



TEXAS EDUCATION AGENCY

William B. Travis Building
1701 North Congress Avenue
Austin, Texas 78701-1494

REQUEST FOR QUALIFICATIONS (RFQ)

RFQ #701-14-007

Employee Assistance Program Service Provider

Authorized by:

<p>PROPOSAL DELIVERY LOCATION: Purchasing & Contracts Division Texas Education Agency 1701 N Congress Ave, Room 2-125 Austin, TX 78701</p>	<p>REFER INQUIRIES TO: Jennifer Feliciano TEAContracts@tea.state.tx.us</p>
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**WITHOUT EXCEPTION – QUALIFICATIONS MUST BE TIME AND DATE STAMPED BY THE PURCHASING & CONTRACTS DIVISION BEFORE:
Tuesday, July 23, 2013, 2:00 P.M., Central Time**

Pursuant to the Provisions of the Texas Government Code Title 10 Subtitle D Chapter 2156.121 – 2156.127, sealed proposals will be received until the date and time established for receipt. After receipt, only the names of the Proposers may be made to the public. Prices and other proposal details may only be divulged after award of a contract, if a contract is awarded. The award notice will be posted to the public Electronic State Business Daily located at <http://esbd.cpa.state.tx.us/>.

All written requests for information will be communicated to all Proposers known to the agency. All proposals shall become the property of the State of Texas upon receipt. All proposals must be delivered to the Texas Education Agency Purchasing & Contracts Division as required by the instructions within this request.

All addenda to and interpretation of this solicitation shall be in writing. The State shall not be legally bound by an addenda or interpretation that is not in writing.

Selected Contractor(s) understands and agrees that no public disclosures or news releases pertaining to being selected or approved as a management team member or information regarding any school in the program or outcomes shall be made without prior written approval of TEA.

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SECTION ONE: INTRODUCTION AND PURPOSE

1.1 PURPOSE OF THE REQUEST FOR QUALIFICATIONS (RFQ)

The Texas Education Agency (TEA) is seeking a Service Provider to provide employee assistance program services that include, but are not limited to, counseling in areas such as substance abuse, legal concerns, marital/family problems, financial problems, psychological/emotional problems, health-related problems, job performance problems, and grief or other types of trauma counseling.

Eligible proposers are licensed and certified entities with professional experience in counseling a diverse population.

1.2 CONTRACT TERM/OPTION TO EXTEND

The term of any contract resulting from this RFQ shall be from contract award until August 31, 2014. TEA, at its own discretion, may extend any contract awarded pursuant to the RFQ for up to four (4) additional fiscal years under the same or different terms subject to appropriation of funds by the Texas Legislature for this project. If renewed, the first renewal period shall be from September 1, 2014 through August 31, 2015, the second shall be from September 1, 2015 through August 31, 2016, the third shall be from September 1, 2016 through August 31, 2017, and the final renewal period shall be from September 1, 2017 through August 31, 2018. The amount of any escalation percentage, if any, allowed at each renewal shall be solely within TEA's discretion and many not exceed 5 percent per year.

1.3 BUDGET

TEA will award one contract as a result of this RFQ. Cost of services to be provided should be based on the monthly TEA employee head count. All services under the contract will be provided at no cost to the participants. The Contractor shall not request payment from any participant's insurance carrier. Payment for services received from a referral which are not included in the contract will be the responsibility of the participant.

1.4 PROJECT DESCRIPTION AND REQUIREMENTS

Contractor will provide employee assistance and counseling services to the Texas Education Agency workforce of approximately 826 employees which includes but is not limited to the following:

- TEA employees and their immediate family members will be counseled or assisted in dealing and coping with problems at work and/or non-work-related issues such as stress from workload, skills deficits, family problems (abusive situation, child care difficulties, etc.), emotional problems, substance abuse issues, etc. on an as-needed basis.
- The counseling sessions will occur off-site or at a designated neutral site and may involve direct crisis intervention contingent upon the credentials of the provider or it may involve referral to the employee's group insurance provider, health maintenance organization (HMO), or local community services program (local state hospital, private hospital, psychologist, psychiatrist, consumer credit counseling, etc.). This service will be provided, and associated costs will be based, primarily on an employee or participant basis, assuming a maximum number of visits (at least six [6]) per employee, plus a number of visits (at least six [6]) per employee's family members, assuming a maximum number of visits (at least six [6] per family member). If an employee or their family member needs additional visits after the initial visits have been exhausted, the employee or their family member will be held personally accountable of any charges relating to the additional visit(s).
- The TEA Human Resources Director, or appointee, shall be advised in an appropriate and timely manner by the Contractor of employee issues that could present a liability, hazard, danger, or otherwise cause harm to TEA's operations, staff, or to the employees being counseled.
- Contractor shall ensure each employee's confidentiality is maintained unless business or other necessity requires disclosure to the TEA.

- Contractor shall develop and provide to TEA employees, subject to TEA approval, informational booklets and other publicity materials to promote these services.
- Contractor shall maintain data on the number of staff counseled, description of service(s) given, and the results or outcome of the services. On a semi-annual basis, TEA, with assistance from the Contractor will conduct a confidential evaluation of these services to validate their effectiveness.
- Contractor shall provide the counseling sessions described in this Contract to former TEA employees and immediate family members for six months beyond the last day of employment.
- Contractor shall offer an unlimited number of critical incident debriefing sessions during the contract period.
- Contractor shall offer a program providing transportation to TEA employees upon request when the employee's driving ability is impaired.
- Contractor will provide mediation services as requested by the TEA Human Resources Director, or appointee, to resolve issues between employees and their co-workers or managers.
- Contractor will provide at least one (1) personal and professional development training session during the term of the resulting contract.
- Contractor may be asked to provide additional professional development training sessions on an as needed basis and negotiate the fees with the selected provider.
- Contractor shall provide the counseling sessions described in the RFQ to TEA retirees and immediate family members for the duration of the resulting contract.

The agency has an EAP Coordinator who will be responsible for monitoring the EAP and will serve as the primary contact person for the EAP Contractor.

The EAP will be a resource that can provide services to include counseling, assessment, and/or referrals to assist employees with problems which may impact the employee's job performance and/or work behavior.

