



TEXAS EDUCATION AGENCY

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

REQUEST FOR QUALIFICATIONS

RFQ No.: 701-16-003

Special Education Due Process Court Reporting Services

Authorized by: The Individuals with Disabilities Education Act, 20 U.S.C. §§1400 et seq.,
and its Implementing Regulations, 34 C.F.R. Part 300,
TEC § 29.001-29.017, and 19 TAC Chapter 89 AA

<p>PROPOSAL DELIVERY LOCATION:</p> <p>Purchasing, Contracts and Agency Services Division Texas Education Agency 1701 N. Congress Ave., Rm. 2-125 Austin, TX 78701-1494 (512) 463-9041</p>	<p>REFER INQUIRIES TO:</p> <p>Yvette Butler TEAContracts@tea.texas.gov</p>
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WITHOUT EXCEPTION - PROPOSAL MUST BE TIME AND DATE STAMPED BY THE TEA PURCHASING, CONTRACTS AND AGENCY SERVICES DIVISION OFFICE BEFORE:

July 8, 2015 – 2:00 P.M., C.T.

Pursuant to the Provisions of the Texas Government Code §§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 Texas Government Code §§2151.004(d) and 2155.131, the Office of the Comptroller of Public Accounts has delegated authority to the Texas Education Agency (TEA) to conduct this Request for Qualifications (RFQ) and to award a contract for the purposes stated herein.

All written requests for information will be communicated to all applicants known to TEA. All proposals shall become the property of the State of Texas upon receipt.

All proposals must be delivered to the TEA Purchasing, Contracts and Agency Services (PCAS) Division as required by the instructions within this RFQ. 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.

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

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

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SECTION ONE: INTRODUCTION AND PURPOSE

1.1 PURPOSE

The Texas Education Agency (TEA) is soliciting proposals from certified court reporters to provide court reporting services for all due process proceedings conducted by TEA contracted special education hearing officers.

Historically underutilized businesses (HUBs) are encouraged to submit proposals.

1.2 BACKGROUND

The Individuals with Disabilities Education Act (IDEA) provides federal funds in exchange for the state's agreement to comply with the extensive requirements of the Act and its implementing regulations. IDEA Part B requires public educational agencies to identify, locate, and evaluate all children ages 3 through 21 who may have qualifying disabilities and need special education and related services.

IDEA Part B also establishes an extensive system of procedural safeguards to protect the rights of eligible children and their parents. One of those safeguards is the requirement that participating states establish and implement a due process hearing system to resolve disputes between parents of children with disabilities and local educational agencies. Accordingly, TEA has adopted due process hearing procedures, including procedures for recording and transcribing the proceedings, that are found in [19 TAC §§ 89.1150-89.1191](#).

1.3 CONTRACT TERM/OPTION TO EXTEND

The term of any contract resulting from this RFQ shall be from contract award until August 31, 2016. TEA, at its own discretion, may extend any contract awarded pursuant to this RFQ for up to three additional fiscal years under the same or different terms. If extended, the first extension period will be from September 1, 2016 through August 31, 2017; the second extension period will be from September 1, 2017 through August 31, 2018; the third extension period will be from September 1, 2018 through August 31, 2019.

1.4 BUDGET

Multiple contracts will be awarded. The total amount of compensation for fiscal year 2016 will be limited to \$400,000.00, inclusive of all payments and expenses. TEA, however, reserves the right to increase this limit if circumstances warrant. This sum represents the total amount available for all contracts awarded.

1.5 COMPENSATION FOR SERVICES

- A. The reporter shall be compensated at the rate of \$9.00 per page for the original plus two copies of the transcript, plus standard shipping costs. Standard shipping is understood to mean the most cost-effective shipping method, unless the hearing officer specifically requests that an expedited shipping method be used.
- B. If the hearing officer requires delivery within three calendar days, the reporter shall be compensated at the rate of \$11.00 per page for the original plus two copies of the transcript, plus shipping costs.
- C. The reporter shall be compensated \$300.00 as an appearance fee if the reporter appears for a scheduled on-site pre-hearing conference or hearing that is cancelled and the hearing officer has not provided notice of cancellation at least 48 hours before the proceeding is scheduled to begin. The reporter shall be compensated \$200.00 as an appearance fee if the reporter appears for a scheduled telephonic pre-hearing conference or hearing that is cancelled and the hearing officer has not provided notice of the cancellation at least 24 hours before the proceeding is scheduled to begin. If the reason for the cancellation is the failure of one of the parties or the hearing officer to appear, the reporter shall document in the reporter's invoice the party or hearing officer who failed to appear or provide reasonable notice.

- D. Delays in the start of the proceedings attributable to the reporter not being present and prepared will result in the reduction of the reporter's invoice by \$15.00 per 15 minutes of delay.
- E. The reporter's travel, to the extent that assignments require travel, and administrative costs are included in the per page rates. While TEA offers no guarantees as to the number or type of reporting assignments, the majority of the assignments have historically been telephonic pre-hearing conferences.
- F. No other charges will be allowed under this contract unless approved in writing by TEA.
- G. There are no minimum or maximum quantities associated with this contract. Services will be scheduled on an "as needed" basis between the hearing officer and the reporter.

1.6 COURT REPORTER QUALIFICATIONS AND REQUIREMENTS

1.6.1 Minimum Qualifications

At a minimum, a reporter must:

- A. Be a certified shorthand or court reporter in accordance with the provisions of Chapter 154 of the Texas Government Code.
- B. Have at least two years of experience transcribing special education due process hearings conducted pursuant to the IDEA or at least five years of experience transcribing administrative hearings for state agencies.

1.6.2 Requirements

- A. The reporter shall work cooperatively with the hearing officer in all proceedings.
- B. The reporter shall travel to the school district involved in the due process hearing to transcribe the hearing. The costs of travel shall be borne by the reporter.
- C. The reporter may, at the direction of the hearing officer, appear by phone to transcribe pre-hearing conferences conducted by conference call.
- D. The reporter shall arrive at the place of the hearing no later than 20 minutes before the scheduled start of the proceeding. If the proceeding is to take place via conference call, the reporter shall be available at the scheduled start of the proceeding. The reporter shall have all equipment set up and be ready to begin work at the time the proceeding is scheduled to start.
- E. The reporter shall provide all supplies necessary for reporting a proceeding. Any delays in the proceedings attributable to the reporter not being prepared with necessary supplies will result in the reduction of the reporter's invoice by \$15.00 per 15 minutes of delay.
- F. Should the reporter be unable to complete his or her duties before the adjournment of the proceeding, the reporter shall immediately notify the hearing officer and make arrangements for a substitute reporter and notify TEA in writing of the substitution. If feasible, the reporter shall remain on duty until the substitute reporter arrives. The substitute reporter must hold a contract awarded from this RFQ and meet all eligibility requirements. Should no substitute be available, the hearing will be adjourned and rescheduled.
- G. The reporter must comply with the standards of neutrality and confidentiality required by IDEA and the Family Educational Rights and Privacy Act (FERPA). 34 C.F.R. Part 300; 34 C.F.R. Part 99. The reporter shall replace parent and student names with initials in all transcripts.

