all respects to the terms of this Contract, including any drawings, specifications or standards incorporated herein, and any defects in materials, workmanship, and free from such defects in design. In addition, respondent warrants that goods and services are suitable for and will perform in accordance with the purposes for which they are intended.

II. **Felony Criminal Convictions:** Contractor represents and warrants that Contractor has not and Contractor's employees assigned to TEA projects have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised TEA as to the facts and circumstances surrounding the conviction.

JJ. **Criminal Background Checks:** If during the term of this Contract, Contractor, and/or Contractor staff, or subcontractor have access to Texas public school campuses, all Contractor and/or Contractor's staff must submit to a national criminal history record information review (includes fingerprinting) and meet all eligibility standards and criteria as set by Agency before serving in assignments on behalf of the Agency. This requirement applies to all individuals who currently serve or will serve in Agency assignments that have the possibility of direct contact with students. Assignments are contingent upon meeting Agency eligibility standards. Contractor and/or any staff member of Contractor who may perform services under this contract must complete this criminal history review before the beginning of an assignment. If said individuals have not completed this requirement or the review results in a determination that Contractor is not eligible for assignment, this contract will be terminated effective immediately or the date of notice of non-eligibility, whichever is earliest.

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

LL. **Buy Texas:** In accordance with Government Code, Section 2155.444, the State of Texas requires that during the performance of a contract for services, Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside the state. This provision does not apply if Contractor receives any federal funds under this Contract.

MM. **Excluded Parties List System:** The Texas Education Agency 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>.

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

- OO. **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. WCAG 2.0 AA is a superior, more flexible standard and is in use all over the world. If a website is compliant with WCAG 2.0 AA, it will, by default comply with our current TAC rules on EIR Accessibility.

Web development vendors 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

- PP. **Collusion:** Contractor certifies and represents that Contractor has not colluded with, nor received any assistance from, any person who was paid by TEA to prepare specifications or a solicitation on which a respondent's bid or proposal is based and will not allow any person who prepared the respective specifications or solicitation to participate financially in any contract award.
- QQ. **Social Security Numbers Withheld:** TEA will not provide Social Security Numbers (SSNs) to any Contractor under this contract 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.
- RR. **Proprietary or Confidential Information:** Contractor, its employees and subcontractors, agree that in executing tasks on behalf of the TEA, they will not use any student-identifying information in any way that violates the provisions of FERPA, and will destroy or return all student-identifying information within thirty (30) days of project completion. Contractor also agrees not to disclose any information to which it is privy under this Contract without the prior consent of the agency. Contractor will indemnify and hold harmless the State of Texas, its officers and employees, and TEA, its officers and employees for any claims or damages that arise from the disclosure by Contractor or its contractors of information held by the State of Texas.
- SS. **Independent Contractor:** Contractor shall serve as an independent contractor in providing services under this Contract. Contractor's employees are not and shall not be construed as employees or agents of the State of Texas.
- TT. **Vendor Performance:** All state agencies must report unsatisfactory vendor performance on purchases over \$25,000. Respondents who are in default or otherwise not in good standing under any other current or prior contract with TEA at the time of selection will not be eligible for award of this contract. 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. Respondents may fail this selection criterion for any of the following conditions: A score of less than 90% in the Vendor Performance System, currently under a Corrective Action Plan, having repeated negative Vendor performance reports for the same

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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 Vendor Performance Tracking System (as authorized by 34 Texas Administrative Code §20.108), TEA may examine other sources of vendor 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 vendor performance to assist in determining best value. In accordance with Texas Government Code, §2155.074 and §2155.75, vendor performance may be used as a factor in future contract awards.

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

UU. **Termination:** This contract shall terminate upon full performance of all requirements contained in this contract, unless otherwise extended or renewed as provided in accordance with the contract terms and conditions.

1. **Termination for Convenience:** 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 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.

#### VV. Amendments:

All amendments to this Contract will be in a manner as prescribed by the Agency Contracting Process and are, subject to Paragraph B of the General Provisions and will be made on AMENDMENT TO TEXAS EDUCATION AGENCY STANDARD CONTRACT form. All amendments will be initiated by the TEA Contracts staff. An amendment to this Contract will become effective on the date of signature of TEA or the effective date shown on the Amendment document whichever is first. 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.

