



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

REQUEST FOR PROPOSAL (RFP)

RFP No.: 701-17-002

Distribution of Instructional Materials: Freight and Material Handling Services

Authorized by TEC §31.021

<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>Mary Helen Nunez-Wallace 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:

Thursday, August 18, 2016 - 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 Solicitation 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 TEA Purchasing, Contracts and Agency Services (PCAS) Division as required by the instructions within this Solicitation. 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 Solicitation, negotiations, subsequent award, or any results or findings based on information provided or obtained to fulfill requirements of this Solicitation 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 OF THE REQUEST FOR PROPOSAL (RFP)

The Texas Education Agency (TEA) is requesting Intrastate Freight and Material Handling Services for the distribution/recall of instructional material and electronic media systems to and from approximately 1,250 school districts or charter schools throughout the State of Texas. The Agency works with two (2) depositories, one located in the Dallas/Fort Worth metroplex and one (1) located in Lubbock, Texas, and multiple publishers located in various locations around the state.

Eligible Proposers are nonprofit organizations, institutions of higher education, private companies, individuals, regional education service centers, etc.,

1.2 BACKGROUND INFORMATION

The Texas Constitution, Article VII, Section 3, requires that the State Board of Education (SBOE) set aside sufficient money to provide free textbooks for children attending the public schools in the state. In accordance with this constitutional requirement and provisions of the *Texas Education Code*, each year a portion of the Available School Fund is set aside by the SBOE to purchase instructional materials. Funds to be expended on instructional materials are appropriated by the Texas Legislature.

1.3 CONTRACT TERM/OPTION TO EXTEND

The term of any contract resulting from this RFP shall be from contract award until August 31, 2017. TEA, at its own discretion, may extend any contract awarded pursuant to this RFP for up to three (3) additional fiscal years under the same or different terms subject to appropriation of funds by the Texas Legislature for this project. If renewed, the first renewal period shall be from September 1, 2017, through August 31, 2018; the second renewal period shall be from September 1, 2018, through August 31, 2019; and the third renewal period shall be from September 1, 2019, through August 31, 2020.

1.4 BUDGET

The awarded contract(s) will be based by geographical region on the truckload (TL) price rate per mile and rate base pricing schedule for less-than-truckload (LTL) shipments. TEA is not seeking a price by value and weight. All accessorial charges associated with the delivery of textbooks to the referenced zip code locations must be included as specified in the cost proposal. Additional price discounts are acceptable at any time after award by any Carrier under contract and shall be subject to any shipment.

TEA may select to award multiple contracts. The Agency may also select more than one carrier for one (1) or more designated zip codes, LTL and/or TL. TEA may also designate Primary and Alternate Carriers.

Proposals must include a detailed budget in accordance with the requirements of Section 3.5 of this Request for Proposal.

1.5 PROJECT DESCRIPTION AND REQUIREMENTS

All proposals submitted in response to this request must indicate how the proposer will meet the following conditions. Failure to do so shall result in disqualification of proposal, and the proposal shall receive no further consideration.

Proposer Requirements:

- 1.5.1. Deliver instructional materials to school districts, charter schools, and other entities as needed throughout the state of Texas for the Texas Education Agency (TEA) during the contract period.
- 1.5.2. Be responsible for providing all services required in these specifications and following all shipping instructions issued by the depositories, school representatives, or publishers for the instructional materials.
- 1.5.3. Make all deliveries within three (3) working days of the shipping date.
- 1.5.4. Arrive within two (2) hours of the scheduled pick up time. Notify the delivery location of the approximate arrival time and of any unanticipated delays (e.g., in pick up, shipping/transit, delivery, etc.).
- 1.5.5. Provide acceptable proof of delivery (P.O.D.) to all delivery locations at time of delivery, at no additional cost.
- 1.5.6. Provide weather-tight trailers in good working order. Trailers may be rejected/refused by the sending entity if obvious defects of the trailer(s) could cause damage to shipments.
- 1.5.7. Have sufficient equipment available to serve all shipping locations as needed.
- 1.5.8. At no additional cost, hold trailers up to four (4) business days prior to actual movement if needed. Sending entities will annotate this requirement on the Bill of Lading.
- 1.5.9. Not break palletized shipments once they have been securely shrink-wrapped or open shipments in transit. The carrier(s) shall be held liable if any shrink-wrapping or seals are found to have been removed or broken. Note: Shipments shall not be double-stacked.
- 1.5.10. Provide a breakdown by shipping location of total number of pieces and total number of pallets on each freight bill and delivery receipt (Example: ABC Depository, 200 boxes on four (4) shrink-wrapped pallets).
- 1.5.11. Resolve any freight claim(s) within forty-five (45) days. Provide claim forms, training and instructions for filing a claim to all participating entities at no additional cost. (Include a sample of the forms and instructions in the RFP response.)
- 1.5.12. Have an efficient system in place at least from 7:30 a.m. to 5:00 p.m. Central Time Monday through Friday to immediately acknowledge pick-up notification from shipping locations.
- 1.5.13. Be in compliance with all applicable state of Texas laws, federal laws, Code of Federal Regulations, and United States Department of Transportation requirements governing the transportation of freight on the state highway system
- 1.5.14. Comply with all Texas motor vehicle and traffic laws
- 1.5.15. Identify carrier's delivery and pickup personnel by standard identification, such as badges, etc., that clearly identify personnel as employees of the carrier. Personnel must communicate and conduct themselves in a professional manner.

To assist the provider in meeting these requirements, TEA shall agree to do the following:

- 1.5.16. Provide access, upon request, to current shipping/delivery point addresses to each contracted carrier to facilitate arrangements for pickup and deliveries. (TEA reserves the right to change, delete, or add shipping/delivery locations free of charge. Additional shipping locations will be paid at the rate that applies to shipping locations closest to them.)
- 1.5.17. Provide contact information for textbook coordinators and their alternates after contract award.

- 1.5.18. Monitor compliance and performance, advise carrier of substandard performance, and reserve the right to cancel the contract with carriers that have significant performance problems or those with a trend of uncorrected minor discrepancies.

TEA shall require shipping entities to fulfill the following responsibilities:

- 1.5.19. Contact the appropriate carrier to pick up instructional materials and deliver them to the receiving entity.
- 1.5.20. Notify the carrier by noon Central Time of the preceding day of the number of shipments moving and the number of trailers required for pick-up. This notice shall include pick-ups at all shipping locations as required.
- 1.5.21. Notify the awarded secondary vendor if the awarded primary vendor does not arrive within two (2) hours of scheduled pick up time and has not requested an extension due to unanticipated delays, acceptable to TEA.
- 1.5.22. Label all boxes in a non-palletized shipment with legible delivery address information. Clearly label securely shrink wrapped, palletized shipments on all sides.
- 1.5.23. Notify the TEA Instructional Materials & Educational Technology Division and Purchasing & Contracts Division in writing, within ten (10) business days of occurrence, of any violations by carriers failing to adhere to any of the requirements of the specifications. Violation of Contract is defined as any requirement specified in the contract and specifications resulting from this advertisement which are not met or adhered to by the awarded carrier.
- 1.5.24. Provide required information on the bill of lading: BOL#; EMAT Order #, District Name - County District Number; Shipment Date, Carrier; PRO#; Prepaid Freight Amount; From; Bill Charges To; Deliver To; Number; and Description. Shipping locations shall be responsible for freight costs incurred by failure to meet this requirement.
- 1.5.25. Indicate on the bill of lading the exact locations that the shipment moves from.
- 1.5.26. Annotate on the bill of lading any request for a contractor to hold trailers two (2) to four (4) business days prior to actual movement. (Requests to hold trailers shall be honored by the contractor at no additional cost.)

