

**Region One Education Service Center**  
**Federal Grant Policies and Procedures Grant Manual**

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### III. Procurement System

*Module 3* of TEA's [FASRG](#) outlines requirements and best practices related to the purchasing function. Reflecting State (and some Federal) requirements for purchasing, *Module 3* is based on statutes containing requirements for the Center for competitive *purchasing/contracting processes* found in the *Texas Education Code, Local Government Code, Texas Government Code, Texas Revised Civil Statutes, Texas Attorney General Opinions, Federal regulations* and other sources. The *Handbook on Purchasing for Texas Public Schools, Junior Colleges and Community Colleges (Appendix 1 of Module 3)* was written to provide information about purchasing and also be a ready reference regarding:

- Purchasing ethics
- Questions and answers on bidding and purchasing topics
- Example purchasing documents
- Purchasing laws
- Texas Attorney General Opinions
- Definitions of purchasing terms

According to *Section 271.003(9), Local Government Code*, "school district" means an independent school district, common school district, community college district, junior college district or regional college district organized under the laws of this State. The Center complies with all requirements outlined in *Module 3* and in State law.

In accordance with TEA's *purchasing policy* established in *Module 3*, the Center's objective is to purchase the best products, materials, and services at the lowest practical prices within relevant statutes and policies. It is important to acquire goods and services for the best price through fair and open competition to protect the interest of the local, State, and Federal government while still maintaining the desired quality and minimizing exposure to misuse of funds.

Also in accordance with *Module 3*, the Center's Standard Operating Procedures pertaining to purchasing goods and services shall reflect *quality assurance* and *quality control*, including an analysis of products provided through the procurement process, a review of services provided, and a review of vendor performance. Additionally, the Center's purchasing practices and procedures must comply with Federal procurement standards, some of which are already incorporated into *Module 3*. It should be noted that some State requirements for purchasing are more restrictive than the Federal requirements. Key State requirements that are more restrictive are noted in this section.

The Center's purchasing procedures, which are located in [Section 3.3.1 of the Standard Operating Procedures Manual](#), address operational procedures such as how to establish a purchase requisition or purchase order. The procedures relating to Federal requirements are listed in the sections below.

## A. Conflict of Interest Requirements

Substantial State and Federal requirements exist pertaining to standards of conduct and conflict of interest. It is the intent of the Center for all employees, officers, and agents to conduct all activities associated with procurements in compliance with the highest ethical standards, including the avoidance of any *real or perceived conflict of interest*. It is also the intent of the Center to impose appropriate sanctions or disciplinary actions, including but not limited to termination and/or prosecution, for any employees or officers who violate any of these requirements. [DBD \(LOCAL\) Employment Requirements` and Restrictions – Conflict of Interest](#)

### **Standards of Conduct**

#### *State Requirements*

According to *The Handbook on Purchasing for Texas Public Schools, Junior Colleges and Community Colleges (Module 3 of FASRG, Appendix 1)*, it is a serious breach of the public trust to subvert the public purchasing process by directing purchases to certain favored vendors, or to tamper with the purchasing process, whether it is done for kickbacks, friendship or any other reason. State law relating to violation of purchasing requirements imposes upon violators certain criminal penalties, which are found in *Section 44.032, Texas Education Code, and Chapter 271.029, Local Government Code*.

The following common standards of ethics shall govern the conduct of Center employees involved in the purchasing function:

1. It is a breach of ethics to attempt to realize personal gain through employment with the Center by any conduct inconsistent with the proper discharge of the employee's duties.
2. It is a breach of ethics to attempt to influence any employee of the Center to breach the standards of ethical conduct set forth in this code.
3. It is a breach of ethics for any employee of the Center to participate directly or indirectly in a procurement when the employee knows that:
  - The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
  - A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
  - Any other person, business or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

4. **Gratuities:** It is a breach of ethics to offer, give or agree to give any employee or former employee of the Center, or for any employee or former employee of the Center to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore pending before this government. Acceptance of gratuities may be construed as a criminal offense. *Board Policy [CBB \(LEGAL\) Revenue Sources - Federal](#)*

In addition, Texas law makes a gift (an item valued at \$100 or more in the aggregate, cash of any amount, or a negotiable instrument of any value) to an employee of the Center a Class A misdemeanor if the employee is someone who exercises some influence in the purchasing process of the governmental body. (*Texas Penal Code*, 36.09[d] and [h]). *Board Policy [DBD Local](#)* prohibits Center employees from accepting gifts of any kind or value.

5. **Kickbacks:** It is a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract of the Center, or any person associated therewith, as an inducement for the award of a subcontract or order.
6. **Contract Clause:** The prohibition against gratuities and kickbacks prescribed above should be conspicuously set forth in every contract and solicitation therefore.
7. It is a breach of ethics for any employee or former employee of the Center knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person.

[Local Government Code, Chapter 176](#) provides information regarding conflict of interest statements to be filed by vendors and Center employees. Refer to the [Texas Ethics Commission website](#) sample forms. See [Board Policy \[BBFA\]\(#\)](#) Exhibit A for the form titled “Affidavit Disclosing Substantial Interest in a Business Entity or Real Property”.

#### *Federal Requirements*

In addition to the State requirements pertaining to standards of conduct and avoiding conflict of interest, in accordance with 2 C.F.R. § 200.18(c)(1), the Center’s standards of conduct covering

conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of Federal contracts include the following Federal standards.

No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a *real or apparent* conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

The officers, employees, and agents of the Center may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

Board Policy [DBD Local](#) addresses requirements for employees concerning conflicts of interest while [DH Local](#) addresses standards of conduct. In accordance with [DBD Local](#), “an employee shall disclose to his or her immediate supervisor a personal financial interest, a business interest, or any other obligation or relationship that in any way creates a potential conflict of interest with the proper discharge of assigned duties and responsibilities or that creates a potential conflict of interest with the best interest of the Center.” If the employee can affect a financial decision based upon their position, they must file an affidavit with the Executive Director or designee prior to any award of a contract or payment by the Center.

***Immediate Family*** is defined as:

1. Spouse
2. Son or daughter, including a biological, adopted, or foster child, a son or daughter in law, a stepchild, a legal ward or a child for whom the employee stands *in loco parentis*
3. Parent, stepparent, parent in law, or other individual who stands *in loco parentis* to the employee
4. Sibling, stepsibling, sibling-in-law
5. Grandparent and grandchild
6. Any person residing in the employee’s household at the time of illness or death

***Person*** means a natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

***Partnership*** is the relationship existing between two or more persons who join to carry on a trade or business. Each person contributes money, property, labor or skill, and expects to share in the profits and losses of the business.

***Financial or other interest*** means any financial or other personal involvement of the person, his or her spouse, domestic partner, children, parent, or siblings who reside in the same household including, but not limited to:

- income; honoraria or other payment for services

- reimbursed or sponsored travel for services
- equity such as stock, stock options or other ownership rights, excluding interests of any amount in publicly traded, diversified mutual funds, pension funds, or other institutional investment funds over which the person does not exercise control
- patents and copyrights
- contracts, licensing and other agreements
- royalties
- employment; and services, relationships or positions, even if uncompensated

### **Reporting Process**

A local government officer/staff member/agent must file a Conflicts Disclosure Statement with the Purchasing Department not later than 4:30 p.m. on the seventh (7th) business day after the date on which the officer/staff member/agent becomes aware of the facts that require the filing of the statement.

A form may be filed with the Purchasing Department by using a printed form that must be signed and notarized, or filing electronically on the [Center's website](#). A statement filed electronically satisfies the signature requirement and does not need to be notarized.

### **Disciplinary Actions**

The Center will impose appropriate sanctions or disciplinary actions, including but not limited to termination and/or prosecution, for any employee or officer who violates any of these requirements related to standards of conduct and conflict of interest. 2 CFR § 200.318(c) (1)

Board Policy [DH Local](#) states, "Violation of any policies, regulations, or guidelines may result in disciplinary action, including termination of employment". The supervisor/director of the employee, in conjunction with the HR Director, will investigate any possible violation and recommend the appropriate personnel action.

"The Executive Director may suspend an employee during an investigation of alleged misconduct by the employee or at any time the Executive Director determines that the Center's best interests will be served by the suspension. Suspension of at-will employees may be with or without pay; suspension of contractual employees shall be with pay, unless the Center provides appropriate due process as detailed," in Policy [DC Local](#). "The Executive Director may dismiss an at-will employee at any time for any reason not prohibited by law or for no reason. All employee recommendations will be submitted in writing to the Executive Director," for approval as stated in [DC Local](#).

### **Mandatory Disclosure**

Upon discovery of any potential conflict, the Center will disclose in writing the potential conflict to TEA or other Federal awarding agency in accordance with applicable TEA or other Federal awarding agency policy, 2 CFR § 200.112.

In addition, the Center will disclose, in a timely manner, in writing to TEA or other Federal awarding agency, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award, 2 CFR § 200.113. Failure to make required disclosures can result in any of the remedies described in 2 CFR § 200.338, Remedies for Noncompliance, including Debarment and Suspension. See Board Policy [DBD Local](#) for determination of potential conflict of interest.

### B. Full and Open Competition

All procurement transactions paid with Federal funds are conducted in a manner providing *full and open competition* consistent with 2 C.F.R § 200.319. In an environment of full and open competition, no proposer or bidder has a competitive advantage over another. All potential proposers and bidders must be provided the same information and have the same opportunity to submit a bid or proposal. Providing a competitive advantage to one or more potential proposers or bidders over another can open up the potential for disputes and lawsuits that can be costly and can significantly delay the completion of projects.

In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals (RFPs) are excluded from competing for such procurements. The Center does not engage in the following situations that may restrict *full and open competition*, including but not limited to:

- placing unreasonable requirements on firms in order for them to qualify to do business;
- requiring unnecessary experience and excessive bonding;
- noncompetitive pricing practices between firms or between affiliated companies;
- noncompetitive contracts to consultants that are on retainer contracts;
- organizational conflicts of interest;
- specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- any arbitrary action in the procurement process, 2 CFR § 200.319(a).

The Purchasing Department, with the assistance of any applicable department, advertises and distributes bid proposals/RFPs to potential vendors. If a question arises from a potential vendor for clarification reasons, the Purchasing Department will respond to the vendor as well as all other potential vendors. If it’s determined the bid/RFP is unclear in some area, the Purchasing

Department will submit an addenda to the original bid/RFP to all potential vendors. If assistance is needed from outside the Center with creating the bid/RFP proposal, the entity that assists in creating the specifications for the bid/RFP is excluded from being allowed to provide a response to the Bid/RFP.