#### WW. 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 vendor 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.us](mailto:TEAAccountsPayable@tea.state.tx.us) 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 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. Additional costs incurred by the contractor that result from repeated submissions and revising of substandard deliverables will be borne solely by the

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contractor and not charged against the contract or to TEA. This process will apply to all deliverables and requirements of the contract, including test items developed. This does not preclude an arrangement that allows the contractor to bill against a deliverable as progress is made toward completing that deliverable, so long as documentation of such progress in a form and nature satisfactory to TEA is provided and is approved by TEA. It is up to the contractor to request incremental billing based on progress towards a deliverable, and such a request must be approved by TEA prior to submission of any invoice by the contractor. TEA reserves the right to reject and not provide payment for deliverables found to be substandard or not in compliance with the deliverable definition agreed to under the "Deliverables and Services Definition Process", including test items developed under the contract. The contractor is strongly encouraged to collaborate with TEA on draft versions of any deliverables or services and request review(s) of such draft versions before submitting a final version.

2. **Retainage.** TEA may withhold 5% or less of each payment as retainage for certain projects. Retainage fees shall be documented in the Contract and may not be arbitrarily imposed after execution of the Contract. The release of retainage may be requested in the final invoice.
3. Unless otherwise stated, payment under this Contract will be made upon performance of services based upon submission of an expenditure report/invoice, properly prepared and certified, outlining expenditures by cost category. Include the contract number, purchase order number, and the Texas Comptroller of Public Accounts Texas Identification Number (TIN) on all invoices/expenditure reports. The cost categories provided in the expenditure report/invoice must coincide with the cost categories detailed in the approved budget. The final expenditure report/invoice is due within forty-five days after the end of the Contract. Payment on the final expenditure report is contingent upon receipt of all reports/products required by this Contract.
4. An encumbrance, accounts payable, and expenditure, as with all other contract accounting terms, will be as defined in the *Financial Accounting and Reporting Module of the TEA Financial Accountability System Resource Guide*. All goods must have been received and all services rendered by the ending date of this Contract in order for Contractor to include these costs as either expenditures or as accounts payable and, thereby, recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.
5. Contractor who is indebted or owes delinquent taxes to the state will have any payments under the contract applied toward the debt or delinquent taxes owed the state until the amount is paid in full, regardless of when the debt or delinquency was incurred. TEA shall determine whether a payment law prohibits the Comptroller from issuing a warrant or initiating an electronic funds transfer to a person before TEA enters into a written contract with that person.

Contractor may verify their account status by accessing the Comptroller's website at:  
[https://fm.xcpa.state.tx.us/fm/pubs/purchase/restricted/index.php?section=indebted&page=persons\\_indebted](https://fm.xcpa.state.tx.us/fm/pubs/purchase/restricted/index.php?section=indebted&page=persons_indebted)

XX. **Prohibition of text messaging and emailing while driving during official federal grant business:** Federal grant recipients and their grant personnel are prohibited from texting messaging while driving a government owned vehicle or while driving their own privately owned vehicle during official grant business, or from using government supplied electronic equipment to text message or email while driving. Recipients must comply with these conditions under Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," effective October 1, 2009.

XX. **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 406 of the Labor code) addresses what Texas requires:  
<http://www.tdi.texas.gov/wc/act/index.html>

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

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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.

**ZZ. 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.

**AAA. 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.

**BBB. Abandonment or Default**

If the contractor defaults on the contract, TEA reserves the right to cancel the contract without notice and either re-solicit or re-award the contract to the next best responsive and responsible respondent. The defaulting contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed; the period of suspension will be determined by the agency based on the seriousness of the default.

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

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

## SPECIAL PROVISIONS - A Program Specific

A. The parties have agreed to changes in some of the General Provisions in this Contract. Each of these changes as set forth below shall apply to this Contract notwithstanding anything to the contrary in any other provision in this Contract.

1. Section B. Contingency is hereby amended by deleting the third sentence thereof in its entirety.
2. Section C. Indemnification is hereby amended by inserting the following at the end of the section:  
For clarification, the DBITS Limitation of Liability (Appendix A, Section 8, Vendor Responsibilities, K. Limitation of Liability found in Section 30 of Amendment 1 to Contract Number DIR-SDD-2123) will apply to this contract.
3. Section J. Time Delays; Suspension; Sanctions for Failure to Perform; Noncompliance is hereby amended by deleting the first section, Time is of the Essence, thereof in its entirety. This section is further amended as follows:

### Suspension

If this Contract is suspended by TEA prior to its expiration date, Contractor will be paid for work completed and accepted pursuant to the Prompt Payment Act under Section 2251.021 of the Texas Government Code. TEA shall not be required to pay any standby hourly rates during a suspension of Work, if TEA suspends performance of the Work because Contractor fails to supply sufficiently skilled workers or materials or equipment, as required under this Contract, or fails to provide required insurance coverage, or fails to furnish or perform the Work in such a way that the completed Work will conform to this Contract.