Direct services to participants will include a 24-hour, toll-free help line staffed with trained counselors, and face-to-face counseling sessions (including assessments and referrals, if necessary).

COUNSELING

A face-to-face counseling session is a scheduled meeting between a participant and a counselor for the purpose of discussion and identification of areas of concern and for problem solving. The counselor will make available a minimum of one (1) hour face-to-face session to the participants. Counseling sessions will be provided at an off-site location. Participants in extreme crisis (in a situation which the participant or other eligible household member may be a danger to themselves or to others) will be seen on an emergency basis. Otherwise, a face-to-face counseling session appointment will be available to the participants within two (2) days of the participant's first contact with the EAP.

A telephone counseling session is a scheduled or unscheduled telephone conversation between a participant and a counselor for the purpose of problem solving. Telephone sessions are not expected to be the usual or routine method of providing counseling. However, telephone counseling may be an appropriate method to provide counseling in extenuating circumstances. The EAP Contractor shall document and track each individual case. Follow-up services provided and length of time allowed for follow-up shall also be documented.

REFERRALS

If it is determined by the counselor that a referral is necessary, the counselor will assist the participant in locating the most appropriate resource to obtain the type of treatment service required. Resources covered by the participant's health insurance coverage will be secured if at all possible.

The counselor will assist the participant in accessing the resource and will follow up to determine the type of service received and the appropriateness, effectiveness, and usefulness of the services.

EAP SURVEY

After services have been provided, the contractor will mail each participant a survey to be returned anonymously. The survey shall generate participant feedback on:

- Service quality and helpfulness
- Accessibility
- Assistance requested/received
- Follow-up care
- General opinion of the EAP
- Suggestions

ON-SITE VISITS

The TEA EAP Coordinator and/or their designated representative will have the right to make on-site visits with prior arrangements during workday hours of the Contractor.

CONFIDENTIALITY

The Contractor agrees to ensure confidentiality and privacy for all participants and their information, except for demographic data that will not reveal the identity of participants. This will be used to help evaluate the usefulness and effectiveness of the EAP. The Contractor will comply with all state and federal regulations regarding confidentiality.

The Contractor shall use scheduling mechanisms to prevent the change of meeting employees or family members by another employee at counseling sessions.

The Contractor shall provide an off-site location for counseling sessions to ensure maximum confidentiality to persons participating in the EAP.

COSTS

All services under the resulting contract will be provided at no cost to the participants. The Contractor shall not request payment from any participant's insurance carrier. Payment for services received from a referral which are not included in the contract will be the responsibility of the participant.

COMPLAINT PROCEDURE

Contractor shall establish complaint procedures for participants in the EAP clearly explaining how to register a complaint against a counselor or service provider. For example, a hotline that is answered 12 hours per day to receive complaints. The Contractor will verbally notify the TEA EAP Coordinator of the incident within two (2) working days. Further, the Contractor will follow up with TEA in writing for situations of flagrant misconduct.

REPORTING

- Contractor will provide statistical and evaluation data at least quarterly. Quarterly reports will include year-to-date totals.
- Contractor will provide the agency a customized report to include the number of participants, number of calls, sessions, referrals, types of problems, number of sessions per problem, listing of referral sources and services used, and follow-up data to reflect participant satisfaction as well as service appropriateness and effectiveness.
- Contractor will provide the TEA EAP Coordinator a quarterly utilization report including year-to-date totals. The report shall include any time designated by the TEA EAP Coordinator such as:
 - Case status (new, re-opened, closed)
 - Utilization rate by cases
 - Utilization rate by helpline calls
 - Employee status
 - Session distribution per client

- Total number of session per reporting period
- Total number of no-show appointments per reporting period
- Total cases

SPECIAL NEEDS

- During initial contract, employee will notify Contractor of need for interpreter and/or language translation services.
- Contractor is to ensure that all service locations meet American with Disabilities Act (ADA) accessibility requirements.
- Contractor is to provide an interpreter for the hearing-impaired either directly or by means of subcontract.
- Contractor is to provide language translation either directly or by means of subcontract.

1.5 PROPOSER QUALIFICATIONS AND REQUIREMENTS

Contractors selected to conduct the project requirements identified in Section 1.4 of the RFQ must submit a narrative proposal that describes how Responders will provide the services described in the Scope of Work and Evaluation Criteria.

The Contractor must have a minimum of four (4) years experience in providing Employee Assistance Programs to business organizations and/or to other state agencies with a similar size workforce.

Contractor shall provide a list of staff to be used in carrying out the contract, including information on each individual's qualifications, work-related experience, education, and training.

Counselors will have at least a Master's degree from an accredited college or university in a behavioral science and will have at least four (4) years of professional experience.

Counselors must also be licensed or certified by the Texas Department of State Health Services (DSHS).

An exception to the Master's degree requirement can be made for a licensed or certified Alcohol & Substance Abuse Counselor with specialized knowledge, training, and expertise obtained through professional training programs that do not award academic degrees.

All counselors that perform services under this contract will have professional liability insurance.

SECTION TWO: GENERAL INSTRUCTIONS AND STANDARD PROPOSAL REQUIREMENTS

All proposals in response to this RFQ must meet the following conditions in order to be considered. Failure to meet these conditions shall result in disqualification of proposal and the proposal shall receive no further consideration.

2.1 PROPOSAL SUBMISSION, DATE AND TIME

WITHOUT EXCEPTION – PROPOSAL MUST BE TIME AND DATE STAMPED BY THE TEA PURCHASING & CONTRACTS DIVISION BEFORE:

July 23, 2013, 2:00 P.M., Central Time

Proposals must be submitted in a sealed envelope (or box as appropriate) with the Proposer's name, RFQ number, and closing date prominently visible on the envelope/package. Facsimile transmissions (FAX) of proposals will not be accepted under any circumstances.

Proposers must sign the "Proposal Signature Page" (Attachment B). By signing, the Proposer or the Proposer's legally authorized agent affirms that all statements within the proposal are true and correct. Discovery of any false statement in the proposal is a material breach and shall void the submitted proposal or any resulting contracts and Proposer shall also be removed from all vendor lists maintained by the state of Texas.