The Center also complies with the following requirements in 2 CFR 200 to ensure full and open competition when purchasing with Federal funds.

### **Geographical Preferences Prohibited**

The Center conducts Federal procurements in a manner that prohibits the use of statutorily or administratively imposed State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference, 2 CFR § 200.319(b). Accordingly, when purchasing with Federal funds, the Center does not give preference to a contractor/vendor which is located in Texas or the local or surrounding community simply due to the location. Nothing in this section preempts State licensing laws.

When contracting for *architectural and engineering (A/E) services*, geographic location may be a selection criterion provided an appropriate number of qualified firms, given the nature and size of the project, are left to compete for the contract.

The Center uses a standard template for bids/RFP's to ensure standardization. The specifications for the goods or services being solicited are the different part of the template. The Purchasing Department, in conjunction with the department seeking the goods or services, will confirm that geographical preferences are prohibited.

### **Contracting with Small and Minority Businesses**

The Center takes all necessary affirmative steps to assure that historically underutilized businesses (HUBs), including minority businesses and women's business enterprises, and labor surplus area firms are used when possible, 2 CFR § 200.321. To accomplish this, the Center uses the following required affirmative steps:

- placing qualified small and minority businesses and women's business enterprises on solicitation lists, if available
- assuring that small and minority business, and women's business enterprises are solicited whenever they are potential sources
- dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises
- establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises

- using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce, and
- requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.

Depending upon the goods or services being solicited, the Center will make every attempt to include HUB vendors in the solicitation process. The Center uses the CMBL master list available on the Texas Comptroller of Public Accounts' website to assist in identifying HUB vendors and is reviewed by the Purchasing Department.

### **Prequalified Lists**

The Center ensures that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition, 2 CFR § 200.319(d). The Center accomplishes this by conducting internet searches, including using [vendor searches available through the Texas Comptroller of Public Accounts](#), and by using other less technologically-advanced tools to locate and identify potential contractors. The Center advertises all Bids/RFPs in The Monitor, The Valley Morning Star, The Brownsville Herald and The Laredo Times so that all potential vendors have a chance to respond. In addition to using internet searches, the Center also utilizes current vendors to send a Bid/RFP proposal. Also, the Center will not preclude potential bidders from qualifying during the solicitation period. The Purchasing Department and program director are responsible for reviewing prequalified lists and determining if they include an adequate number of qualified sources.

### **Solicitation Language**

All solicitations will incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description will not, in competitive procurements, contain features which unduly restrict competition. The description will include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, will set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications will be avoided if at all possible.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers will be clearly stated and will identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals, 2 CFR § 200.319(c).

The Center uses a standard template for all of its Bids/RFP proposals. The template encompasses all of the standard language that is required by law, including times and dates of any pre-award meetings, deadlines for submission, a conflict of interest form, and a debarment and suspension form. The template is then adjusted to reflect the specific goods/services being solicited. With the assistance of the department seeking the goods/services (if goods/services benefit the entire Center, the Purchasing Department will be responsible for the specific wording for those goods/services), the Purchasing Department will create the specifications for the goods/services.

### C. Federal Procurement System Standards

In addition to avoiding conflicts of interest and ensuring full and open competition as described above, the Center's written procurement procedures for purchases made with Federal funds reflect applicable State and local laws and regulations and conform to the following *Federal* standards for procuring goods and services with Federal funds, 2 CFR § 200.318.

#### **Avoiding Acquisition of Unnecessary or Duplicative Items**

The Center avoids the acquisition of unnecessary or duplicative items. Additionally, the Center considers consolidating or breaking out procurements to obtain a more economical purchase. And, where appropriate, the Center makes an analysis of leases versus purchase alternatives, and other appropriate analyses to determine the most economical approach, 2 CFR § 200.318(d).

These considerations are given as part of the process to determine the allowability of each purchase made with Federal funds. See *II. Financial Management Standards, F. Expending Grant Funds, Determining Allowability of Costs*, for written procedures on determining allowability.

#### **Use of Intergovernmental Agreements**

To foster greater economy and efficiency, the Center enters into State and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services. 2 CFR § 200.318(e). This includes cooperative purchasing agreements as well as shared services arrangements (SSAs) where practical and beneficial. Cooperative purchasing is described in section 3.5 of *Module 3*. SSAs as they pertain to a particular grant program are described in Section 1.3.1 of *Module 1* (FAR).

The Center uses various purchasing cooperatives to meet its purchasing needs. The Center is a member of the following purchasing cooperatives:

- 1 Government Purchasing Alliance administered by Pinal County Arizona, Scottsdale Arizona Unified School District, and Yavapai County Arizona
- Choice Partners Cooperative administered by the Harris County Department of Education
- Goodbuy Purchasing Program administered by Region 2 ESC

- Purchasing Association of Cooperative Entities (PACE) Regions 13 & 20 administered by Region 20 ESC
- Texas Association of School Board's BuyBoard (BuyBoard)
- The Cooperative Purchasing Network administered by Region IV (TCPN)
- TIPS/TAPS administered by Region VIII ESC
- State of Texas Correctional Institute (TCI)
- State of Texas Department of Information Resources (DIR)
- State of Texas Comptroller Texas Procurement and Support Services (TPASS) contracts
- State of Texas Institute for the Blind and Handicapped (TIBH)
- State of Texas Multiple Award Schedule (TXMAS) administered by the General Services
- U.S. Communities administered by a partnership between the Association of School Business Officials, the National Association of Counties, the National Institute of Governmental Purchasing, the National League of Cities and the United States Conference of Mayors

In addition, the Center administers the following Purchasing Cooperatives:

- Child Nutrition Program – South Texas Cooperative (CNP-STC)
- Library Purchasing Cooperative
- Region One Purchasing Cooperative (ROPC)
- Texas Energy Center

The departments of the Center decide the most cost efficient and effective method for making purchases. Refer to the appendix for procedures on how to access these cooperatives on the internet.

### **Use of Federal Excess and Surplus Property and Procurement of Recovered Materials**

The Center considers the use of Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs, 2 CFR § 200.318(f). The program manager/director that oversees the Federal award is responsible for researching or inquiring other Federal program areas within the Center to determine if existing material/equipment is available for use for Federal award.

*Procurement of Recovered Materials:* In addition, the Center complies with Section [6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act](#), 2 CFR § 200.322. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR Part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The requirements apply to State and local governments, including the Center, and include the purchase of everyday items such as paper products, non-paper office products, office furniture, floor mats, and awards and plaques, as well as many other items, where the purchase

price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000. Requirements also include:

- procuring solid waste management services in a manner that maximizes energy and resource recovery and
- establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Pursuant to Section 6002, the decision *not* to procure recovered materials must be based on a determination that such procurement items—

- A. are not reasonably available within a reasonable period of time;
- B. fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the Center; or
- C. are only available at an unreasonable price. Any determination under subparagraph (B) shall be made on the basis of the guidelines of the Bureau of Standards in any case in which the material is covered by the guidelines.

The Center has made the [EPA guidelines](#) available on its website for program directors to utilize in making their purchasing decisions.

### **Awarding Contracts to Responsible Contractors**

The Center awards contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. The Center considers such matters as contractor integrity and business ethics, compliance with public policy, ability to complete the project on time and in accordance with specifications, record of past performance, and the contractor's financial and technical resources, 2 CFR § 200.318(h).

The Center will check references where possible and engage in practical activities such as checking with the local Better Business Bureau and the Texas Attorney General's office to ensure there are no outstanding complaints against the contractor.

The Center will award a contract to a contractor who has the appropriate experience, expertise, qualifications, and any required certifications, necessary to perform the work. Contractors should also have the financial resources to sustain the project while the initial work is being completed and during each service period until he or she submits invoices for payment to the Center as work is completed (for example, at the end of each month). Contractors should have the proper equipment or the capability to subcontract for the proper equipment necessary to complete the contracted work. For example, if the contractor is to develop curriculum guidelines on a computer, the contractor should already have his or her own computer with the appropriate software.

*Debarment and Suspension:* The Center will not subcontract with or award subgrants to any person or company who is debarred or suspended from receiving Federal funds. The Purchasing Specialist is required to check for excluded parties at the System for Award Management (SAM) website before any procurement transaction paid with Federal funds. This procedure is performed when the vendor is set up in the Center's accounting system as a new vendor. This list is located at: <http://www.sam.gov/>. [2 CFR Part 180](#) and [2 CFR Part 3485](#).

The Center has many bids/RFPs throughout the year where the Center goes out on bid on behalf of participating members. The Center also has various bids that are awarded based on catalog pricing from the vendor. These types of bids are usually awarded to multiple vendors. The Center will use any past performance the potential awardee has had with the Center, and/or its members' feedback, to determine if the vendor has been responsible. The Center may also contact any other customers of the potential awardee as well as research on the internet. As stated above, each vendor is researched on SAM to determine their status of being debarred or suspended from receiving Federal funds. The department responsible for the bid as well as the Purchasing Department will perform these tasks. The Purchasing Specialist notifies the vendor whose name appears on the debarment list of their failure to qualify, after the board has taken action.

#### *State Rules for Selecting Vendors*

In addition to Federal standards for making awards only to responsible contractors, TEC § 44.031 establishes nine criteria that the Center uses in determining contract awards to vendors, whether using State, local, or Federal funds. All nine criteria must be considered *unless Federal law prohibits it or is more restrictive as noted below*. These criteria are as follows:

- (1) the purchase price
- (2) the reputation of the vendor and of the vendor's goods or services
- (3) the quality of the vendor's goods or services
- (4) the extent to which the goods or services meet the Center's needs
- (5) the vendor's past relationship with the Center
- (6) the impact on the ability of the Center to comply with laws and rules relating to historically underutilized businesses
- (7) the total long-term cost to the Center to acquire the vendor's goods or services
- (8) for a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner:
  - (A) has its principal place of business in this State; or
  - (B) employs at least 500 persons in this State

**(Note:** Federal requirements prohibit geographic preference when purchasing with Federal funds. Therefore, *this requirement cannot be used to select a contractor when the purchase is made with Federal funds.*)

- (9) any other relevant factor specifically listed in the request for bids or proposals. Factors that the Center may consider under this criteria would include vendor response time and compatibility of goods/products purchased with those already in use in the Center.