### Sanctions

If Contractor fails or refuses for any reason to comply with or perform any of its obligations under this Contract, TEA may impose such sanctions as it may reasonably 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 suspension of this Contract, if imposed, shall become effective five days from the close of business on the day of Contractor's receipt of written notice thereof from TEA.

4. Section K. Information Security Requirements is hereby amended as follows:  
Access to Confidential TEA Information.

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

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

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

No later than sixty (60) days from contract expiration or termination or as otherwise specified in this Contract, Contractor must complete the sanitization and destruction of the data and provide to TEA all sanitization documentation.

#### Access to Internal TEA Network and Systems

As a condition of gaining remote access to any internal TEA network and systems, Contractor must comply with TEA's policies and procedures, provided that TEA provides Contractor with advance notice of such policies and procedures before Contractor gains such remote access. TEA's remote access request procedures will require Contractor to submit TEA Applicable Access Request forms for TEA's review and approval. Remote access technologies provided by Contractor must be approved by TEA's Information Security Officer. TEA, in its sole discretion, may deny network or system access to any individual that does not complete the required forms. Contractor must secure its own connected systems in a manner consistent with TEA's requirements. If Contractor gains remote access to any internal TEA network and systems, TEA reserves the right to audit the security measures in effect on Contractor's systems used to perform services under the contract after providing Contractor with 48-hours' notice. TEA also reserves the right to immediately terminate network and system connections not meeting such requirements. For the avoidance of doubt, TEA shall have no right to audit security measures with respect to any Contractor systems which are not used to perform services under the contract.

#### Disclosure of Breach of Security System

Contractor shall provide notice to TEA's Project Manager and TEA's Information Security Officer as soon as possible following Contractor's discovery or reasonable belief that there has been unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information maintained by Contractor pursuant to Chapter 521 of the Texas Business & Commerce Code ("Breach of Security System"). Within twenty-four (24) hours of the discovery or reasonable belief of a Breach of Security System, Contractor shall provide a written report to TEA's Information Security Officer detailing the circumstances of the incident which includes at a minimum:

- (1) Description of the nature of the Breach of Security System;
- (2) The type of TEA information involved;
- (3) Who may have obtained the information;
- (4) What steps Contractor has taken or will take to investigate the Breach of Security System;
- (5) What steps Contractor has taken or will take to mitigate any negative effect of the Breach of Security System; and
- (6) A point of contact for additional information.

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

- (1) Who is known or suspected to have gained unauthorized access to TEA information;
- (2) Whether there is any knowledge if TEA information has been abused or compromised;
- (3) What additional steps Contractor has taken or will take to investigate the Breach of Security System;
- (4) What steps Contractor has taken or will take to mitigate any negative effect of the Breach of Security System; and
- (5) What corrective action Contractor has taken or will take to prevent future similar unauthorized use or disclosure.

Contractor shall confer with TEA's Chief Information Security Officer regarding the proper course of the investigation and risk mitigation. TEA reserves the right to conduct an independent investigation of any Breach of Security System, and should TEA choose to do so, Contractor shall provide commercially reasonable assistance to TEA and TEA's authorized representative(s). Subject to review and approval of TEA's Information Security Officer, Contractor, at its own cost, shall provide notice to individuals whose personal, confidential, or privileged data were compromised or likely compromised as a result of the Breach of Security System in accordance with Chapter 521 of the Texas Business & Commerce Code and Section 2054.1125 of the Texas Government Code. If TEA elects to send its own separate notice of a Breach of Security System in accordance with Chapter 521 of the Texas Business & Commerce Code and Section 2054.1125 of the Texas Government Code in lieu of having Contractor send such notice, then all costs associated with preparing and providing notice, to the extent required by applicable statute, shall be reimbursed to TEA by Contractor. If Contractor does not reimburse such costs within thirty (30) days of TEA's written request, then TEA shall have the right to collect such costs.