2.1.1 Receipt of Proposals

TEA's Purchasing & Contracts Division is open Monday through Friday, 8:00 A.M. to 5:00 P.M., excluding holidays. Proposals will not be considered if received in Texas Education Agency's Purchasing & Contracts Division after 2:00 P.M. (Central Time) on the closing date. In establishing the time and date of receipt, the Commissioner of Education will rely solely on the time/date stamp of the TEA Purchasing & Contracts Division. Please note that all TEA visitors must register with the TEA Receptionist Desk and receive a visitors badge to visit any area of the agency. In addition, all visitors must be escorted by a TEA employee to the respective area. Be sure to incorporate time for parking and the reception desk when delivering proposals in person. Mailing address is:

Purchasing & Contracts Division, Rm. 2-125
Texas Education Agency
William B. Travis Bldg.
1701 N. Congress Ave.
Austin, TX 78701-1494

Method of Submittal

Regardless of the method of submitting the proposal—United States Postal Service (USPS), United Parcel Service, Federal Express or any other delivery service—the **proposal must be received in the TEA Purchasing and Contracts Office by 2:00 P.M. (CT) on or before the closing date in order to be considered.**

TEA WILL NOT accept a USPS postmark and/or round validation stamp, mail receipt with the date of mailing stamped by the USPS, a dated shipping label, invoice or receipt from a commercial carrier, or any other documentation as proof of receipt of any proposal. Proposers are advised that TEA assume no responsibility, due to any circumstances, for the receipt of a proposal after the deadline time and date established in this RFQ.

2.1.2 Number of Proposal Copies

Five (5) copies of the proposal must be submitted. The required number of copies of the proposal must be received in the TEA office by 2:00 P.M. on the established deadline date. Failure to meet this condition shall result in disqualification of proposal and the proposal shall receive no further consideration. Photocopying is not available at TEA.

Additions or replacements to the proposal will not be accepted after the closing date for receiving the proposal in the Purchasing & Contracts Division of the TEA Office.

2.2 EXPECTED SEQUENCE OF EVENTS/CRITICAL DATES

DATE	EVENT
June 17, 2013	Publication of Request for Qualifications in Electronic State Business Daily (ESBD) at http://esbd.cpa.state.tx.us
July 5, 2013	Notice of Intent Due by 2:00 P.M.
July 10, 2013	Last day to submit written questions by 2:00 P.M., CT
July 23, 2013	Proposals are due in the TEA Office before 2:00 P.M., CT
July 24, 2013	Evaluation process begins
August 5 – 16, 2013	Oral Presentations and Negotiations
September 1, 2013	Commencement of Contract
August 31, 2014	Ending date of contract

It should be noted that all of these dates except the final completion date may vary slightly as conditions require.

2.3 QUESTIONS RECEIVED PRIOR TO OPENING OF PROPOSALS

Any person wishing to obtain clarifying information about this Request for Qualifications may contact:

TEA Contracts

TEAContracts@tea.state.tx.us

Fax: (512) 475-1706

Written documentation of all vendor interaction is required (email is preferred).

2.3.1 Requests for Additional Information

In order to assure that no prospective Proposer may obtain a competitive advantage because of acquisition of information unknown to other prospective Proposers, any additional information that is different from or in addition to information provided in this RFQ will be provided only in response to written inquiries. All questions will be de-identified and the written answers will be posted as an Addendum to the RFQ on the electronic state business daily (ESBD) link: <http://esbd.cpa.state.tx.us>.

Upon publication of this RFQ, besides written inquiries as described above, employees and representatives of TEA will not answer questions or otherwise discuss the contents of the RFQ with any potential vendor or their representatives. If a potential vendor fails to observe this restriction, that vendor's response to this RFQ may be disqualified. This restriction does not preclude discussions for the purpose of conducting business unrelated to this RFQ.

TEA will not be bound by any communication with Proposers other than the written addenda issued by TEA. If you do not have access to the Internet, you may obtain a copy of the FAQs or additional/clarifying information by contacting: TEA Contracts at (512) 463-9041.

2.4 STANDARD PROPOSAL REQUIREMENTS

- Proposals that address only part of the requirements contained in this Request for Qualifications may be considered non-responsive.
- TEA reserves the right to reject any and all proposals and to negotiate portions thereof.
- TEA reserves the right to select the proposal containing the best proposal considering the outcomes desired. The Proposer shall furnish such additional information that TEA may reasonably require.

2.5 STATE NOT RESPONSIBLE FOR PREPARATION COSTS

The TEA will not be liable for any costs incurred in the preparation and submittal of a proposal.

2.6 DISCLOSURE OF PROPOSAL CONTENT

After contract award, proposals are subject to release under the Texas Government Code, Chapter 552, Public Information Act. Proposers must indicate on their proposal cover if their submission contains proprietary information. It is recommended that a proposer identify the specific sections within the proposal that it considers proprietary.

2.7 CONFLICT OF INTERESTS

A Proposer will not be selected if it has a conflict of interest that will or may arise during the performance of its obligations under the contract. For this reason, Proposer's response to this RFQ must disclose all business interest and all relationships that could be considered to pose possible conflicts of interest in the Proposer's performance of contract obligations. In addition, Proposers must represent and warrant in its response to this RFQ and in the contract that in the performance of services under the contract, (1) Proposer does not have and will not have any actual or potential conflict of interest, and (2) Proposer will take whatever reasonable actions may be necessary and prudent to avoid even the appearance of impropriety.

A TEA employee may not have a direct interest in the proceeds from a contract resulting from this RFQ as defined above. No TEA employee may be related within the second degree of consanguinity or affinity to anyone who has a direct interest in the proceeds of a contract arising from this RFQ as defined above. Each Proposer shall certify that it is in compliance with this provision to the best of its knowledge.

SECTION THREE: PROPOSAL FORMAT AND CONTENT

3.1 PROPOSAL FORMAT AND CONTENT

Proposals must be typewritten entirely on 8.5" x 11" White paper and must be limited to five pages not including appendices and attachments. Font size must be no smaller than ten (10) points. Proposals must be submitted in a manner which does not carry any benefit, keepsake, or value for members of the review panel. Proposals should include a cover page, which clearly states the name of the firm or organization and the name, position, and telephone number of the Proposer's project administrator who may be contacted regarding the proposal (see Attachment A).

3.1.1 Response Checklist

This checklist is to assist Proposers ensuring that all information is included in their response. Proposers must refer to the appropriate section of the RFQ for detailed information on the following.