- H. The reporter must comply with all contractual timelines, including, but not limited to:
1. Transcripts shall be delivered to the hearing officer within 12 calendar days of the close of the proceeding or at a reasonable agreed upon time at the hearing officer's direction.
 2. All requested corrections to the transcript shall be made within seven days of receiving notice from the hearing officer. The reporter will not charge for corrections deemed to be the reporter's error.
 3. The reporter shall be available to work later than 5:00 P.M. if deemed necessary by the hearing officer.
- I. The reporter shall deliver at the specified time all products that are 1) due to the hearing officer and 2) requested by the parties. The reporter shall deliver to the hearing officer an original and a condensed sanitized transcript, disk, and exhibits. The reporter shall deliver to the parties only those items requested at the conclusion of the hearing that fall within the scope of the contract.

Each transcript shall contain a cover sheet, which sets forth the date, time and location of the proceeding along with the name of the presiding officer. Witness, attorney, and exhibit indexes shall be contained in each transcript in accordance with the usual and customary practice of the profession and may be billed at the contract rate.

A page of transcript is the usual court reporter's page with 25 numbered lines, double spaced on 8 ½ by 11 inch paper. Pages shall be filled as much as possible, but it is recognized that in instances where short pages must occur, those pages will be numbered and may be billed at the contract rate when the page contains 10 or more lines in accordance with the usual and customary practice of the profession. All pages shall be numbered consecutively. The outside cover of the transcript shall be folded so that no transcript fasteners are visible from the outside of the transcript. The completed transcript shall be bound securely before delivery to the hearing officer and the parties.

SECTION TWO: GENERAL INSTRUCTIONS AND STANDARD PROPOSAL REQUIREMENTS

2.1 PROPOSAL SUBMISSION, DATE, AND TIME

WITHOUT EXCEPTION – A PROPOSAL MUST BE TIME AND DATE STAMPED BY THE TEA PURCHASING, CONTRACTS AND AGENCY SERVICES DIVISION OFFICE BEFORE:

Wednesday, July 8, 2015, 2:00 P.M., C.T.

Proposals must be submitted in a sealed envelope (or box as appropriate) with Proposer's name, RFQ number, and closing date prominently visible on the envelope/package. If multiple envelopes/boxes are used, 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, Contract Terms and Conditions and Affirmations* instrument (Attachment B). By signing, Proposer or 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 contractor 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 PCAS Division Office on the date and time specified in this RFQ. In establishing the time and date of receipt, the Commissioner of Education will rely solely on the time/date stamp of the PCAS Division Office.

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 PCAS Division Office by the deadline established in this RFQ.**

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 established in this RFQ.

2.1.2 Proposal Delivery

TEA is open Monday through Friday, 8:00 A.M. to 5:00 P.M., excluding holidays. The TEA PCAS Division Office is located on the 2nd floor of the William B. Travis Bldg., 1701 N. Congress (at 17th 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 TEA. 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. The mailing address is:

Purchasing, Contracts and Agency Services Division, Room 2-125
Texas Education Agency
William B. Travis Building
1701 North Congress Avenue
Austin, Texas 78701-1494

2.1.3 Number of Copies of Proposal

One original signature, and six copies, and one electronic copy in diskette or Flash drive (USB) of the proposal must be submitted. The required number of copies of the proposal must be received in the TEA PCAS Division Office before 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 TEA PCAS Division Office.

2.1.4 Notice of Intent to Submit a Proposal

All prospective proposers should notify TEA in writing of their intent to submit a proposal (Attachment A) by 5:00 P.M. on June 15, 2015, to the TEA PCAS Division Office via email TEAContracts@tea.texas.gov or by FAX (512) 475-1706, attention to Yvette Butler. Failure to notify TEA of the intent to submit a proposal will not disqualify proposers from submitting a proposal.

2.2 EXPECTED SEQUENCE OF EVENTS/CRITICAL DATES

DATE	EVENT
May 28, 2015	Publication of RFQ on the Electronic State Business Daily at http://esbd.cpa.state.tx.us/
June 15, 2015	<i>Notice of Intent to Submit a Proposal</i> is due in the TEA Purchasing, Contracts and Agency Services Division by 5:00 P.M., C.T.
June 15, 2015	Last day to submit written questions about the RFQ to TEA, no later than 3:00 P.M., C.T.
June 19, 2015	Publication of Questions and Answers document in the Electronic State Business Daily at http://esbd.cpa.state.tx.us/
July 8, 2015	Proposals due in the TEA Purchasing, Contracts and Agency Services Division by 2:00 P.M., C.T.
July 13 - July 17, 2015	Evaluation process
September 1, 2015	Beginning date of contract
August 31, 2016	End of initial term of contract

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 RFQ may contact:

Yvette Butler

TEAContracts@tea.texas.gov

2.3.1 Requests for Additional Information

In order to ensure 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 RFQ 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 RFQ 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 RFQ is advertised. Proposer’s failure to periodically check the ESBD will in no way release Proposer from “addenda or additional information” resulting in additional cost to meet the requirements of the RFQ. **NO PHONE INQUIRIES WILL BE ACCEPTED.**

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

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

2.4 STANDARD PROPOSAL REQUIREMENTS

- A. Proposals that address only part of the requirements contained in this RFQ may be considered non-responsive.
- B. TEA reserves the right to reject any and all proposals and to negotiate portions thereof including the submitted cost proposals/budget.
- C. TEA reserves the right to select the proposal based on the best value to the State of Texas and TEA. Proposers 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.
- D. Proposers must work with TEA 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

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 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 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 for only a subset of the work expected to be performed or the funds to be expended under the contract. Specifically, TEA has identified the following National Institute of Governmental Purchasing (NIGP) class and item code for potential subcontracting opportunities:

961-02 Administrative Services, All Kinds (Incl. Clerical, Secretarial Services, etc.).

Therefore, all proposers must submit the HSP as a part of the response.

- 1. If Proposer is a HUB, an HSP is still required in order to identify the percentage of the work to be performed by subcontractors.
- 2. If 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.

Proposer shall develop and administer the HSP as a part of Proposer's proposal in accordance with the TEA Policy on Utilization of HUBs and state law. Proposer must make a good faith effort and solicit a minimum of three Texas certified HUBs from the Centralized Master Bidders List (CMBL)/HUB Directory for work that it cannot complete with its own staff and resources. Proposers must also notify minority or women trade organizations or development centers of subcontracting opportunities. Additional requirements are listed in the HSP (Attachment C).

The HUB goal for this procurement is **26.0%** minority, woman-owned and/or veteran service disabled owned business participation. The HSP will be incorporated into the contract between TEA and the selected proposers. 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 Texas Government Code §2161.065, and the submission of a protégé as a subcontractor in the HSP constitutes a good faith effort for the particular area to be subcontracted with the protégé.

Proposals that fail to submit the HSP will be rejected for non-compliance with the advertised contract specifications.

