



**TEXAS EDUCATION AGENCY**  
William B. Travis Building  
1701 North Congress Avenue  
Austin, Texas 78701-1494

**REQUEST FOR PROPOSAL (RFP)**

**RFP No.: 701-14-023**

**Texas Teacher Evaluation and Support System**

Authorized by TEC § 21.351

<b>PROPOSAL DELIVERY LOCATION:</b> Purchasing & Contracts Division Texas Education Agency 1701 N. Congress Ave., Rm. 2-125 Austin, TX 78701-1494 (512) 463-9041	<b>REFER INQUIRIES TO:</b> Kay Wagner <a href="mailto:TEAContracts@tea.state.tx.us">TEAContracts@tea.state.tx.us</a>
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**WITHOUT EXCEPTION - PROPOSAL MUST BE TIME AND DATE STAMPED BY THE TEA PURCHASING & CONTRACTS BEFORE:**

**Tuesday, December 3, 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, names, 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 electronic state business daily at <http://esbd.cpa.state.tx.us/>.

Pursuant to Chapter 2155.131 of the Texas Government Code and House Bill 3560, the Office of the Comptroller of Public Accounts has delegated authority to the Texas Education Agency to conduct this Request for Proposal and to award a contract for the purposes stated herein.

All written requests for information will be communicated to all applicants 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 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.

Contractor understands and agrees that no public disclosures or news releases pertaining to this RFP, negotiations, subsequent award, or any results or findings based on information provided or obtained to fulfill requirements of this RFP shall be made without prior written approval of TEA.

**NOTE:** Failure to formalize the terms of the proposal by signing the Execution of Offer will result in disqualification of the offer contained within the bid package. Proposers must indicate in writing and offer alternative language to any General Provisions terms that are not feasible with the submission of the proposal to this RFP. If a proposal is signed and submitted without including a specific identification of all General Provisions that are not feasible, TEA will not negotiate the General Provisions and reserves the right to commence negotiations with other proposers.

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# **REQUEST FOR PROPOSAL**

## **Texas Teacher Evaluation and Support System**

### **SECTION ONE INTRODUCTION AND PURPOSE**

#### **1.1 PURPOSE OF THE REQUEST FOR PROPOSAL (RFP)**

It is the intent of the Texas Education Agency (TEA) to solicit proposals for the Texas Teacher Evaluation and Support System (TTESS) in accordance with all requirements stated herein to establish practices for effective educator evaluation tools and practices that can be developed and implemented statewide. The purpose of the TTESS is to create an aligned system of supports to improve teacher and principal effectiveness through a more robust and meaningful evaluation system that provides timely and relevant feedback directly tied to professional development offerings for all teachers.

Eligible proposers are nonprofit organizations, institutions of higher education, private companies, and individuals.

#### **1.2 BACKGROUND INFORMATION**

In spring 2012, based on feedback from the field TEA began taking steps to overhaul state systems for training, evaluating, and supporting teachers throughout Texas. This process has included multiple iterations of stakeholder input, piloting of innovative evaluation systems, development of new standards for teachers, and support from reports such as the Texas Teaching Commission. Based on this previous work and obtaining approval from the United States Department of Education (USDE) for an Elementary and Secondary Education Act (ESEA) waiver in September, 2013, the Agency is ready to take those efforts to the next level and begin implementation of new, better-aligned tools and resources related to evaluation and professional development for teachers.

In order to successfully meet the assurances of the ESEA waiver, and adequately train over 300,000 educators on this new system the Texas Education Agency is in the process of building additional capacity. We will be piloting a new state-approved teacher evaluation system in 40 districts in the 2014-2015 school year with statewide implementation beginning in 2015-2016.

The state's goal for the new evaluation systems is to shift the culture of appraisals from a compliance-based exercise to one of support and collaboration for all educators on a campus. A fully implemented state system will include multiple measures of a teacher's performance that is directly tied to embedded, contextual professional development opportunities.

TEA is currently in the process of finalizing new state standards for teaching practice that will be used to inform the work of the evaluation system. It is expected that the contractor will align all tools and training materials for this project to the new standards.

The contractor will be expected to work with outside agents identified by TEA, including the Texas Comprehensive Center, regional education service centers, and other identified parties to meet requirements including contract for principal evaluation system and the state approved value-added model. All products, processes, or ideas developed, manufactured, or offered under a contract awarded in response to this RFP become the property of the State of Texas with exclusive rights of ownership, including rights under patent, copyright, or trade secret law.

#### **1.3 CONTRACT TERM/OPTION TO EXTEND**

The term of any contract resulting from this RFP shall be from contract award through the term of the corresponding Federal Grant period ending August 31, 2015 with an options to continue through August 31, 2016. TEA, at its own discretion, may extend any contract awarded pursuant to this RFP under the same or different terms subject to appropriation of funds by the Texas Legislature for this project.

#### 1.4 BUDGET

Up to two contracts will be awarded as a result of this RFP based on quality of proposals for training component and data dashboard. In accordance with the "Omnibus Appropriations Act, 2010", the agency is required to provide the percentage and dollar amount of Federal funds for this project. This project is 100% funded with federal funds in the amount of up to \$4,500,000. Proposals must include a detailed budget in accordance with the requirements of Section 3.5 of this Request for Proposal. ~~This contract is fixed price per deliverable. will be a cost reimbursement contract.~~

#### 1.5 PROJECT DESCRIPTION AND REQUIREMENTS

The following desired outcomes are the expected activities to be implemented through the educator evaluation initiative.

**Proposers will establish a timeline and action plan, including benchmarks, for achieving the following yearly outcomes: TEA reserves the right to re-evaluate year 2 and year 3 deliverables and throughout the entire term of the contract.**

1. Year 1 (through August 2014)
  - a. Assist TEA in the development of the following components of the teacher evaluation system that are aligned with Texas State Teaching Standards:
    - i. Teacher observation rubric
    - ii. Teacher self-assessment
    - iii. Measures of student growth for non-tested grades and subjects
  - b. Provide training and communication support for holistic evaluation system that will include measures of student learning
  - c. Oversee direct training of 40 pilot districts and ESC staff for 2014-2015 school year including development of training materials
  - d. Implement off-the-shelf dashboard and online data collection system that is integrated with professional development tools, for new evaluation system that will allow administrators and TEA personnel to monitor and track the results of new evaluations. No funds will be provided for development of new technology platforms.
  - e. In coordination with, and support from, the Texas Comprehensive Center, assist with stakeholder input process
  - f. Access to aligned professional development tools that are tied to evaluation results
2. Year 2 (September 1, 2014-August 31, 2015)
  - a. Develop training materials for new evaluation system including video and online resources to be shared with teachers, principals, and central office administrators
  - b. In coordination with, and support from, the Texas Comprehensive Center, assist with stakeholder input process
  - c. Rollout of train-the-trainer model, in conjunction with ESC staff, for statewide implementation in 2015-2016 school year
  - d. Trainings for pilot and statewide implementation must include, but not limited to the following items:
    - i. Explanation of overall teacher evaluation system
    - ii. Overview of online dashboard and data collection system
  - e. Access to aligned professional development tools that are tied to evaluation results
  - f. In coordination with, and support from, the Texas Comprehensive Center, assist with stakeholder input process

