

STATE OF TEXAS §  
COUNTY OF TRAVIS §

Division/Org Code:	160-006	Program Name:	IDEA B Formula - Special Education Mediators
Speed Chart:		Legal/Funding Authority:	20 USC 1400 et seq
Payee Name:	Kimberlee Kovach	Contract #:	3338
Payee ID ISAS	17428678597	PO #:	64574

## 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 Kimberlee Kovach ("Contractor").

### ARTICLE II. PERIOD OF CONTRACT

TEA shall pay Contractor for the reasonable and approved costs incurred by Contractor in connection with the Contract Project during the period beginning **September 1, 2015** 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 additional fiscal years under the same or different terms subject to appropriation of funds by the Texas Legislature for this project.

If extended, the first extension period shall be from September 1, 2016 through August 31, 2017; the second extension shall be from September 1, 2017 through August 31, 2018; and the third extension shall be from September 1, 2018 through August 31, 2019.

### ARTICLE III. PURPOSES OF CONTRACT

Contractor shall perform all of the functions and duties 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 following amounts for the performance, satisfactory to the TEA, of Contractor's functions and duties under this contract.

- A. Compensation at the hourly rate of \$150.00 for time spent performing the functions of a mediator.
- B. Time expended traveling to and from a mediation will be compensated at the hourly rate of \$60.00. In cases where return travel is delayed due to inclement weather, canceled flights, or other unforeseen circumstances, TEA will consider on a case-by-case basis and in accordance with state and TEA travel rules, whether the mediator should be compensated for all of the time expended because of the delay.
- C. Mediators will be reimbursed for TEA-sponsored training sessions at the hourly rate of \$150.00 for the actual time spent in training. Mediators will be reimbursed at the current state rates for transportation expenses for all TEA-sponsored training sessions. Lodging and meal expenses will only be reimbursed if the travel requires an overnight stay.
- D. TEA will reimburse a mediator for certain expenses as provided below:
  1. Copying costs will be reimbursed at 10 cents per page or the amount invoiced if service was contracted to another vendor, whichever is less.
  2. Telephone and long distance charges will be reimbursed at the actual cost incurred.
  3. Fax costs will be reimbursed at 10 cents per page.
  4. Translation and sign language interpreter costs, if required, will be reimbursed at the current market rate in the region where the service was incurred. When possible, the mediator shall obtain multiple estimates for these services.
  5. An amount not to exceed \$1,500.00 for tuition to attend TEA approved seminars for continuing legal education (CLE) credit hours. The \$1,500.00 limit applies to all contractors regardless of whether they serve as both a

mediator and a hearing officer or serve in only one capacity. The transportation, lodging, and meal expenses related to attending seminars that fall within the \$1,500.00 tuition cap will be reimbursed at the current state rate, except that TEA will only reimburse a Contractor for the travel expenses for one out-of-state seminar per fiscal year. A mediator wanting to attend a seminar must seek TEA's approval before the expiration of the early registration deadline, if any, or at least 30 days before the date on which the seminar begins. Tuition reimbursement for seminars offering an early registration discount will be limited to the amount of the early registration tuition.

6. Lodging and meal expenses to conduct mediations will be reimbursed at the current General Services Administration (GSA)'s federal travel rates, except that the "standard rate" shall be \$85 maximum for lodging and \$46 maximum for meals and will apply for in-state locations that are not specifically listed in the GSA federal rates. Although receipts are not required for meals, reimbursement is limited to actual expenses incurred up to the maximum rate. Meal expenses are reimbursed only for travel requiring overnight stay. (Tips and alcoholic beverages will not be reimbursed.)
7. Mileage will be reimbursed at the current state rate. Car rentals, when required, will be reimbursed at the current state rate and will be limited to full-size or smaller vehicles. Mileage is not reimbursed for car rentals; however, gasoline will be reimbursed at actual cost.
8. Airfare will be reimbursed at the actual cost incurred. First and/or business class fares will not be reimbursed unless the mediator provides documentation dated at the time of ticket purchase that the first and/or business class fare is the only available option.
9. Mediators should ensure that all travel expenses that they incur are the most cost effective considering all relevant circumstances.