- | | | |
|--------------------------|--|--------------|
| <input type="checkbox"/> | Suggested Format for Proposal Cover Page | Attachment A |
| <input type="checkbox"/> | Proposal Signature Page | Attachment B |
| <input type="checkbox"/> | Understanding of the Project and Methodology | Section 3.2 |
| <input type="checkbox"/> | Management Plan for the Project | Section 3.3 |

Failure to return all information on the checklist may disqualify the proposal.

3.2 UNDERSTANDING OF THE PROJECT AND METHODOLOGY

Each proposal should contain a clear and concise program summary describing your organization's abilities to meet the requirements of this RFQ. The proposal must describe the project activities, services, and reports to be generated during the contract period and relate them to the stated purposes and specifications described in the RFQ. Technical evidence relating to the Proposer's ability to perform the proposed services must be appended to the proposal.

3.3 MANAGEMENT PLAN FOR PROJECT

The Proposer must provide satisfactory evidence of capability to manage and coordinate the types of activities described in the RFQ and to produce the specified product(s) or service(s) on time. To provide information on qualifications to accomplish the described tasks, Proposers must include in this section the following information:

- Structure of the Proposer organization
- Résumés of the Proposer and individuals involved in the project
- Evidence that the Proposer has experience working on similar projects; three references must be provided that include the name of the agencies or entities, the contact person name, and phone number from each employing agency/entity

3.4 PROPOSER'S FINANCIAL RESPONSIBILITY

Non-profit organizations may be required to submit indicators of financial stability such as an audited financial statement, a certified public accountant-compiled financial report, or similar document. All non-profit organizations may be requested to submit proof of non-profit status. A Proposer may show that it is a non-profit organization by any of the following means:

- Copy of a letter from the Internal Revenue Service recognizing that contributions to the organization are tax deductible under Section 501(c)(3) of the Internal Revenue Code;
- Statement from a state taxing body or the State Attorney General certifying that the organization is a non-profit organization operating within the state and that no part of its net earnings may lawfully benefit any private shareholder or individual;
- Certified copy of the Proposer's certificate of incorporation or similar document if it clearly establishes the non-profit status of the Proposer.

SECTION FOUR: REVIEW OF PROPOSALS

4.1 REVIEW OF PROPOSALS

Review of proposals will begin as soon as practical after receipt. The proposals will be reviewed by TEA and evaluated in accordance with the criteria specified within RFQ. Proposers may be asked to participate in the oral presentation phase of the evaluation process. Proposals will be rated again following oral presentations. The evaluation team shall consist of persons knowledgeable in the content area.

TEA will notify each Proposer in writing of their qualification or non-qualification. Additional copies of proposals **not qualified** will be destroyed in accordance with the agency approved records retention policy.

4.2 SELECTION CRITERIA

Proposals will be selected based on the ability of each Proposer to carry out all of the requirements contained in this RFQ. TEA will determine satisfaction of minimum requirements by assigning points according to the following scale:

CATEGORIES	POINTS
A. Executive Summary: 1. Narrative proposal (20 pts) 2. Experience with diverse workforce (10 pts) 3. Experience with private organizations or public governmental entities (10 pts)	40
B. Management Plan: 1. Evidence of capability to manage and coordinate the activities (10 pts) 2. Resumes of individuals (10 pts) 3. Proof of applicable licenses of individuals (10 pts) 4. Five business references (10 pts) 5. Ability to provide a personal and professional development training session (10 pts) 6. Ability to provide quality and user friendly materials to participants (10 pts) 7. Experience and ability to produce applicable reports (10 pts)	70
C. Pricing Proposal: 1. Cost-effectiveness and appropriateness of resources dedicated to the project (20 pts)	20
TOTAL	130

4.3 PAYMENT

All payments are made in accordance with Texas Government Code [§2251.001](#) et seq. Payments for Goods and Services. Unless otherwise indicated by the TEA, payment is only by reimbursement upon satisfactory performance of services.

Payment is contingent upon submission of properly prepared and certified invoices.. The information provided on each detailed status report must coincide with the tasks outlined in the approved budget, as negotiated by the TEA. The TEA Project Manager will approve invoices based upon project progress, task completion, reasonable use of project funds, and satisfactory performance of services as outlined in the progress report. The invoice shall note the period of time payment is for, the agreed upon monthly amount, contract number, purchase order number, and the Texas comptroller of Public Accounts Payee Identification Number (TIN).

According to guidelines set forth by the Texas Comptroller of Public Accounts, the payment scheduling policy requires agencies to pay as close to the due date as possible in order to maximize fiscal benefits to the state. Payments are due from TEA 30-days from receipt of a correct and complete invoice.

EXECUTION OF OFFER, AFFIRMATION OF TERMS AND CONDITIONS, AND PROPOSAL PREFERENCES

- A. As used in these General Provisions:
- *Contract* means the entire document, and all of TEA's attachments, appendices, schedules (including but not limited to the General Provisions and the Special Provisions), amendments and extensions of or to the Standard Contract;
 - *Receiving Agency or Party or TEA* means the Texas Education Agency;
 - *Performing Agency or Contractor* means the party or parties to this Contract other than TEA, including its or their officers, directors, employees, agents, representatives, consultants and subcontractors, and subcontractors' officers, directors, employees, agents, representatives and consultants;
 - *Project Manager/Administrator* means the respective person(s) representing TEA or Contractor, as indicated by the Contract, for the purposes of administering the Contract Project;
 - *Contract Project* means the purpose intended to be achieved through the Contract;
 - *Amendment* means a Contract that is revised in any respect, and includes both the original Contract, and any subsequent amendments or extensions thereto;
 - *Works* means all tangible or intangible material, products, ideas, documents or works of authorship prepared or created by Contractor for or on behalf of TEA at any time after the beginning date of the Contract ("Works" includes but is not limited to computer software, data, information, images, illustrations, designs, graphics, drawings, educational materials, assessment forms, testing materials, logos, trademarks, patentable materials, etc.); and,
 - *Intellectual Property Rights* means the worldwide intangible legal rights or interests evidenced by or embodied in: (a) any idea, design, concept, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (b) any work of authorship, including any copyrights, moral rights or neighboring rights; (c) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (d) domain name registrations; and (e) any other similar rights. The Intellectual Property Rights of a party include all worldwide intangible legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- B. **Contingency:** The Contract(s), including any amendments, extensions or subsequent contracts, are executed by TEA contingent upon the availability of appropriated funds by legislative act. Notwithstanding any other provision in this Contract or any other document, this Contract is void upon the insufficiency (in TEA's discretion) or unavailability of appropriated funds. In addition, this Contract may be terminated by TEA at any time for any reason upon notice to Contractor. Expenditures and/or activities for which Contractor may claim reimbursement shall not be accrued or claimed subsequent to receipt of such notice from TEA.
- C. **Indemnification:**
For local educational agencies (LEAs), regional education service centers (ESCs), institutions of higher education (IHEs), and state agencies: Contractor, to the extent permitted by law, shall hold TEA harmless from and shall indemnify TEA against any and all claims, demands, and causes of action of whatever kind or nature asserted by any third party and occurring or in any way incident to, arising from, or in connection with, any acts of Contractor in performance of the Contract Project.