3. Year 3 (September 1, 2015-August 31, 2016)
  - a. Oversee statewide rollout of new evaluation system in coordination with ESCs, or other identified entities
  - b. Conduct refresher train-the-trainer sessions for ESCs or other identified entities
  - c. In coordination with, and support from, the Texas Comprehensive Center, assist with stakeholder input process

## 1.6 PROJECT DELIVERABLES

1. Implementation of the new state-approved teacher system in 40 pilot districts in 2014-2015 and statewide implementation in 2015-2016.
2. Collaborate with Texas Comprehensive Center to manage and convene stakeholder meetings
3. Develop training materials for new evaluation system.
4. Conduct train-the-trainer model, in collaboration with Regional Education Service Centers or other entities, for statewide rollout in 2015-2016.
5. Implement off-the-shelf dashboard and online data collection system that is integrated with professional development tools, for new evaluation system that will allow administrators and TEA personnel to track the results of new evaluations and link data between educator characteristics and background (including preparation program), evaluations results, professional development choices and student achievement data. No funds will be provided for development of new technology platforms.
6. Access to aligned professional development tools that are tied to evaluation results

TEA engages in extensive review of all documents that are to be published prior to release; therefore, contractors should budget for multiple rounds of feedback. However, maintaining the integrity of all reported findings is of the utmost importance. Drafts of both reports, the requirements report and the qualitative report, will be subject to review by TEA and are due no later than **30 calendar days prior to the report's due date**. All drafts and final reports should be of a quality similar to a peer-reviewed scientific or educational journal. **Typically, the main body of the report is tailored towards a general audience, while all details regarding analyses and other technical information is located in the technical appendix(ices) for researchers.** In general, all written reports must follow the American Psychological Association's (APA) formatting style. Documents must also be compliant with all state and federal regulations for web accessibility (i.e., Americans with Disabilities Act [ADA] compliance), and these regulations shall take precedence when differing from APA format (see <http://www.dir.texas.gov/faqs/itleadership/pages/statewideeiraccessibilityfaq.aspx>).

The draft of each report should come first as a SINGLE Microsoft Word document that can be edited using track changes. The report's final version for publication must come with both a Word version and a PDF file that are web accessible.

## SECTION TWO GENERAL INSTRUCTIONS AND STANDARD PROPOSAL REQUIREMENTS

All proposals in response to this request 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 BEFORE:

**Tuesday, December 3, 2013 - 2:00 P.M., Central Time (CT)**

Proposals must be submitted in a sealed envelope (or box as appropriate) with the proposer's name, RFP number, and closing date prominently visible on the envelope/package. If multiple envelopes/boxes are used, the proposer should indicate on the package "*specific item # of total # of items.*"

Facsimile transmissions (FAX) of proposals will not be accepted under any circumstances.

Proposers must sign the "Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences" instrument (Attachment B). By signing, the Proposer or the Proposer's legally authorized agent affirms that the 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

To be eligible to be considered for funding, proposals must be received in the TEA's Purchasing & Contracts Division (PCD) on or before 2:00 P.M. (Central Time) on the closing date as specified in the Request for Proposal. In establishing the time and date of receipt, the Commissioner of Education will rely solely on the time/date stamp of the Purchasing & Contracts Division.

##### **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 agency's Purchasing & Contracts Division by 2:00 P.M. (Central Time) on or before the closing date in order to be considered.**

**Note:** 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 assumes no responsibility, due to any circumstances, for the receipt of a proposal after the deadline time and date established in this RFP.

#### 2.1.2 Purchasing & Contracts Division (PCD)

TEA's PCD is open Monday through Friday, 8:00 A.M. to 5:00 P.M., excluding holidays. Proposals will not be considered if received in PCD after 2:00 P.M. (Central Time) on the closing date. PCD is located on the 2nd floor of the William B. Travis Bldg, 1701 N. Congress (at 17<sup>th</sup> St. and N. Congress, two blocks north of the Capitol) in Rm. 2-125, Austin, TX 78701-1494. 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.

**2.1.3 Number of Copies of Proposal**

1. One signed original (clearly marked original) of the complete response, including one signed original of the HUB Subcontracting Plan;
2. One signed copy (clearly marked copy) of the complete response, including one signed copy of the HUB Subcontracting Plan;
3. Four Flash/thumb drives clearly marked with vendor name containing the complete bid response.

Paper responses must be bound in a 3-ring binder and the cover of the binders must reference "RFP #701-14-023" and include the name and address of the responding Vendor.

**NOTE:** Flash Drive(s) must be securely fastened in the 3-ring binder marked original.

The required number of copies of the proposal must be received in the TEA Purchasing & Contracts by 2:00 P.M. on the established deadline date. Failure to meet this condition shall result in disqualification of the 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 of the Texas Education Agency.

**2.1.4 Intent to Submit Proposal**

All prospective proposers should notify the Texas Education Agency in writing of their intent to submit a proposal (Attachment A) by Thursday, November 7, 2013, to the TEA Purchasing and Contracts Division via email [TEAContracts@tea.state.tx.us](mailto:TEAContracts@tea.state.tx.us) or by FAX (512) 475-1706. Failure to notify the Agency of the intent to submit a proposal will not disqualify the proposer from submitting a proposal.