E. Mediators will not be compensated for time spent preparing billing invoices.

#### 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
- Special Provisions C, Lobbying
- Special Provisions D, Historically Underutilized Business Subcontracting Plan (HSP) Changes and Reporting Requirements

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.

By entering into this contract, the Contractor certifies and ensures that it utilizes and continue to utilize, for the term of the contract, the U.S. Department of Homeland Security's E-Verify system to determine eligibility of: 1. All persons employed to perform duties within Texas, during the term of the contract; and 2. All persons (including subcontractors) assigned by the Proposer to perform work pursuant to the contract, within the United States of America. Contractor shall provide, upon request of the TEA an electronic or hardcopy screen shot of the confirmation number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.

If this certification is falsely made, the contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the state must undertake to replace the terminated contract.

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: Kimberlee Kovach  
Typed title: Attorney at Law

**Kimberlee Kovach**  
Digitally signed by Kimberlee Kovach  
DN: cn=Kimberlee Kovach, o, ou,  
email=k2kovach@yahoo.com, c=US  
Date: 2015.08.25 14:45:53 -05'00'  
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 8-28-15 (month/day/year) by a person authorized to bind Agency.

Return three (3) copies with original signature to:  
Norma Barrera  
Texas Education Agency  
Purchasing, Contracts and Agency Services Division  
1701 North Congress Avenue Rm. 2-125  
Austin, Texas 78701-1494  
Or  
Electronic version may be submitted to:  
TEAContracts@tea.state.tx.us

  
Shirley Beaulieu  
Associate Commissioner Finance/ CFO

## APPENDIX 1

I. The definitions of terms in the General Provisions are incorporated herein.

II. If there is a conflict or ambiguity between or among the terms of the documents that constitute this contract, and if that conflict or ambiguity cannot be resolved by construing the terms so as to harmonize all their terms, then the conflict or ambiguity shall be resolved with the following contract documents prevailing in the following order of priority:

General and Special Provisions of the Standard Contract;  
The Standard Contract, inclusive of all appendices;  
Contractor's Proposal to the Texas Education Agency in response to RFQ No. 701-16-002 Special Education Mediators, including the Historically Underutilized Business Subcontracting Plan (HSP); and the  
RFQ No. 701-16-002 Special Education Mediators.

III. Description of Services

Contractor shall serve as a special education mediator by performing the applicable duties specified in the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), the IDEA federal regulations, the Texas Education Code, and 19 Texas Administrative Code Chapter 89, Division 7, and in this contract. See Special Provisions A, Program Specific for additional requirements of a mediator.

IV. Budget

Contractor shall be compensated for services performed and shall be reimbursed for expenses incurred as provided in Article IV Payment Under Contract in this Standard Contract.

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.

## CONTRACT TERMS AND CONDITIONS

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

- 1) *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;
- 2) *Receiving Agency, Party, Owner or TEA* means the Texas Education Agency;
- 3) *Bidder, Proposer, or Respondent* may be used interchangeably. Bidder, Proposer, and Respondent infer pre-award status, and Contractor infers post-award status;
- 4) *Bid package, proposal, or response* may be used interchangeably;
- 5) *Contractor or Performing Agency* means the party or parties to this contract other than TEA, including its or their officers, directors, employees, agents, representatives, consultants and subcontractors, and subcontractors' officers, directors, employees, agents, representatives and consultants;
- 6) *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;
- 7) *Contract Project* means the purpose intended to be achieved through the contract;
- 8) *Amendment* means a contract that is revised in any respect, and includes both the original contract, and any subsequent amendments or extensions thereto;
- 9) *Major Contract* means any contract over \$10 million cumulative over the life of the contract;
- 10) *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;
- 11) *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; and
- 12) *TEA Confidential Information* means information that is confidential under the provisions of the Family Educational Rights and Privacy Act (FERPA), the Texas Public Information Act, or other applicable state or federal laws. Examples of TEA Confidential Information include: (a) personally identifiable student information; (b) social security numbers; (c) driver's license numbers; (d) criminal background checks; (e) e-mail address of a member of the public, unless the individual waives his or her right to e-mail confidentiality by affirmatively consenting to disclose the e-mail address or the individual seeks to contract or has a contract with TEA; (f) certain personnel information concerning a TEA employee including home address, home telephone number, emergency contact information, and family member information (if the employee elects in writing to keep this information confidential), personal medical information, and information reflecting personal financial decisions such as the employee's choice of insurance carrier or choice to contribute money to a 401(k); (g) biometric identifiers such as fingerprints; (h) information about security vulnerabilities in TEA systems; and (i) SAS data sets.