Proposers who are awarded a contract will be responsible for maintaining business records documenting compliance with HUB Program requirements. Selected proposers shall submit a Progress Assessment Report (PAR) monthly documenting all subcontractor payments made in the preceding month. Submission of the PAR is a condition for payment. Selected proposers shall also report all 2nd and 3rd Tier subcontracting in the monthly PAR. PARs are due no later than the 10th day of the following month. The PAR is required to be submitted monthly, even if no activity occurred for the month. Reports shall be submitted electronically to the HUBOffice@tea.texas.gov.

2.7.1 How to Find Texas Certified HUBs for Subcontracting Opportunities

Use the Centralized Master Bidders List (CMBL)/HUB Directory (make sure to check both “HUBs on the CMBL” and “HUBs only” or use “All Contractors”).

1. Open <https://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>
2. Search: ☉ HUBs on CMBL & HUBs only
3. Selection 1:
Class Code: # 961, Item: # 02, Administrative Services
Class Code: # 961, Item: #24, Court Reporting Services
District: # ALL

To see the items associated *with any particular class*, click on the *Class number in the Commodity Book* at: http://www.window.state.tx.us/procurement/com_book/index.html

District Number. (Texas is divided into 25 geographical districts. District **14** is specific to: Bastrop, Blanco, Burnet, Caldwell, Gillespie, Hays, Lee, Llano, Mason, **Travis**, Williamson counties.)

4. Click **Submit Search**

2.8 CONFLICT OF INTEREST

A proposer will not be selected if it has a conflict of interest that will or may arise during the performance of its obligations under the contract. For this reason, Proposer's response to this RFQ must disclose any existing or potential conflicts of interest or possible issues that might create appearances of impropriety relative to the submission of a proposal from Proposer, and possible selection as Successful Proposer, or its performance of the contract.

As part of this disclosure requirement, Proposer must include in its proposal all past and present contractual, business, financial or personal relationships between Proposer and TEA and between Proposer's proposed subcontractors, if any, and TEA. For purposes of this disclosure requirement: (i) “past” is defined as within the two calendar years prior to the deadline for submission of proposals in response to this RFQ; (ii) TEA is defined as the statewide elected official who heads the agency as well as TEA's employees or recent former employees; and (iii) “recent former employees” are defined as those TEA employees who have terminated TEA employment within the two calendar years prior to the deadline for submission of proposals in response to this RFQ. For each item, Proposer must provide a detailed explanation of why Proposer does or does not believe such item poses a conflict of interest, potential conflict of interest, or appearance of impropriety issue

relative to Proposer's submission of a proposal, possible selection as Successful Proposer, or its performance of the contract.

For purposes of this RFQ, "personal relationship" is defined as a current or past connection other than a clearly contractual, business, financial, or similar relationship and includes family relationships or other connections outside simply providing a response to this RFQ. For this purpose, "family relationship" means a relationship within the third degree of consanguinity or second degree of affinity (see Chapter 573 of the Texas Government Code) which defines these degrees of consanguinity and affinity.

Connections other than such family relationships fall within this definition and must be disclosed if a reasonable person could expect the connection to diminish Proposer's independence of judgment or effectiveness in the performance of Proposer's responsibilities to TEA or the state under the contract. Connections also fall within this definition if a reasonable person could expect the connection, within the overall context of Proposer's submission of a proposal, possible selection as Successful Proposer, or its performance of the contract, to create an issue for TEA's consideration relative to a potential appearance of impropriety or conflict of interest.

Proposer certifies that it is in compliance with Texas Government Code §669.003, relating to contracting with executive head of a state agency. If Proposer employs or has used the services of a former executive head of TEA or other state agency, Proposer must complete the section relating to Texas Government Code §669.003 in the *Execution of Offer, Contract Terms and Conditions and Affirmations* instrument (Attachment B) in order for the proposal to be evaluated.

If the circumstances certified by Proposer change or additional information are obtained subsequent to submission of proposals, by submitting a response Proposer agrees that it is under a continuing duty to supplement its response under this provision and that the duty to disclosure of any conflicts of interest is an ongoing obligation throughout the term of the contract. Proposer shall submit updated information as soon as reasonably possible upon learning of any change to its affirmation.

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 twenty (20) pages not including appendices and attachments. Proposals should be stapled in the top left corner. Proposals must be submitted in a manner that 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 organization or individual and the name, position, and telephone number of 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 proposals. Proposers must refer to the appropriate section of the RFQ for detailed information on the following:

<input type="checkbox"/>	Proposal Cover Page	Sec. 3.1.1/Attachment D
<input type="checkbox"/>	Management Plan and Experience for the Project	Sec. 3.3 and Sec. 1.6.1 and 1.6.2
<input type="checkbox"/>	Signed <i>Execution of Offer, Contract Terms and Conditions and Affirmations</i>	Attachment B
<input type="checkbox"/>	HUB Subcontracting Plan (HSP)	Attachment C

3.2 CONDITIONS FOR SUBMITTING PROPOSALS

- A. TEA reserves the right to reject any and all proposals and to negotiate portions thereof.
- B. TEA reserves the right to select the proposal based on consideration of the outcomes desired. Proposer shall furnish such additional information that TEA may reasonably require.
- C. Selected proposals will be incorporated into a contract prepared by TEA for signature by the contracting parties.
- D. Proposer must agree to work with TEA staff so that the special education due process hearing program remains in compliance with IDEA and any other applicable laws.
- E. Proposer must agree to comply with all of the requirements set forth in this RFQ.
- F. In the event that an unforeseeable error occurs in this RFQ, TEA reserves the right to correct any such error.

3.3 MANAGEMENT PLAN AND EXPERIENCE FOR THE PROJECT

- A. Proposer must demonstrate that all reporters under the contract meet the minimum qualifications described in Section 1.6.1 of the RFQ. To this end, proposer must include the following information:
 - 1. Evidence that each reporter who will provide services under a contract resulting from this RFQ is certified in accordance with the provision of Chapter 154 of the Texas Government Code.
 - 2. A detailed description of the reporter's experience transcribing special education due process hearings conducted pursuant to IDEA and/or administrative hearings for state agencies.

3. A statement acknowledging that all reporters who will provide services under a contract resulting from this RFQ must submit to a national criminal history record information review (includes fingerprinting) and must meet all eligibility standards and criteria, as set by TEA, before serving in assignments. This requirement is separate from any similar requirement for certification.
 4. A sample transcript of no more than 25 pages in length
- B. Proposer must provide satisfactory evidence of capability to manage and coordinate the types of activities described in Section 1.6.2 of the RFQ. To this end, proposer must include the following information:
1. Past experience working on similar projects;
 2. Approach for scheduling, preparing for, and transcribing proceedings;
 3. The structure of the organization; and
 4. The equipment that will be used to carry out the requirements in the RFQ.

3.4 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:

- A. Private companies may be asked to submit their most recent audited financial statement or a certified public accountant-compiled financial report;
- B. Nonprofits may be asked to submit an audited financial statement, a certified public accountant-compiled financial report, or similar document; and
- C. 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 contractors or suppliers.