Additional Requirements:

Proposers should be aware of the following additional requirements to be established in contract(s) resulting from this RFP.

- 1.5.27. In the event that a contract is awarded for a specific region or regions other than the entire state, the vendor is required to verify that the delivery location is within the carrier's awarded area prior to pick up of textbooks. Verification can be obtained by contacting any United States Post Office. Carriers shall notify the sender if a delivery location is outside of their awarded area.
- 1.5.28. In the even that a contract is awarded to both a primary and a secondary vendor as a result of this RFP, the primary vendor forfeits the right to transport a shipment if it does not arrive within two hours of the scheduled time unless he has requested and been granted an extension due to unanticipated delays acceptable to TEA. If h the primary vendor has not met this requirement, the secondary vendor shall be contacted. Once the secondary vendor

has been successfully contacted, the primary vendor forfeits the right to transport the shipment even if the primary vendor arrives before the secondary vendor.

- 1.5.29. In the event that a depository ships multiple orders on separate bills of lading on the same day to the same location, TEA shall be entitled to the lower freight costs by issuing a corrected bill of lading for the aggregate weight of the shipment(s) involved within 180 days of the shipment date.
- 1.5.30. If an awarded proposer(s) develops a pattern of repeated violations or otherwise no longer meets the bid specifications, TEA may advise the depository(s) to select an alternate carrier until an investigation regarding specification compliance can be completed. Any investigation will be complete within thirty (30) business days from the date of notification to TEA. During the investigation period, the vendor will be offered the opportunity to respond to all charges within seven (7) business days from the date of notification from TEA. The vendor's response shall include an explanation of the charges and a detailed plan for corrective action. After the investigation is completed, TEA will determine whether to reinstate the vendor or to cancel the contract based on the findings and vendor's response. Written notice will be provided to the vendor within seven (7) business days after completion of the investigation.
- 1.5.31. For continued failure to perform, the TEA may terminate the contract immediately upon delivery of written notice of such failure, without penalty or recourse by the awarded vendor. Continuous non-compliance regarding billing errors may also be reason for contract termination. If the contract is terminated, the vendor shall be subject to damages and all legal remedies available to the TEA.

1.6. FUEL SURCHARGE PRICE ADJUSTMENTS, INCREASES AND DECREASES

Unit price upward or downward adjustments will be correlated with the index-based surcharge specified herein. Fuel surcharges will be based on the [National U.S. Department of Energy Gulf Coast Region index](#). Weekly Retail On-highway Diesel Prices published on Monday become effective on the following Wednesday.

A fuel surcharge will be allowed as indicated below to reflect changing fuel costs.

Department of Energy (DOE) Gulf Coast Region			
Cost per Gallon		LTL	TL
From	Through	@ 0.5%	Per Mile
1.209 or less		0.00%	\$0.00
1.21	1.269	0.05%	\$ 0.01
1.27	1.329	1.00%	\$ 0.02
1.33	1.389	1.50%	\$ 0.03
1.39	1.449	2.00%	\$ 0.04
1.45	1.509	2.50%	\$ 0.05
1.51	1.569	3.00%	\$ 0.06
1.57	1.629	3.50%	\$ 0.07
1.63	1.689	4.00%	\$ 0.08

1.69	1.749	4.50%	\$ 0.09
1.75	1.809	5.00%	\$ 0.10
1.81	1.869	5.50%	\$ 0.11
1.87	1.929	6.00%	\$ 0.12
1.93	1.989	6.50%	\$ 0.13
1.99	2.049	7.00%	\$ 0.14
2.05	2.109	7.50%	\$ 0.15
2.11	2.169	8.00%	\$ 0.16
2.17	2.229	8.50%	\$ 0.17
2.23	2.289	9.00%	\$ 0.18
2.29	2.349	9.50%	\$ 0.19
2.35	2.409	10.00%	\$ 0.20
2.41	2.469	10.50%	\$ 0.21
2.47	2.529	11.00%	\$ 0.22
2.53	2.589	11.50%	\$ 0.23
2.59	2.649	12.00%	\$ 0.24
2.65	2.709	12.50%	\$ 0.25
2.71	2.769	13.00%	\$ 0.26
2.77	2.829	13.50%	\$ 0.27
2.83	2.889	14.00%	\$ 0.28
2.89	2.949	14.50%	\$ 0.29
2.95	3.009	15.00%	\$ 0.30
3.01	3.069	15.50%	\$ 0.31
3.07	3.129	16.00%	\$ 0.32
3.13	3.189	16.50%	\$ 0.33
3.19	3.249	17.00%	\$ 0.34
3.25	3.309	17.50%	\$ 0.35
3.31	3.369	18.00%	\$ 0.36
3.37	3.429	18.50%	\$ 0.37
3.43	3.489	19.00%	\$ 0.38
3.49	3.549	19.50%	\$ 0.39
3.55	3.609	20.00%	\$ 0.40
3.61	3.669	20.50%	\$ 0.41
3.67	3.729	21.00%	\$ 0.42
3.73	3.789	21.50%	\$ 0.43
3.79	3.849	22.00%	\$ 0.44
3.85	3.909	22.50%	\$ 0.45
3.91	3.969	23.00%	\$ 0.46
3.97	4.029	23.50%	\$ 0.47
4.03	4.089	24.00%	\$ 0.48
4.09	4.149	24.50%	\$ 0.49
4.15	4.209	25.00%	\$ 0.50
4.21	4.269	25.50%	\$ 0.51
4.27	4.329	26.00%	\$ 0.52
4.33	4.389	26.50%	\$ 0.53
4.39	4.449	27.00%	\$ 0.54
4.45	4.509	27.50%	\$ 0.55
4.51	4.569	28.00%	\$ 0.56
4.57	4.629	28.50%	\$ 0.57
4.63	4.689	29.00%	\$ 0.58