**B. Contingency:** The contracts, 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:

#### Acts or Omissions

Contractor shall indemnify and hold harmless the State of Texas and TEA, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of Contractor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the contract and any Purchase Orders issued under the contract. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE

ATTORNEY GENERAL. CONTRACTOR AND TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

Infringements

- 1) Contractor shall indemnify and hold harmless the State of Texas and TEA, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.
- 2) Contractor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Contractor's written approval, (iii) any modifications made to the product by Contractor pursuant to TEA's specific instructions, (iv) any intellectual property right owned by or licensed to TEA, or (v) any use of the product or service by TEA that is not in conformity with the terms of any applicable license agreement.
- 3) If Contractor becomes aware of an actual or potential claim, or TEA provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against TEA, shall), at Contractor's sole option and expense; (i) procure for TEA the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that TEA's use is non-infringing.

CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TEA AND/OR THE STATE SHALL NOT BE LIABLE TO CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS TEA, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

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

Pursuant to the Texas Government Code, the state auditor may conduct an audit or investigation of 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 Contractor or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Contractor or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.

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

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

Contractor warrants that (i) it has the authority to grant the rights herein granted, (ii) it has not assigned or transferred any right, title, or interest to the Works or Intellectual Property Rights that would conflict with its obligations under the contract, and Contractor will not enter into any such agreements, and (iii) the Works will be original and will not infringe any intellectual property rights of any other person or entity. These warranties will survive the termination of the contract. If any preexisting rights are embodied in the Works, Contractor grants to TEA the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (a) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such preexisting rights and any derivative works thereof and (b) 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's Office of Legal Services.

**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's Office of Legal Services.

- J. Time Delays; Suspension; Sanctions for Failure to Perform; Noncompliance:** Time is of the Essence. Contractor's timely performance is essential to this contract.

Suspension

If this contract is suspended by TEA prior to its expiration date, the reasonable monetary value of services properly performed by Contractor pursuant to this contract prior to suspension shall be determined by TEA and paid to Contractor as soon as reasonably possible. TEA shall not be required to pay any standby hourly rates during a suspension of Work, if TEA suspends performance of the Work because the Work is defective, or Contractor fails to supply sufficiently skilled workers or suitable materials or equipment, or fails to provide required insurance coverage, or fails to furnish or perform the Work in such a way that the completed Work will conform to this contract.

Sanctions

If Contractor, in TEA's sole determination, fails or refuses for any reason to comply with or perform any of its obligations under this contract, TEA may impose such sanctions as it may deem appropriate. This includes but is not limited to the withholding of payments to Contractor until Contractor complies; the cancellation, termination, or suspension of this contract in whole or in part; and the seeking of other remedies as may be provided by this contract or by law. Any cancellation, termination, or suspension of this contract, if imposed, shall become effective at the close of business on the day of Contractor's receipt of written notice thereof from TEA.

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

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

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

No later than 30 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 documentation that the sanitization has been completed. The documents must be certified by an authorized agent of the company.

Access to Internal TEA Network and Systems

As a condition of gaining remote access to any internal TEA network and systems, Contractor must comply with TEA's policies and procedures. TEA's remote access request procedures will require Contractor to submit TEA access request forms for TEA's review and approval. Remote access technologies provided by Contractor must be approved by TEA's Information Security Officer. TEA, in its sole discretion, may deny network or system access to any individual that does not complete the required forms. Contractor must secure its own connected systems in a manner consistent with TEA's requirements. TEA reserves the right to audit the security measures in effect on Contractor's connected systems without prior warning. TEA also reserves the right to immediately terminate network and system connections not meeting such requirements.