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

- A. 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;
- B. 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;
- C. A certified copy of Proposer's certificate of incorporation or similar document if it clearly establishes the nonprofit status of Proposer; or
- D. 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.

SECTION FOUR: REVIEW OF PROPOSALS

4.1 REVIEW OF PROPOSALS

The review of proposals will begin as soon as practical after receipt. The evaluation team will consist of TEA staff knowledgeable in the content area, and may also include reviewers from outside TEA with expertise in the area. The recommendations of the review panel will be assembled and presented to senior executive TEA 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, TEA 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 TEA approved records retention policy.

4.2 SELECTION CRITERIA

Proposals will be selected based on the ability of each proposer to carry out all of the requirements contained in this RFQ. TEA will base its selection on, among other things, demonstrated competence, qualifications, past contractor performance, and the proposed budget/cost. 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. Past performance on contracts with other state agencies may be used as a factor in selecting proposals under this RFQ.

Because federal funds will be used for the resulting contracts, TEA will also consider past performance on contracts relating to federal programs and activities, including any current or prior contracts with TEA.

Following are the criteria and the total number of points of each portion of the RFQ that will be applied in selecting proposals:

CATEGORIES	POSSIBLE POINTS
Experience and Qualifications	
1. For each reporter who will provide services under a contract resulting from this RFQ, a detailed description of the reporter's court reporter certification and experience transcribing special education hearings and/or administrative hearings for state agencies.	30
2. Quality of sample transcripts.	20
Management Plan	
1. A detailed description for meeting requirements of the RFQ including past experience working on similar projects.	20
2. Approach for scheduling, preparing for, and transcribing proceedings.	20
3. The structure of the organization.	5
4. Necessary support and equipment to carry out the requirements in the RFQ	5
Possible Deductions	
Up to 30 points may be deducted from the overall score for performance deficiencies associated with any current or previous contracts with TEA.	
Total Points	100

SECTION FIVE: CONTRACTUAL REQUIREMENTS

5.1 CONTRACTOR'S PROPOSAL

Selected proposals will be incorporated into a contract prepared by 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 contractors. All documents created at any time during the contract period belong to TEA and must be returned to TEA or destroyed as specified in the contract between the parties.

5.3 PAYMENT

All payments are made in accordance with Texas Government Code [§2251.001](#) et seq. Payments for Goods and Services. Unless otherwise indicated by 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 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

RFQ # 701-16-003

Special Education Due Process Court Reporting Services

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

Name of Organization or Individual	
Mailing Address:	
Contact Person (if different from above):	
E-Mail:	
Phone Number:	
FAX:	

1. 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.
2. The information from this notice may also be provided to HUB contractors (if requested) to help establish subcontracting relationships for this solicitation as well as future solicitations with the agency.
3. Filing this notice in no way binds the organization or individual to submit a proposal for this RFQ.
4. 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 RFQ, BUT NOT LATER THAN June 15, 2015, TO:

TEAContracts@tea.texas.gov

Texas Education Agency

Attention to: Yvette Butler

Purchasing, Contracts and Agency Services (PCAS) Division

FAX (512) 475-1706

**EXECUTION OF OFFER
CONTRACT TERMS AND CONDITIONS AND AFFIRMATIONS**

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

- 1) *Contract* means the entire document, and all of TEA's attachments, appendices, schedules (including but not limited to the General Provisions and the Special Provisions), amendments and extensions of or to the Standard Contract;
- 2) *Receiving Agency, Party, Owner or TEA* means the Texas Education Agency;
- 3) *Bidder, Proposer, or Respondent* may be used interchangeably. Bidder, Proposer, and Respondent infer pre-award status, and Contractor infers post-award status;
- 4) *Bid package, proposal, or response* may be used interchangeably;
- 5) *Contractor or Performing Agency* means the party or parties to this contract other than TEA, including its or their officers, directors, employees, agents, representatives, consultants and subcontractors, and subcontractors' officers, directors, employees, agents, representatives and consultants;
- 6) *Project Manager/Administrator* means the respective person(s) representing TEA or Contractor, as indicated by the contract, for the purposes of administering the Contract Project;
- 7) *Contract Project* means the purpose intended to be achieved through the contract;
- 8) *Amendment* means a contract that is revised in any respect, and includes both the original contract, and any subsequent amendments or extensions thereto;
- 9) *Major Contract* means any contract over \$10 million cumulative over the life of the contract;
- 10) *Works* means all tangible or intangible material, products, ideas, documents or works of authorship prepared or created by Contractor for or on behalf of TEA at any time after the beginning date of the contract ("Works" includes but is not limited to computer software, data, information, images, illustrations, designs, graphics, drawings, educational materials, assessment forms, testing materials, logos, trademarks, patentable materials, etc.). This does not include any pre-existing materials of Contractor, or any licensed third party materials provided by Contractor;
- 11) *Intellectual Property Rights* means the worldwide intangible legal rights or interests evidenced by or embodied in: (a) any idea, design, concept, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (b) any work of authorship, including any copyrights, moral rights or neighboring rights; (c) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (d) domain name registrations; and (e) any other similar rights. The Intellectual Property Rights of a party include all worldwide intangible legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses; and
- 12) *TEA Confidential Information* means information that is confidential under the provisions of the Family Educational Rights and Privacy Act (FERPA), the Texas Public Information Act, or other applicable state or federal laws. Examples of TEA Confidential Information include: (a) personally identifiable student information; (b) social security numbers; (c) driver's license numbers; (d) criminal background checks; (e) e-mail address of a member of the public, unless the individual waives his or her right to e-mail confidentiality by affirmatively consenting to disclose the e-mail address or the individual seeks to contract or has a contract with TEA; (e) certain personnel information concerning a TEA employee including home address, home telephone number, emergency contact information, and family member information (if the employee elects in writing to keep this information confidential), personal medical information, and information reflecting personal financial decisions such as the employee's choice of insurance carrier or choice to contribute money to a 401(k); (f) biometric identifiers such as fingerprints; (g) information about security vulnerabilities in TEA systems; and (h) SAS data sets.

B. Contingency: The contracts, including any amendments, extensions or subsequent contracts are executed by TEA contingent upon the availability of appropriated funds by legislative act. Notwithstanding any other provision in this contract or any other document, this contract is void upon the insufficiency (in TEA's discretion) or unavailability of appropriated funds. In addition, this contract may be terminated by TEA at any time for any reason upon notice to Contractor. Expenditures and/or activities for which Contractor may claim reimbursement shall not be accrued or claimed subsequent to receipt of such notice from TEA.