4.69	4.749	29.50%	\$ 0.59
4.75	4.809	30.00%	\$ 0.60
4.81	4.869	30.50%	\$ 0.61
4.87	4.929	31.00%	\$ 0.62
4.93	4.989	31.50%	\$ 0.63
4.99	5.049	32.00%	\$ 0.64
5.05	5.109	32.50%	\$ 0.65
5.11	5.169	33.00%	\$ 0.66
5.17	5.229	33.50%	\$ 0.67
5.23	5.289	34.00%	\$ 0.68
5.29	5.349	34.50%	\$ 0.69
5.35	5.409	35.00%	\$ 0.70
5.41	5.469	35.50%	\$ 0.71
5.47	5.529	36.00%	\$ 0.72
5.53	5.589	36.50%	\$ 0.73
5.59	5.649	37.00%	\$ 0.74
5.65	5.709	37.50%	\$ 0.75
5.71	5.769	38.00%	\$ 0.76
5.77	5.829	38.50%	\$ 0.77
5.83	5.889	39.00%	\$ 0.78
5.89	5.949	39.50%	\$ 0.79
5.95	6.009	40.00%	\$ 0.80
6.01	6.069	40.50%	\$ 0.81
6.07	6.129	41.00%	\$ 0.82
6.13	6.189	41.50%	\$ 0.83
6.19	6.249	42.00%	\$ 0.84
6.25	6.309	42.50%	\$ 0.85
6.31	6.369	43.00%	\$ 0.86
6.37	6.429	43.50%	\$ 0.87
6.43	6.489	44.00%	\$ 0.88
6.49	6.549	44.50%	\$ 0.89
6.55	6.609	45.00%	\$ 0.90
6.61	6.669	45.50%	\$ 0.91
6.67	6.729	46.00%	\$ 0.92
6.73	6.789	46.50%	\$ 0.93
6.79	6.849	47.00%	\$ 0.94
6.85	6.909	47.50%	\$ 0.95
6.91	6.969	48.00%	\$ 0.96
6.97	7.029	48.50%	\$ 0.97
7.03	7.089	49.00%	\$ 0.98
7.09	7.149	49.50%	\$ 0.99
7.15	7.209	50.00%	\$ 1.00
7.21	7.269	50.50%	\$ 1.01
7.27	7.329	51.00%	\$ 1.02
7.33	7.389	51.50%	\$ 1.03
7.39	7.449	52.00%	\$ 1.04
7.45	7.509	52.50%	\$ 1.05
7.51	7.569	53.00%	\$ 1.06
7.57	7.629	53.50%	\$ 1.07
7.63	7.689	54.00%	\$ 1.08

7.69	7.749	54.50%	\$ 1.09
7.75	7.809	55.00%	\$ 1.10
7.81	7.869	55.50%	\$ 1.11
7.87	7.929	56.00%	\$ 1.12
7.93	7.989	56.50%	\$ 1.13
7.99	8.049	57.00%	\$ 1.14
8.05	8.109	57.50%	\$ 1.15
8.11	8.169	58.00%	\$ 1.16
8.17	8.229	58.50%	\$ 1.17
8.23	8.289	59.00%	\$ 1.18
8.29	8.349	59.50%	\$ 1.19
8.35	8.409	60.00%	\$ 1.20
8.41	8.469	60.50%	\$ 1.21
8.47	8.529	61.00%	\$ 1.22
8.53	8.589	61.50%	\$ 1.23
8.59	8.649	62.00%	\$ 1.24
8.65	8.709	62.50%	\$ 1.25
8.71	8.769	63.00%	\$ 1.26
8.77	8.829	63.50%	\$ 1.27
8.83	8.889	64.00%	\$ 1.28
8.89	8.949	64.50%	\$ 1.29
8.95	9.009	65.00%	\$ 1.30
9.01	9.069	65.50%	\$ 1.31
9.07	9.129	66.00%	\$ 1.32
9.13	9.189	66.50%	\$ 1.33
9.19	9.249	67.00%	\$ 1.34
9.25	9.309	67.50%	\$ 1.35
9.31	9.369	68.00%	\$ 1.36
9.37	9.429	68.50%	\$ 1.37
9.43	9.489	69.00%	\$ 1.38
9.49	9.549	69.50%	\$ 1.39
9.55	9.609	70.00%	\$ 1.40
9.61	9.669	70.50%	\$ 1.41
9.67	9.729	71.00%	\$ 1.42
9.73	9.789	71.50%	\$ 1.43
9.79	9.849	72.00%	\$ 1.44
9.85	9.909	72.50%	\$ 1.45
9.91	9.969	73.00%	\$ 1.46
9.97	10.029	73.50%	\$ 1.47

Additional comment from existing contract:

Greater than \$10.029 - add 0.5% for every \$0.06 increase in fuel costs for LTL shipments
- add \$.01 per mile for every \$0.06 increase in fuel cost for TL shipments

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

SECTION TWO GENERAL INSTRUCTIONS AND STANDARD PROPOSAL REQUIREMENTS

2.1 PROPOSAL SUBMISSION, DATE, AND TIME

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

August 18, 2016 - 2:00 P.M., Central Time (CT)

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

Facsimile transmissions (FAX) of proposals will not be accepted under any circumstances. Proposers must sign the "Execution of Offer, Contract Terms and Conditions, Affirmations, and Proposal Preferences" instrument (Attachment B). By signing, the Proposer or the Proposer's legally authorized agent affirms that the all statements within the proposal are true and correct. Discovery of any false statement in the proposal is a material breach and shall void the submitted proposal or any resulting contracts and Proposer shall also be removed from all 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 Purchasing, Contracts, and Agency Services (PCAS) Division Office before 2:00 P.M. (Central Time) on the closing date as specified in the Request for Proposal. In establishing the time and date of receipt, the Commissioner of Education will rely solely on the time/date stamp of the 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 agency's PCAS Division Office before 2:00 P.M. (Central Time) on or before the closing date in order to be considered.**

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

2.1.2 Proposal Delivery

TEA is open Monday through Friday, 8:00 A.M. to 5:00 P.M., excluding holidays. Proposals will not be considered if received in PCAS Office after 2:00 P.M. (Central Time) on the closing date. The PCAS 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 the agency. In addition, all visitors must be escorted by a TEA employee to the respective area. Be sure to incorporate time for parking and the reception desk when delivering proposals in person. 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**

Five (5) copies of the proposal must be submitted, two (2) as hard copies and three (3) electronically on flash drives. 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 PCAS Division Office of the Texas Education Agency.

2.1.4 **Intent to Submit Proposal**

All prospective proposers should notify the Texas Education Agency in writing of their intent to submit a proposal (Attachment A) by August 1, 2016, to the TEA PCAS Division Office via email TEAContracts@tea.texas.gov or by FAX (512) 475-1706. Failure to notify the Agency of the intent to submit a proposal will not disqualify the proposer from submitting a proposal.