Disclosure of Security Breach

Contractor shall provide notice to TEA's Project Manager and TEA's Information Security Officer as soon as possible following Contractor's discovery or reasonable belief that there has been unauthorized use, exposure, access, disclosure, compromise, modification, or loss of sensitive or confidential TEA information ("Security



Incident"). Within 24 hours of the discovery or reasonable belief of a Security Incident, Contractor shall provide a written report to TEA's Information Security Officer detailing the circumstances of the incident which includes at a minimum:

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

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

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

Contractor shall confer with TEA's Chief Information Security Officer regarding the proper course of the investigation and risk mitigation. TEA reserves the right to conduct an independent investigation of any Security Incident, and should TEA choose to do so, Contractor shall cooperate fully by making resources, personnel, and systems access available to TEA and TEA's authorized representative(s). Subject to review and approval of TEA's Information Security Officer, Contractor, at its own cost, shall provide notice that satisfies the requirements of applicable law to individuals whose personal, confidential, or privileged data were compromised or likely compromised as a result of the Security Incident. If TEA, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing notice shall be reimbursed to TEA by Contractor. If Contractor does not reimburse such costs within 30 days of TEA's written request, then TEA shall have the right to collect such costs.

- L. Refunds Due to TEA:** If TEA determines that TEA is due a refund of money paid to Contractor pursuant to this contract, Contractor shall pay the money due to TEA within 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 and Escalation:** All notices, reports and correspondence required by this contract shall be in writing and delivered to the TEA Project Manager listed below or his or her successors in office. Within 30 days of execution of a contract, the respective parties will designate the next level of personnel within each organization to address conflicts or ambiguity that cannot be resolved at the Project Manager level.

**TEA**

Lorie Williams  
 Texas Education Agency  
 William B. Travis Building  
 1701 N. Congress Avenue  
 Austin, Texas 78701

**CONTRACTOR**

Kimberlee Kovach  
 8132 jester Blvd.  
 Austin, TX 78750

**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 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. Pursuant to 34 TAC §201.14 -18 and Texas Government Code, Chapter 2161, Contractors shall maintain business records documenting compliance with the HUB subcontracting plan (HSP) and shall submit a compliance report to TEA monthly, in the format required by TEA. The compliance report submission shall be required as a condition for payment. If Contractor subcontracts any part of the contract in a manner that is not consistent with its HSP, Contractor must submit a revised HSP before subcontracting any of the work under the contract. If Contractor subcontracts any of the work without prior authorization and without complying with this section, Contractor is deemed to have breached the contract and is subject to any remedial actions provided by Texas Government Code, Chapter 2161, and other applicable state law.

- 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 Texas Business and Commerce 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, Texas 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 TEA 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 TEA 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. TEA's participation in mediation or any other dispute resolution process shall not waive any of TEA'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 TEA, Contractor shall furnish TEA with satisfactory proof of its compliance with this provision.
- BB. **Public Information:** 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 TEA under this contract constituting a record under the Act is received by TEA, the information must qualify for an exception provided by the Act in order to be withheld from public disclosure. Contractor authorizes 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 TEA does not have a good faith belief that information may be subject to an exception to disclosure, TEA is not obligating itself by this contract to submit the information to the Attorney General. It shall be the responsibility of 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. Contractor waives any claim against and releases from liability 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 Contractor and determined by the Attorney General or a court of law to be subject to disclosure under the Act.

Under Section 2252.907 of the Texas Government Code, a contract between a state governmental entity and a nongovernmental contractor involving the exchange or creation of public information, as defined by Texas Government Code Section 552.002, must require the nongovernmental **contractor to make any information created or exchanged with the state pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state.** The TEA Project Manager will provide the specific format by which Contractor is required to make the information accessible by the public.

- CC. Gratuities:** By signing this contract, Contractor represents and warrants that 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 TEA'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:** A Contractor who is aggrieved in connection with the solicitation, evaluation, or award of this or any other contract by TEA may submit a formal protest to the Director of TEA's Contracts, Purchasing and Agency Services (PCAS) Division. This protest procedure shall be the exclusive method by which anyone may make a challenge to any aspect of TEAs contracting process. TEA will not be required to consider the merits of any protest unless the written protest is submitted within 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 TEA'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 TEA that a violation of law has occurred in its contracting process in a case in which a contract has been awarded, then TEA 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 TEA
- 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:** Contractor warrants that all goods and services furnished shall conform in all respects to the terms of this contract, including any drawings, specifications or standards incorporated herein, and any defects in materials, workmanship, and free from such defects in design. In addition, Contractor warrants that goods and services are suitable for and will perform in accordance with the purposes for which they are intended.
- 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 TEA before serving in assignments on behalf of TEA. This requirement applies to all individuals who currently serve or will serve in TEA assignments that have the possibility of direct contact with students. Assignments are contingent upon meeting TEA 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 PCAS Division. An attempted assignment after contract award without TEA approval will constitute a material breach of contract.
- LL. Buy Texas:** In accordance with Texas 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:** TEA and 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/briefing-room/presidential-actions/executive-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:** State agencies shall procure products which comply with the State of Texas Accessibility requirements for Electronic Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