C. Indemnification:

Acts or Omissions

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

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

Infringements

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

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

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

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

- D. **Subcontracting and Substitutions:** Contractor shall not assign, transfer or subcontract any of its rights or responsibilities under this contract without prior formal written amendment to this contract properly executed by both TEA and Contractor. TEA reserves the right to request changes in personnel assigned to the project. The TEA Project Manager must pre-approve any changes in key personnel throughout the contract term. Any changes to the HUB Subcontracting Plan (HSP) must be approved by TEA's HUB Coordinator before staffing changes are initiated. Substitutions are not permitted without written approval of the TEA Project Manager.
- E. **Encumbrances/Obligations:** All encumbrances, accounts payable, and expenditures shall occur on or between the beginning and ending dates of this contract. All goods must have been received and all services rendered during the contract period in order for Contractor to recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.

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

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

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

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

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

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

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

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

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

publicly performing, or reproducing the Works, or making derivative works from the Works that are created or conceived under this contract, without the express written permission of TEA's Office of Legal Services.

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

Suspension

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

Sanctions

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

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

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

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

No later than 30 days from contract expiration or termination or as otherwise specified in this contract, Contractor must complete the sanitization and destruction of the data and provide to TEA documentation that the sanitization has been completed. The documents must be certified by an authorized agent of the company.

Access to Internal TEA Network and Systems

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

Disclosure of Security Breach

Contractor shall provide notice to TEA's Project Manager and TEA's Information Security Officer as soon as possible following Contractor's discovery or reasonable belief that there has been unauthorized use, exposure, access, disclosure, compromise, modification, or loss of sensitive or confidential TEA information ("Security Incident"). Within 24 hours of the discovery or reasonable belief of a Security Incident, Contractor shall provide a written report to TEA's Information Security Officer detailing the circumstances of the incident which includes at a minimum:

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

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

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

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

- L. Refunds Due to TEA:** If TEA determines that TEA is due a refund of money paid to Contractor pursuant to this contract, Contractor shall pay the money due to TEA within 30 days of Contractor's receipt of written notice that such money is due to TEA. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset, counterclaim, cancellation, termination, suspension, total withholding, and/or disapproval of all or any subsequent applications for said funds.
- M. Capital Outlay:** If Contractor purchases capital outlay (furniture and/or equipment) to accomplish the Contract Project, title will remain with Contractor for the period of the contract. TEA reserves the right to transfer capital outlay items for contract noncompliance during the contract period or as needed after the ending date of the contract. This provision applies to any and all furniture and/or equipment regardless of unit price and how the item is classified in Contractor's accounting record. This provision is applicable when federal funds are utilized for the contract.
- N. TEA Property (terms):** In the event of loss, damage or destruction of any property owned by or loaned by TEA while in the custody or control of Contractor, Contractor shall indemnify TEA and pay to TEA the full value of or the full cost of repair or replacement of such property, whichever is the greater, within 30 days of Contractor's receipt of written notice of TEA's determination of the amount due. This applies whether the property is developed or purchased by Contractor pursuant to this contract or is provided by TEA to Contractor for use in the Contract Project. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset or counterclaim against any money otherwise due to Contractor by TEA.
- O. State of Texas Laws:** In the conduct of the Contract Project, Contractor shall be subject to laws or rules of the State of Texas pertaining to and or governing this contract and the Contract Project. This contract constitutes the entire agreement between TEA and Contractor for the accomplishment of the Contract Project. This contract shall be interpreted according to the laws of the State of Texas except as may be otherwise provided for in this contract.
- P. Federal Regulations Applicable to All Federally Funded Contracts:**
1. For Local Education Agencies (LEAs): 28 CFR 35 Subparts A-E, 28 CFR 36 Subparts C & D, Appendix A, 29 CFR 1630, 34 CFR 75 or 76 as applicable, 77, 79, 80, 81, 82, 85, 99, 104, 47 CFR 0 and 64, and OMB Circulars A-87 (Cost Principles) and A-133 (Audits);
 2. For Education Service Centers (ESCs): 28 CFR 35 Subparts A-E, 28 CFR 36 Subparts C & D, Appendix A, 29 CFR 1630, 34 CFR 75 or 76 as applicable, 77, 79, 80, 81, 82, 85, 99, 104, 47 CFR 0 and 64, and OMB Circulars A-87 (Cost Principles) and A-133 (Audits);
 3. For Institutions of Higher Education (IHEs): 28 CFR 35 Subparts A-E, 28 CFR 36 Subparts C & D, Appendix A, 29 CFR 1630, 34 CFR 74, 77, 79, 81, 82, 85, 99, 104, OMB Circular A-21 (Cost Principles), 47 CFR 0 and 64, OMB Circular A-133 (Audits), and OMB Circular A-110 (Uniform Administrative Requirements);
 4. For Nonprofit Organizations: 28 CFR 35 Subparts A-E, 28 CFR 36 Subparts C & D, Appendix A, 29 CFR 1630, 34 CFR 74, 77, 79, 81, 82, 85, 99, 104, 47 CFR 0 and 64, OMB Circulars A-122 (Cost Principles) and A-133 (Audits), and OMB Circular A-110 (Uniform Administrative Requirements);

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

Q. Point of Contact and Escalation: All notices, reports and correspondence required by this contract shall be in writing and delivered to the TEA Project Manager listed below or his or her successors in office. Within 30 days of execution of a contract, the respective parties will designate the next level of personnel within each organization to address conflicts or ambiguity that cannot be resolved at the Project Manager level.

TEA

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

CONTRACTOR

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

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

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

T. Forms, Assurances, and Reports: Contractor shall timely make and file with the proper authorities all forms, assurances and reports required by federal laws and regulations. TEA shall be responsible for reporting to the proper authorities any failure by Contractor to comply with the foregoing laws and regulations coming to TEA's attention, and may deny payment or recover payments made by TEA to Contractor in the event of Contractor's failure so to comply. Contractor who is indebted or owes delinquent taxes to the state will have any payments under the contract applied toward the debt or delinquent taxes owed the state until the account is paid in full, regardless of when the debt or delinquency was incurred. This provision does not apply if the warrant or transfer results in payments being made in whole or in part with money paid to the state by the federal government. Pursuant to 34 TAC §201.14 -18 and Texas Government Code, Chapter 2161, Contractors shall maintain business records documenting compliance with the HUB subcontracting plan (HSP) and shall submit a compliance report to TEA monthly, in the format required by TEA. The compliance report submission shall be required as a condition for payment. If Contractor subcontracts any part of the contract in a manner that is not consistent with its HSP, Contractor must submit a revised HSP before subcontracting any of the work under the contract. If Contractor subcontracts any of the work without prior authorization and without complying with this section, Contractor is deemed to have breached the contract and is subject to any remedial actions provided by Texas Government Code, Chapter 2161, and other applicable state law.