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

DATE	EVENT
Tuesday, July 26, 2016	Publication of Request for Proposals in the Electronic State Business Daily at http://esbd.cpa.state.tx.us/
Monday, August 1, 2016	Notice of Intent to submit a proposal is due in the TEA Purchasing, Contracts and Agency Services (PCAS) Division Office by the specified date & time
Monday, August 8, 2016	Last day to submit written questions about the RFP to PCAS Division, no later than 5:00 P.M., CT
Thursday, August 18, 2016	Proposal is due in the TEA PCAS Division before 2:00 P.M., CT
August 18 – August 31, 2016	Evaluation process, oral presentations, and /or negotiations
September 1, 2016	Selection of Proposer
September 9, 2016	Beginning date of contract and commencement of work
August 31, 2017	Ending date of contract and final product submitted to the TEA with final billing

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

2.3 **QUESTIONS RECEIVED PRIOR TO OPENING OF PROPOSALS**

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

Mary Helen Nunez-Wallace

TEAContracts@tea.texas.gov

(Written documentation of all contractor interaction is required.)

2.3.1 **Requests for Additional Information**

In order to ensure order that no prospective proposer may obtain a competitive advantage because of acquisition of information unknown to other prospective proposers, any additional information, that is different from or in addition to, information provided in the Request for Proposal will be provided only in response to written inquiries. Copies of all such inquiries and the written answers will be posted as an addendum to the Request for Proposal at the Electronic State Business Daily (ESBD) at <http://esbd.cpa.state.tx.us/>. The addendum will be updated as needed while the RFP is advertised. The proposer's failure to periodically check the ESBD will in no way

release the selected contractor from “addenda or additional information” resulting in additional cost to meet the requirements of the RFP. **NO PHONE INQUIRIES WILL BE ACCEPTED.**

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

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

2.4 STANDARD PROPOSAL REQUIREMENTS

- 2.4.1 Proposals that address only part of the requirements contained in this Request for Proposal may be considered non-responsive.
- 2.4.2 Texas Education Agency reserves the right to reject any and all proposals and to negotiate portions thereof including the submitted cost proposals/budget.
- 2.4.3 Texas Education Agency reserves the right to select the proposal based on the best value to the state of Texas and the agency. The proposer shall furnish additional information that the evaluation team may require in order to complete the evaluation of the proposals submitted. Failure to provide the requested material or information may disqualify the proposal.
- 2.4.4 The Contractor must work with the Agency staff to clarify the design of the materials, project design, project activities, and/or other products, and modify these items if necessary.

2.5 STATE NOT RESPONSIBLE FOR PREPARATION COSTS

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

2.6 DISCLOSURE OF PROPOSAL CONTENT

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

Selected contractor is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state. Selected contractor and TEA will agree on the specific format that will be used.

2.7 HISTORICALLY UNDERUTILIZED BUSINESS (HUB) SUBCONTRACTING PLAN

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

Statement of Probability – TEA has determined that subcontracting opportunities are probable in connection with this procurement. Therefore, ALL proposers must submit the HSP as a part of the response. The proposer shall develop and administer the HSP as a part of the proposer’s proposal in accordance with the TEA Policy on Utilization of HUB and state law. Proposer must make a good faith effort and solicit a minimum of three Texas certified historically underutilized businesses from the state’s Centralized Master Bidders List (CMBL)/HUB Directory for work that they cannot complete with their 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).

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

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

The HUB Subcontracting goal for this procurement is **26.0%** minority, woman-owned and/or veteran service disabled owned business participation. In the event proposals have equal scores, the proposal with the highest percentage of HUB subcontracting will be awarded the contract.

The HSP will be incorporated into the contract between the TEA and the selected Proposer. Contractors are encouraged to collaborate with TEA to develop mentor protégé opportunities. Under TAC Title 34, §20.14, a proposer's participation in a Mentor Protégé Program under TGC §2161.065, and the submission of a protégé as a subcontractor in the HUB subcontracting plan constitutes a good faith effort for the particular area to be subcontracted with the protégé.

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

The Contractor awarded the contract will be responsible for maintaining business records documenting compliance with HUB Program requirements. The selected Proposer 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. The selected Contractor shall also report all 2nd and 3rd Tier subcontracting in the monthly PAR. PAR's 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 Comptroller's 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/tpasscmbldsearch/index.jsp>
2. Search: ☉ HUBs on CMBL & HUBs only
3. Selection 1:
Class Code: #962 – 86 Transportation of Goods, Shipping and Handling
Class Code: #958 – 47 Freight Management

4. Click **Submit Search**

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

2.8 CONFLICT OF 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 RFP 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 its proposed subcontractors', possible selection as Successful Proposer, or its performance of the Contract.

As part of this disclosure requirement, each 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 (2) calendar years prior to the deadline for submission of proposals in response to this RFP; (ii) TEA is defined as the statewide elected official who heads the agency as well as the agency's employees or recent former employees; and (iii) "recent former employees" are defined as those TEA employees who have terminated agency employment within the two (2) calendar

years prior to the deadline for submission of proposals in response to this RFP. 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 RFP, "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 RFP. 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 the agency's consideration relative to a potential appearance of impropriety or conflict of interest.

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

Name of Former Executive; Name of State Agency; Date of Separation from State Agency; Position with Bidder; and Date of Employment with Bidder.

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 their affirmation.

2.9 CERTIFICATE OF INTERESTED PARTIES (FORM 1295):

In 2015, the Texas Legislature adopted [House Bill 1295](#), which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016.

Starting on January 1, 2016, the commission has made available on its website a new filing application that must be used to file Form 1295. A business entity must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the business entity must sign the printed copy of the form and have the form notarized. The completed Form 1295 with the certification of filing must be filed with the governmental body or state agency with which the business entity is entering into the contract.

The governmental entity or state agency must notify the commission, using the commission's filing application, of the receipt of the filed Form 1295 with the certification of filing not later than the 30th day after the date the contract binds all parties to the contract. The commission will post the completed Form 1295 to its website within seven business days after receiving notice from the governmental entity or state agency.

SECTION THREE PROPOSAL FORMAT AND CONTENT

3.1 PROPOSAL FORMAT AND CONTENT

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

3.1.1 Proposal Cover Page

Proposals should include a cover page, which clearly states the name of the firm or organization and the name, position, and telephone number of the Proposer's Project Administrator who may be contacted regarding the proposal (Attachment D).

3.1.2 Response Checklist

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

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

3.2 UNDERSTANDING OF THE PROJECT AND METHODOLOGY

The proposal must communicate an understanding of the project requirements and identify potential problems in the conduct of the project and methods to identify and solve such problems.

3.2.1. All deliveries must be made within three (3) working days from the scheduled (actual) shipping date.

3.2.2. Proof of delivery must be provided to all depositories, independent school districts or charter schools, and all other shipping locations (on an as needed basis) within seventy-two (72) hours of request or made available on the carrier's web site.

3.2.3 Carrier(s) must notify schools before shipping.

3.2.4. Carrier(s) must make reasonable efforts to notify the designated depository contact, the depository, independent school district, charter school, and all other shipping locations in the event of extended delays (to include but not be limited to pickup, shipping/transit, delivery or etc.)