**2.2 EXPECTED SEQUENCE OF EVENTS/CRITICAL DATES**

DATE	EVENT
Thursday, October 31, 2013	Publication of Request for Proposals in the electronic state business daily at <a href="http://esbd.cpa.state.tx.us/">http://esbd.cpa.state.tx.us/</a>
Thursday, November 7, 2013	Proposer's Conference, beginning at 1:30 PM Central Time, Room PDC7, William B Travis Building, 1701 North Congress Ave, Austin, TX., 78701
Monday, November 11, 2013	Notice of Intent to submit a proposal is due in the TEA Purchasing & Contracts Division by the specified date & time
Monday, November 18, 2013	Last day to submit written questions about the RFP to TEA, no later than 5:00 P.M., CT
Tuesday, November 19, 2013	Answer to Question will be posted on the ESBD
Tuesday, December 3, 2013	Proposal is due in the Purchasing & Contracts before 2:00 P.M., CT
Wednesday, December 4, 2013 – Monday December 16, 2013	Evaluation process, oral presentations, and /or negotiations
Thursday, December 19, 2013	Selection of Proposer
Wednesday January 1, 2014	Beginning date of contract and commencement of work
August 31, 2015	Ending date of contract and final product submitted to the TEA with final billing

*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 proposal may contact:  
Kay Wagner

[TEAContracts@tea.state.tx.us](mailto:TEAContracts@tea.state.tx.us)

*(Written documentation of all vendor interaction is required.)*

### **2.3.1 Proposer's Conference**

Proposers will be provided one and only one opportunity to review any documents, forms, etc., that have been developed to provide information about the scope of the Texas Teacher Evaluation and Support System. This conference will be on Thursday, November 7, 2013, from 1:30 P.M. until 3:30 P.M. in Rm.PDC7 of the William B Travis Building, 1701 North Congress Ave, Austin, TX. Each person attending will be required to sign a register setting out the representative's name, the firm or organization represented, address, and telephone number.

The Proposer's Conference is an opportunity to ask clarifying questions of Texas Education Agency personnel to assist potential proposers in clarifying their understanding of the scope and nature of the work required in this study. The conference will be open to all potential proposers, and questions asked and answered will be in the presence of all attending. The Q&A and conference attendee list will be posted to electronic state business daily at <http://esbd.cpa.state.tx.us/> and available to the public.

### **2.3.2 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 the Request for Proposal or at the Proposer's Conference will be provided only in response to written inquiries. Copies of all such inquiries and the written answers will be posted as an addendum to the Request for Proposal at the Electronic State Business Daily (ESBD) at <http://esbd.cpa.state.tx.us/> and the TEA website. The addendum will be updated as needed on a weekly basis while the RFP is advertised. The respondent's failure to periodically check the ESBD will in no way release the selected vendor from "addenda or additional information" resulting in additional cost to meet the requirements of the RFP. **NO PHONE INQUIRIES WILL BE ACCEPTED.**

Any Amendment to this procurement solicitation will be posted as an addendum on the ESBD. If respondents do not have Internet access, copies may be obtained through the point of contact listed in this RFP. Upon publication of this RFP, besides written inquiries as described above, employees and representatives of TEA will not answer questions or otherwise discuss the contents of the RFP with any potential vendor or their representatives. If a potential vendor fails to observe this restriction, that vendor's response to this RFP may be disqualified. This restriction does not preclude discussions for the purpose of conducting business unrelated to this RFP.

TEA will not be bound by any communication with Respondents other than the written addenda issued by the Agency.

## **2.4 STANDARD PROPOSAL REQUIREMENTS**

1. Proposals that address only part of the requirements contained in this Request for Proposal may be considered non-responsive.
2. Texas Education Agency reserves the right to reject any and all proposals and to negotiate portions thereof including the submitted cost proposals/budget.
3. Texas Education Agency reserves the right to select the proposal based on the best value to the state of Texas and the agency. The proposer shall furnish additional information that the

evaluation team may require in order to complete the evaluation of the proposals submitted. Failure to provide the requested material or information may disqualify the proposal.

4. The contractor must work with the Agency staff to clarify the design of the materials, project design, project activities, and/or other products, and modify these items if necessary.

## 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 HISTORICALLY UNDERUTILIZED BUSINESS (HUB) SUBCONTRACTING PLAN

It is the policy of the TEA to promote and encourage contracting and subcontracting opportunities for HUBs in all contracts. Accordingly, TEA has adopted the Policy on Utilization of HUBs. If the TEA determines that subcontracting opportunities are probable, then a HUB Subcontracting Plan (HSP) is a required element of the Proposal.

**Statement of Probability** – TEA has determined that subcontracting opportunities are probable in connection with this procurement. Therefore, ALL respondents must submit the HSP as a part of the response. The respondent shall develop and administer the HSP as a part of the respondent's Proposal in accordance with the TEA Policy on Utilization of HUB and state law. Proposer must make a good faith effort and solicit a minimum of three Texas certified historically underutilized businesses from the state's Centralized Master Bidders List (CMBL) that they cannot complete with their own staff and resources. Respondents must also notify minority or women trade organizations or development centers of subcontracting opportunities. Additional requirements are listed in the HSP (Attachment C).

All Proposers are required to submit a HUB Subcontracting Plan (HSP) for this RFP.

1. If the proposer is a HUB, a HSP is still required in order to identify the percentage of the work to be performed by subcontractors.
2. If the proposer (HUB or non HUB) is not subcontracting any portion of the work, the Self Performance portion of the HSP must be completed and returned with the proposal response.

The HUB subcontracting goal for this procurement is **24.6%** minority and/or woman owned business participation. In the event proposals have equal scores, the proposal with the highest percentage of HUB subcontracting will be awarded the contract.

The HSP will be incorporated into the contract between the TEA and the selected proposer. The selected proposer shall submit a Progress Assessment Report (PAR) for each billing cycle in which a payment was made to any subcontractor during the term of a contract. Contractors are encouraged to collaborate with TEA to develop mentor protégé opportunities. Under TAC Title 34, §20.14, a proposer's participation in a Mentor Protégé Program under TGC §2161.065, and the submission of a protégé as a subcontractor in the HUB subcontracting plan constitutes a good faith effort for the particular area to be subcontracted with the protégé.

Proposals that are required to submit a HSP and fail to submit the HSP will be rejected for noncompliance with the advertised contract specifications.

The proposer awarded the contract will be responsible for maintaining business records documenting compliance and shall make a compliance report to TEA as requested. The Progress

Assessments Report (PAR) is due no later than the 15<sup>th</sup> day of the following month. The PAR is required to be submitted monthly, even if no activity occurred for the month. Reports may be submitted electronically or by fax.

### **2.7.1 How to Find Texas Certified HUBs for Subcontracting Opportunities**

Use the Comptroller Centralized Master Bidders List (CMBL)/HUB Directory (make sure to check both "HUBs not on the CMBL" and "HUBs on the CMBL")

1. Open <http://www2.cpa.state.tx.us/cmb/cmbhub.html>.
2. **Search:** ☉ HUBs on CMBL & HUBs not on the CMBL.
3. **Selection 1:**  
Class Code: # 924 Educational/Training Services  
Item: # 05 Advisory Services/Education  
District: # 14 Travis County  
  
**Selection 2:**  
Class Code: # 924 Educational/Training Services  
Item: # 18 Educational Services, Alternative  
District: # 14 Travis County  
  
**Selection 3:**  
Class Code: # 924 Educational/Training Services  
Item: # 19 Educational Research Services  
District: # 14 Travis County
4. Click **Submit Search**.