### **Contract Provisions**

In all Federally-funded contracts, the Center includes the applicable provisions described in [Appendix II to 2 CFR Part 200 – Contract Provisions for non-Federal Entity Contracts under Federal Awards](#), 2 CFR § 200.326. Provisions include the following:

1. All contracts paid from State or Federal grants administered by TEA must retain copyright for the Texas Education Agency (TEA) and for the Federal government (if a Federally funded contract) unless otherwise negotiated in writing with TEA. Pursuant to the provisions in 2 CFR § 200.315, title to intangible property vests in the Center as long as such property is used for authorized purposes. However, TEA and the Federal awarding agency reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.
2. All contracts greater than \$150,000 must address administrative, contractual, or legal remedies.
3. All contracts greater than \$10,000 must address termination for cause and for convenience.
4. All construction contracts must include the Equal Employment Opportunity clause.
5. All prime construction contracts in excess of \$2,000 must include a provision for compliance with the Davis-Bacon Act and its implementing regulations.
6. All contracts in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with the Contract Work Hours and Safety Standards Act and its implementing regulations.
7. All contracts that meet the definition of “funding agreement” and where the Center wishes to enter into a contract with a small business firm or nonprofit organization must include a provision for compliance with the Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements.
8. All contracts and subgrants greater than \$150,000 must contain a provision for compliance with the Clean Air Act and the Federal Water Pollution Control Act and their implementing regulations.
9. All contracts must include compliance with the Energy Policy and Conservation Act pertaining to mandatory standards and policies relating to energy efficiency contained in the State energy conservation plan.
10. A contract or subcontract must not be made to any party that is debarred or suspended from receiving Federal funds, <http://www.sam.gov/>.
11. Lobbying Certification and Disclosure of Lobbying (Byrd Anti-Lobbying Amendment) – All contractors that apply or bid for an award of \$100,000 or more must file the required

Lobbying Certification that it has not and will not use any Federal funds to lobby. If *non*-Federal funds are used to lobby, the contractor must complete the Disclosure of Lobbying and forward the disclosure to the next tier, who must forward it through each tier to the Federal awarding agency:

<https://www.whitehouse.gov/sites/default/files/omb/grants/sfllin.pdf>

12. All contracts greater than \$10,000 must include compliance with section 6002 of the Solid Waste Disposal Act and its implementing regulations. 2 CFR § 200.322

The Center also adheres to the best practices recommended by TEA as it pertains to professional services contracts paid from Federal grants. See *III. Procurement System, G. Contract Administration*.

### **Maintenance of Procurement Records**

Per *Module 3* Section 3.1.1 of [FASRG](#),

“Accurate record-keeping and documentation should be a fundamental element of the procurement process. Precise and systematic record-keeping and records management withstands the constant scrutiny of various interest groups including vendors, the general public, and outside agencies as well as internal groups which are the users or customers of the purchasing system. This records management function should support the Center's overall information management plan described in the Data Collection and Reporting module and generally provide for:

- Both the *flow and retention of forms* including requisitions, purchase orders, petty cash and cash reimbursement receipts. *Full documentation of all competitive procurements* with comprehensive competitive procurement files containing specifications, competitive procurement advertisement, pre-competitive procurement conference minutes (as appropriate), competitive procurements submitted, competitive procurement tabulation, board minutes indicating competitive procurement awards (or a similar award notice) and related records.
- *Full documentation of procurement procedures* utilized to obtain goods and services through competitive sealed proposals, design/build contracts and other procurement options.
- *Documentation of price quotations* obtained when purchasing with Federal funds.

The records management function may rely on electronic formats including automated systems, diskettes, CD-ROM, imaging and microfiche. Alternatively, it may use hard copy or a combination of methods.”

Therefore, the Center will select the methods best suited to its needs.

In addition, in accordance with Federal standards, the Center maintains records sufficient to detail the history of all Federal procurements, including but not necessarily limited to, the following:

- the method of procurement and the rationale for choosing that method (i.e., the reason the Center chose procurement by micro-purchase, small purchase procedures, sealed bid, competitive proposals, or noncompetitive proposals)
- the type of contractual agreement or instrument used and rationale for using that type
- the process used to either select the contractor or to reject the contractor (what was the process and what were the factors considered in selecting or rejecting the contractor; this must be in writing)
- the basis used for determining the price of the contract (including a cost or price analysis), and
- verification that the contractor is not suspended or debarred, 2 CFR § 200.318(i).

See Section VII. *Record Keeping* for more information on the Center's records management policies. The Center's Purchasing Department maintains documentation for all Bids/RFPs submitted both electronically (secure business office share drive) and in hard copy. Each bid/RFP is assigned a bid number and the Purchasing Department creates folders for each bid/proposal. Each Bid/RFP will have the specification form the department submits to the Purchasing Department before the Bid/RFP is developed. Also included is the official Bid/RFP, the advertisement and dates advertised, any amendments or clarification to the original Bid/RFP, list of bidders that did respond and if they met all Bid/RFP criteria, vendor or Center's communications, bid opening forms, the bid tabulations, the board agenda item seeking board approval, board approval, and letters to vendors and cooperative members informing them of the Board's decision. The Purchasing Department will maintain these files in the business office or in a secure storage room as required by State law.

### **Time and Materials Contracts**

Time and materials contracts are a hybrid of fixed-price and cost-reimbursement contracts. They present the highest risk to the government and the lowest risk to the contractor. Therefore, they are the *least* desirable for the Federal or State government and are rarely awarded, 2 CFR § 200.318(j).

Time and materials type contract means a contract whose cost to the Center is the sum of: the actual costs of materials, and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. In other words, the contractor is saying it will work until the task is completed, but it has no idea how long it will take, nor how much money it will cost. This obviously can be very cost prohibitive and can

encourage fraudulent behavior by some unscrupulous contractors. Therefore, Federal regulations permit the use of a time and materials contract only after a determination is made that no other contract is suitable and only if the contract includes a ceiling price that the contractor exceeds at its own risk. Further, the Center must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

The Center may use a time and materials type contract paid with Federal funds in accordance with the above and *only* (1) after a determination that no other contract is suitable; and (2) if the contract includes a ceiling price that the contractor exceeds at its own risk. It is the Center's intent to enter into contracts that have a stated contract price, payable upon completed and satisfactory services. The Center does not enter into any open-ended contract where the price and time deadline are not known. Some contracts may have a stated price for the services to be received and an additional amount not to be exceeded for travel. However, the Center has been utilizing a fee plus travel contract method less over the years due to the goal of having a more clear and precise contract. Occasionally, a contract price must be amended to reflect any unforeseen circumstances or due to extending the contract for any additional services to be performed (for example, the contract may have stated to pay a contractor for three days of training but it was mutually decided to change to five days of training). The departments are responsible for creating, monitoring and adjusting all contracts in their area or program.

### **Settlements of Issues Arising Out of Procurements**

The Center alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements made with Federal funds, 2 CFR § 200.318(k). These issues include, but are not limited to, source evaluation (i.e. analyzing information *sources* in order to assess their credibility), protests, disputes, and claims. These standards do not relieve the Center of any contractual responsibilities under its contracts. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction. The Executive Director or the Deputy Director for Business Operations and Finance Support are the primary officers responsible for handling and coordinating the settlement of any contractual and administrative issues arising out of procurements.

### **Protest Procedures to Resolve Disputes**

The Center maintains protest procedures to handle and resolve disputes relating to procurements made with Federal funds and, in all instances, discloses information regarding the protest to TEA or other awarding agency, 2 CFR § 200.318(k). The protestor must exhaust all administrative remedies with the Center before pursuing a protest with a Federal agency. The Executive Director and the Deputy Director for Business Operations and Finance Support in the Center are the primary officers responsible for handling and coordinating any disputes relating to procurements.

See the purchasing procedures in the [Standard Operating Procedures Manual Section 3.3.1](#) for protest procedures related to procurement.

#### D. Responsibility for Purchasing

In accordance with [CH Local](#) of Region One’s Policy, “The Executive Director or designee shall have the authority to make budgeted purchases unless Board policy requires the Board to make or approve a purchase.” The Deputy Director for Business Operations and Finance Support is designated with the responsibility for overseeing all procurements of the Center. This includes development and revision of the policies and procedures related to the purchasing function, training staff in how to use and implement the policies and procedures, and monitoring for employee compliance with policies and procedures. The Executive Director and Human Resources Director are responsible for reporting any potential or realized conflicts of interest to TEA and implementing the appropriate sanctions or disciplinary actions for employees who fail to comply with the policies and procedures.

All departments within the Center have the authority to initiate purchases; the Center does not have a centralized purchasing department. Each department’s director can assign this duty to any supervisor or program manager within their department. Program directors/managers are responsible for complying with all Federal, State and local regulations for each award they monitor and for purchases made for each award. Departments determine, with the assistance of the Purchasing Department, if a Bid/RFP is the best method for certain purchases. The Purchasing Department performs a solicitation process for those services/goods that benefit the entire Center (for example, instructional materials, books, general supplies, etc.) and its member districts through its purchasing cooperatives.

#### E. Purchase Methods When Using Federal Funds

In some situations, the Federal requirements pertaining to purchasing methods are more restrictive than State of Texas requirements. In other situations, the State requirements are more restrictive than the Federal requirements. Therefore, when determining the method that must be used in a particular purchasing situation, the more restrictive method or requirement must be used in each case.

#### **State Requirements Related to Purchasing Methods**

Unless otherwise more restrictive in Federal law for procurement with Federal funds, the Center complies with the purchasing methods prescribed in TEA’s [FASRG](#) and in State law for all purchases regardless of the funding source (i.e., State, local, or Federal).

Texas Education Code § 44.031 (a) states that all school district contracts for the purchase of goods and services valued at **\$50,000 or more** in the aggregate, for each 12-month period are to be made by the method that provides the best value to the district. This does not apply to contracts for the purchase of produce or vehicle fuel. Although TEC 44.031 applies to school districts only, the Center follows this code as well.

The law enumerates several options for competitive procurement that are available to the Center. One of these options must be used for contracts expected to equal or exceed \$50,000 regardless of the funding source (i.e., State, local, or Federal):

- (1) competitive bidding for services other than construction services;
- (2) competitive sealed proposals for services other than construction services;
- (3) a request for proposals, for services other than construction services;
- (4) an interlocal contract;
- (5) a method provided by Chapter 2269, Government Code, for construction services;
- (6) the reverse auction procedure as defined by Section 2155.062(d), Government Code; or
- (7) the formation of a political subdivision corporation under Section 304.001, Local Government Code.

### **Professional and Consulting Services**

Several exceptions to following one of these competitive procurement methods are identified in TEC § 44.031. This section does not apply to a contract for *professional services* rendered, including services of an architect, attorney, certified public accountant, or engineer (which must be selected in accordance with [Chapter 2254 of the Government Code](#).) The Center may, at its option, contract for professional services rendered by a *financial consultant* or a *technology consultant* in the manner provided by Section 2254.003, Government Code, in lieu of the methods provided by this section.