3.2.5. An alternate carrier shall be contacted for shipment(s) if the assigned primary/alternate carrier does not arrive within two (2) hours of scheduled pick up time and has not requested an extension due to unanticipated delays or the primary/alternate carrier of record turn down the assignment. As soon as an alternate carrier has been successfully contacted, the original

assigned carrier (primary/alternate) forfeits the right to transport the referenced shipment even if the original assigned carrier arrives before the alternate carrier.

Technical evidence relating to the proposer's ability to perform the proposed services must be appended to the proposal.

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

3.3 MANAGEMENT PLAN FOR THE PROJECT

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

3.3.1 Structure of the organization

3.3.2 Indications of the ability to perform the tasks described in section 1.5

3.3.3 Evidence that the Proposer has experience through working on similar projects

3.3.4 Three (3) current references that include the name of the Agency or entities, the nature of the project, kinds of activities that were performed by the proposer must be described, and the name and phone number of a contact person from each employing agency/entity must be provided. Names given as references will not affect the scoring. In addition, no employees of TEA can be listed in the proposal as references. They may be listed in a memo transmitting the proposal, but not in the proposal. If the proposer plans to use external consultants or subcontractors, a staff organization and resumes of consultants and/or subcontractors must be included.

3.3.5 Name of the Proposer's Project Manager who will direct the overall project throughout the duration of the contract as well as those of staff members who will coordinate major activities during each phase of the contract, and the time allocations that the personnel described will devote to fulfillment of the contract. Proposers must also identify the next level of authority within the organization to escalate issues throughout the term of the contract. The information will be required during the contract kick-off meeting. (Resumes of all project staff members shall be submitted as an appendix.) If the resumes include references, the references will not be considered in the review.

3.4 COST PROPOSAL

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

3.4.1 The cost proposals submitted in response to this RFP shall be valid for a period of 90 days from the RFP closing date.

3.4.2 Proposers must provide a truth-in-rate notice if rates are quoted with reference to bureau-set class rates. Failure to provide this information may result in disqualification of proposal and the proposal may not receive further consideration.

3.4.3 The state of Texas can be divided into five (5) geographical regions defined by zip code: 75xxx, 76xxx, 77xxx, 78xxx and 79xxx. Bidders may submit proposals for any one (1), two (2), three (3), four (4) or all five (5) regions (the entire State of Texas). **Partial bidding for routes within regions is not acceptable.**

- 3.4.4** Each proposer must provide its freight rates for the zip codes the proposer's bid includes. Proposers have the option of submitting rates for LTL and TL. Proposers must submit rates on the attached freight rate sheet, Attachment E.
- 3.4.5** Cost proposals may not include unloading and/or inside delivery charges. Neither TEA nor individual school districts/schools will be subject to these charges.
- 3.4.6** Proposers must submit the accessorial rates and charges identified in Attachment F. They should list, in the space provided on Attachment F, the applicable per-event charge for demurrage, powered and non-powered, that may be required due to some school districts' inability to accept all trailers of a multi-trailer shipment. Proposers must provide a list of any additional accessorial services and rates as a separate attachment. TEA reserves the right to use accessorial services on an as needed basis.
- 3.4.7** Bidders are reminded that the contract(s) resulting from this RFP will include shipments to and from independent school districts, charter schools, and other shipping locations. Mileage rates (cost per mile) to and from shipping locations must be the same as those quoted for outbound from Dallas. The discounts to be applied for shipments between independent school districts or charter schools shall be the same as those quoted for 75XXX.
- 3.4.8** Services to be purchased from other agencies, subcontractors, including any amounts subcontracted to HUBs, consultants, and others must be specified in the proposal.
- 3.4.9** Carrier(s) must submit invoices for payment through EMAT.
- 3.4.10** Failure to meet these conditions shall result in disqualification of proposal, and the proposal shall receive no further consideration.

The budget must evidence that financial resources are adequately and appropriately allocated among cost categories in a cost-effective and prudent business manner to accomplish project objectives and activities. Services to be purchased from other agencies, subcontractors, including any amounts subcontracted to HUBs, consultants, and others must be specified.

Payment will be made upon satisfactory performance of services, receipt by the Texas Education Agency of specified deliverables, and receipt of properly prepared and certified invoices/expenditure reports.

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

3.5 PROPOSER'S FINANCIAL RESPONSIBILITY

All private sector companies, individuals, or non-profit organizations will 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 will be required to submit proof of nonprofit status. A proposer may show that it is a nonprofit organization by any of the following means:

- i. 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;
- ii. 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;
- iii. A certified copy of the proposer's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the proposer; or
- iv. Any item described above if that item applies to a state or national parent organization, together with a statement by the parent organization that it is a local nonprofit affiliate.

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

SECTION FOUR REVIEW OF PROPOSALS

4.1 REVIEW OF PROPOSALS

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

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

By law, the Agency may not disclose any information until a contract is executed by both parties. Upon contract award, TEA will post the contract award notice to the Electronic State Business Daily (ESBD) at: <http://esbd.cpa.state.tx.us/>. Additional copies of proposals **not selected for funding** will be destroyed in accordance with the agency approved records retention policy.

4.2 SELECTION CRITERIA

Proposals will be selected based on the ability of each Proposer to carry out all of the requirements contained in this Request for Proposal. A proposer who is in default or otherwise not in good standing under any other current or prior contract with TEA at the time of selection will not be eligible for award of this contract. TEA will base its selection on, among other things, demonstrated competence, qualifications of the proposer, past contractor performance, and the proposed budget/cost. All state agencies report unsatisfactory contractor performance on purchases over \$25,000. 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 shall be used as a factor in future contract awards.

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

CATEGORIES	POSSIBLE POINTS
A. Quality of Technical Component <ol style="list-style-type: none"> 1. Entity has sufficient fleet size to meet the requirements in the RFP 2. Satisfactory adequacy and appropriateness of project design 3. Ability to cover geographic area 4. On-time performance and target 	40
B. Quality of Management Component <ol style="list-style-type: none"> 1. Organization structure 2. Evidence of capability to manage project 3. Experience of organization 4. Quality of carrier and staff 	40
C. Experience and Financial Stability <ol style="list-style-type: none"> 1. Use of Electronic Data Interchange (EDI) to track shipments 2. Hauling cargo similar to the RFP requirements 3. Insurance coverage that meets the state of Texas standards 4. Ability to work with the Agency's invoicing requirements and payment processes 	40

D. Pricing Structure	30
E. References, Safety Record, and Reputation	20
TOTAL	170 points

4.2.1 Preference(s)

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

SECTION FIVE CONTRACTUAL REQUIREMENTS

5.1 CONTRACTOR'S PROPOSAL

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

5.2 PROJECT REVIEW REQUIREMENTS

TEA reserves the right to review any materials, and/or products developed or adapted by the Contractor. Upon completion of the contract period, all documents will be returned to TEA or destroyed accordingly. All documents created at any time during the contract period belong to TEA. The TEA Project Manager will establish procedures for communicating phase out and transition of the deliverable(s).