Proposers who are certified as a HUB with the State of Texas are encouraged to submit a proposal for the services requested in this RFP.

### **2.8 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 RFP must disclose all business interest and all relationships (i.e. previous employment, personal relationships etc.) 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 RFP and in the contract that in the performance of services under the contract, (1) proposer does not have and will not have any actual, perceived 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. If circumstances change or additional information is obtained subsequent to submission of proposals, Respondent's duty to disclose under these provisions continues under the term of the contract and does not end with submission of a proposal or receipt of contract award.

Pursuant to Section 2252.901 of the Texas Government Code, Proposer shall make full disclosure of former employee/retiree of TEA or the 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 Proposer 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.

## SECTION THREE PROPOSAL FORMAT AND CONTENT

### 3.1. PROPOSAL FORMAT AND CONTENT

Proposals must be written entirely on 8 ½" X 11" white paper and must be limited to 50 pages not including appendices and attachments. Proposals should be stapled in the top left corner or if bound may be bound in no more than a 3-ring binder. Proposals must be submitted in a manner which does not carry any benefit, keepsake, or value for members of the review panel.

#### 3.1.1 Proposal Cover Page

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 (Attachment D).

#### 3.1.2 Response Checklist

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

- |                          |  |                         |
|--------------------------|--|-------------------------|
| <input type="checkbox"/> | RFP Cover Sheet  | Sec. 3.1.1/Attachment D |
| <input type="checkbox"/> | Understanding of the Project and Methodology   | Sec. 3.2                |
| <input type="checkbox"/> | Management Plan  | Sec. 3.3                |
| <input type="checkbox"/> | Task Activity Plan   | Sec. 3.4/Attachment F   |
| <input type="checkbox"/> | Cost Proposal  | Sec. 3.5/Attachment E   |
| <input type="checkbox"/> | Proposer's Financial Responsibility  | Sec. 3.6                |
| <input type="checkbox"/> | Signed Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences | Attachment B            |
| <input type="checkbox"/> | HUB Subcontracting Plan (HSP)  | Attachment C            |

### 3.2. UNDERSTANDING OF THE PROJECT AND METHODOLOGY

The proposal must communicate an understanding of prior studies and research in the areas of the project, describe the tasks to be performed, and identify potential problems in the conduct of the project and methods to identify and solve such problems.

The proposer must describe clearly, specifically, and as completely as possible, the methodology for carrying out the objectives and requirements of the project as described in this RFP. (If applicable, the proposer must also describe the training program, staff development, and curriculum design.)

The proposal must describe the project design, project activities, materials, and other products, services, and reports to be generated during the contract period and relate them to the stated purposes and specifications described in the Request for Proposal. Technical evidence relating to the proposer's ability to perform the proposed services must be appended to the proposal.

Failure to meet these conditions shall result in disqualification of proposal and the proposal shall receive no further consideration.

(If the above wording is not appropriate, then change as needed; but a review by Contracts Management is required.)

### 3.3. MANAGEMENT PLAN FOR THE PROJECT

The proposer must provide satisfactory evidence of capability to manage and coordinate the types of activities described in the RFP and to produce the specified product or service on time. To provide information on qualifications to accomplish the described tasks, proposers must include in this section the following information:

1. Structure of the organization
2. Indications of the ability to perform the tasks described in section 1.5.
3. Evidence that the proposer has experience through working on similar projects.
4. Three (3) current references that include the name of the agency or entities, the nature of the project, kinds of activities that were performed by the proposer must be described, and the name and phone number of a contact person from each employing agency/entity must be provided. Names given as references will not affect the scoring. In addition, no employees of TEA can be listed in the proposal as references. They may be listed in a memo transmitting the proposal, but not in the proposal. If the proposer plans to use external consultants or subcontractors, a staff organization and resumes of consultants and/or subcontractors must be included.
5. Name of the respondent's project manager who will direct the overall project throughout the duration of the contract as well as those of staff members who will coordinate major activities during each phase of the contract, and the time allocations that the personnel described will devote to fulfillment of the contract. Respondents must also identify the next level of authority within the organization to escalate issues throughout the term of the contract. The information will be required during the contract kick-off meeting. (Resumes of all project staff members shall be submitted as an appendix.) If the resumes include references, the references will not be considered in the review.

### **3.4. TASK ACTIVITY PLAN**

Proposer must plan for a project starting date of no earlier than January 1, 2014, and an ending date of no later than August 31, 2014 if selected as the contractor. The proposer must submit a task/activity plan specifying to the degree possible the tasks and activities which are to be undertaken. Timelines showing beginning and ending dates for each major task are to be included, as well as the name(s) of person(s) responsible for each task. Activities must be sufficiently designed and outlined in the task/activity plan that will provide evidence of satisfactory delivery of services and products. Time frames must be logical and appropriate to complete all activities within the beginning and ending dates of the contract. Failure to meet this condition shall result in disqualification of proposal and the proposal shall receive no further consideration.

### **3.5. COST PROPOSAL**

The proposer must submit a budget detailing costs necessary to accomplish the project objectives and activities outlined in the task/activity plan (Attachment E, Suggested Format for Budget Summary and Expenditure Report). It is recommended that budget detail be submitted in Excel compatible or Excel format.

Objects of expenditure used in the budget summary may vary depending on the project. Costs must be justified in terms of activities and objects of expenditure and must be reasonable (i.e., consistent with current market price) and necessary to accomplish the objectives of the project. The budget must evidence that financial resources are adequately and appropriately allocated among cost categories in a cost-effective and prudent business manner to accomplish project objectives and activities. Services to be purchased from other agencies, subcontractors, including any amounts subcontracted to HUBs, consultants, and others must be specified.

This section of the proposal must also contain a proposed Schedule of Task Completion (Attachment F) which ensures completion of tasks and the delivery of products by specified dates. Payment will be made upon satisfactory performance of services, receipt by the Texas Education Agency of specified deliverables, and receipt of properly prepared and certified invoices/expenditure reports.

Failure to meet these conditions shall result in disqualification of proposal and the proposal shall receive no further consideration.