- U. Signature Authority; Final Expression; Superseding Document:** Contractor certifies that the person signing this contract has been properly delegated this authority. The contract represents the final and complete expression of the terms of agreement between the parties. The contract supersedes any previous understandings or negotiations between the parties. Any representations, oral statements, promises or warranties that differ from the contract shall have no force or effect. The contract may be modified, amended or extended only by formal written amendment properly executed by both TEA and Contractor.
- V. Antitrust:** By signing this contract, Contractor, represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has, (1) violated the antitrust laws of the State of Texas under Texas Business and Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the Proposal to any competitor or any other person engaged in such line of business during the procurement process for this contract.
- W. Family Code Applicability:** By signing this contract, Contractor, if other than a state party, certifies that under Section 231.006, Texas Family Code, that Contractor is not ineligible to receive specified grant, loan, or payment under this contract and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. TEA reserves the right to terminate this contract if Contractor is found to be ineligible to receive payment. If Contractor is found to be ineligible to receive payment and the contract is terminated, Contractor is liable to TEA for attorney's fees, the costs necessary to complete the contract, including the cost of advertising and awarding a second contract, and any other damages or relief provided by law or equity.
- X. Dispute Resolution:** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by TEA and Contractor to attempt to resolve all disputes arising under this contract. The parties may agree to mediation of their dispute at any time. However, if all issues in dispute are not completely resolved through direct negotiations between the parties within 180 days after TEA receives Contractor's notice of claim, then the parties must submit the dispute to mediation before a mutually acceptable mediator in Travis County, Texas. The mediation must be completed on or before 270 days after TEA receives Contractor's notice of claim. Completion of the mediation is a condition precedent to the filing of a contested case hearing under Chapter 2260. TEA's participation in mediation or any other dispute resolution process shall not waive any of TEA's contractual or legal rights and remedies, including but not limited to sovereign immunity.
- Y. Interpretation:** In the case of conflicts arising in the interpretation of wording and/or meaning of various sections, parts, Appendices, General Provisions, Special Provisions, Exhibits, and Attachments or other documents, the TEA Contract and its General Provisions, Appendices and Special Provisions shall take precedence over all other documents which are a part of this contract.
- Z. Education Service Center:** No funds transferred to Regional Education Service Centers or to school districts may be used to hire a registered lobbyist.
- AA. Compliance with Laws:** Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting Contractor's performance, including if applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations. For the entire duration of the contract, Contractor shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this Contract. When required or requested by TEA, Contractor shall furnish TEA with satisfactory proof of its compliance with this provision.
- BB. Public Information:** TEA is subject to the provisions of the Texas Public Information Act. If a request for disclosure of this contract or any information related to the goods or services provided under the contract or information provided to TEA under this contract constituting a record under the Act is received by TEA, the information must qualify for an exception provided by the Act in order to be withheld from public disclosure. Contractor authorizes TEA to submit any information contained in the contract, provided under the contract, or otherwise requested to be disclosed, including information Contractor has labeled as confidential proprietary information, to the Office of the Attorney General for a determination as to whether any such information may be exempt from public disclosure under the Act. If TEA does not have a good faith belief that information may be subject to an exception to disclosure, TEA is not obligating itself by this contract to submit the information to the Attorney General. It shall be the responsibility of Contractor to make any legal argument to the Attorney General or appropriate court of law regarding the exception of the information in question from disclosure. Contractor waives any claim against and releases from liability TEA, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this contract or otherwise created, assembled, maintained, or held by Contractor and determined by the Attorney General or a court of law to be subject to disclosure under the Act.

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

- CC. Gratuities:** By signing this contract, Contractor represents and warrants that Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.
- DD. Venue and Jurisdiction:** Subject to and without waiving any of TEA's rights, including sovereign immunity, this contract is governed by and construed under and in accordance with the laws of the State of Texas. Venue for any suit concerning this solicitation and any resulting contract or purchase order shall be in a court of competent jurisdiction in Travis County, Texas.
- EE. Protests:** Any actual or prospective Bidder, Respondent, or Contractor who is aggrieved in connection with the solicitation, evaluation, or award of this or any other contract by TEA may submit a formal protest to the Director of TEA's Contracts, Purchasing and Agency Services (PCAS) Division. This protest procedure shall be the exclusive method by which anyone may make a challenge to any aspect of TEAs contracting process. TEA will not be required to consider the merits of any protest unless the written protest is submitted within 10 working days after such aggrieved person knows, or reasonably should have known, of the occurrence of the action which is protested. The protest document must meet with all requirements in applicable law and TEA's rules (Title 19 of the Texas Administrative Code, at § 30.2002) <http://ritter.tea.state.tx.us/rules/tac/index.html>.
If the protest procedure results in a final determination by TEA that a violation of law has occurred in its contracting process in a case in which a contract has been awarded, then TEA may declare the contract void at inception. In that event, the party who had been awarded the contract shall have no rights under the contract and no remedies under the law against TEA
- FF. Liability for and Payment of Taxes:** Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this contract, including, but not limited to, any federal, state, or local income, sales or excise taxes of Contractor or its employees. TEA shall not be liable for any taxes resulting from this contract.
- GG. Severability:** In the event that any provision of this contract is later determined to be invalid, void, or unenforceable, the invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein. The remaining terms, provisions, covenants, and conditions of this contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.
- HH. Conformance:** Contractor warrants that all goods and services furnished shall conform in all respects to the terms of this contract, including any drawings, specifications or standards incorporated herein, and any defects in materials, workmanship, and free from such defects in design. In addition, Contractor warrants that goods and services are suitable for and will perform in accordance with the purposes for which they are intended.
- II. Felony Criminal Convictions:** Contractor represents and warrants that Contractor has not and Contractor's employees assigned to TEA projects have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised TEA as to the facts and circumstances surrounding the conviction.
- JJ. Criminal Background Checks:** If during the term of this contract, Contractor, and/or Contractor staff, or subcontractor have access to Texas public school campuses, all Contractor and/or Contractor's staff must submit to a national criminal history record information review (includes fingerprinting) and meet all eligibility standards and criteria as set by TEA before serving in assignments on behalf of TEA. This requirement applies to all individuals who currently serve or will serve in TEA assignments that have the possibility of direct contact with students. Assignments are contingent upon meeting TEA eligibility standards. Contractor and/or any staff member of Contractor who may perform services under this contract must complete this criminal history review before the beginning of an assignment. If said individuals have not completed this requirement or the review results in a determination that Contractor is not eligible for assignment, this contract will be terminated effective immediately or the date of notice of non-eligibility, whichever is earliest.
- KK. Assignment of Contract:** This contract may not be assigned, sold, or transferred without the express written consent of the TEA PCAS Division. An attempted assignment after contract award without TEA approval will constitute a material breach of contract.
- LL. Buy Texas:** In accordance with Texas Government Code, Section 2155.444, the State of Texas requires that during the performance of a contract for services, Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside the state. This provision does not apply if Contractor receives any federal funds under this contract.
- MM. Excluded Parties List System:** TEA and Contractor must adhere to the directions provided in the President's Executive Order (EO) 13224, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, which may be viewed at <http://www.whitehouse.gov/briefing-room/presidential-actions/executive-orders>. That Executive Order prohibits any transaction or dealing by United States persons, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed in the General Services Administration's Excluded Parties List System (EPLS) which may be viewed on the System for Award Management (SAM) site at <http://www.sam.gov>.