For all other contractors, including nonprofit organizations and for-profit businesses: Contractor shall indemnify, hold harmless, and defend TEA and the State, all of its officers, agents, and employees from any and all claims, actions, suits, 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 or omissions of the Contractor or any agent, employee, subcontractor, or supplier of Contractor in performance of the Contract Project.
- D. **Subcontracting and Substitutions:** Contractor shall not assign, transfer or subcontract any of its rights or responsibilities under this Contract without prior formal written amendment to this Contract properly executed by both TEA and Contractor. TEA reserves the right to request changes in personnel assigned to the project. The TEA Project Manager must pre-approve any changes in key personnel throughout the contract term. Any changes to the HUB Subcontracting Plan (HSP) must be approved by the Agency HUB Coordinator before staffing changes are initiated. Substitutions are not permitted without written approval of the TEA Project Manager.
- E. **Encumbrances/Obligations:** All encumbrances, accounts payable, and expenditures shall occur on or between the beginning and ending dates of this Contract. All goods must have been received and all services rendered during the Contract period in order for Contractor to recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.

- F. **Contractor's Proposal:** Contractor's proposal that was furnished to TEA in response to a request for qualifications is incorporated in this Contract by reference. The provisions of this Contract shall prevail, however, in all cases of conflict arising from the terms of Contractor's proposal whether such proposal is a written part of this Contract or is attached as a separate document.
- G. **Requirements, Terms, Conditions, and Assurances:** The terms, conditions, and assurances, which are stated in the Request for Qualifications, 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:** Contractor shall maintain its records and accounts in a manner which shall assure a full accounting for all funds received and expended by Contractor in connection with the Contract Project. These records and accounts shall be retained by Contractor and made available for programmatic or financial audit by TEA and by others authorized by law or regulation to make such an audit for a period of not less than five (5) years from the date of completion of the Contract Project or the date of the receipt by TEA of Contractor's final claim for payment or final expenditure report in connection with this Contract, whichever is later. If an audit has been announced, the records shall be retained until such audit has been completed.

Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's office, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirements to cooperate is included in any subcontract it awards.

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

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

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

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

For Education Service Centers (ESCs): The foregoing Intellectual Property Ownership provisions apply to an Education Service Center (ESC) and its employees, agents, representatives, consultants, and subcontractors. If an ESC or any of its subcontractor(s) wish to obtain a license agreement to use, advertise, offer for sale, sell, distribute, publicly display, publicly perform or reproduce the Works, or make derivative works from the Works, then express written permission must first be obtained from TEA Legal Division.

For Colleges and Universities: The foregoing Intellectual Property Ownership provisions apply to any colleges and universities and their employees, agents, representatives, consultants, and subcontractors; provided, that for all Works created or conceived by colleges or universities under the Contract, they are granted a non-exclusive, non-transferable, royalty-free license to use the Works for their own academic and educational purposes only. Colleges and universities are prohibited, however, from advertising, offering for sale, selling, distributing, publicly displaying, publicly performing, or reproducing the Works, or

making derivative works from the Works that are created or conceived under this Contract, without the express written permission of TEA Legal Division.

- J. **Sanctions for Failure to Perform or for Noncompliance:** If Contractor, in TEA's sole determination, fails or refuses for any reason to comply with or perform any of its obligations under this Contract, TEA may impose such sanctions as it may deem appropriate. This includes but is not limited to the withholding of payments to Contractor until Contractor complies; the cancellation, termination, or suspension of this Contract in whole or in part; and the seeking of other remedies as may be provided by this Contract or by law. Any cancellation, termination, or suspension of this Contract, if imposed, shall become effective at the close of business on the day of Contractor's receipt of written notice thereof from TEA.
- K. **Contract Cancellation, etc.:** If this Contract is cancelled, terminated, or suspended by TEA prior to its expiration date, the reasonable monetary value of services properly performed by Contractor pursuant to this Contract prior to such cancellation, termination or suspension shall be determined by TEA and paid to Contractor as soon as reasonably possible.
- 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 Texas State Board of Education rules pertaining to this Contract and the Contract Project, and to the laws of the State of Texas governing this Contract and the Contract Project. This Contract constitutes the entire agreement between TEA and Contractor for the accomplishment of the Contract Project. This Contract shall be interpreted according to the laws of the State of Texas except as may be otherwise provided for in this Contract.
- P. **Federal Regulations Applicable to All Federally Funded Contracts:**
1. For Local Education Agencies (LEAs): 28 CFR 35 Subparts A-E, 28 CFR 36 Subparts C & D, Appendix A, 29 CFR 1630, 34 CFR 75 or 76 as applicable, 77, 79, 80, 81, 82, 85, 99, 104, 47 CFR 0 and 64, and OMB Circulars A-87 (Cost Principles) and A-133 (Audits);
 2. For Education Service Centers (ESCs): 28 CFR 35 Subparts A-E, 28 CFR 36 Subparts C & D, Appendix A, 29 CFR 1630, 34 CFR 75 or 76 as applicable, 77, 79, 80, 81, 82, 85, 99, 104, 47 CFR 0 and 64, and OMB Circulars A-87 (Cost Principles) and A-133 (Audits);
 3. For Institutions of Higher Education (IHEs): 28 CFR 35 Subparts A-E, 28 CFR 36 Subparts C & D, Appendix A, 29 CFR 1630, 34 CFR 74, 77, 79, 81, 82, 85, 99, 104, OMB Circular A-21 (Cost Principles), 47 CFR 0 and 64, OMB Circular A-133 (Audits), and OMB Circular A-110 (Uniform Administrative Requirements);
 4. For Nonprofit Organizations: 28 CFR 35 Subparts A-E, 28 CFR 36 Subparts C & D, Appendix A, 29 CFR 1630, 34 CFR 74, 77, 79, 81, 82, 85, 99, 104, 47 CFR 0 and 64, OMB Circulars A-122 (Cost Principles) and A-133 (Audits), and OMB Circular A-110 (Uniform Administrative Requirements);
 5. For State Agencies: 28 CFR 35 Subparts A-E, 28 CFR 36 Subparts C & D, Appendix A, 29 CFR 1630, 34 CFR 76, 80, 81, 82, 85, 99, 104, 47 CFR 0 and 64, OMB Circulars A-87 (Cost Principles) and A-133 (Audits), and OMB Circular A-110 (Uniform Administrative Requirements); and
 6. For Commercial (for-profit) Organizations: 29 CFR 1630 and 48 CFR Part 31.
 7. For American Recovery and Reinvestment Act funded projects: FAR 52.204-11, 52.212-5, 52.214-26, 52.215-2, and OMB Guidance Memo M-09-15.