### **3.6. PROPOSER'S FINANCIAL RESPONSIBILITY**

All private sector companies, individuals, or non-profit organizations may be required to submit prior to award indicators of financial stability. For example:

1. Private companies may be asked to submit their most recent audited financial statement or a certified public accountant-compiled financial report;
2. Nonprofits may be asked to submit an audited financial statement, a certified public accountant-compiled financial report, or similar document; and
3. Individuals may be asked to submit those documents which depict their financial stability, such as an audited proprietorship financial statement, statement from a certified public accountant or banker, or a statement from vendors or suppliers.

Nonprofit organizations may also be required to submit proof of nonprofit status. A proposer may show that it is a nonprofit organization by any of the following means:

1. A 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;
2. A statement from a state taxing body or the state attorney general certifying that the organization is a nonprofit organization operating within the state and that no part of its net earnings may lawfully benefit any private shareholder or individual;
3. A certified copy of the proposer's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the proposer; or
4. Any item described above if that item applies to a state or national parent organization, together with a statement by the parent organization that it is a local nonprofit affiliate.

Failure to meet this condition, if requested, shall result in a non-award. TEA will commence negotiations with the next high point proposer.

## SECTION FOUR REVIEW OF PROPOSALS

### 4.1. REVIEW OF PROPOSALS

Review of proposals will begin as soon as practical after receipt. The proposers receiving the most favorable ratings during the first round of selection will be asked to send a representative to Austin, Texas, at a time and place to be arranged for oral presentation of proposals. Proposals will be rated again following oral presentations. The evaluation team shall consist of TEA staff knowledgeable in the content area, and may also include reviewers from outside the Agency with expertise in the area.

The recommendations of the review panel will be assembled and presented to senior executive agency staff who will:

1. Approve the proposal in whole or in part;
2. Disapprove the proposal; or
3. Defer action on the proposal for such reasons as a requirement for further evaluation.

By law, the Agency may not disclose any information until a contract is executed by both parties. Upon contract award, TEA will post the contract award notice to the Electronic State Business Daily (ESBD) at: <http://esbd.cpa.state.tx.us/>. Additional copies of proposals **not selected for funding** 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 Request for Proposal. A proposer who is 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. TEA will base its selection on, among other things, demonstrated competence, qualifications of the proposer, past vendor performance, and the proposed budget/cost. All state agencies report unsatisfactory vendor performance on purchases over \$25,000. 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.

Following are the criteria and the total number of points of each portion of the RFP that will be applied in selecting a proposer:

CATEGORIES	POSSIBLE POINTS
A. Quality of Technical Component 1. Clear description of details for carrying out project (20) 2. Understanding of prior studies and research (10) 3. Adequacy and appropriateness of project design (10)	40
B. Quality of Management Component 1. Activities are of sufficient scope and detail to provide evidence of satisfactory delivery of services and products (15) 2. Logical and appropriate time frames for completing project objectives (10)	25
C. Quality of Task/Activity Plan 1. Experience of organization in managing education-related research and evaluation projects of similar scope to that described in this RFP (10) 2. Personnel qualifications, including appropriate combination of programmatic, research/evaluation, and technical skill sets and experience (10)	20

D. Cost-Effectiveness and Appropriateness of Financial Resources Dedicated to Project 1. Costs are appropriately aligned with major program objectives (20) 2. Costs associated with specific activities and tasks are reasonable for the work proposed (20)	40
<i>( It may be appropriate to use more than 100 points.)</i> <b>TOTAL</b>	<b>125 points</b>

**4.2.1 Preference(s)**

The Agency shall also give preference, among proposals that are otherwise comparable, to a proposal submitted by a Texas Resident Bidder (TX based company) and / or a HUB. In the event of a tie, the proposer with the highest percentage of HUB subcontracting will be awarded the contract.

## **SECTION FIVE CONTRACTUAL REQUIREMENTS**

### **5.1 CONTRACTOR'S PROPOSAL**

The selected proposal may be incorporated into a contract prepared by the TEA for signature by the contracting parties.

### **5.2 PROJECT REVIEW REQUIREMENTS**

TEA reserves the right to review any materials, and/or products developed or adapted by the Contractor. Upon completion of the contract period, all documents will be returned to TEA or destroyed accordingly. All documents created at any time during the contract period belong to TEA.

The TEA Project Manager will establish procedures for communicating phase out and transition of the deliverable(s).

### **5.3 PAYMENT**

All payments are made in accordance with Texas Government Code §2251.001, [www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2251.htm](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2251.htm) 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, deliverables received, inspected, tested and approved 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.

**NOTICE OF INTENT TO SUBMIT A PROPOSAL**

**RFP No.: 701-14-023**

**Texas Teacher Evaluation and Support System**

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

Name of Organization:	
Mailing Address:	
Contact Person:	
E-Mail:	
Phone Number:	
FAX:	

- 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 RFP.**
- Proposers who do not file this notice are still eligible to submit a proposal.

**PLEASE SUBMIT THIS NOTICE BY E-MAIL OR FAX AS SOON AS POSSIBLE AFTER RECEIPT OF THE RFP, BUT NOT LATER THAN, \_\_\_\_\_, 2013 TO:**

[TEAContracts@tea.state.tx.us](mailto:TEAContracts@tea.state.tx.us)  
Texas Education Agency  
Purchasing and Contracts Division  
FAX (512) 475-1706

## ATTACHMENT B - 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:** CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AGENTS AND EMPLOYEES, AND THE TEXAS EDUCATION AGENCY, ITS OFFICERS, AND EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT. CONTRACTOR SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY TEA.

THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TEA FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF TEA OR ITS EMPLOYEES.

For local educational agencies (LEAs), regional education service centers (ESCs), institutions of higher education (IHEs), and state agencies: Contractor, to the extent permitted by law, shall hold TEA harmless from and shall indemnify TEA against any and all claims, demands, and causes of action of whatever kind or nature asserted by any third party and occurring or in any way incident to, arising from, or in connection with, any acts of Contractor in performance of the Contract Project.

D. **Subcontracting and Substitutions:** Contractor shall not assign, transfer or subcontract any of its rights or responsibilities under this Contract without prior formal written amendment to this Contract properly executed by both TEA and Contractor. TEA reserves the right to request changes in personnel assigned to the project. The TEA Project Manager must pre-approve any changes in key personnel throughout the contract term. Any changes to the HUB Subcontracting Plan (HSP) must be approved by the Agency HUB Coordinator before staffing changes are initiated. Substitutions are not permitted without written approval of the TEA Project Manager.