The Federal cost principles (specifically in 2 CFR § 200.459) broadly define *professional and consultant services* as those services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the Center.

*Professional services* are further defined in the *Handbook on Purchasing* as “infrequent, technical, and/or unique functions performed by independent contractors whose occupation is the rendering of such services.” Finally, professional services as described in [Attorney General Opinion DM-418](#), referenced in the *Handbook*, includes not only the services of lawyers, physicians, or theologians, “but also those members of disciplines requiring special knowledge or attainment and

a high order of learning, skill, and intelligence including guest speakers, consultants, writers, and artists.” A professional is only one who “is a member of [a] discipline with widely accepted standards of required study or specified attainments in special knowledge as distinguished from mere skill.” Id. (quoting Wooddell, 230 S.E.2d at 470).

Certain *professional services*, specifically those covered under Chapter 2254, Subchapter A of the Texas Government Code, (i.e., architects, CPAs, registered engineers, optometrists, physicians, surgeons, land surveyors, landscape architects, registered nurses and State certified or State licensed real estate appraisers) are not selected based on competitive bidding. Rather, they must be selected based on demonstrated competence and qualifications obtained through a *Request for Qualifications* or similar document. After the Center makes its selection based on demonstrated competence and qualifications, a fair and reasonable price for the services is then negotiated and agreed upon.

*Consulting services*: According to FAR (Module 1 Financial Accounting and Reporting of TEA’s [FASRG](#)), consulting services, R 6291,

“refer to the practice of helping (the Center) to improve performance through analysis of existing problems and development of future plans. Consulting may involve the identification and cross-fertilization of best practices, analytical techniques, change management and coaching skills, technology implementations, strategy development, or operational improvement. Consultants often rely on their outsider’s perspective to provide unbiased recommendations. They generally bring formal frameworks or methodologies to identify problems or suggest more effective or efficient ways of performing tasks. Consulting services cover all functional areas such as instruction, curriculum, and administration.

Consulting does not include a routine service/activity that is necessary to the functioning of the Center’s programs, such as hiring additional people on contract to supplement present staff. It also does *not* apply to services provided to conduct organized activities (such as training or other similar educational activities.)”

The Center shall use a personal services contract only if the services of the contractor are necessary to accomplish the objectives of the particular program/project, the fees are reasonable in cost, and the Center cannot meet the needs by using an employee. 34 CFR 75.515. For example, an employee may have the knowledge, skills, and capability to provide the services, but the employee may not have the time in an already-busy schedule to provide the services in the time required.

Under IRS rules, a person cannot work part of the time as an employee, and part of the time as a contractor/consultant. If an employee provides additional services above and beyond regular

contracted hours and regular job responsibilities, the employee is paid *extra-duty pay* in accordance with the Center's employee compensation policy, and not a fee based on a contract.

### **Allowable Professional Service Costs**

Professional, consultant or personal contracting services are allowable to be purchased with Federal funds when reasonable and when the Center considers the following factors:

- The nature and scope of the service rendered in relation to the service required;
- The necessity of contracting for the service, considering the Center's capability in the particular area;
- The past pattern of such costs, particularly in the years prior to Federal awards;
- The impact of Federal awards on the Center's business (i.e., what new problems have arisen);
- Whether the proportion of Federal work to the Center's total business is such as to influence the Center in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal awards;
- Whether the service can be performed more economically by direct employment rather than contracting;
- The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Federally funded activities; and
- The adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

### **Purchasing Goods or Services with Federal Funds**

In accordance with [2 CFR Part 200, Subpart E, Cost Principles](#), all purchases made with Federal funds, regardless of the method of purchase, must be determined to be:

- *reasonable* in cost (comparable to current fair market value)
- *necessary* to carry out the objectives of the Federal program
- *allowable* under the Federal cost principles and the terms and conditions of the award
- *allocable* (chargeable or assignable) to the grant program based on the relative benefits received

*See Section II Financial Management System, Part E Expending Grant Funds, under Other Considerations for Allowability* for procedures relating to documented purchases (reasonable, necessary, allocable and allowable)

### **Five Methods for Procuring with Federal Funds**

2 CFR § 200.320 provides for five methods that must be used when making purchases with Federal funds. In some cases, these *Federal* methods are more restrictive than *State* requirements; in other cases, the *State* requirements are more restrictive than these *Federal* methods. Additionally, if *local* requirements are more restrictive than either State or Federal, then local requirements must be followed. In all cases, the more restrictive requirements or methods must be followed when making purchases with Federal funds.

The type of purchase method and procedures required depends on the cost (and type, in some cases) of the item(s) or services being purchased.

- Micro-purchases
- Small purchase procedures
- Sealed bids
- Competitive proposals
- Noncompetitive proposals (sole source)

See [Section 3.3.1 of the Standard Operating Procedures Manual](#) for procedures related to purchasing.

#### **Micro-Purchases (Purchases up to \$3,500.00)**

Federal methods provide for procurement by *micro-purchase*. *Micro-purchase* is defined in 2 CFR § 200.320(a) as a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed \$3,500.00. The micro-purchase method is used in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost.

The Center utilizes the micro-purchases method for acquiring supplies or services that do not exceed an aggregate amount of \$3,500.00 if the price is reasonable. The program manager responsible for the Federal award determines if the price is reasonable.

Quotes are not required but encouraged. If quotes are obtained for items under \$3,500.00, they should be kept in the department and attached to the requisition.

#### **Small Purchase Procedures (Purchases between \$3,500.01 and \$49,999.99 in the Aggregate)**

The *Federal* threshold for *small purchase procedures* is \$150,000. 2 CFR § 200.320(b). However, with some exceptions noted in TEC § 44.031, the *State* threshold for all Center's contracts that do not require competitive bidding is less than \$50,000 in the aggregate. Therefore, the more restrictive *State* threshold of less than \$50,000 must be followed by the Center.

*Small purchase procedures* (as defined in 2 CFR § 200.320[b]) may be used in those relatively simple and informal procurement methods for securing non-personal contracted services, supplies, or other property that do not cost more than \$49,999.99.

For purchases funded from ***local funds***, to obtain the most competitive price, the Center, ***may***, at its option, obtain price quotes for items costing less than \$50,000. Unlike the mandatory competitive procurement described for purchases over \$50,000, if an item to be paid from *local funds* costs less than \$50,000, the Center may utilize price quotations or competitive procurement process (purchasing cooperatives, sole source, an existing RFP/bid or a new RFP/bid) to stimulate competition and to attempt to receive the most favorable pricing.

However, if using ***State or Federal funds*** to purchase goods or services, *price or rate quotations must be obtained* from an adequate number of qualified sources for all purchases between \$3,500.01 and \$49,999.99 or use the competitive procurement process. The department must obtain more than one price or rate quote unless using a purchasing cooperative, existing Bid/RFP or sole source vendor, in which case, the prices have already been awarded. If purchasing from a purchasing cooperative or existing Bid/RFP, the departments can elect to obtain only one quote to purchase the goods or services although it is recommended to obtain more than one quote. Such price or rate quotations may be obtained orally and/or documented in writing, and the Center must demonstrate that price or rate quotations were obtained from an adequate number of qualified sources.

The Purchasing Department will also have a list of current Bids/RFPs.

### **Purchases \$50,000 or More in the Aggregate**

According to Texas law, one of the following competitive methods must be used for purchases of \$50,000 or more in the aggregate:

- (1) competitive bidding for services other than construction services;
- (2) competitive sealed proposals, for services other than construction services;
- (3) a request for proposals, for services other than construction services;
- (4) an interlocal contract;
- (5) a method provided by Chapter 2269, Government Code, for construction services;
- (6) the reverse auction procedure as defined by Section 2155.062(d), Government Code; or
- (7) the formation of a political subdivision corporation under Section 304.001, Local Government Code.

Each of these competitive methods is described more thoroughly in *Module 3 Section 3.2.3 of [FASRG](#)*.

In addition, *one of the three following methods must be used*, depending on the circumstance described below, when purchasing with *Federal funds*: sealed bids (formal advertising); competitive proposals; or noncompetitive proposals (sole source).

#### *Sealed Bids (Formal Advertising)*

Bids are publicly solicited and a *firm fixed-price contract* (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the following conditions apply:

- A complete, adequate, and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively for the business; and
- The procurement lends itself to a firm fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

- Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids. The invitation for bids must be publically advertised.
- The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond.
- All bids will be opened at the time and place prescribed in the invitation for bids. The bids must be opened publicly.
- A firm fixed-price contract award must be made in writing to the lowest responsive and responsible bidder.

Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of. Any or all bids may be rejected if there is a sound documented reason.

#### *Competitive Proposals*

A competitive proposal is normally used with more than one source submitting an offer, and either a *fixed price* or a *cost-reimbursement* type contract is awarded. (A *cost reimbursement contract* reimburses the contractor for actual costs incurred to carry out the contract.) Competitive proposals are generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical.
- Proposals must be solicited from an adequate number of qualified sources.
- The Center must have a written method for conducting technical evaluations of the proposals received and for selecting recipients.
- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

When using Federal funds, the Center may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

#### *Noncompetitive Proposals (Sole Sourcing)*

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used when using Federal funds only when one or more of the following circumstances apply:

- The item is available only from a single source and an equivalent cannot be substituted. This must be documented.
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
- TEA (or other Federal awarding agency) expressly authorizes noncompetitive proposals in response to a written request from the Center.
- After solicitation of a number of sources, competition is determined inadequate.

Additionally, *State* requirements related to sole source purchasing are, in some ways, more restrictive. In addition to the Federal requirements above, sole source purchases must meet established criteria:

- Identification and confirmation that competition in providing the item or product to be purchased is precluded by the existence of a patent, copyright, secret process or monopoly;
- A film, manuscript, or book;
- A utility service, including electricity, gas, or water; and
- A captive replacement part or component for equipment.

According to State requirements, sole source does not apply to mainframe data-processing equipment and peripheral attachments with a single item purchase price in excess of \$15,000.

The Center has developed a Sole Source Affidavit that must be completed by the vendor, signed by them and notarized signifying their product is a sole source product. The department must determine if there is any other equivalent product by contacting districts, other service centers, researching on the internet, etc. The department must then document why only this product can meet their needs and that it is not available from any other vendor. In all cases, the Center will obtain and retain documentation from the vendor which clearly delineates the reasons which qualify the purchase to be made on a sole source basis. The sole source affidavit can be found in the appendix.

### **Cost/Price Analysis for Federal Procurements in Excess of \$150,000**

In accordance with the requirements in 2 CFR § 200.323, the Center will make independent estimates of the goods or services being procured *before* receiving bids or proposals to get an estimate of how much the goods and services are valued in the current market.