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

TEA

Harvester Pope
Director, Human Resources Division
Texas Education Agency
William B. Travis Building
1701 N. Congress Avenue
Austin, Texas 78701

CONTRACTOR

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.

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

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

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.

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.

Antitrust: By signing this Contract, Contractor, represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has, (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the Proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

Family Code Applicability: By signing this Contract, Contractor, if other than a state Party, certifies that under Section 231.006, Family Code, that Contractor is not ineligible to receive specified grant, loan, or payment under this Contract and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate. TEA reserves the right to terminate this Contract if Contractor is found to be ineligible to receive payment. If Contractor is found to be ineligible to receive payment and the Contract is terminated, Contractor is liable to TEA for attorney's fees, the costs necessary to complete the Contract, including the cost of advertising and awarding a second contract, and any other damages or relief provided by law or equity.

Dispute Resolution: The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by TEA and Contractor to attempt to resolve all disputes arising under this Contract. The parties may agree to mediation of their dispute at any time. However, if all issues in dispute are not completely resolved through direct negotiations between the parties within 180 days after the agency receives Contractor's notice of claim, then the parties must submit the dispute to mediation before a mutually acceptable mediator in Travis County, Texas. The mediation must be completed on or before 270 days after the agency receives Contractor's notice of claim. Completion of the mediation is a condition precedent to the filing of a contested case hearing under Chapter 2260. The agency's participation in mediation or any other dispute resolution process shall not waive any of the agency's contractual or legal rights and remedies, including but not limited to sovereign immunity.

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.

Education Service Center: No funds transferred to Regional Education Service Centers or to school districts may be used to hire a registered lobbyist.

Compliance with Laws: Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting Contractor's performance, including if applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations. For the entire duration of the Contract, Contractor shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this Contract. When required or requested by the Agency, Contractor shall furnish TEA with satisfactory proof of its compliance with this provision.

Public Information: The TEA is subject to the provisions of the Texas Public Information Act. If a request for disclosure of this Contract or any information related to the goods or services provided under the Contract or information provided to the TEA under this Contract constituting a record under the Act is received by the TEA, the information must qualify for an exception provided by the Texas Public Information Act in order to be withheld from public disclosure. Contractor authorizes the TEA to submit any information contained in the Contract, provided under the Contract, or otherwise requested to be disclosed, including information Contractor has labeled as confidential proprietary information, to the Office of the Attorney General for a determination as to whether any such information may be exempt from public disclosure under the Act. If the TEA does not have a good faith belief that information may be subject to an exception to disclosure, the TEA is not obligating itself by this Contract to submit the information to the Attorney General. It shall be the responsibility of the Contractor to make any legal argument to the Attorney General or appropriate court of law regarding the exception of the information in question from disclosure. The Contractor waives any claim against and releases from liability the TEA, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by the Contractor and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act.

Gratuities: By signing this Contract, Contractor represents and warrants that the Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.

Venue and Jurisdiction: Subject to and without waiving any of the Agency's rights, including sovereign immunity, this Contract is governed by and construed under and in accordance with the laws of the State of Texas. Venue for any suit concerning this solicitation and any resulting contract or purchase order shall be in a court of competent jurisdiction in Travis County, Texas.

Protests: Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of this or any other contract by the Texas Education Agency may submit a formal protest to the Director of the Agency's Contracts and Purchasing Division. This protest procedure shall be the exclusive method by which anyone may make a challenge to any aspect of the Agency's contracting process.

The Agency will not be required to consider the merits of any protest unless the written protest is submitted within ten (10) working days after such aggrieved person knows, or reasonably should have known, of the occurrence of the action which is protested. The protest document must meet with all requirements in applicable law and Agency's rules (Title 19 of the Texas Administrative Code, at § 30.2002) <http://ritter.tea.state.tx.us/rules/tac/index.html>.

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

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.

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.

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

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.

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

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

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

Excluded Parties List System: The Texas Education Agency is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's Excluded Parties List System (EPLS, <http://www.epls.gov>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list. Contractor certifies that they are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.

Suspension and Debarment: Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal, state or local government entity. If Contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this contract.

Web Accessibility Policy: State law requires State Agencies and institutions of higher education to provide persons and employees with disabilities access comparable to access and use provided to the public and State employees without disabilities for the following: telephones and other telecommunications products, information kiosks, transaction machines, internet websites, and multimedia resources. TEA adheres to the standards set forth in TAC §206 State Web Sites, TAC §213 Electronic and Information Resources, and the Federal 508 requirements which may be viewed at <http://www.governor.state.tx.us/disabilities/resources/keylaws/access>. This policy is applicable to all TEA contractors who develop or provide any of the services or products listed above as a result of a TEA contract award or approved vendor list. All documents created or developed under this Contract must also be compliant with all state and federal regulations for web accessibility (i.e., Americans with Disabilities Act (ADA) compliance, http://www.dir.state.tx.us/general_info/accessibility.htm).