- E. **Encumbrances/Obligations:** All encumbrances, accounts payable, and expenditures shall occur on or between the beginning and ending dates of this Contract. All goods must have been received and all services rendered during the Contract period in order for Contractor to recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.
- F. **Contractor's Proposal:** Contractor's proposal that was furnished to TEA in response to a request for proposal is incorporated in this Contract by reference. The provisions of this Contract shall prevail, however, in all cases of conflict arising from the terms of Contractor's proposal whether such proposal is a written part of this Contract or is attached as a separate document.
- G. **Requirements, Terms, Conditions, and Assurances:** The terms, conditions, and assurances, which are stated in the Request for Proposal, in response to which Contractor submitted a proposal, are incorporated herein by reference for all purposes, although the current General Provisions shall prevail in the event of conflict.
- H. **Records Retention and the Right to Audit:** Contractor shall maintain its records and accounts in a manner which shall assure a full accounting for all funds received and expended by Contractor in connection with the Contract Project. These records and accounts shall be retained by Contractor and made available for programmatic or financial audit by TEA and by others authorized by law or regulation to make such an audit for a period of not less than five (5) years from the date of completion of the Contract Project or the date of the receipt by TEA of Contractor's final claim for payment or final expenditure report in connection with this Contract, whichever is later. If an audit has been announced, the records shall be retained until such audit has been completed.

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

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

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

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

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

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

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

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

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

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

- K. **Refunds Due to TEA:** If TEA determines that TEA is due a refund of money paid to Contractor pursuant to this Contract, Contractor shall pay the money due to TEA within 30 days of Contractor's receipt of written notice that such money is due to TEA. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset, counterclaim, cancellation, termination, suspension, total withholding, and/or disapproval of all or any subsequent applications for said funds.
- L. **Capital Outlay:** If Contractor purchases capital outlay (furniture and/or equipment) to accomplish the Contract Project, title will remain with Contractor for the period of the Contract. TEA reserves the right to transfer capital outlay items for Contract noncompliance during the Contract period or as needed after the ending date of the Contract. This provision applies to any and all furniture and/or equipment regardless of unit price and how the item is classified in Contractor's accounting record. This provision is applicable when federal funds are utilized for the Contract.
- M. **TEA Property (terms):** In the event of loss, damage or destruction of any property owned by or loaned by TEA while in the custody or control of Contractor, Contractor shall indemnify TEA and pay to TEA the full 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.

- N. **State of Texas Laws:** In the conduct of the Contract Project, Contractor shall be subject to laws or rules of the State of Texas pertaining to and or governing this Contract and the Contract Project. This Contract constitutes the entire agreement between TEA and Contractor for the accomplishment of the Contract Project. This Contract shall be interpreted according to the laws of the State of Texas except as may be otherwise provided for in this Contract.
- O. **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.
- P. **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**

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

**CONTRACTOR**

- Q. **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.
- R. **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.
- S. **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.
- T. **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.
- U. **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.
- V. **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.
- W. **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.
- X. **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.
- Y. **Education Service Center:** No funds transferred to Regional Education Service Centers or to school districts may be used to hire a registered lobbyist.

- Z. **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.
- AA. **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.

The 83<sup>rd</sup> Legislature recently passed SB 1368, which amended Section 2252.907 of the Texas Government Code to require that a contract between a state governmental entity and a nongovernmental contractor involving the exchange or creation of public information, as defined by Section 552.002. **Contractor is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state.** The TEA Project Manager will provide the specific format by which the Contractor is required to make the information accessible by the public.

- BB. **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.
- CC. **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.
- DD. **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.

- EE. **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.
- FF. **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.
- GG. **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.
- HH. **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.
- II. **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.
- JJ. **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.
- KK. **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.
- LL. **Excluded Parties List System:** The Texas Education Agency and the contractor must adhere to the directions provided in the President's Executive Order (EO) 13224, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, which may be viewed at <http://www.whitehouse.gov/news/orders>. That Executive Order prohibits any transaction or dealing by United States persons, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed in the General Services Administration's Excluded Parties List System (EPLS) which may be viewed on the System for Award Management (SAM) site at <http://www.Sam.gov>.
- MM. **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.
- NN. **Electronic and Information Resources Accessibility Standards:** Effective September 1, 2006, state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic Information Resources specified in 1TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

[Section 508 of the US Rehabilitation Act of 1973](#) is in the final stages of revision and most likely will be adopted sometime in FY 2014. Therefore, all current and potential Contractors are hereby notified of the requirement. The current technical requirements for accessibility contained within this regulation form the basis for our Texas TAC rules on EIR Accessibility.

This refresh of 508 will be using the [WCAG 2.0 AA Accessibility Guidelines](#) (also ISO/IEC standard 40500) as the new technical standard that Federal agencies will be required to meet when procuring products and services. Once the 508 refresh is adopted, DIR will be modifying the TAC rules to synchronize with it.

Given this coming change, all Texas agencies and institutions of higher education should begin using or specifying WCAG 2.0 AA guidelines for the design of new websites or web applications. The rationale is twofold:

1. It could be technically difficult and expensive to bring these websites / applications to WCAG 2.0 AA later.
2. WCAG 2.0 AA is a superior, more flexible standard and is in use all over the world. If a website is compliant with WCAG 2.0 AA, it will, by default comply with our current TAC rules on EIR Accessibility.

Web development vendors should already be familiar with designing to this standard, and their ability to meet these standards should be a strong consideration in the selection process.

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

[WCAG 2.0 at a glance](#)  
[IBM Developer Guidelines Web Checklist](#)  
[Webaim.org Accessibility Checklist](#)

- OO. **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.
- PP. **Social Security Numbers Withheld:** TEA will not provide Social Security Numbers (SSNs) to any Contractor under this contract unless specifically specified as part of the project requirements. TEA, its contractors and their subcontractors, will not require or request school districts to provide SSNs under this contract. Contractor agrees that in executing tasks on behalf of the TEA, they will not use any student-identifying information in any way that violates the provisions of FERPA, and will destroy or return all student-identifying information to TEA within thirty (30) days of project completion. An authorized officer of the company must certify that ALL records have either been properly destroyed or returned to the Agency in order to close out the contract.
- QQ. **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.
- RR. **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.
- SS. **Vendor Performance:** All state agencies must report unsatisfactory vendor performance on purchases over \$25,000. Respondents who are in default or otherwise not in good standing under any other current or prior contract with TEA at the time of selection will not be eligible for award of this contract. A Respondent's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Respondents may fail this selection criterion for any of the following conditions: A score of less than 90% in the Vendor Performance System, currently under a Corrective Action Plan, having repeated negative Vendor performance reports for the same reason, Having purchase orders that have been cancelled in the previous 12 months for non-performance (i.e. late delivery, etc.). TEA may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by 34 Texas Administrative Code

§20.108), TEA may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of TEA, and any negative findings, as determined by TEA, may result in non-award to the Respondent.