To accomplish this, before bids and proposals are received, the Center conducts either a *price analysis* or a *cost analysis*, depending on the type of contract, in connection with every procurement with Federal funds in excess of \$150,000. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation; however, the Center will come to an independent estimate prior to receiving bids or proposals, 2 CFR § 200.323(a). The *cost analysis* or *price analysis*, as appropriate for the particular situation, will be documented in the procurement files.

Accordingly, the Center performs a *cost or price analysis* in connection with every *Federal* procurement action in excess of \$150,000, including contract modifications, as follows:

**Cost Analysis → Non-competitive Contracts:** A *cost analysis* involves a review of proposed costs by expense category, and the Federal cost principles apply, which includes an analysis of whether the costs are allowable, allocable, reasonable, and necessary to carry out the contracted services. In general,

- A *cost analysis* must be used for all *non-competitive contracts*, including sole source contracts.
- The Federal cost principles apply.
- All *non-competitive contracts* must also be awarded and paid on a *cost-reimbursement basis*, and not on a fixed-price basis.
- In a cost-reimbursement contract, the contractor is reimbursed for reasonable actual costs incurred to carry out the contract.

- Profit must be negotiated as a separate element of the price in all cases where there is no competition.

When performing a *cost* analysis, the program director, with assistance from the requesting department, Business Office and Finance Support, and Purchasing Office negotiates profit as a separate element of the price. To establish a fair and reasonable profit, consideration is given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work, 2 CFR § 200.323(b).

**Price Analysis → Competitive Contracts:** A *price* analysis determines if the lump sum price is fair and reasonable based on current market value for comparable products or services. In general,

- A price analysis can only be used with *competitive* contracts and is usually used with fixed-price contracts. It cannot be used with non-competitive contracts.
- Compliance with the Federal cost principles is not required for fixed-price contracts, but total costs must be reasonable in comparison to current market value for comparable products or services.
- A competitive contract may be awarded on a fixed-price basis or on a cost-reimbursement basis. If awarded on a cost-reimbursement basis, the Federal cost principles apply and costs are approved by expense category, and not a lump sum.

See Appendix 9 – Cost/Price Analysis for procedures related to Federal contracts that exceed \$150,000.

Costs or prices based on *estimated* costs for contracts are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable costs under the Federal cost principles.

#### F. Purchase Cards (Center-Issued Credit Cards)

The use of Center-issued credit cards is carefully controlled and monitored to prevent fraud, waste, and abuse. Section 3.3.3.3 in *Module 3* of the [FASRG](#) addresses the use of credit cards. The Center's Executive Director and Deputy Director for Business, Operations and Finance Support work together to set and enforce policies and procedures. Misuse and abuse will not be tolerated. The Center does not use procurement cards. Refer to [Section 3.3.2 of the Standard Operating Procedures Manual](#), for specific information related to the proper accounting of credit card purchases.

In accordance with suggested procedures in *Module 3* of [FASRG](#), the Center:

- Holds reviewers of credit card purchases to the same standards as cardholders
- Applies the same set of rules to all card users, although spending limits may vary
- Restricts card usage by spending limits and unauthorized merchant category codes
- Restricts card usage by limiting it for only travel purposes, and with approval, product

#### *Segregation of Duties*

- Identifies certain employees to be cardholders and others to be reviewers of the cardholders' purchases.
- Does not allow the same employee to buy, receive, approve, and reconcile card purchases.
- Cardholder purchases are reviewed by Purchasing Department staff.

#### *Cardholders*

- Requires cardholders to turn in detailed receipts in accordance with policies and documenting the business reason. Restaurant receipts must include line-by-line detail of the order.
- Requires cardholders to acknowledge in writing receipt of the policy and procedure manual.

#### *Reviewers*

- Requires the reviewers to call the employee immediately upon noticing a questionable transaction rather than waiting for the due date of receipts.
- Requires the reviewers to acknowledge in writing receipt of the policy and procedure manual.

#### *Monitoring and Oversight*

- Is selective when issuing cards – focus on repetitive, small-dollar purchases.
- Keeps limits as low as possible to accommodate normal business needs. If there is a need to allow for emergency purchases, certain employees can have a higher limit.
- Card reviewers must follow the same high standards applied to cardholders.
- The Purchasing Department staff reviews the transactions of the cardholder including any purchases from unauthorized suppliers.
- Reviews Center-wide activity periodically to identify frequently used vendors or products to consider negotiating volume discounts in order to obtain best prices for the Center.
- Encourages staff to contact the hotline used to report any fraud.

Each credit card transaction must be properly accounted for. Refer to [Section 3.3.2 of the Standard Operating Procedures Manual](#), for specific information related to the proper accounting of credit card purchases.

#### G. Contract Administration

The Center maintains the following oversights to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders, 2 CFR § 200.318(b). The program manager/director of the Federal award is responsible for monitoring contractor performance. The manager/director will compare actual performance of contract against projected performance and have the contractor explain any differences. They may also compare fees paid to date to contractor versus how far along the contractor is in performing the contractual duties. The manager/director may establish surveys of those directly benefitted by the contractor's work for feedback purposes.

To ensure proper administration of contracts and any subgrants that may be awarded by the Center, the Center uses the following guidelines to determine whether each agreement it makes for the disbursement of Federal funds is a *contract*, whereby funds are awarded to a *contractor*, or a *subaward*, whereby funds are awarded to a *subrecipient*. The substance of the relationship is more important than the form of the written agreement, 2 CFR § 200.330.

##### *Subawards/Subgrants*

A *subaward/subgrant* is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. The Center determines who is eligible to receive what Federal assistance, and a *subrecipient/subgrantee*:

- Has its performance measured in relation to whether objectives of a Federal program are met
- Has responsibility for programmatic decision making
- Is responsible for adhering to applicable Federal program requirements, and
- In accordance with the subgrant agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the Center

##### *Contracts*

A *contract* is for the purpose of obtaining goods or services for the Center's own use and creates a procurement relationship with the contractor. [Board Policy CHF \(LOCAL\) Purchasing and Acquisition – Independent Contractors](#)

A *contractor*:

- Provides goods and services within normal business operations
- Provides similar goods or services to many different purchasers
- Normally operates in a competitive environment
- Provides goods or services that are ancillary to the operation of the Federal program, and
- Is not subject to compliance requirements of the Federal program as a result of the contract, though similar requirements may apply for other reasons

The Center complies with the following *best practices* recommended by TEA for all *professional services contracts* paid with Federal funds:

1. The effective dates (i.e., beginning and ending dates) of the contract are within the effective dates of the Federal award as stated on TEA's NOGA. A contract may be *negotiated* prior to the effective date of the award, but it may not be signed or be effective until on or after the effective date stated on the NOGA.
2. The Center may sign a *letter of intent* with the potential contractor prior to the issuance of the NOGA. The letter of intent must contain a provision that the pending contract is contingent upon receipt of the specific NOGA.
3. To ensure the potential contract is approved by TEA, the contract shall not be signed until after the NOGA is received by the Center.
4. The contract will contain the following provisions (in addition to the Contract Provisions required and identified in *III. Procurement System, C. Federal Procurement System Standards, Contract Provisions*.
  - a. All services will be completed during the effective dates of the contract.
  - b. All services will be paid only upon receipt of a proper invoice that coincides with the contract upon verification that the services were satisfactorily performed in accordance with the description in the contract. For ongoing services, payment may be made at the end of every month upon receipt of the invoice. Contractors will not be paid in advance.
  - c. The contract specifies that the invoice provided by the contractor will include the list of services provided, dates of services, and location(s) where services were provided during the billing period.
  - d. The Center complies with the regulations pertaining to procurement in 2 CFR § 200.318 - .323.
  - e. The Center complies with the provisions in 2 CFR § 200.459 pertaining to allowable professional service costs.
  - f. The contract identifies the funding source(s) that will be charged for the services provided, including the specific amount and/or percentage of the total contract amount to be charged to each funding source.
  - g. The contract identifies and lists only reasonable, necessary, and allocable services to be provided in accordance with the funding sources that will be charged.

- h. The administrative costs charged to the grant in the contract must be reasonable and must comply with any statutory limitations for administrative costs specified in the Federal program funding source.

Additionally, the Center complies with the *Standards of Conduct* and *Conflict of Interest* policies and procedures related to procurement, including the mandatory disclosure of any potential or real conflicts of interest. (See *Section III. Procurement System, A. Conflict of Interest Requirements.*)

### **Documentation for Contracts**

The Center maintains the following written documentation, at a minimum, for each contract paid with Federal funds:

1. A copy of the written, signed contract/agreement for services to be performed (program manager/director and the Executive Director)
2. The rationale or procedure for selecting a particular contractor (program manager/director and purchase order documentation)
3. Evidence the contract was made only to a contractor or consultant possessing the ability to perform successfully under the terms and conditions of the contract or procurement (program manager/director)
4. Records on the services performed – date of service, purpose of service – ensuring that services are consistent and satisfactorily performed as described in the signed contract or purchase order (program manager/director)
5. Documentation that the contractor was *not paid before services were performed*, and (program manager/director)
6. Records of all payments made (such as a spreadsheet or report generated from the general ledger), including the total amount paid to the contractor (accounts payable files and iTCCS system)

### **Payment Only After Services Are Performed**

For both State and Federally funded contracts, it is not permissible under Texas law to pay a contractor or consultant in *advance* of performing services. Advance payment to contractors is considered “lending credit” to the contractor and is prohibited under the *Texas Constitution*, Article 3, §§ 50 and 52. For ongoing services that occur monthly, payment can be made at the end of every month (based on a proper invoice submitted by the contractor and verification of work performed) for services performed during the month, or some other similar arrangement.

Consultants and contractors will not be paid without having a properly signed and dated contract or other written agreement in place which clearly defines the scope of work to be performed, the beginning and ending dates of the contract, and the agreed-upon price. The contract should also include a description of the payment procedures.

Upon performance of services (monthly or upon completion of services), the contractor is required to submit an *invoice* to the Center that contains at a minimum the following:

- a clear identification of the contractor/consultant, including name and mailing address
- a corresponding contract (or written agreement) number, if applicable
- the dates (beginning and ending date) during which the services were performed (i.e., billing period)
- a description of the services/activities completed during the billing period
- the total amount due to the contractor for the billing period

By submitting a properly-prepared invoice, the contractor is certifying that it is true and correct.