5.3 PAYMENT

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

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

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

NOTICE OF INTENT TO SUBMIT A PROPOSAL

RFP # 701-17-002

Distribution of Instructional Materials: Freight and Material Handling Services

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

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

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

PLEASE SUBMIT THIS NOTICE BY E-MAIL OR FAX AS SOON AS POSSIBLE AFTER RECEIPT OF THE RFP, BUT NOT LATER THAN, August 1, 2016 TO:

TEAContracts@tea.texas.gov

Texas Education Agency

Attention to : Mary Helen Nunez-Wallace

Purchasing, Contracts and Agency Services (PCAS) Division

FAX (512) 475-1706

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

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 in the competitive solicitation. Proposer and Respondent infer pre-solicitation award status and Contractor infers post-award status;
4. *Bid package, proposal, or response may be use 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; and,
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;
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 the 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 the 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 HUB Coordinator before staffing changes are initiated. Substitutions are not permitted without written approval of TEA Project Manager. The awarded Contractor will be responsible for maintaining business records documenting compliance with HUB Program requirements. Contractor 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. The selected Contractor shall also report all 2nd and 3rd Tier subcontracting in the monthly PAR. PAR's 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.
- 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 the competitive solicitation (Request for Proposal) is incorporated in this contract by reference. The provisions of this contract shall prevail, however, in all cases of conflict arising from the terms of Contractor's proposal whether such proposal is a written part of this contract or is attached as a separate document.
- G. Requirements, Terms, Conditions, and Assurances:** The terms, conditions, and assurances, which are stated in the competitive solicitation (Request for Proposal), in response to which Contractor submitted a proposal, are incorporated herein by reference for all purposes, although the current General Provisions shall prevail in the event of conflict.
- H. Records Retention and the Right to Audit:** Contractor shall maintain its records and accounts in a manner which shall assure a full accounting for all funds received and expended by Contractor in connection with the Contract Project. These records and accounts shall be retained by Contractor and made available for programmatic or financial audit by TEA and by others authorized by law or regulation to make such an audit for a period of not less than seven (7) years from the date of completion of the Contract Project or the date of the receipt by TEA of Contractor's final claim for payment or final expenditure report in connection with this contract, whichever is later. If an audit has been announced, the records shall be retained until such audit has been completed.
- Pursuant to Government Code, the state auditor may conduct an audit or investigation of 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, or 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 Legal Division.

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; Proprietary; FERPA; Confidential Information:

Access to Confidential TEA 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 Contractor's security policy to ensure that any data that is on 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 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 60 days from contract expiration or termination or as otherwise specified in this contract, Contractor must complete the sanitization and destruction of the data and provide to TEA documentation that the sanitization has been completed. The documents must be certified by an authorized agent of the company.

FERPA

Performing Party, its employees and subcontractor's, agree that in executing tasks on behalf of the TEA, they will not use any student-identifying information in any way that violates the provisions of FERPA, and will destroy or return all student-identifying information within sixty (60) days of project completion. Performing Party also agrees not to disclose any information to which it is privy under this Contract without the prior consent of the agency.

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 Applicable Access Request forms for TEA's review and approval. Remote access technologies provided by Contractor must be approved by TEA's Information Security Officer. TEA, in its sole discretion, may deny network or system access to any individual that does not complete the required forms. Contractor must secure its own connected systems in a manner consistent with TEA's requirements. 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. Point of Contact and Escalation:** All notices, reports and correspondence required by this contract shall be in writing and delivered to TEA Project Manager listed below or their 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

Kelly Callaway
 Director, Instructional Materials
 Texas Education Agency
 William B. Travis Building
 1701 N. Congress Avenue
 Austin, Texas 78701

CONTRACTOR

- Q. 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.
- R. 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, the selected respondent 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 Government Code, Chapter 2161, and other applicable state law.
- S. 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.
- T. 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.
- U. Family Code Applicability:** By signing this contract, Contractor, if other than a state party, certifies that under Section 231.006, Family Code, that Contractor is not ineligible to receive specified grant, loan, or payment under this contract and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. TEA reserves the right to terminate this Contract if Contractor is found to be ineligible to receive payment. If Contractor is found to be ineligible to receive payment and the contract is terminated, Contractor is liable to TEA for attorney's fees, the costs necessary to complete the contract, including the cost of advertising and awarding a second contract, and any other damages or relief provided by law or equity.

- V. 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.
- W. 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, TEA contract and its General Provisions, Appendices and Special Provisions shall take precedence over all other documents which are a part of this contract.
- X. Education Service Center:** No funds transferred to Regional Education Service Centers or to school districts may be used to hire a registered lobbyist.
- Y. 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.
- Z. 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 non-governmental contractor involving the exchange or creation of public information, as defined by the Texas Government Code Section 552.002, must require the non-governmental contractor to make any information created or exchanged with the state pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state. TEA Project Manager will provide the specific format by which Contractor is required to make the information accessible by the public.
- AA. Gratuities:** By signing this contract, Contractor represents and warrants that Contractor has not given, offer 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.
- BB. 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.
- CC. 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 TEA's 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

- DD. 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.
- EE. 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.
- FF. 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.
- GG. 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.
- HH. 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.
- II. Assignment of Contract:** This contract may not be assigned, sold, or transferred without the express written consent of TEA Purchasing, Contracts, and TEA Services (PCAS) Division. An attempted assignment after contract award without TEA approval will constitute a material breach of contract.
- JJ. Buy Texas:** In accordance with Government Code, Section 2155.444, the State of Texas requires that during the performance of a contract for services, Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside the state. This provision does not apply if Contractor receives any federal funds under this contract.
- KK. 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>.
- LL. Suspension and Debarment:** Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntary excluded from participation in this transaction by any federal, state or local government entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement. If Contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this contract.

MM. 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 1TAC 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 have been adopted in FY 2015. Therefore, all current and potential contractors are hereby notified of the changes. The current technical requirements for accessibility contained within this regulation form the basis for our Texas TAC rules on EIR Accessibility.

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

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

1. It is 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](#)

All websites must follow Federal 508 accessibility requirements and Web Content Accessibility Guidelines (WCAG) 2.0 AA standards and be tested for accessibility before acceptance by TEA. For sites developed outside of TEA, the vendor must contract with a third party with expertise and a proven track record in accessibility testing. This company must evaluate the site and produce a report that verifies the site is compliant to (WCAG) 2.0 AA.

The awarded Contractor must employ real users with disabilities for manual testing. Contractor must provide a report that will include the results of auto-testing, screen-by-screen assessments, pass/fail status for each of the identified compliance standards to be met and recommendations for how to repair the screens/pages that do not meet the standards. Remediation recommendations shall be provided to the code level. The report should include documentation of the experience of real users with disabilities and may recommend techniques for improving the usable accessibility of the application. Contractor shall validate, by title, if all accessibility requirements have been met.

NN. Collusion: Contractor certifies and represents that Contractor has not colluded with, nor received any assistance from, any person who was paid by TEA to prepare specifications or a solicitation on which a 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.