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

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

TT. **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 fifteen (15) calendar days advance written notice to the other Party. In the event of such a termination, the Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TEA shall be liable for reimbursing only those expenses incurred by the Contractor that are permitted, properly performed under this Contract and were incurred prior to the effective termination date.
2. **Termination for Cause/Default:** If the Contractor fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any of the terms or conditions of the Contract, TEA may, upon written notice of default to the Contractor, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the Contract.

TEA may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless TEA notifies the Contractor in writing prior to the exercise of such remedy.

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

3. **Termination Due to Changes in Law:** If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either Party cannot reasonably fulfill this Contract and if the Parties cannot agree to an amendment that would enable substantial continuation of the Contract, the Parties shall be discharged from any further obligations under this Contract.
4. **Rights upon Termination or Expiration of Contract:** In the event that the Contract is terminated for any reason, or upon its expiration, TEA shall retain ownership of all associated work products and documentation obtained from the Contractor under the Contract.
5. **Survival of Terms:** Termination of the Contract for any reason shall not release the Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.
6. **Contract Transition:** In the event a subsequent competitive solicitation is awarded to a New Contractor, the Outgoing Contractor shall hand-over to the New Contractor all "works" including but not limited to the following: data, materials, database access, intellectual property, source code, training materials, access to websites, asset transfer, and maintenance of service commitments. The purpose of transition planning is to ensure a seamless and continuous service when changing from one contract to another. The Outgoing Contractor will begin shipping, transmitting or providing access to all appropriate materials and data to the

New Contractor within 10 days of announcement of award at the New Contractor's expense for data processing and production, packing and shipping. The Outgoing Contractor will be responsible for providing the services identified in the Contract until all records have been completely transferred to the New Contractor. The Outgoing Contractor is responsible for performing due diligence to ensure that all the transition activities are identified and completed during the Contract Transition.

The Outgoing Contractor shall submit to TEA requested reports and data. TEA will not release the final invoice until all materials are returned to TEA or their designee. The TEA Project Manager shall approve the Transition Plan prior to its implementation. The Transition Plan must minimize the impacts on continuity of operations and maintain communication with the TEA Project Manager and the New Contractor.

**UU. Amendments:**

All amendments to this Contract will be in a manner as prescribed by the Agency Contracting Process and are, subject to Paragraph B of the General Provisions and will be made on AMENDMENT TO TEXAS EDUCATION AGENCY STANDARD CONTRACT form. All amendments will be initiated by the TEA Contracts staff. An amendment to this Contract will become effective on the date of signature of TEA or the effective date shown on the Amendment document whichever is first. Effective September 1, 2013, if the initial major contract solicitation document submitted to the CPA Contract Advisory Team (CAT) changes substantially, agencies are required to resubmit their solicitation documents(s) for CAT review. Changes in the major contract solicitation are considered substantial when: 1) the solicitation change caused the estimated value for the original term of the contract, not including renewal periods, to increase by 25% or more; 2) or there are significant revisions, deletions and/or additions to the specifications, statement of work (SOW), set(s) of deliverables, performance measures, payment methodology, etc.

1. The Contractor is permitted to rebudget among direct cost categories within the approved budget to meet unanticipated requirements and to make limited changes (less than 10%) to the approved budget without submitting a written amendment. However, a revised budget document must be submitted to the TEA Project Manager for approval. Once approved, the documents must be submitted to the Contracts office and will be incorporated into the Contract file. Failure to submit the budget documents will result in invoices being rejected or payment delayed.
2. Written amendments are required for the following Contract changes:
  - a. any revision which would result in the need for additional funding;
  - b. any revision to the scope of work, deliverables, or objectives of the Contract (regardless of whether there is an associated budget revision requiring prior approval) additionally increases of 25% or more must be approved by the Comptroller;
  - c. a request to extend the period of the Contract;
  - d. cumulative transfers among direct cost categories which exceed or are expected to exceed ten percent of the current total approved budget category
  - e. any reduction of funds or reduction in the scope of work;
  - f. whenever a line item within a class/object code is added;
  - g. an increase in the quantity of capital outlay item(s) requested; and
  - h. an increase or decrease in the number of positions charged to Contract.All amendments must be signed by both parties.

**VV. Payment:**

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

- (1) the day on which the agency received the goods;
  - (2) the date the performance of the service under the contract is completed; or
  - (3) the day on which the agency received the complete and correct invoice for goods or services.
- Invoices must be submitted to [TEAAccountsPayable@tea.state.tx](mailto:TEAAccountsPayable@tea.state.tx) and the TEA Project Manager.

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

1. Payment for service(s) described in this Contract is contingent upon satisfactory completion of the Deliverables and Services Review and Acceptance Process. The contractor must submit final deliverables

to TEA for review and approval prior to invoicing. These include test items developed under the contract. "Final" deliverable means a deliverable that, in the belief and testimony of the contractor, is in final completed form and in compliance with all required specifications as defined by project documentation and this contract. TEA will review each deliverable, including test items, submitted by the contractor for quality and alignment to the deliverable definition agreed to under the "Deliverables and Services Definition Process". TEA will have 15 working days to approve a deliverable or request revisions to the deliverable. TEA must review and approve any deliverable before it may be invoiced by the contractor. If TEA finds a submitted deliverable to be substandard or not in compliance with the deliverable definition agreed to under the "Deliverables and Services Definition Process", the contractor will have 10 working days to address the quality or other compliance requirement and resubmit the deliverable. Additional costs incurred by the contractor that result from repeated submissions and revising of substandard deliverables will be borne solely by the contractor and not charged against the contract or to TEA. This process will apply to all deliverables and requirements of the contract, including test items developed. This does not preclude an arrangement that allows the contractor to bill against a deliverable as progress is made toward completing that deliverable, so long as documentation of such progress in a form and nature satisfactory to TEA is provided and is approved by TEA. It is up to the contractor to request incremental billing based on progress towards a deliverable, and such a request must be approved by TEA prior to submission of any invoice by the contractor. TEA reserves the right to reject and not provide payment for deliverables found to be substandard or not in compliance with the deliverable definition agreed to under the "Deliverables and Services Definition Process", including test items developed under the contract. The contractor is strongly encouraged to collaborate with TEA on draft versions of any deliverables or services and request review(s) of such draft versions before submitting a final version.