According to the specific scope of work under Contract #3235, Contractor will store TEA Confidential Information on TEA servers. If Contractor is required to remove TEA Confidential Information from TEA systems or premises in order to perform services under this Contract, it shall only be permitted to do so using TEA-approved portable devices which have been configured and secured by TEA for such purposes. Contractor shall promptly return such devices for sanitization upon the earlier of Contractor's completion of any services requiring use thereof or the date of this Contract's termination. Contractor may NOT store TEA Confidential Data on Contractor's electronic media.



5. Section L. Refunds Due to TEA is hereby amended as follows:  
If TEA reasonably 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 in accordance with SB 1569 and SB 1863 (79th Regular Session.) Such refunds would have been determined to be a recovered overpayment by a designated audit entity retained by either the state of Texas or the Contractor. Contractor shall have the opportunity to provide documentation to the audit entity before the audit entity completes the final audit report and issues a final determination. If Contractor fails to make timely payment in accordance with this Section, 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.
6. Section R. Time and Effort Recordkeeping is hereby amended as follows:  
For those personnel whose salaries are prorated between or among different funding sources, time and effort records will be maintained by Contractor through the STAT tool 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. For federally funded projects, time and effort records maintained by Contractor through the STAT tool will be considered compliant with the requirements set forth in the applicable OMB cost principles.
7. Section HH. Conformance is hereby amended as follows:  
The Contractor warrants that, for the duration of this Contract, and any extensions hereto, all services furnished by Contractor shall conform in all respects to the terms of this Contract, including any drawings, specifications or standards incorporated herein or in a work order submitted by TEA through the STAT tool pursuant to which Contractor agrees to perform services. In addition, respondent warrants that such services are suitable for and will perform in accordance with the purposes for which they are intended, as specified in the Contract or in a work order submitted by TEA through the STAT tool pursuant to which Contractor agrees to perform services.  
EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES MADE IN THIS SECTION, CONTRACTOR MAKES NO REPRESENTATION, CONDITION OR WARRANTY OF ANY KIND UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE REGARDING ANY SERVICE OR DELIVERABLE OR ANY OTHER PRODUCT DELIVERED TO TEA UNDER THIS AGREEMENT.
8. Section UU. Termination is hereby amended as follows:  
6. **Contract Transition:** In the event a subsequent competitive solicitation is awarded to a New Contractor, the Outgoing Contractor shall hand-over to the New Contractor all "Works" including but not limited to the following: data, materials, database access, intellectual property, source code, training materials, access to websites, asset transfer, and maintenance of service commitments. The purpose of transition planning is to ensure a seamless and continuous service when changing from one contract to another. The Outgoing Contractor will begin shipping, transmitting or providing access to all appropriate materials and data to the New Contractor within 10 days of announcement of award at the New Contractor's expense for data processing and production, packing and shipping. The Outgoing Contractor will be responsible for providing the services identified in the Contract until all records have been completely transferred to the New Contractor. The Outgoing Contractor and TEA shall identify, and Contractor shall complete, all transition activities. 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.

Contractor will continue to provide all services required under the Contract without interruption in the service levels during the transition period. Contractor shall support the successor, including sharing TEA owned files until the TEA determines that the successor can satisfactorily maintain contract services without interruption. TEA will negotiate the number of Contractor's staff needed and the number of man hours to complete the transition. Costs will be based on the existing contract rates and fee structure. Contractor will not be liable for the successor's capabilities, personnel or any work performed by the successor or their designated staff.

## Special Provisions - B

Debarment and Suspension Certification  
(Required for all federally-funded contracts)

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, §85.510, Participants' Responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19,160-19,211). The regulations may be viewed and downloaded from the website: <http://www.sba.gov/sites/default/files/files/SBA%201624.pdf>

READ INSTRUCTIONS ON NEXT PAGE BEFORE COMPLETING CERTIFICATION

### CERTIFYING STATEMENT

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

SIERRA- CEDAR, INC.