### **Verification of Receipt of Goods and Services Provided by Contractors**

If the purpose of the contract or purchase order is to deliver goods, the Facilities Foreman or designee in the Facilities and Operations Department that received the goods will verify that the quantity and quality of goods were as specified in the contract/purchase order. The receiving report and procedures used in all other State/local purchases will be used for all Federal purchases. See [Section 3.3.4 of the Standard Operating Procedures Manual](#) for procedures related to accepting goods.

If the purpose of the contract is to purchase services, the Purchasing Specialist, along with the requesting Department Director/Administrator will verify that the quality and scope of services were received as specified in the contract. [Section 3.3.1 of the Standard Operating Procedures Manual](#) addresses payments for services.

### **Prompt Payment to Vendors/Contractors**

The Center pays all vendors/contractors within thirty (30) days of receipt of a proper invoice and the receipt of the goods or services in accordance with the [Texas Prompt Payment Act, Government Code, Chapter 2251, Subchapter A, for all contractors, and Property Code, Chapter 28 for Construction Contractors.](#)

### **H. Submission of Procurement System**

In accordance with 2 CFR § 200.324(b), the Center will make available upon request from TEA all procurement documents for pre-procurement review, such as requests for proposals or invitations for bids, or independent cost estimates.

In addition, the Center may request (in accordance with the process established by TEA) that its procurement system be reviewed by TEA to determine whether the system meets Federal standards in order for the system to be certified. The Center may also self-certify its procurement system in

accordance with the provisions in 2 CFR § 200.324(c), which does not preclude TEA's right to survey the system.

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## XII. Legal Authorities and Helpful Resources

The following documents contain relevant grants management requirements. Staff should be familiar with these materials and consult them when making decisions related to the Federal grant.

- Education Department General Administrative Regulations (EDGAR)
  - <http://www2.ed.gov/policy/fund/reg/edgarReg/edgar.html>
- [Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards \(2 CFR Part 200\)](#)
  - <http://www.ecfr.gov/cgi-bin/text-idx?SID=ccccf77e01c9e6d4b3a377815f411704&node=pt2.1.200&rgn=div5>
- [USDE's Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards \(2 CFR Part 3474\)](#)
  - [http://www.ecfr.gov/cgi-bin/text-idx?SID=ccccf77e01c9e6d4b3a377815f411704&tpl=/ecfrbrowse/Title02/2cfr3474\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=ccccf77e01c9e6d4b3a377815f411704&tpl=/ecfrbrowse/Title02/2cfr3474_main_02.tpl)
- Federal education program statutes, regulations, and guidance
  - <http://www.ed.gov/>

## Appendices



### **Appendix 3 – Local Government Officer Conflicts Disclosure Statement (Form CIS) and Instructions**

Click the link below to access the form and instructions:

**[Local Government Officer Conflicts Disclosure Statement \(Form CIS\) and Instructions](#)**

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# Appendix 4 – Purchase Order Compliance Form

REQUISITION # \_\_\_\_\_

Departments **must** consider the following elements when planning to use Federal funds. Please check all that apply and provide additional explanation or documentation as necessary.

**ALLOWABLE:** *a cost must be allowable under the federal cost principles in 2 CFR Part 200 (EDGAR), Subpart E and under the terms and conditions of the Federal grant award AND must be reasonable, necessary and allocable. Cost is allowable in accordance with the Federal grant award (budgeted in the approved grant application/contract)*

- Cost is not being used to meet cost sharing or matching requirements of another Federal/State grant
- Cost is consistent with policies and procedures that apply uniformly to all funds (not treated differently)
- Costs are adequately documented

How is it allowable? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**REASONABLE:** *a cost is reasonable if sound business practices were followed and price is comparable to current market price*

- All procurement procedures were followed for purchased of \$50,000 and more (see Federal Grant Policies and Procedures Manual)
- Prices were obtained from adequate number of quotes (required if unit cost between \$3,500.01-\$49,999.99 for goods/services (see quotes section below)
- Purchase is less than \$3,500.00

How is it reasonable? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**NECESSARY:** *a cost is necessary if needed to achieve an important program objective (not considered “nice to have”)*

- The cost is needed for the proper and efficient performance of the Federal/State grant or contract (items cannot be purchased toward end of grant period since the program did not receive benefit of the purchase)
- The cost is identified in the approved budget, application or contract (required if requires specific approval)
- The cost aligns with the identified needs based on results and findings from a formal needs assessment

How is it necessary? \_\_\_\_\_

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**ALLOCABLE:** *a cost is allocable to the Federal award if the goods or services involved are chargeable is assignable to the award in accordance with the relative benefits received*

- The charge to the program is in proportion to the value received by that program

How is it allocable? \_\_\_\_\_

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**BENEFIT:** *a cost is necessary if order needed in the grants' final 90 days to achieve an important program objective*

- The cost is needed for the proper and efficient performance of the Federal grant or contract
- The cost is identified in the approved budget, application or contract (required if requires specific approval)
- The cost aligns with the identified needs based on results and findings from a formal needs assessment
- Does not apply

**SPECIAL OR UNUSUAL COSTS:** *certain costs that may be difficult to determine reasonableness or allocability, require prior written approval for "special or unusual costs" not identified in the regulations in advance of the incurrence of such costs*

- Submit request in writing to the TEA Chief Grants Administrator or Federal Program Officer
- Request must include timeframe or scope of the agreement
- Does not apply

**CONSIDERATION FOR ITEMS OF SPECIFIC APPROVAL:** *the department received prior approval from TEA or other awarding agency through the application and grant/contract awarding process for the following items. **If the awarding agency requires pre-approval for the following, attach application or other document***

- Participant Support Costs – stipends, travel, registration fees paid to or on behalf of participant or trainees (not employees)
- Capital Outlay (66XX)
- Does not apply

**PURCHASE VERSUS LEASE:** *the department avoids the acquisition of unnecessary or duplicative items, and considers consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, the Center makes an analysis of leases versus purchase alternatives, and other appropriate analyses to determine the most economical approach*

- Prudence was used in making the decision to incur the cost
- Necessary to carry out the objectives of the grant program or is recognized as an ordinary cost to operate the organization
- Applied sound business practices; arm's-length bargaining; Federal, State, and other laws and regulations; and the terms and conditions of the award
- Price is comparable to that of the current fair market value for equivalent goods or services
- No significant deviations from the established practices of the organization which may unjustifiably increase the cost
- Does not apply

**RECOVERED MATERIALS:** *consider the use of [Federal excess and surplus property](#) in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. The requirements apply to State and local governments, including the ESC, and include the purchase of everyday items such as paper products, non-paper office products, office furniture, floor mats, and awards and plaques, as well as many other items, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000. Requirements also include*

- Research or inquire other Federal program areas within the ESC to determine if existing material/equipment is available for use.
- Compliance with Solid Waste Disposal Act procuring only items designated in the EPA guidelines.
- Reasonably available within certain time frame.
- Meet performance standards.
- Unreasonable price.
- Does not apply

**PRICE/COST ANALYSIS:** *must perform a cost or price analysis in connection with every procurement action in excess of \$150,000 in the aggregate. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation. The program must make independent estimates before receiving bids or proposals. **See Cost/Price Analysis Form and attach, if applicable.***

**Price Analysis:**

- Adequate price competition
- Prices set by law or regulation
- Established catalog prices and market prices
- Comparisons to previous purchases
- Comparison to a valid Grantee independent estimate
- Value analysis

**Cost Analysis:**

- Obtaining cost or pricing data (cost breakdown) from prospective contractors or subcontractors
- Verifying and evaluating the accuracy and allowability of cost data
- Projecting cost data from known to estimated costs to show the effect on overall prices

**DEBARMENT AND SUSPENSION:** *The ESC will not subcontract with or award subgrants to any person or company who is debarred or suspended from receiving Federal funds. It is required to check for excluded parties at the System for Award Management (SAM) website, <http://www.sam.gov/>, before any procurement transaction paid with Federal funds. If there is a potential match please visit the following section of OFAC's website for guidance: <http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/directions.aspx>. For all other prohibitions and restrictions, see the agency note in the Additional Comments field to ascertain the extent or limit on the sanction, restriction or partial denial. If there is no note, contact the agency taking the action for this information.*

- The following “due diligence” steps were taken to determine a valid OFAC match
  1. If a match is found, there may be instances where an Individual or Firm has the same or similar name as your search request but is actually a different party. Therefore, it is important that you verify a potential match with the debarring agency identified in the record information.
  2. Acknowledge having read the following information before performing a search by Data Universal Numbering System (Dun & Bradstreet) (DUNS) or Commercial and Government Entity (CAGE) Code. SAM does not have DUNS or CAGE Code identifiers for all Firms listed in SAM. Therefore, a search by one of these fields may not be sufficient to find a match. An additional Name search should be performed if a match is not found when searching by one of these fields
  3. Searching only on a particular classification code (e.g. Firm), you are potentially excluding results classified with a different code.

- The vendor/contractor is **not** suspended or debarred – attach screen shot as confirmation
- The vendor/contractor is suspended or debarred – ineligible to receive Federal monies

**QUOTES FOR PURCHASES:** *for Goods/Services contracts from \$3,500.01-\$49,999.99, departments must obtain adequate number of quotes (written or verbal from potential vendor) unless utilizing a purchasing cooperative, existing bid/RFP or sole source vendor. If lowest quote isn't used, please explain below:*

List vendors and quotes here or attach a PO or PA requisition

	\$ _____
	\$ _____
	\$ _____

Other explanations: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SOLE SOURCE: Must meet State and Federal requirements for noncompetitive proposals. See Sole Source Vendor Affidavit and attach, if applicable.**

Does not apply

**Federal Requirements** (check one or more):

- The item is available only from a single source and an equivalent cannot be substituted; this must be documented
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation
- TEA (or other Federal awarding agency) expressly authorizes noncompetitive proposals in response to a written request from the ESC
- After solicitation of a number of sources, competition is determined inadequate

**State Requirements** (check one):

- Identification and confirmation that competition in providing the item or product to be purchased is precluded by the existence of a patent, copyright, secret process or monopoly
- A film, manuscript, or book
- A utility service, including electricity, gas, or water
- A captive replacement part or component for equipment