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

Social Security Numbers Withheld: TEA will not provide Social Security Numbers (SSNs) to any Contractor under this contract. TEA, its contractors and their subcontractors, will not require or request school districts to provide SSNs under this contract.

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

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.

Vendor Performance: All state agencies must report unsatisfactory vendor performance on purchases over \$25,000. Respondents who are in default or otherwise not in good standing under any other current or prior contract with TEA at the time of selection will not be eligible for award of this contract. Agencies report satisfactory and exceptional vendor performance to assist in determining best value. In accordance with Texas Government Code, §2155.074 and §2155.75, vendor performance may be used as a factor in future contract awards.

Contractor performance information is located on the CPA web site at:
http://www.window.state.tx.us/procurement/prog/vendor_performance/

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:** Either Party may terminate this Contract at any time, in whole or in part, without penalty, by providing thirty (30) calendar days advance written notice to the other Party. In the event of such a termination, the Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TEA shall be liable for reimbursing only those expenses incurred by the Contractor that are permitted under this Contract and were incurred prior to the effective termination date.
- 2. Termination for Cause/Default:** If the Contractor fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any of the terms or conditions of the Contract, TEA may, upon written notice of default to the Contractor, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the Contract.

TEA may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions

of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless TEA notifies the Contractor in writing prior to the exercise of such remedy.

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

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

Amendments:

1. All amendments to this Contract will be in a manner as prescribed by the Project Administrator of TEA, subject to Paragraph B of the General Provisions and will be made on AMENDMENT TO TEXAS EDUCATION AGENCY STANDARD CONTRACT form supplied by TEA. Amendments must be mailed to the Purchasing and Contracts Division, Room 2-125, Texas Education Agency, William B. Travis Building, 1701 North Congress, Austin, Texas 78701. An amendment to this Contract will become effective on the date of signature of TEA.
2. The Contractor is permitted to rebudget among direct cost categories within the approved budget to meet unanticipated requirements and to make limited changes (less than 10%) to the approved budget without submitting a written amendment. However, a revised budget document must be submitted to the TEA Project Manager for approval. Once approved, the documents must be submitted and Contracts office and will be incorporated into the Contract file. Failure to submit the budget documents will result in invoices being rejected or payment delayed.
3. 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 or objectives of the Contract (regardless of whether there is an associated budget revision requiring prior approval);
 - c. a request to extend the period of the Contract;
 - d. cumulative transfers among direct cost categories which exceed or are expected to exceed ten percent of the current total approved budget category
 - e. any reduction of funds or reduction in the scope of work;
 - f. whenever a line item within a class/object code is added;
 - g. an increase in the quantity of capital outlay item(s) requested; and
 - h. an increase or decrease in the number of positions charged to Contract.

All amendments must be signed by both parties.

Payment:

Payment for goods or services purchased with State-appropriated funds is made by warrant (check) or by electronic Direct Deposit from the State Treasury. Direct Deposit is the preferred method of payment. Any payment owed by an agency must be mailed or transmitted electronically to the vendor no later than 30 days after the later of:

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

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

1. Payment for service(s) described in this Contract is contingent upon satisfactory completion of the service(s). Satisfaction will be determined by TEA's Project Administrator, in his sole discretion but in accordance with reasonable standards and upon advice of his superiors in TEA, if necessary. Unless otherwise stated, payment under this Contract will be made upon performance of services based upon submission of an expenditure report/invoice, properly prepared and certified, outlining expenditures by cost category. Include the contract number, purchase order number, and the Texas Comptroller of Public Accounts Texas Identification Number (TIN) on all invoices/expenditure reports. The cost categories provided in the expenditure report/invoice must coincide with the cost categories detailed in the approved budget. A list of tasks/activities performed during the invoice period must accompany the expenditure report/invoice. The final expenditure report/invoice is due within forty-five days after the end of the Contract. Payment on the final expenditure report is contingent upon receipt of all reports/products required by this Contract.
2. 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.
3. Contractor who is indebted or owes delinquent taxes to the state will have any payments under the contract applied toward the debt or delinquent taxes owed the state until the amount is paid in full, regardless of when the debt or delinquency was incurred. TEA shall determine whether a payment law prohibits the Comptroller from issuing a warrant or initiating an electronic funds transfer to a person before TEA enters into a written contract with that person.

Contractor may verify their account status by accessing the Comptroller's website at: <http://ecpa.cpa.state.tx.us/vendor/tpsearch1.html>. If the account status message is "on vendor hold," the contractor is advised to contact the Comptroller's Warrant Hold Section in the Division of Revenue Accounting at 1-800-531-5441 ext. 3-4561 for assistance in resolving the issue.

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 (5) business days of being requested by the TEA, provide TEA with current certificates of insurance or other proof acceptable to TEA of the following insurance coverage: Standard Workers Compensation Insurance, covering all personnel who will provide services under this Contract; Commercial General Liability Insurance, personal injury and advertising injury with, at a minimum, the following limits: \$500,000 minimum each occurrence; \$1,000,000 per general aggregate.

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

ZZ. Force Majeure

Neither Contractor nor *{Insert agency name here}* shall be liable to the other for any delay in, or failure of performance, of any requirement included in any PO 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 (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

AAA. Drug Free Workplace Policy

The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

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

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

Proposer has read, understands, and agrees to be bound to the terms and conditions stated in the RFQ if a contract is awarded to Proposer pursuant to this RFQ. By signature hereon, the respondent certifies that:

All statements and information prepared and submitted in the response to this RFQ are current, complete and accurate.

Pursuant to Texas Government Code, Title 10, Subtitle D, Section 2155.004(b), the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

Bidder certifies that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003 of the Government Code, relating to contracting with executive head of a state agency. If Section 669.003 applies, bidder will complete the following information in order for the bid to be evaluated.

Name of Former Executive: _____

Name of State Agency: _____

Date of Separation from State Agency: _____

Position with Bidder: _____

Date of Employment with Bidder: _____

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

Pursuant to Texas Government code, Title 10, Subtitle D, Section 2155.004(a), the bidder has not received compensation for participation in the preparation of specifications for this solicitation.