Organization Name

Rick Riordan, EVP

Name and Title of Authorized Representative

Bing Riordan

Signature

11/19/2014

Date

Dept. of Education Form ED GCS-009

12/88

## GENERAL INSTRUCTIONS FOR SPECIAL PROVISIONS - B DEBARMENT AND SUSPENSION CERTIFICATION

### Definitions:

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

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

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

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

### INSTRUCTIONS FOR CERTIFICATION

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

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**Special Provisions - C  
Part A**

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

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

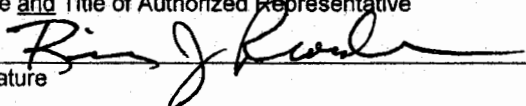
The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

SIERRA- CEDAR, INC.  
Organization Name

RICK RIORDAN, EVP  
Name and Title of Authorized Representative

  
Signature

11/19/2014  
Date

**GENERAL INSTRUCTIONS FOR SPECIAL PROVISIONS - C**  
**PART A**  
**LOBBYING CERTIFICATION**

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

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

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

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

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**TEXAS EDUCATION AGENCY  
Disclosure of Lobbying Activities**

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

Federal Program Name: \_\_\_\_\_

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

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**GENERAL INSTRUCTIONS FOR SPECIAL PROVISIONS - C**  
**PART B**  
**DISCLOSURE OF LOBBYING ACTIVITIES**

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

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

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

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

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**EXHIBIT A**  
**Description of Services**

A. Contractor will provide Maintenance, Support, and Enhancement of the Oracle (PeopleSoft) Financial Application, ISAS, the Educational Materials (EMAT) and other Custom Developed Modules. Contractor will provide services to include production support; customer assistance/support; maintenance and security; project management and reporting; software modification, enhancement, testing and performance tuning; special requests; and data changes to fully support the application for the term of the contract.

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**EXHIBIT B**  
**Best and Final Offer submitted on November 3, 2014**

A. Contractor's Budget document is attached and incorporated herein.

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# **Texas Education Agency**

**ITS/SEDS Project Management  
Office Division  
Texas Education Agency  
SOW No.: 701-15-009**

**Best and Final Offer**

**November 03, 2014**

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## Table of Contents

Pricing Offer..... 1

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## Pricing Offer

The Texas Education Agency is currently evaluating the proposal in response to SOW 701-15-009 Maintenance, Support, and Enhancement of Oracle (PeopleSoft) Financial Application and Custom Developed Modules. At this time, the agency requests a Best and Final Offer (BAFO) which requires that a new pricing offer be submitted to include anticipated costs of additional resources for the CAPPS upgrade project.

Sierra-Cedar has added estimated pricing for the CAPPS upgrade project to the previously submitted pricing model and reduced pricing for the 1<sup>st</sup> year by two months, due to the delay of beginning the new contract from 9/1/14 to 11/1/14.

## ISAS Support

**Instructions:** Enter the Proposed Price Per Unit for all categories. The total proposed price will be automatically calculated. List all assumptions made in preparing the Pricing Offer. The Annual Projected Workload Units and Approximate Hours/Per Unit are only estimates and will change due to customer requests, work complexity and funding constraints. In no way should these estimates be regarded as guarantees of any level of minimum payments.

The Awarded Vendor shall be responsible for providing the necessary staff, procedures, management processes, documentation and controls required to produce the deliverables listed in the SOW. The Awarded Vendor shall:

- Provide all materials, resources and services as required to complete the project deliverables.
- Provide appropriate management of the project to deliver all products timely and within budget.
- Provide competent, suitably qualified and trained personnel resources necessary to meet the requirements stated in the SOW.
- Provide the appropriate number of personnel resources and the proper mix of skill and expertise necessary to meet the requirements stated in the SOW.
- Provide and implement appropriate quality assurance processes.
- Adhere to all TEA standards established for the project.
- Complete and deliver high quality services necessary to meet the requirements in the SOW.
- Adhere to all TEA change management process and procedures.
- Protect the confidentiality of student, teacher or staff identifiable data as well as other sensitive data.

### Contract Year 1 Pricing (10 months)

	<b>\$100.80</b>		
Customer Assistance & Production Support			
Maintenance Software Modification, Enhancements, Performance Tuning, Special Requests and Data Changes			
Project Management & Reporting			
			<b>\$246,960</b>

### Following Contract Years (12 months)

	<b>\$100.80</b>		
Customer Assistance & Production Support			
Maintenance Software Modification, Enhancements, Performance Tuning, Special Requests and Data Changes			