**FORMS CHECKLIST:**

**W-9 FORM: Completed, signed and attached electronically to the vendor's information in the iTTCS system.**

- Yes
- No

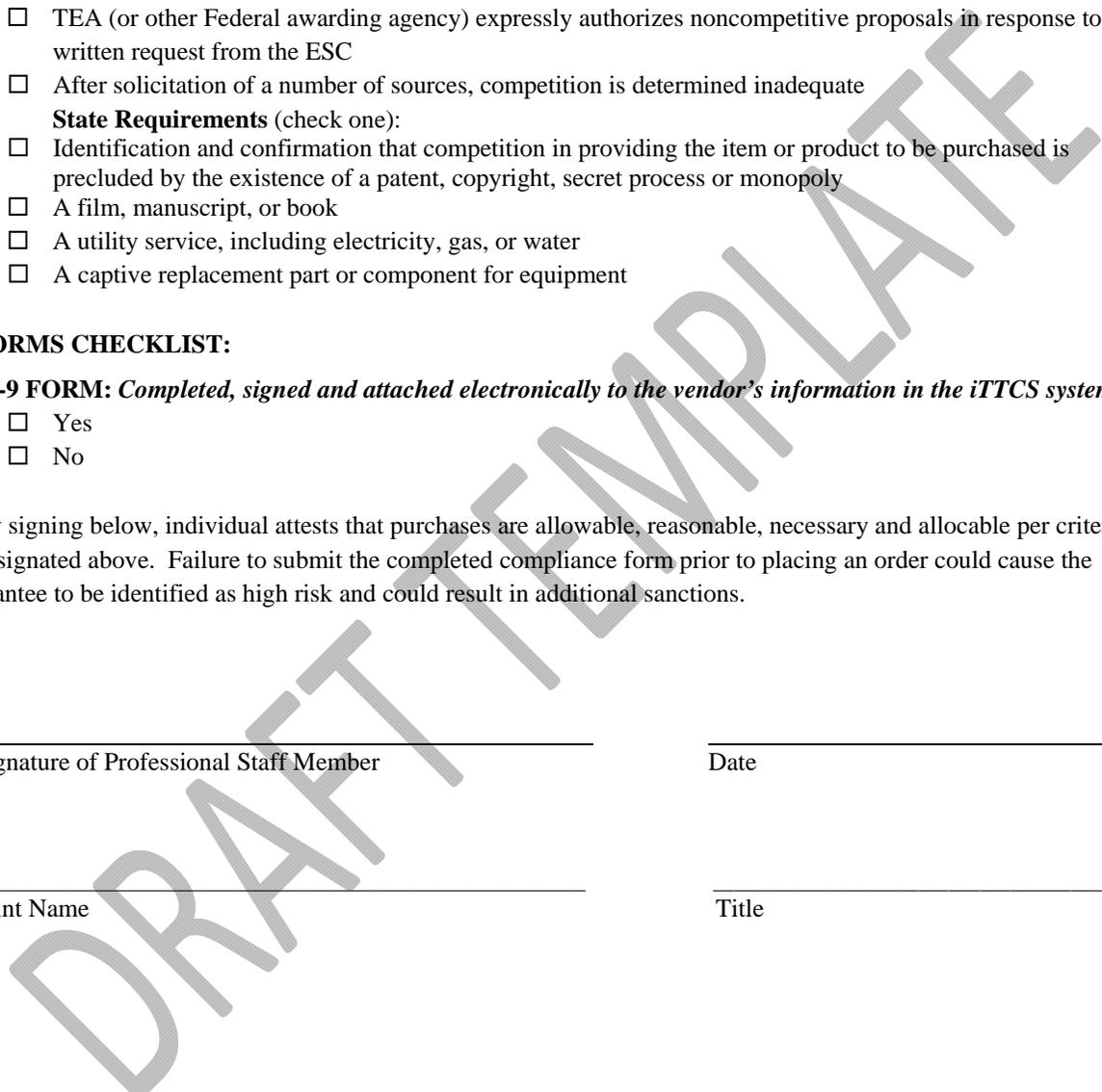
By signing below, individual attests that purchases are allowable, reasonable, necessary and allocable per criteria designated above. Failure to submit the completed compliance form prior to placing an order could cause the grantee to be identified as high risk and could result in additional sanctions.

\_\_\_\_\_  
Signature of Professional Staff Member

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title



## Appendix 5 – Purchasing Cooperatives

The Center is a member of the following purchasing cooperatives (reminder that websites change periodically so the detailed instructions listed below could change):

- 1 Government Purchasing Alliance administered by Pinal County Arizona, Scottsdale Arizona Unified School District, and Yavapai County Arizona
- Choice Partners Cooperative administered by the Harris County Department of Education
- Goodbuy Purchasing Program administered by Region 2 ESC
- Purchasing Association of Cooperative Entities (PACE) Regions 13 & 20 administered by Region 20 ESC
- Texas Association of School Board’s BuyBoard (BuyBoard)
- Texas Central Purchasing Network administered by Region IV (TCPN)
- TIPS/TAPS administered by Region VIII ESC
- State of Texas Correctional Institute (TCI)
- State of Texas Department of Information Resources (DIR)
- State of Texas Comptroller Texas Procurement and Support Services (TPASS) contracts
- State of Texas Institute for the Blind and Handicapped (TIBH)
- State of Texas Multiple Award Schedule (TXMAS) administered by the General Services
- U.S. Communities administered by a partnership between the Association of School Business Officials, the National Association of Counties, the National Institute of Governmental Purchasing, the National League of Cities and the United States Conference of Mayors

### 1. BuyBoard:

- <https://www.buyboard.com>
- To view the vendors participating in the BuyBoard program, on the home page select the link in the vendor section and then select “Vendors by State”
- To search the vendors for products and/or services they offer in the coop, select BuyBoard Login and login using User ID and Password. The User ID and Password set up for Region One is **the Center**.
- User can search by vendor or browse contracts. User will need to determine what the product/service may be classified as under the ‘browse contracts’ option (i.e. office supplies & equipment or paper & toner).
- Once you find the item or vendor, contact the vendor and ask for a quote, making sure their quote prices are BuyBoard prices.
- The department should not place the order through BuyBoard’s website.
- Once the quote is received, the department creates a purchase order requisition, details the quote or reference number on the requisition (either in the vendor comments, quote number field or in the body of the PO requisition). An example would be “Per TASB BuyBoard Quote #”. Attach the quote to the purchase requisition and submit to the business office once all online departmental approvals have occurred. Once the requisition is approved in the business office and is now a

purchase order, the PO along with the quote will be faxed by the business office to BuyBoard or the vendor.

- Items/services should not be ordered before a purchase order requisition is approved.
- **EDGAR Compliance** – Statement on BuyBoard’s website regarding compliance
- **HUB Subcontracting** – to search Minority/Women-Owned Business Enterprise/HUB:
  1. Login
  2. Select Reports (dark blue area at top of page)
  3. Select Current Vendors
  4. Check the box for “Include MWBE Vendors Only”
  5. PDF file will be created, listing each MWBE vendor under each category

## 2. TCPN:

- <http://www.tcpn.org>
- By selecting contracts, user can browse all contracts or search by contract category.
- When browsing all contracts, the user can click on the contract title column or vendor column to sort the contracts or vendors in alphabetical order. Each contract has a related contract number that will need to be included on the PO requisition.
- When searching by contract category, select the category, and then select the sub-category. A list of vendors will display for the user to pick from.
- Once you find the contract title or vendor, contact the vendor and ask for a quote, making sure their quote prices are TCPN prices.
- Once the quote is received, the department creates a purchase order requisition, details the quote or contract number on the requisition (either in the vendor comments, quote number field or in the body of the PO requisition). An example would be “Per TCPN Contract #R141703. Attach the quote to the purchase requisition and submit to the business office once all online departmental approvals have occurred. Once the requisition is approved in the business office and is now a purchase order, the PO along with the quote will be faxed by the business office to the TCPN vendor.
- Items/services should not be ordered before a purchase order requisition is approved.
- **EDGAR Compliance** – legal department at TCPN/Region 4 to discuss
- **HUB Subcontracting** - to search Minority/Women-Owned Business Enterprise/HUB:
  1. Select Contracts (dark blue area at the top)
  2. Select Search All Current Contracts
  3. Leave “Search With Results” blank
  4. For Filters, select Texas, All Contract Ages, and Diversity Certified Vendors Only
  5. Select vendor of choice
  6. Select tab “Diversity Initiative”

## 3. TIPS/TAPS:

- <http://www.tips-usa.com/vlist.cfm>
- Select Texas from the drop-down box for “Select the State to Show Vendors Serving”, and select the Get Vendors button.
- A list of contracts displays and by clicking on the category, one can see a list of vendors awarded for that contract. Click on the desired vendor to see a list of all contracts the vendor has been awarded, including the contract numbers, and a contact list. Contact the desired vendor and ask for a quote, making sure their quote prices are TIPS/TAPS prices.
- Once the quote is received, the department creates a purchase order requisition, details the quote and contract number on the requisition (either in the vendor comments, quote number field or in the body of the PO requisition). An example would be “Per TIPS/TAPS Contract #3062515”. Attach the quote to the purchase requisition and submit to the business office once all online departmental approvals have occurred. Once the requisition is approved in the business office and is now a purchase order, the PO along with the quote will be emailed or faxed by the business office to the TIPS/TAPS coop or directly to the vendor.
- Items/services should not be ordered before a purchase order requisition is approved.
- **EDGAR Compliance** – will be listed on each vendor’s Contacts sheet if they are Federally compliant
- **HUB Subcontracting** - to search Minority/Women-Owned Business Enterprise/HUB:
  1. Select Contracts at top of page
  2. Select MWBE/HUB Contracts
  3. Select Texas and press Get Vendors
  4. Find category desired and click on it
  5. A vendor list will appear. Find vendor of choice.
  6. Select Contacts tab.

#### 4. EPCNT:

- <http://www.epcnt.com>
- Select Bid Information.
- Under Bid Information, select EPCNT Awarded Bids.
- There is a list of bids for various categories that were hosted by various districts. If a category is desired, note the Bid Number and then select the link(s) under the Bid Information column. If a vendor listed is desired, contact the vendor, tell them Region 1 is a member of the EPCNT coop and ask for a quote making sure the pricing is per the Bid Number referenced earlier.
- Once the quote is received, the department creates a purchase order requisition, details the quote and bid number on the requisition (either in the vendor comments, quote number field or in the body of the PO requisition). An example would be “Per EPCNT Bid #68-15”. Attach the quote to the purchase requisition and submit to the business office once all online departmental approvals have occurred. Once

the requisition is approved in the business office and is now a purchase order, the PO along with the quote should be sent to the vendor.

- Items/services should not be ordered before a purchase order requisition is approved.

5. DIR:

- <http://dir.texas.gov>
- DIR offers technology related products and services
- At the home page, type in the item to be searched on
- A list of contracts will appear and can be selected.
- Once selected, there will be a “How to Order” section displayed, detailing how to obtain the pricing information from that vendor as well.
- Once pricing is received, the department creates a purchase order requisition, details the DIR Contract Number on the requisition (either in the vendor comments, quote number field or in the body of the PO requisition). An example would be “DIR Contract Number DIR-TSO-3128”. Attach the pricing to the purchase requisition and submit to the business office once all online departmental approvals have occurred. Once the requisition is approved in the business office and is now a purchase order, the PO along with the pricing should be sent to the vendor.
- Items/services should not be ordered before a purchase order requisition is approved.