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

OO. Electronic and Information Resources Accessibility Standards: State agencies shall procure products which comply with the State of Texas Accessibility requirements for Electronic Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

Regulations updating the accessibility requirements for entities covered by [Section 508 of the Rehabilitation Act of 1973](#) will likely be adopted sometime in FY 2015. Therefore, all current and potential contractors are hereby notified of the impending changes. The current technical requirements for accessibility contained within the regulations form the basis for our Texas TAC rules on EIR Accessibility.

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

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

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

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

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

[WCAG 2.0 at a glance](#)

[IBM Developer Guidelines Web Checklist](#)

[Webaim.org Accessibility Checklist](#)

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

QQ. Social Security Numbers Withheld: TEA will not provide Social Security Numbers (SSNs) to any Contractor under this contract unless specifically specified as part of the project requirements. TEA, its Contractors and their subcontractors, will not require or request school districts to provide SSNs under this contract.

RR. Proprietary; Confidential Information; Nondisclosure; Press Releases: All information gathered, produced, derived, obtained, analyzed, controlled or accessed by Contractor in connection with a contract resulting from a solicitation ("Confidential Information") shall be and remain confidential information and shall not be released or disclosed by Contractor without the prior written consent of TEA, which consent must specifically identify the confidential information to be disclosed by Contractor and the nature of the disclosure for which consent is sought. Contractor, its employees and subcontractors, agree that in executing tasks on behalf of TEA, will not use any student-identifying information in any way that violates the provisions of FERPA, and will destroy or return all student-identifying information within 30 days of project completion. Contractor also agrees not to disclose any information to which it is privy under this contract without the prior consent of TEA. Contractor will indemnify and hold harmless the State of Texas, its officers and employees, and TEA, its officers and employees for any claims or damages that arise from the disclosure by Contractor or its Contractors of information held by the state of Texas. Except when defined as part of the Work under this contract. Contractor will not make any press releases, public statements, or advertisement referring to the Contract Project or the engagement of Contractor in connection with the Contract Project, or release any information relative to the Contract Project for publication, advertisement or any other purpose without the prior written approval of TEA.

Within 30 days of completion of the Contract Project, Contractor or Contractor's authorized agent must provide a signed written statement certifying that all media used for storing TEA Confidential Information has been sanitized and that all TEA Confidential Information has been destroyed or returned to TEA and that there are no copies of the information.

SS. Independent Contractor: Contractor shall serve as an independent contractor in providing services under this contract. Contractor's employees are not and shall not be construed as employees or agents of the State of Texas.

TT. Contractor Performance: All state agencies must report unsatisfactory contractor performance on purchases over \$25,000. Proposers who are in default or otherwise not in good standing under any other current or prior contract with

TEA at the time of selection will not be eligible for award of this contract. A proposer's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Texas Government Code. Proposers may fail this selection criterion for any of the following conditions: A score of less than 90% in the Contractor Performance Tracking System, currently under a Corrective Action Plan, having repeated negative contractor performance reports for the same reason, having purchase orders that have been cancelled in the previous 12 months for non-performance (i.e. late delivery, etc.). TEA may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Contractor Performance Tracking System (as authorized by 34 Texas Administrative Code §20.108), TEA may examine other sources of contractor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of TEA, and any negative findings, as determined by TEA, may result in non-award to Proposer.

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

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

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

1. **Termination for Convenience:** TEA may terminate this contract at any time, in whole or in part, without penalty, by providing 15 calendar days advance written notice to Contractor. In the event of such a termination, Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TEA shall be liable for reimbursing only those expenses incurred by Contractor that are permitted, properly performed under this contract and were incurred prior to the effective termination date.
2. **Termination for Cause/Default:** If Contractor fails to provide the goods or services contracted for according to the provisions of the contract, or fails to comply with any of the terms or conditions of the contract, TEA may, upon written notice of default to Contractor, immediately terminate all or any part of the contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the contract.

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

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

3. **Termination Due to Changes in Law:** If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either party cannot reasonably fulfill this contract and if the parties cannot agree to an amendment that would enable substantial continuation of the contract, the parties shall be discharged from any further obligations under this contract.
4. **Rights upon Termination or Expiration of Contract:** In the event that the contract is terminated for any reason, or upon its expiration, TEA shall retain ownership of all associated work products and documentation obtained from Contractor under the contract.
5. **Survival of Terms:** Termination of the contract for any reason shall not release Contractor from any liability or obligation set forth in the contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.
6. **Contract Transition:** In the event a subsequent competitive solicitation is awarded to a New Contractor, the Outgoing Contractor shall hand-over to the New Contractor all "Works" including but not limited to the following: data, materials, database access, intellectual property, source code, training materials, access to websites, asset transfer, and maintenance of service commitments. The purpose of transition planning is to ensure a seamless and continuous service when changing from one contract to another. The Outgoing Contractor will begin shipping, transmitting or providing access to all appropriate materials and data to the New Contractor within 10 days of announcement of award at the New Contractor's expense for data processing and production, packing and shipping. The Outgoing Contractor will be responsible for providing the services identified in the contract until all records have been completely transferred to the New Contractor. The Outgoing Contractor is responsible

for performing due diligence to ensure that all the transition activities are identified and completed during the contract transition.

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

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

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

1. Contractor is permitted to re-budget among direct cost categories within the approved budget to meet unanticipated requirements and to make limited changes to the approved budget without the issuance of a written amendment as long as the total budget amount does not change. However, a revised budget document must be submitted to the TEA Project Manager for approval. Once approved, the documents must be submitted to the PCAS Division for incorporation into the contract file. Failure to submit the budget documents will result in invoices being rejected or payment delayed.
2. Written amendments are required for the following contract changes:
 - a. Any revision which would result in the need for additional funding;
 - b. Any revision to the scope of work, deliverables, or objectives of the contract (regardless of whether there is an associated budget revision requiring prior approval) additionally increases of 25% or more for major contracts must be approved by the Comptroller;
 - c. A request to extend the period of the contract;
 - d. Cumulative transfers among direct cost categories which exceed or are expected to exceed 25% of the current total approved budget category;
 - e. Any reduction of funds or reduction in the scope of work;
 - f. Whenever a line item within a class/object code is added;
 - g. An increase in the quantity of capital outlay item(s) requested; and
 - h. An increase or decrease in the number of positions charged to contract.

All Amendments must be signed by both parties.