Regulations updating the accessibility requirements for entities covered by [Section 508 of the Rehabilitation Act of 1973](#) will likely be adopted sometime in FY 2015. Therefore, all current and potential contractors are hereby notified of the impending changes. The current technical requirements for accessibility contained within the regulations 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, the Texas Department of Information Resources will be modifying the TAC rules to align 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 contractors should already be familiar with designing to this standard, and their ability to meet these standards should be a strong consideration in the selection process.

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

[WCAG 2.0 at a glance](#)

[IBM Developer Guidelines Web Checklist](#)

[Webaim.org Accessibility Checklist](#)

**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 Contractor's bid or proposal is based and will not allow any person who prepared the respective specifications or solicitation to participate financially in any contract award.

**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.

**RR. Proprietary; Confidential Information; Nondisclosure; Press Releases:** All information gathered, produced, derived, obtained, analyzed, controlled or accessed by Contractor in connection with a contract resulting from a solicitation ("Confidential Information") shall be and remain confidential information and shall not be released or disclosed by Contractor without the prior written consent of TEA, which consent must specifically identify the confidential information to be disclosed by Contractor and the nature of the disclosure for which consent is sought. Contractor, its employees and subcontractors, agree that in executing tasks on behalf of TEA, 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 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 TEA. 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. Except when defined as part of the Work under this contract. Contractor will not make any press releases, public statements, or advertisement referring to the Contract Project or the engagement of Contractor in connection with the Contract Project, or release any information relative to the Contract Project for publication, advertisement or any other purpose without the prior written approval of TEA.

Within 30 days of completion of the Contract Project, Contractor or Contractor's authorized agent must provide a signed written statement certifying that all media used for storing TEA Confidential Information has been

sanitized and that all TEA Confidential Information has been destroyed or returned to TEA and that there are no copies of the information.

**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. Contractor Performance:** All state agencies must report unsatisfactory contractor performance on purchases over \$25,000. Proposers 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 proposer'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, Texas Government Code. Proposers may fail this selection criterion for any of the following conditions: A score of less than 90% in the Contractor Performance Tracking System, currently under a Corrective Action Plan, having repeated negative contractor performance reports for the same reason, having purchase orders that have been cancelled in the previous 12 months for non-performance (i.e. late delivery, etc.). TEA may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Contractor Performance Tracking System (as authorized by 34 Texas Administrative Code §20.108), TEA may examine other sources of contractor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of TEA, and any negative findings, as determined by TEA, may result in non-award to Proposer.

Agencies report satisfactory and exceptional Contractor performance to assist in determining best value. In accordance with Texas Government Code, §2155.074 and §2155.75, contractor performance may be used as a factor in future contract awards.

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

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

- 1. Termination for Convenience:** TEA may terminate this contract at any time, in whole or in part, without penalty, by providing 15 calendar days advance written notice to Contractor. In the event of such a termination, 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 Contractor that are permitted, properly performed under this contract and were incurred prior to the effective termination date.
- 2. Termination for Cause/Default:** If 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 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 Contractor in writing prior to the exercise of such remedy.

Contractor shall remain liable for all covenants and indemnities under the contract. 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 Contractor under the contract.
- 5. Survival of Terms:** Termination of the contract for any reason shall not release 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 its 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 TEA 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 PCAS staff. An amendment to this contract will become effective on the date of signature of TEA or the effective date shown on the amendment document whichever is first.