OO. Social Security Numbers Withheld: TEA will not provide Social Security Numbers (SSNs) to any Contractor under this contract unless specifically specified as part of the project requirements. TEA, its Contractors and their subcontractors, will not require or request school districts to provide SSNs under this contract. Contractor agrees that in executing tasks on behalf of TEA, they will not use any student-identifying information in any way that violates the provisions of FERPA, and will destroy or return all student-identifying information to TEA within 30 days of project completion. An authorized officer of the company must certify that ALL records have either been properly destroyed or returned to TEA in order to close out the contract.

PP. 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.

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 Project or the engagement of Contractor in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of TEA.

QQ. 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.

RR. 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, Gov't Code. Proposers may fail this selection criterion for any of the following conditions: A score of less than 90% in Contractor Performance 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 Contractor Performance Tracking System (as authorized by 34 Texas Administrative Code §20.108). TEA or a designee may conduct periodic contract compliance reviews without advance notice, to monitor performance. 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 the 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/

SS. 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, invoice and fees verification.
6. **Contract Transition:** In the event a subsequent competitive solicitation is awarded to a New Contractor, the Outgoing Contractor shall hand-over to the New Contractor all "Works" including but not limited to the following: data, materials, database access, intellectual property, source code, training materials, access to websites, asset transfer, and maintenance of service commitments. The purpose of transition planning is to ensure a seamless and continuous service when changing from one contract to another. The Outgoing Contractor will begin shipping, transmitting or providing access to all appropriate materials and data to the New Contractor within 10 days of announcement of award at the New Contractor's expense for data processing and production, packing and shipping. The Outgoing Contractor will be responsible for providing the services identified in the contract until all records have been completely transferred to the New Contractor. The Outgoing Contractor is responsible for performing due diligence to ensure that all the transition activities are identified and completed during the contract transition.

The Outgoing Contractor shall submit to TEA requested reports and data. TEA will not release the final invoice until all materials are returned to TEA or their designee. 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 TEA Project Manager and the New Contractor.

- TT. 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 TEA STANDARD CONTRACT form. All amendments will be initiated by 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 20% 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. For all other contracts (excludes major contracts) the Contractor is permitted to re-budget among direct cost categories within the approved budget to meet unanticipated requirements and to make limited changes 25% or up to \$1,000 in a direct category in the approved budget without the issuance of a written Amendment as long as the total budget amount does not change. Contractors are required to report deviations from budget and request prior approvals from the TEA Project Manager. Additionally, a revised budget document must be submitted to TEA Project Manager for approval. Once approved, the documents must be submitted to the Contract staff 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. Revisions or additions to the scope of work, deliverables, or objectives of the contract (regardless of whether there is an associated budget revision requiring prior approval). Increases of 20% or more for major contracts must be approved by the Texas Comptroller;
 - c. A request to extend the period of the contract;

- d. Any reduction of funds or reduction in the scope of work;
- e. Whenever a line item within a class/object code is added;
- f. An increase in the quantity of capital outlay item(s) requested; and
- g. An increase or decrease in the number of positions charged to contract.

All Amendments must be signed by both parties.

UU. 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.

Invoices must be submitted to TEAAccountsPayable@tea.texas.gov and TEA Project Manager.

Additional information and a Direct Deposit Authorization application may be found at: <https://fm.x.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 or services. TEA project manages may also utilize a Deliverables and Services Review and Acceptance Process written procedures. When the formal procedures are to be utilized, the TEA project manager will provide to the selected Contractor a copy of the Handbook. 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" provided by the TEA Program Manager, located 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 must be stated in the competitive solicitation and documented in the contract. The fees may not be arbitrarily imposed after execution of the Contract. The release of retainage shall 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 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 Texas Comptroller's website at https://fm.x.cpa.state.tx.us/fm/pubs/purchase/restricted/index.php?section=indebted&page=persons_indebted

VV. 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.

WW. 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 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.

XX. 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 RFP caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party

could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three business days of the existence of such force majeure, or otherwise waive this right as a defense.

YY. 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.

ZZ. 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 sites referenced in this document may be viewed at: <http://www.statutes.legis.state.tx.us/>

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

AFFIRMATIONS:

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

All statements and information prepared and submitted in the response to this RFP 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), the Proposer certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

Texas Government Code §2252.901 prohibits the agency into entering into an employment contract, a professional services contract, or a consulting services contract with a former or retired TEA employee before the first anniversary of their last date of regular employment. If TEA enters into a "professional services" contract with a corporation, firm, or other business entity that employs a former or retired employee during the first year of the past employee's departure from the agency, the former or retired employee is restricted from performing services on projects that the employee worked on while employed at TEA.

Texas Government Code §572.069. CERTAIN EMPLOYMENT FOR FORMER STATE OFFICER OR EMPLOYEE RESTRICTED. A former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the officer's or employee's service or employment with the state agency ceased.

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

reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

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

Name of Former Executive: _____

Name of State Agency: _____

Date of Separation from State Agency: _____

Position with Bidder: _____ Date of Employment with Bidder: _____

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

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

Contractor's FEI#	
Contractor's SSN	
Contractor's TIN	
Contractor's charter #	

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

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

PROPOSAL PREFERENCES

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

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

<input type="checkbox"/>	§ 2155.441	Products of persons with mental or physical disabilities
<input type="checkbox"/>	§ 2155.442	Energy efficient products
<input type="checkbox"/>	§ 2155.443	Rubberized asphalt paving material
<input type="checkbox"/>	§ 2155.444	Texas produced supplies, materials, or equipment; or USA supplies, materials, or equipment over foreign products
<input type="checkbox"/>	TAC§ 2038 D	Preference to services offered by a Texas bidder
<input type="checkbox"/>	§ 2155.444	Texas agriculture products
<input type="checkbox"/>	§ 2155.445	Recycled, remanufactured, or environmentally sensitive products made of recycled materials
<input type="checkbox"/>	§ 2155.446	Paper containing recycled fibers

<input type="checkbox"/>	§ 2155.447	Recycled motor oil and lubricants
<input type="checkbox"/>	§ 2155.449	Products produced in facilities on rehabilitated property as certified by section 361.609 of the Texas Health and Safety Code
<input type="checkbox"/>	§ 2155.449	Products and services from economically depressed or blighted areas
<input type="checkbox"/>	§ 2155.449	Products and services from Historically Underutilized Business or small business pursuant to the goals and objectives stated in chapter 2161 of the Texas Government Code
<input type="checkbox"/>	§ 2155.444	Goods produced or offered by service-disabled veterans.
<input type="checkbox"/>	§ 2155.445	Preference to manufacture that has recycle program for computer equipment.
<input type="checkbox"/>	§ 2155.452	Preference to contractors providing foods of higher nutritional value.

In compliance with this RFP, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all commodities or services at the prices quoted in the proposal or bid. When a Texas business address shown hereon that address is, in fact, the legal business address of 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

Contractor acknowledges that under state law and TEA policy, they 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 to this requirement will result in disqualification.