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

Contractor may verify their account status by accessing the Comptroller's website at:

[https://fm.x.cpa.state.tx.us/fm/pubs/purchase/restricted/index.php?section=indebted&page=persons\\_indebted](https://fm.x.cpa.state.tx.us/fm/pubs/purchase/restricted/index.php?section=indebted&page=persons_indebted)

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

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

Workers Compensation & Employers Liability Contractor must maintain Workers' Compensation insurance coverage in accordance with statutory limits. This state of Texas website (Coverage starts with 406 of the Labor code) addresses what Texas requires 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 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.

YY. **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 RFP caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

ZZ. **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.

AAA. **Abandonment or Default**

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

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

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

BBB. **Bidder Affirmations:**

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

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

Respondent has not given, offered to give, not intends to give at anytime 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.

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.

Under Section 2155.006(b) of the Texas Government Code, a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

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: \_\_\_\_\_

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 RFP, 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. When a Texas business address shown hereon that address is, in fact, the legal business address of Respondent and respondent qualifies as a Texas Resident Bidder Under TAC Title 34, Part 1, Chapter 20.

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

## **Definition of a Historically Underutilized Business (HUB)**

- is at least 51% owned by an Asian Pacific American, Black American, Hispanic American, Native American and/or American woman,
- is a for-profit entity that has not exceeded the size standards prescribed by [34 TAC §20.23](#), and has its principal place of business in Texas, and
- has an owner residing in Texas with a proportionate interest that actively participates in the control, operations and management of the entity's affairs.

The statewide HUB Program facilitates the use of HUBs in state procurement and provides information on the state's procurement process to minority and woman- owned businesses.

In accordance with [34 TAC §20.13](#), each state agency shall make a good faith effort to utilize HUBs in contracts for construction, services (including professional and consulting services) and commodities purchases.

Contractors seeking certification as a HUB are required to submit a completed HUB certification application and supporting documentation to the statewide HUB Program, affirming under penalty of perjury that their business qualifies as a HUB.

Attachment C

**Texas Education Agency  
Historically Underutilized Business  
Subcontracting Plan (HSP)**  
Separate document

(FORMAT FOR COVER PAGE)

PROJECT PROPOSAL  
Submitted to the  
Texas Education Agency  
Purchasing & Contracts Division

RFP No.: 701-14-023

TITLE OF PROPOSED PROJECT:	Texas Teacher Evaluation and Support System
RESPONDENT ORGANIZATION:	Name and address of organization submitting proposal (include zip code)
RESPONDENT ORGANIZATION IDENTIFICATION NUMBER:	Show Respondent organization Federal Employer's Identification Number or Texas Identification Number (TINS)
PROPOSAL DEVELOPED BY:	Name, position, email, and telephone number of person responsible for development of proposal
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:	<input type="checkbox"/> Check box if proposal being submitted contains proprietary information
ACCEPTANCE OF TERMS AND CONDITIONS:	<input type="checkbox"/> 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

## SUGGESTED FORMAT FOR BUDGET SUMMARY AND EXPENDITURE REPORT

State Fiscal Year/BY	2003
ISAS Contract	No. XXXX
ISAS PO	No. 0000XXXXX
Vendor ID	XXXXXXXXXX
Project ID	XXXXXXXXXX
Billing Period	09/01/XX - 1/30/XX
Invoice Number	XXXXXX

The information in this expense summary report is true, correct, and unpaid. A schedule of itemized costs shall be submitted separately upon request of the TEA Contract Administrator.

Signature of Certifying Official (Contractor): \_\_\_\_\_ Date: \_\_\_\_\_

I am an employee of the TEA who has knowledge of the satisfactory delivery of services by the contractor, certify that these services were rendered to TEA or goods were received by TEA and that they correspond in every particular with the agreement under which they were procured and that this invoice is true, correct, and unpaid.

Signature of TEA Contract Administrator: \_\_\_\_\_ Date: \_\_\_\_\_

Task	Sub-Task	Task Description	Sub-Task/Activities	Est'd Start Date	Est'd End Date	Org'l Budget	TEA Approved Adjustments	Percent Change	Approved Adjusted Budget	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Year to Date	Bud Bal	
01	01.01					-	-	0.00%	-														-	-
01	01.02					-	-	0.00%	-														-	-
01	01.03					-	-	0.00%	-														-	-
02	02.01					-	-	0.00%	-														-	-
02	02.02					-	-	0.00%	-														-	-
02	02.03					-	-	0.00%	-														-	-
03	03.01					-	-	0.00%	-														-	-
03	03.02					-	-	0.00%	-														-	-
03	03.03					-	-	0.00%	-														-	-
04	04.01					-	-	0.00%	-														-	-
04	04.02					-	-	0.00%	-														-	-
04	04.03					-	-	0.00%	-														-	-
05	05.01					-	-	0.00%	-														-	-
05	05.02					-	-	0.00%	-														-	-
05	05.03					-	-	0.00%	-														-	-
06	06.01					-	-	0.00%	-														-	-
06	06.02					-	-	0.00%	-														-	-
06	06.03					-	-	0.00%	-														-	-
07	07.01					-	-	0.00%	-														-	-
07	07.02					-	-	0.00%	-														-	-
07	07.03					-	-	0.00%	-														-	-
<b>TOTAL</b>						-	-		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
01	N/A		Subtotal 01			-	-	0.00%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
02	N/A		Subtotal 02			-	-	0.00%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
03	N/A		Subtotal 03			-	-	0.00%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
04	N/A		Subtotal 04			-	-	0.00%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
05	N/A		Subtotal 05			-	-	0.00%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
06	N/A		Subtotal 06			-	-	0.00%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
07	N/A		Subtotal 07			-	-	0.00%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>TOTAL</b>						-	-		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

CHECK - - - - -

## SCHEDULE OF TASK COMPLETION

Title of Proposed Project \_\_\_\_\_

Proposer Organization (Name) \_\_\_\_\_

Beginning and Ending Dates: \_\_\_\_\_ to \_\_\_\_\_

<u>Task/Activity Numbers</u>	<u>Projected Completion Date and Cost by Task</u>	
	<u>Projected Completion Date</u>	<u>Projected Cost</u>
Task No. 1 (title)		
Activities		
1. (list)	Month __, 20__	
2. etc.		
Total Task No. 1		\$xxxxx.xx
Task No. 2 (title)		
continued		
Total Task No. 2		\$xxxxx.xx
Etc.		
Total Budget		\$xxxxx.xx

Cost may also be by activity if feasible but must be shown, at a minimum, for task total.

Selected proposer will be reimbursed for actual expenditures upon satisfactory performance of services/completion of tasks and upon submittal of properly prepared and certified invoices/expenditure reports.