If the initial major contract (defined as expected value of \$10 million or more) solicitation document submitted to the CPA Contract Advisory Team (CAT) changes substantially, agencies are required to resubmit their solicitation documents(s) for CAT review. Changes in the major contract solicitation are considered substantial when: 1) the solicitation change caused the estimated value for the original term of the contract, not including renewal periods, to increase by 25% or more; 2) or there are significant revisions, deletions and/or additions to the specifications, statement of work (SOW), set(s) of deliverables, performance measures, payment methodology, etc.

1. Contractor is permitted to re-budget among direct cost categories within the approved budget to meet unanticipated requirements and to make limited changes to the approved budget without the issuance of a written amendment as long as the total budget amount does not change. However, a revised budget document must be submitted to the TEA Project Manager for approval. Once approved, the documents must be submitted to the PCAS Division for incorporation into the contract file. Failure to submit the budget documents will result in invoices being rejected or payment delayed.
2. Written amendments are required for the following contract changes:
  - a. Any revision which would result in the need for additional funding;
  - b. Any revision to the scope of work, deliverables, or objectives of the contract (regardless of whether there is an associated budget revision requiring prior approval) additionally increases of 25% or more for major contracts must be approved by the Comptroller;
  - c. A request to extend the period of the contract;
  - d. Cumulative transfers among direct cost categories which exceed or are expected to exceed 25% 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 TEA must be transmitted electronically to Contractor no later than 30 days after the later of:

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

Additional information and a Direct Deposit Authorization application may be found at: <https://fm.x.cpa.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. 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 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 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 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" in the Service Level Agreement or the Contract Monitoring Tool, Contractor will have 10 working days to provide a Corrective Action Plan and address the quality or other compliance requirement and resubmit the deliverable. Additional costs incurred by Contractor that result from repeated submissions and revising of substandard deliverables will be borne solely by 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 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 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 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. Contractor is strongly encouraged to collaborate with TEA on draft versions of any deliverables or services and request review(s) of such draft versions before submitting a final version.

2. Retainage: TEA may withhold 5% or less of each payment as retainage for certain projects. Retainage fees shall be documented in the contract and may not be arbitrarily imposed after execution of the contract. The release of retainage may be requested in the final invoice.
3. Unless otherwise stated, payment under this contract will be made upon performance of services based upon submission of an expenditure report/invoice, properly prepared and certified, outlining expenditures by cost category. Include the contract number, purchase order number, and the Texas Comptroller of Public Accounts Texas Identification Number (TIN) on all invoices/expenditure reports. The cost categories provided in the expenditure report/invoice must coincide with the cost categories detailed in the approved budget. A list of tasks/activities performed during the invoice period must accompany the expenditure report/invoice. The final expenditure report/invoice is due within 45 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 its 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.

**YY. Insurance:** Contractor represents and warrants that it will, within five business days of being requested by 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 and may be found at: <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; and  
Damage to Premises Rented to You: \$50,000

Contractor represents and warrants that all of the above coverage is with companies licensed in the State of Texas, with "A" rating from A.M. Best, and authorized to provide the corresponding coverage. Contractor also represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least 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 contract resulting from this RFQ 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 business days of the existence of such force majeure, or otherwise waive this right as a defense.

**AAA. Drug Free Workplace Policy:** 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 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 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 Proposer. 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 TEA based on the seriousness of the default.

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

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

Any terms and conditions attached to a solicitation will not be considered unless specifically referred to on this solicitation and may result in disqualification.

## SPECIAL PROVISIONS - A Program Specific

- A. A mediator must be independent and impartial. In this regard, a mediator may not:
1. Be an employee of TEA or any public agency that is involved in the education or care of the student who is the subject of a mediation;
  2. Have a personal or professional interest that would conflict with his or her objectivity in a mediation; and
  3. Represent, contract with, be employed by, or accept any remuneration from any individual or entity (including, without limitation, any child, parent, teacher, administrator, school district, charter school, or regional education service center) in connection with any matter relating to or involving public education (including, without limitation, any matter arising under or relating to the Texas Education Code, IDEA, Section 504 of the Rehabilitation Act of 1973, and any other federal or state law, rule, or regulation relating to education).