Project Management & Reporting	\$296,352
<b>Pricing Proposal Assumptions: Pricing assumptions apply both to ISAS and EMAT costing:</b> <ol style="list-style-type: none"> <li>1) Sierra-Cedar will be providing 4 FTEs for the requested work. Estimates of hours on SCR's will be for determining staff requirements greater than 4 FTEs. If TEA requires staff greater than 4 FTEs, Sierra-Cedar will provide additional staff under change control and additional invoicing.</li> <li>2) Sierra-Cedar will bill monthly on a fixed price basis for 4 FTEs. TEA may add additional scope of work to fully utilize the 4 FTEs (in addition to Asset Management, Accounts Payable, General Ledger, Commitment Control, Inventory, Purchasing, EMAT, TGIF, and Cash Receipts). This can include projects like the multi-application support required by TEA.</li> <li>3) For all project based services described in our proposal, Sierra-Cedar will leverage the application support team proposed. A change order will be drafted for any additional resources required for a successful project based upon the requirements presented at the time the CAPPs upgrade project has been defined.</li> <li>4) Projected costs are based upon historical support information and planned upcoming enhancements communicated by TEA.</li> </ol>	
<b>Note:</b> If the "Projected Workload Units" completed is less during the contract, the contractor will be paid only for the number of units completed times the negotiated hours per unit.	

## EMAT/EVI Support

<b>Instructions:</b> Enter the Proposed Price Per Unit for all categories. The total proposed price will be automatically calculated. List all assumptions made in preparing the Pricing Offer. <b>The Annual Projected Workload Units and Approximate Hours/Per Unit are only estimates and will change due to customer requests, work complexity and funding constraints. In no way should these estimates be regarded as guarantees of any level of minimum payments.</b>	
The Awarded Vendor shall be responsible for providing the necessary staff, procedures, management processes, documentation and controls required to produce the deliverables listed in the SOW. The Awarded Vendor shall: <ul style="list-style-type: none"> <li>• Provide all materials, resources and services as required to complete the project deliverables.</li> <li>• Provide appropriate management of the project to deliver all products timely and within budget.</li> <li>• Provide competent, suitably qualified and trained personnel resources necessary to meet the requirements stated in the SOW.</li> <li>• Provide the appropriate number of personnel resources and the proper mix of skill and expertise necessary to meet the requirements stated in the SOW.</li> <li>• Provide and implement appropriate quality assurance processes.</li> <li>• Adhere to all TEA standards established for the project.</li> <li>• Complete and deliver high quality services necessary to meet the requirements in the SOW.</li> <li>• Adhere to all TEA change management process and procedures.</li> <li>• Protect the confidentiality of student, teacher or staff identifiable data as well as other sensitive data.</li> </ul>	
<b>Contract Year 1 Pricing (10 months)</b>	
	\$100.80
Customer Assistance & Production Support	



Maintenance Software Modification, Enhancements, Performance Tuning, Special Requests and Data Changes			
Project Management & Reporting			
			\$413,199
<b>Following Contract Years (12 months)</b>			
		\$100.80	
Customer Assistance & Production Support			
Maintenance Software Modification, Enhancements, Performance Tuning, Special Requests and Data Changes			
Project Management & Reporting			
			\$495,839
<b>Pricing Proposal Assumptions:</b>			
1. For year 1, the projected split between EMAT and EVI work is 35% EVI(\$144,620) and 65% (\$268,579) EMAT			
2. For the following contract years, the projected split between EMAT and EVI work is 35% EVI(\$173,544) and 65% (\$322,295) EMAT.			
<b>Note:</b> If the "Projected Workload Units" completed is less during the contract, the contractor will be paid only for the number of units completed times the negotiated hours per unit.			

## CAPPS Upgrade

		\$140.00	
CAPPS Upgrade - ISAS	BAFO Request		
CAPPS Upgrade - EMAT	BAFO Request		
CAPPS Upgrade - EVI	BAFO Request		
<b>Total</b>			<b>\$294,000</b>

### Pricing Offer Assumptions:

- 1) Total Proposed Price above is an estimation of the costs associated with the PeopleSoft Financials Upgrade to CAPPS version 9.2.
- 2) The final price of the PeopleSoft Financials Upgrade will be negotiated by TEA and Sierra-Cedar. The final price will be determined by a number of variables including but not limited to final scope, project timing, and various CPA considerations. A change order will be drafted for any additional resources required for a successful project based upon the requirements presented at the time the CAPPS upgrade project has been defined.
- 3) Estimated hours to support the upgrade are above and beyond the hours proposed to support ISAS and EMAT/EVI.
- 4) Estimated costs are based on the following resources over a nine (9) month period:
  - o Technical Upgrade Specialist - 100% Commitment
  - o Project Manager - 40% Commitment