Contractor shall provide to Agency, Contractor's nine (9) digit Federal Employer's Identification Number (FEI#) or Social Security Number (SSN) if Contractor is an individual, or Contractor's fourteen (14) digit State of Texas Payee Identification Number (TIN). If Contractor is incorporated, Contractor shall also provide to Agency the corporation's charter number issued by the Texas Secretary of State's office. Information provided by the contractor will be verified by the Agency.

Contractor's FEI# _____

Contractor's SSN _____

Contractor's TIN _____

Contractor's charter # _____

TEA has a policy of being a smoke-free agency. The policy reflects our commitment to providing a healthy environment for all our employees and visitors. This policy prohibits smoking within any state building or on the grounds. Contractor, by acceptance of this contract, agrees to abide by this policy when on the property of {Agency}.

The undersigned is an authorized official for the Proposer and certifies that the proposal submitted with this "Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences" instrument is in full compliance with the provisions expressly stated above. I further certify that the proposal submitted with this instrument is allowed to claim any of the Chapter 2155 Texas Government Code preferences checked below:

The proposer, if selected as the contractor, will be required to purchase products and materials produced in this state when they are available at a price and time comparable to products and materials produced outside of Texas (TX Govt. Code § 2155.4441).

Check below if claiming a preference included in Chapter 2155 of the Texas Government Code and in Rule 1 TAC 113.8

<input type="checkbox"/>	§ 2155.441	Products of persons with mental or physical disabilities
<input type="checkbox"/>	§ 2155.442	Energy efficient products
<input type="checkbox"/>	§ 2155.443	Rubberized asphalt paving material
<input type="checkbox"/>	§ 2155.444	Texas produced supplies, materials, or equipment; or USA supplies, materials, or equipment over foreign products
<input type="checkbox"/>	Rule 1 TAC	Services offered by a Texas bidder
<input type="checkbox"/>	§ 2155.444	Texas agriculture products
<input type="checkbox"/>	§ 2155.445	Recycled, remanufactured, or environmentally sensitive products made of recycled materials
<input type="checkbox"/>	§ 2155.446	Paper containing recycled fibers
<input type="checkbox"/>	§ 2155.447	Recycled motor oil and lubricants
<input type="checkbox"/>	§ 2155.449	Products produced in facilities on rehabilitated property as certified by section 361.609 of the Texas Health and Safety Code
<input type="checkbox"/>	§ 2155.449	Products and services from economically depressed or blighted areas
<input type="checkbox"/>	§ 2155.449	Products and services from Historically Underutilized Business or small business pursuant to the goals and objectives stated in chapter 2161 of the Texas Government Code
<input type="checkbox"/>	HB 3560	Goods produced or offered by service-disabled veterans.
<input type="checkbox"/>	HB 3560	Preference to manufacture that has recycle program for computer equipment.
<input type="checkbox"/>	HB 3560	Preference to contractors providing foods of higher nutritional value.

In compliance with this RFQ, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all commodities or services at the prices quoted in the proposal or bid. By signing this proposal, the proposer signifies that if a Texas address is shown as the address of the proposer, the proposer qualifies as a Texas Resident Bidder as defined in Rule 1 TAC.

PROPOSER/COMPANY NAME:
STREET ADDRESS:
CITY/STATE/ZIP:
TELEPHONE NO.:
FACSIMILE NO.:
EMAIL ADDRESS:
NAME OF PROPOSER'S AUTHORIZED AGENT:
TITLE OF PROPOSER'S AUTHORIZED AGENT:
SIGNATURE OF AUTHORIZED AGENT:

FORMAT FOR COVER PAGE

Employee Assistance Program Service Provider

Submitted to the Texas Education Agency, Purchasing and Contracts Division

RFQ #701-14-007

TITLE OF PROPOSED PROJECT: **Employee Assistance Program Service Provider**

RESPONDENT ORGANIZATION: (Name and address of organization submitting proposal; Include zip code)

RESPONDENT ORGANIZATION IDENTIFICATION NUMBER: (Respondent organization's Federal Employer Identification Number or SSN if an Individual; If Respondent organization is a corporation or if individual is incorporated, the charter number of Respondent organization or individual must also be shown.)

PROPOSAL DEVELOPED BY: (Name, position, email and telephone number of person to be in charge of proposed project.)

PROJECT ADMINISTRATOR: (Name, position, email, and telephone number of person to be in charge of proposed project)

PROPOSAL TRANSMITTED BY: (Name, position, email, and telephone number of official committing the Respondent organization to the proposed project)

CONTRACTING OFFICER: (Name, position, email, and telephone number of official with authority to negotiate contracts for Respondent organization)

DURATION OF PROJECT: (Beginning and ending dates of proposed project)

TOTAL BUDGET FOR PROPOSED PROJECT: (Total of projected expenditures listed in budget section)

CONTAINS PROPRIETARY INFORMATION: (Check box if the proposal being submitted contains proprietary information.)

ACCEPTANCE OF TERMS AND CONDITIONS: We hereby accept by the submission of the proposal the Terms and Conditions of the General Provisions)

DATE SUBMITTED: (Date proposal is submitted to TEA)

NOTICE OF INTENT TO SUBMIT A PROPOSAL

RFQ #701-14-007

Employee Assistance Program Service Provider

The undersigned organization hereby files a notice of intent to submit a proposal:

Name of Organization: _____

Mailing Address: _____

Phone Number: _____ **Fax:** _____

E-Mail: _____

- Filing of this notice is not mandatory; however, it will assist the Texas Education Agency in anticipating the volume of proposals in order to better expedite the review process and finalize contract awards
- Filing this notice in no way binds the organization to submit a proposal for this RFQ
- Respondents who do not file this notice are still eligible to submit a proposal

SUBMIT THIS NOTICE BY EMAIL OR FAX AS SOON AS POSSIBLE AFTER RECEIPT OF THE REQUEST FOR QUALIFICATIONS, BUT NOT LATER THAN JULY 9, 2013 TO:

Purchasing and Contracts Division

Texas Education Agency

TEAContracts@tea.state.tx.us

Fax: (512) 475-1706

SAMPLE COST PROPOSAL

Service	Total Employees	Cost Per Employee (Per Month)	Total Cost (Total Employees x Cost Per Employee)
	#	\$	\$
	#	\$	\$
	#	\$	\$
Grand Total			\$