**A person who otherwise qualifies to conduct a mediation is not a TEA employee solely because he or she is paid by TEA to serve as a mediator. In addition, the outside practice of law is not barred as long as it is permitted under Section A above and is compatible with the duties of a special education mediator.**

- B. A mediator must travel to the school district or charter school involved in a mediation to conduct the mediation.
- C. A mediator must possess, at his or her own expense, the necessary support and equipment to perform his or her duties. At a minimum, the mediator must have and maintain in good working order: (1) a telephone (monitored during business hours by an assistant, answering service, or answering system); (2) a fax machine; (3) a personal computer, with Internet service, running Windows and Microsoft Office compatible software; and (4) an electronic mail (email) address.
- D. A mediator must comply with the standards of neutrality, confidentiality, and conduct required by IDEA, the Family Educational Rights and Privacy Act (FERPA), and the State Bar of Texas Rules.
- E. A mediator must comply with all legal and contractual timelines, including but not limited to the following:
1. Contacting both parties by phone or email within three business days of a case assignment;
  2. Conducting the mediation session within 15 days of assignment unless both parties have difficulty agreeing to the date, time, and place of the session; and
  3. Providing a closure letter to both parties that states the date and final outcome of the mediation session (i.e., agreement or no agreement). TEA's mediation survey must be included with the closure letter. The closure letter must be transmitted to the parties within five business days of the closure of the mediation, and a copy of the letter must be uploaded into TEA's electronic docket system.
- F. A mediator must prepare and submit to TEA by the 10th day of each month a standard invoice (on a template provided by TEA) detailing the activities and expenses by case. Payment for services and reimbursement of expenses by TEA is further conditioned upon:
1. The mediator's full compliance with all legal and contractual requirements applicable to mediations (including, without limitation, the specific requirements described in Section D, above);
  2. The reasonableness of the amount of time spent by the mediator on the cases for which he or she is seeking payment/reimbursement; and
  3. The mediator's timely submission of reasonable and acceptable documentation supporting all expenses being claimed.
- G. A mediator must attend all training sessions held at TEA (typically one or two each fiscal year). A mediator must earn at least 10 hours of CLE relating to the practice of mediation, including the study of mediation, negotiation, conflict management techniques or theory, or conflict related topics from communications, psychology or other related disciplines. A mediator who has not previously served as a special education mediator may attend CLE trainings relating to special education law with TEA's prior approval. A mediator who also has a contract to serve as a special education hearing officer must earn at least 5 hours of CLE relating to the practice of mediation, including the study of mediation, negotiation, conflict management

techniques or theory, or conflict related topics from communications, psychology or other related disciplines, in addition to the CLE hours required under the contract to serve as a hearing officer.

- H. If a mediator has not previously served as a special education mediator for TEA, he or she must:
  - 1. Attend orientation training required by TEA; and
  - 2. Observe at least two special education mediations before being assigned a case.
- I. A mediator must provide updates on case activities for each case file in the manner specified by TEA, including but not limited to entering direct updates into TEA's electronic docket system.
- J. A mediator and any of the mediator's staff who will have access to Texas public school campuses must submit to a national criminal history record information review (including fingerprinting) and meet all eligibility standards and criteria set by TEA before serving in assignments on behalf of TEA. If an individual has not completed this requirement or the review results in a determination that the individual is not eligible for assignment, the contract will be terminated effective immediately or on the date of notice of non-eligibility, whichever is earliest.

**There is no guarantee as to the number of cases that will be assigned to a mediator. TEA's current practice is to assign cases to mediators based on a random rotation or based on the parties' selection. However, the assignment process could be modified in the future based on program needs.**

## 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.

Kovach Dispute Resolution

Organization Name

Kimberlee Kovach, Independent Mediator & Arbitrator

Name and Title of Authorized Representative

**Kimberlee Kovach**

Digitally signed by Kimberlee Kovach  
DN: cn=Kimberlee Kovach, o, ou, email=k2kovach@yahoo.com,  
c=US  
Date: 2015.08.25 16:30:10 -05'00'

08/25/15

Signature

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.