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

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

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

- A. Payment for service(s) described in this contract is contingent upon satisfactory completion of the Deliverables and Services Review and Acceptance Process. Contractor must submit final deliverables to TEA for review and approval prior to invoicing. These include test items developed under the contract. "Final" deliverable means a deliverable that, in the belief and testimony of Contractor, is in final completed form and in compliance with all required specifications as defined by project documentation and this contract. TEA will review each deliverable, including test items, submitted by Contractor for quality and alignment to the deliverable definition agreed to under the "Deliverables and Services Definition Process." TEA will have 15 working days to approve a deliverable or request revisions to the deliverable. TEA must review and approve any deliverable before it may be invoiced by Contractor. If TEA finds a submitted deliverable to be substandard or not in compliance with the deliverable definition agreed to under the "Deliverables and Services Definition Process" in the Service Level Agreement or the Contract Monitoring Tool, Contractor will have 10 working days to provide a Corrective Action Plan and address the quality or other compliance requirement and resubmit the deliverable. Additional costs

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

- B. 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.
- C. Unless otherwise stated, payment under this contract will be made upon performance of services based upon submission of an expenditure report/invoice, properly prepared and certified, outlining expenditures by cost category. Include the contract number, purchase order number, and the Texas Comptroller of Public Accounts Texas Identification Number (TIN) on all invoices/expenditure reports. The cost categories provided in the expenditure report/invoice must coincide with the cost categories detailed in the approved budget. A list of tasks/activities performed during the invoice period must accompany the expenditure report/invoice. The final expenditure report/invoice is due within 45 days after the end of the contract. Payment on the final expenditure report is contingent upon receipt of all reports/products required by this contract.
- D. 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.
- E. Contractor who is indebted or owes delinquent taxes to the state will have any payments under the contract applied toward the debt or delinquent taxes owed the state until the amount is paid in full, regardless of when the debt or delinquency was incurred. TEA shall determine whether a payment law prohibits the Comptroller from issuing a warrant or initiating an electronic funds transfer to a person before TEA enters into a written contract with that person.

Contractor may verify its account status by accessing the Comptroller's website at https://fm.xcpa.state.tx.us/fm/pubs/purchase/restricted/index.php?section=indebted&page=persons_indebted

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

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

Workers Compensation & Employers Liability: Contractor must maintain Workers' Compensation insurance coverage in accordance with statutory limits.

Workers Compensation: Statutory Limits

Employers Liability: Each Accident \$1,000,000

Disease- Each Employee \$1,000,000

Disease-Policy Limit \$1,000,000

This State of Texas website (Coverage starts with 406 of the Labor code) addresses what Texas requires and may be found at: <http://www.tdi.texas.gov/wc/act/index.html>

Commercial General Liability: Occurrence based:

Bodily Injury and Property Damage

Each occurrence limit: \$1,000,000;

Aggregate limit: \$2,000,000;

Medical Expense each person: \$5,000;

Personal Injury and Advertising Liability: \$1,000,000;

Products /Completed Operations Aggregate Limit: \$2,000,000; and

Damage to Premises Rented to You: \$50,000

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

ZZ. Force Majeure: Neither Contractor nor TEA shall be liable to the other for any delay in, or failure of performance, of any requirement included in any contract resulting from this RFQ caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three business days of the existence of such force majeure, or otherwise waive this right as a defense.

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

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

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

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

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

AFFIRMATIONS:

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

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

Proposer has not given, offered to give, not 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.

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

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

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

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

ATTACHMENT B

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.

Proposer certifies that it is in compliance with Texas Government Code Section 669.003, relating to contracting with executive head of a state agency. If Section 669.003 applies, Proposer will complete the following information in order for the proposal to be evaluated.

Name of Former Executive: _____

Name of State Agency: _____

Date of Separation from State Agency: _____

Position with Proposer: _____

Date of Employment with Proposer: _____

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

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

Proposer's FEI#	
Proposer's SSN	
Proposer's TIN	
Proposer'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. If awarded a contract, Proposer agrees to abide by this policy when on the property of TEA.

The undersigned is an authorized official for Proposer and certifies that the proposal submitted with this EXECUTION OF OFFER, CONTRACT TERMS AND CONDITIONS AND AFFIRMATIONS instrument is in full compliance with the provisions expressly stated above.

In compliance with this RFQ, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all commodities or services at the prices quoted in the proposal or bid. When a Texas business address shown hereon that address is, in fact, the legal business address of Proposer and Proposer qualifies as a Texas Resident Bidder under TAC Title 34, Part 1, Chapter 20.

PROPOSER/COMPANY NAME:

STREET ADDRESS:

CITY/STATE/ZIP:

TELEPHONE #:

FACSIMILE #:

EMAIL ADDRESS:
NAME OF PROPOSER'S AUTHORIZED AGENT:
TITLE OF PROPOSER'S AUTHORIZED AGENT:
SIGNATURE OF AUTHORIZED AGENT:

THIS ATTACHMENT "B" MUST BE SIGNED AND RETURNED WITH YOUR PROPOSAL

Proposer acknowledges that under state law and TEA policy, it may not disclose any information during the solicitation process (upon opening the proposal and during negotiations). The solicitation process must remain confidential and is exempt from open records until such time that a contract is awarded. Failure to abide by this requirement will result in disqualification.

Texas Education Agency Historically Underutilized Business Subcontracting Plan (HSP)

Definition of a Historically Underutilized Business (HUB)

- A for-profit entity that has not exceeded the size standards prescribed by [34 TAC §20.11](#), and has its principal place of business in Texas; and
- Is at least 51% owned by an Asian Pacific American, Black American, Hispanic American, Native American, American woman, and/or Service Disabled Veterans who reside in Texas and actively participate in the control, operations and management of the entity's affairs.

*Note: Veterans are not required to be United States citizens; however, they must reside in Texas.

**Note: Sole proprietorships must be 100% owned and controlled by an individual meeting the criteria above. In addition, each entity within a joint venture is required to be HUB certified.

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

Questions regarding the TEA HUB Program or the HUB Subcontracting Plan may be directed to the TEA HUB Office: HUBOffice@tea.texas.gov.

A version of this document that is electronically fillable is available at:

(a) Procurement 701-16-003, Bidder Package 2: <http://esbd.cpa.state.tx.us/>.

(b) <http://comptroller.texas.gov/procurement/prog/hub/hub-subcontracting-plan/>

(FORMAT FOR PROPOSAL COVER PAGE)

PROJECT PROPOSAL
Submitted to the
Texas Education Agency
Purchasing, Contracts and Agency Services Division
RFQ #: 701-16-003

TITLE OF PROPOSED PROJECT:

**SPECIAL EDUCATION DUE PROCESS COURT
REPORTING SERVICES**

**PROPOSER ORGANIZATION OR INDIVIDUAL
NAME:**

Name and address of organization or individual
submitting proposal (include zip code)

**PROPOSER ORGANIZATION OR INDIVIDUAL
IDENTIFICATION NUMBER:**

Proposer's Federal Employer's Identification Number
or Texas Identification Number (TINS)

CONTRACTING OFFICER (IF APPLICABLE):

Name, position, email, and telephone number of
official with authority to negotiate contracts for
Proposer

DURATION OF PROJECT:

September 1, 2015 to August 31, 2016

TOTAL BUDGET FOR PROPOSED PROJECT:

NA

CONTAINS PROPRIETARY INFORMATION:

Check box if proposal being submitted contains
proprietary information

ACCEPTANCE OF TERMS AND CONDITIONS:

I/We hereby accept by the submission of the
proposal the "Execution of Offer, Contract Terms
and Conditions and Affirmations"

DATE SUBMITTED:

Date proposal is submitted to TEA