Texas Education Agency Historically Underutilized Business Subcontracting Plan (HSP)

Separate document

Definition of a Historically Underutilized Business (HUB)

- At least 51% owned by an Asian Pacific American, Black American, Hispanic American, Native American and/or American woman,
- 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
- Has an owner residing in Texas with a proportionate interest that actively participates in the control, operations and management of the entity's affairs.
- Service Disabled Veteran, as defined by 38 United States Code (U.S.C.), Section 101(2) who have a service-connected disability as defined by 38 U.S.C. Section 101(16), and have a disability rating of 20 percent or more as determined by the Department of Veterans Affairs or the Department of Defense

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

**Note: Sole proprietorships must be 100 percent 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.

(FORMAT FOR COVER PAGE)

PROJECT PROPOSAL
Submitted to the
Texas Education Agency
Purchasing, Contracts and Agency Services Division
RFP #: 701-17-002

TITLE OF PROPOSED PROJECT: **Distribution of Instructional Materials: Freight and Material Handling Services**

PROPOSER ORGANIZATION: Name and address of organization submitting proposal (include zip code)

PROPOSER ORGANIZATION IDENTIFICATION NUMBER: Show Proposer organization Federal Employer's Identification Number or Texas Identification Number (TINS)

PROPOSAL DEVELOPED BY: Name, position, email, and telephone number of person responsible for development of proposal

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

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

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

DURATION OF PROJECT: Beginning and ending dates of proposed project

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

CONTAINS PROPRIETARY INFORMATION: Check box if proposal being submitted contains proprietary information

ACCEPTANCE OF TERMS AND CONDITIONS: We hereby accept by the submission of the proposal the Execution of Offer, "Contract Terms and Conditions, Affirmations and Proposal Preferences"

DATE SUBMITTED: Date proposal is submitted to TEA

Attachment E
FREIGHT RATES

Title of Proposed Project _____

Proposer Organization (Name) _____

If pricing less-than-truckload (LTL) shipment by zip code, proposers MUST annotate a rate offer for truckload (TL) and TL Pup shipments that weigh **10,001** pounds or more per zip code. LTL rates will be based on a percentage reduction discount off the January 1, 2016, Southern Motor-Carrier Rate Conference (Czarlite) base rate, Freight All Kinds (FAK) Class 60.

TEA defines an LTL shipment as one that weighs from 151 pounds to **10,000** pounds, with the TL rate alternating with the LTL rates, and the lowest rate applying. Shipments of 150 pounds or less are not a part of these specifications or this RFP.

Destination Zip Code Area	LTL MC	LTL % Discount*	TL Pup (28 ft. or less in length)	TL (Greater than 28 ft. in length)	LTL MC	TL MC	Pup MC
			Rate/Mile	Rate/Mile			
Zip 75XXX							
Zip 76XXX							
Zip 77XXX							
Zip 78XXX						**	**
Zip 79XXX						**	**

*Discount off the January 2016 Southern Motor-Carrier (SMC³) Rate Conference (Czarlite) base rates with a FAK Class 60 exception rating

**The Minimum Charge (MC) for TL shipments to Zip's 78XXX and 79XXX shall not exceed the charge based on the rate per mile times the number of miles between the depository and the destination or origin.

ATTACHMENT F

ACCESSORIAL CHARGES

- 1) Bidder shall list the applicable per-unit charge for demurrage in the event TEA or its representative detains the vehicle beyond the time allowed for loading, unloading, etc.:

	Quoted Price
Demurrage Powered - LTL	
Demurrage Non-Powered - LTL	
Demurrage Powered - TL	
Demurrage Non-Powered - TL	
Demurrage Powered – TL-Pup	
Demurrage Non-Powered – TL-Pup	

- 2) Bidder shall exempt TEA from the following accessorial charges: single-shipment charges, notification charges and linear- or density-based minimum charges.

NOTE: THIS REQUEST FOR PROPOSALS, THE TERMS AND CONDITIONS, AND ATTACHED SPECIFICATIONS OVERRIDE ANY EXCEPTIONS TO ACCESSORIAL CHARGES THAT ARE IN DIRECT CONFLICT.

NOTE: ASSUME THAT MOST DELIVERIES WILL BE SHIPPER LOAD AND CONSIGNEE UNLOAD.



**Texas Education Agency
RFP 701-17-002**

Distribution of Instructional Materials: Freight and Material Handling Services

Addendum #1

Questions & Answers received Thru 8/8/16

Q: Who is the current provider of services?

A: Under the previous RFP, the agency selected four vendors: Averitt, Trans Expedite, Quality Logistics, and Central Freight. The agency also selected a primary and secondary vendor for each region.

Q: What is the historical volume in terms of contract value per year?

A: Dollar value varies based on the request for transportation and ranges from \$300,000 - \$700,000 per year between the current 4 vendors.

Q: Is there a spreadsheet that shows all the pick-up and delivery locations?

In order to give accurate pricing, we need to know the complete zip code for both pick-up and delivery locations. Pricing using only the first 2 digits of a zip won't give the best rates. If you look at zips that start with 79xxx, it stretches from the top of the panhandle down below El Paso. As an example, a load picking up in Lubbock (79xxx) going to Childress TX (79xxx) is 145 miles, but a load from Lubbock to El Paso is 347 miles.

A: Please see attachments.

Q: Can you provide estimated volumes to each zip on page 43?

If possible to breakdown by: FTL = full truckload LTL = less than truckload

A: Volumes will vary by ISD and by the year. There is no way we can predict how many districts will order which materials in a given year of the contract period.



**Texas Education Agency
RFP No. 701-17-002**

**Distribution of Instructional Materials:
Freight and Material Handling Services
Addendum 2
August 12, 2016**

The RFP timeline changed as follows:

2.2 EXPECTED SEQUENCE OF EVENTS/CRITICAL DATES

DATE	EVENT
Tuesday, July 26, 2016	Publication of Request for Proposals in the Electronic State Business Daily at http://esbd.cpa.state.tx.us/
Monday, August 1, 2016	Notice of Intent to submit a proposal is due in the TEA Purchasing, Contracts and Agency Services (PCAS) Division Office by the specified date & time
Monday, August 8, 2016	Last day to submit written questions about the RFP to PCAS Division, no later than 5:00 P.M., CT
Thursday, August 18, 2016	Proposal is due in the TEA PCAS Division before 2:00 P.M., CT
Friday, August 19, 2016	Proposal is due in the TEA PCAS Division before 2:00 P.M., CT
August 18 – August 31, 2016	Evaluation process, oral presentations, and /or negotiations
August 19 – August 31, 2016	Evaluation process, oral presentations, and /or negotiations
September 1, 2016	Selection of Proposer
September 9, 2016	Beginning date of contract and commencement of work
August 31, 2017	Ending date of contract and final product submitted to the TEA with final billing

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