**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.**

Kovach Dispute Resolution

Organization Name

Kimberlee Kovach, Independent Mediator and Arbitrator

Name and Title of Authorized Representative

Kimberlee Kovach

Digitally signed by Kimberlee Kovach  
DN: cn=Kimberlee Kovach, o, ou, email=k2kovach@yahoo.com, c=US  
Date: 2015.08.25.16:31:53 -0500

08/25/15

Signature

Date

Dept. of Education Form ED 80-0008

11/89

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

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

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

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

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

**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 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 style="text-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>10. A) Name and Address of Lobbying Registrant  (If individual, Last name, First name, MI):</p>	<p>B) Individuals Performing Services (include address, if different from 10 A)  (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>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No: _____</p> <p>Date: _____</p>	
<p><b>Federal Use Only:</b></p>		<p>Authorized for Local Reproduction Standard Form—LLL</p>

(STCONT)



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

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

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

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

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

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

- A. Contractor's HSP submitted in response to RFQ 701-16-002 Special Education Mediators is incorporated herein.
- B. Any changes to the HUB Subcontracting Plan (HSP) must be approved by the Agency HUB Coordinator before staffing changes are initiated.
- C. Contractor must submit monthly compliance reports (Prime Contractor Progress Assessment Report (PAR) to the TEA HUB Coordinator, verifying their compliance with the HSP, including the use/expenditures they have made to all subcontractors. (The PAR is available at <http://www.tea.state.tx.us/index2.aspx?id=7038> )



# HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

**NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).**

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

**- - Agency Special Instructions/Additional Requirements - -**

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only contracts that have been in place for five years or less shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

**SECTION-1: RESPONDENT AND REQUISITION INFORM**

- a. Respondent (Company) Name: Kovach Dispute Resolution State of Texas VID #: 1742867859700  
 Point of Contact: Kimberlee Kovach Phone #: 512 970-2683  
 E-mail Address: k2kovach@yahoo.com kim@kimkovach.com Fax #: 512 477-9302
- b. Is your company a State of Texas certified HUB?  - Yes  - No
- c. Requisition #: 701-16-002 Bid Open Date: 07/08/2015  
(mm/dd/yyyy)

Enter your company's name here: Kovach Dispute Resolution Requisition #: 701-16-002

**SECTION 2: SUBCONTRACTING INTENTIONS RESPONDENT**

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including goods and services, will be subcontracted. Note: In accordance with 34 TAC §20.11., an "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b, of this SECTION and continue to Item c of this SECTION.)
- **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources. (If **No**, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>five (5) years or less</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
<b>Aggregate percentages of the contract expected to be subcontracted:</b>		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>).

c. Check the appropriate box (Yes or No) that indicates whether you will be using only Texas certified HUBs to perform all of the subcontracting opportunities you listed in SECTION 2, Item b.

- **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- **No** (If **No**, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract with Texas certified HUBs with which you have a continuous contract\* in place with for five (5) years or less meets or exceeds the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements".

- **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- **No** (If **No**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

**\*Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: \_\_\_\_\_

Requisition #: \_\_\_\_\_

**SECTION-2: SUBCONTRACTING INTENTIONS RESPONDENT (CONTINUATION SHEET)**

a. This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for five (5) years or less.	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

*\*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*

Enter your company's name here: Kovach Dispute ResolutionRequisition #: 701-16-002**SECTION-3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4)**

Check the appropriate box (Yes or No) that indicates whether your response/proposal contains an explanation demonstrating how your company will fulfill the entire contract with its own resources.

- **Yes** (If **Yes**, in the space provided below **list the specific page(s)/section(s)** of your proposal which explains how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)
- **No** (If **No**, in the space provided below **explain how** your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)

As a sole proprietorship, I will be conducting all of the work associated with this proposal. As discussed in Section B.5 of the submitted Management Plan and Experience, I have the requisite equipment, supplies and materials. As a HUB, I will not be subcontracting any portion of this contract. My VID #: 1742867859700 and the Vendor# is 487201.

**SECTION-4: AFFIRMATION**

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

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Kimberlee Kovach  
Digitally signed by Kimberlee Kovach  
 DN: cn=Kimberlee Kovach, o, ou,  
 email=k2kovach@yahoo.com, c=US  
 Date: 2015.07.06 13:44:32 -05'00'

Signature

Kimberlee Kovach

Printed Name

Mediator

Title

07/06/2015Date  
(mm/dd/yyyy)**Reminder:**

- If you responded "**Yes**" to **SECTION 2, Items c or d**, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" **for each** of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "**No**" **SECTION 2, Items c and d**, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" **for each** of the subcontracting opportunities you listed in SECTION 2, Item b.