6. STATE OF TEXAS COMPTROLLER PURCHASING CONTRACTS – procedures are being developed to utilize the State contracts and will be communicated to Region 1 employees when finalized.

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# Appendix 6 – Sole Source Vendor Affidavit

## REQUEST FOR SOLE SOURCE APPROVAL

Email this form to Marc David Garcia at [mdgarcia@esc1.net](mailto:mdgarcia@esc1.net)

Company: \_\_\_\_\_ Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_ Web Site: \_\_\_\_\_

I have carefully reviewed the Texas Education Code, Section 44.031 and hereby certify that our company meets and complies with Section (j) of the aforementioned code for the sale of the item(s) offered. NOTE: Thoroughly describe all item(s); you may submit by attachment, catalogs, or brochures.

1) To whom do you sell the item(s) on the attached copy? Check all that apply

- a) Broker \_\_\_\_\_
- b) Wholesalers \_\_\_\_\_
- c) Retailers \_\_\_\_\_
- d) End Consumer **ONLY**: \_\_\_\_\_

2) **Federal Requirements** (check applicable)

- The item is available only from a single source and an equivalent cannot be substituted
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation
- TEA (or other Federal awarding agency) expressly authorizes noncompetitive proposals in response to a written request from the ESC
- Competition is determined inadequate

**State Requirements** (check applicable)

- Identification and confirmation that competition in providing the item or product to be purchased is precluded by the existence of a patent, copyright, secret process or monopoly
- A film, manuscript, or book
- A utility service, including electricity, gas, or water
- A captive replacement part or component for equipment

By signature below, I, an authorized representative of the company listed above, affirm that there is/are no other like item(s) available for purchase that would serve the same purpose or function, and there is only one source for the above named item(s) due to exclusive distribution or marketing rights. I also understand that by falsifying the claim of sole source will remove my company from the Region One Education Service Center vendors list for a period not to exceed two (2) years. We further certify that pricing offered to the Region One ESC is the lowest pricing available to similar customers.

Authorized Signature	Title	Date
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### Notary Public Requirement

SUBSCRIBED AND SWORN to before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Notary Public, State of \_\_\_\_\_, county of \_\_\_\_\_ Date Commission Expires \_\_\_\_\_

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Notary Printed Name



## Appendix 9 – Cost/Price Analysis

### DETERMINATION OF COST OR PRICE ANALYSIS (REASONABLENESS)

**Purpose:** Federal regulations require documentation of cost analysis or price analysis for every procurement action at or above \$150,000 (*see* 2 C.F.R. § 200.323). The Determination of Cost or Price Reasonableness form is used to document the analysis showing that the offered price is fair and reasonable. The form is kept as part of the procurement file to demonstrate that the procurement process was conducted in an open and fair manner and that Region One ESC received the most advantageous price. **This form is required by the Grant Director who is responsible for grant oversight and implementation of internal controls to meet the grant requirements.**

#### **Instructions:**

1. Complete a separate Determination of Cost or Price Reasonableness form for each vendor being recommended for contract award. Complete all sections.
2. Provide a detailed discussion of your price analysis or cost analysis. A Determination of Cost or Price Reasonableness form that lacks sufficient detail cannot be approved.
3. Sign in blue ink and date the form.
4. Maintain a copy on the grant file subject to retention schedules
5. Submit completed form to the Purchasing Director prior to contract award.

*An improperly completed and/or unsigned form will be returned to the Grant Director.*

**Prepared by:** \_\_\_\_\_  
(Grant Director)

**Date:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_

**Division:** \_\_\_\_\_

**Subject:** Determination of Cost or Price Reasonableness

**Good or service to be acquired:** \_\_\_\_\_

**RFP #:** \_\_\_\_\_

**Independent Estimate Produced before Receiving Bids or Proposals:**  Yes (attach supporting document(s))

**Vendor:** \_\_\_\_\_

**Amount:** \_\_\_\_\_

(Attach written quotation or other information that documents the estimate of cost or price reasonableness)

(As necessary include unit costs, rates, schedules, price estimates, and budgets, etc.)

**I. This expenditure is being made under one or more of the following (check those that apply and attach supporting documentation):**

- A. Sole source (as defined under TEC 44.031(j))
- B. Emergency procurement (as defined under TEC 44.031(h))
- C. Interlocal agreement or purchasing cooperative (TEC 44.031(a)(4) / Tex. Gov't Code Ch. 791; 2 C.F.R. § 200.318(e))
- D. Request for Quotations for goods or services at or above \$150,000 (Region One ESC has a procedure of procuring and securing quotes for items under \$50,000 and above \$2,500)
- E. Request for Proposals for goods or services at or above \$150,000 (Region One ESC has a policy of procuring goods and services valued at \$50,000 or above in accordance with TEC 44.031(a))
- F. Request for Quotations or Requests for Proposals (where the solicitation is publically posted) where only one (1) quote/proposal is received
- G. Professional services (as defined under TEC 44.031(f) and/or Ch. 2254 of the Tex. Gov't Code)
- H. Price adjustment to Purchase Order No. \_\_\_\_\_ or Contract No. \_\_\_\_\_ and already procured under item A – G)
- I. Extension of an existing contract past its initial term. Contract extension is allowed under procurement method or contract. Extension must adhere to CH Local requirements for board approval and rationale is beneficial to Region One ESC.

\_\_\_\_\_  
\_\_\_\_\_

- J. Other condition (specify):

\_\_\_\_\_  
\_\_\_\_\_

**II. Cost or price offered or fee negotiated is considered fair and reasonable for the following reason(s), and if applicable, is supported by attached documentation and/or a detailed discussion of the cost or price analysis (select at least one applicable situation):**

- Comparison of previous Region One ESC purchase order and contract prices with current proposed price, for the same or similar items. Both the validity of the comparison and the reasonableness of the previous price(s) have been established *Attach the referenced Region One ESC purchase orders/contracts, amounts, issuance dates, and how they are similar to the current purchase.*
- Comparison with Vendor’s published price lists, market prices, pricing indexes, and discount or rebate arrangements. *Attach published price list or other published pricing information used (a vendor’s quotation or correspondence does not qualify as a published price list).*
- Comparison of proposed price with independent cost estimates. *Attach estimates used.*
- Comparison of proposed price with prices obtained through market research for the same or similar items. *Attach documentation of research conducted.*
- Analysis of Offeror’s cost information. *Attach cost information.*
- The order is priced in accordance with existing Region One ESC Purchase Order No. \_\_\_\_\_ and/or Region One ESC Contract No. \_\_\_\_\_, which was competitively established.
- Other reason (specify):  
\_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATION:**

*I certify that the information provided above is true and correct to the best of my knowledge and belief. I further certify that I have determined that the costs or prices proposed are necessary, fair, and reasonable.*

\_\_\_\_\_  
Individual Preparing Form

\_\_\_\_\_  
Signature Date

**APPROVED:**

---

**Level One:** Program Manager (Grant) – *Type name and title above*

---

Signature

Date

---

**\*Level Two:** Coordinator – *Type name and title above*

---

Signature

Date

---

**\*Level Three:** Finance Director – *Type name and title above*

---

Signature

Date

---

**\*Level Four:** Deputy Director for Business Operations & Finance Support – *Type name and title above*

---

Signature

Date

**\* Items \$50,000 and greater**



## Appendix 12 – Federal Consultant Contract

### FEDERAL CONSULTANT SERVICES CONTRACT

This Consultant Services Contract is made and entered into by and between the Region One Education Service Center, located in Edinburg, Texas 78541 and \_\_\_\_\_, (“Consultant”), located at \_\_\_\_\_, for Consultant to provide services to Region One ESC in accordance with the terms and conditions specified herein.

#### RECITALS

Region One ESC is a local governmental entity, established to promote education in Hidalgo County, Texas. Both Region One ESC and Consultant desire to set forth in writing the terms and conditions of their agreement. In consideration of the mutual covenants and conditions contained in this Contract and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties intending to be legally bound agree as follows:

#### Article 1 Purpose

Region One ESC agrees to retain Consultant and Consultant agrees to provide services to Region One ESC as consultant and to perform the duties and all the necessary labor and resources needed to provide the services set forth in Article 3-*Scope of Work*. Consultant shall also perform such other related services and duties as are customarily performed by a consultant in a similar position.

#### Article 2 Term of Contract

This Contract is for services beginning \_\_\_\_\_, and ending \_\_\_\_\_ (“Term”). All Contract extensions shall be subject to the terms and conditions specified herein.

#### Article 3 Scope of Work

Exhibit A includes a detailed scope of work that sets out the services Consultant agrees to provide.

#### Article 4 Independent Contractor Status

It is the intention of the parties that Consultant be an independent contractor and not an employee, agent, joint venturer, or partner of Region One ESC. Nothing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee between Region One ESC and either Consultant or any employee or agent of Consultant.

#### Article 5 Texas Education Code Chapter 22

Will Consultant and/or his/her employees have direct unsupervised contact with students? \_\_\_\_\_ (Yes/No) If yes, attach Addendum A or Addendum B AND Addendum C.

#### Article 6 Review of Progress

Consultant will work to meet all timelines mutually established by Consultant and Region One ESC. Region One ESC reserves the right to monitor the progress of Consultant.

### **Article 7 Changes & Amendments**

During the Term of Contract (see Article 2), Region One ESC and Consultant reserve the right to make changes to the work the Consultant is required to provide pursuant to this Contract. This Contract may be amended only by the mutual agreement of the parties, in a writing to be attached to and incorporated in this Contract. All such changes shall be made in writing and agreed to by both parties.

### **Article 8 Assignment**

Neither this Contract nor any duties or obligations under it shall be assignable by Consultant without the prior written acknowledgment and authorization of Region One ESC.

### **Article 9 Compensation**

The source of funding for this contract will be \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ from \_\_\_\_\_ (Federal, State or local) funds. Region One ESC will pay Consultant a daily rate of \_\_\_\_\_ for a maximum of \_\_\_\_\_ days in the amount not to exceed \_\_\_\_\_, plus usual and customary expenses including, but not limited to, hotel, meals, travel, and other business-related expenses. Region One ESC agrees to make payment to Consultant upon completion of the Contract and upon receipt of an invoice, along with IRS Form W-9. Region One ESC is Texas sales and use tax exempt and will not reimburse Consultant for any Texas sales taxes incurred by Consultant.

### **Article 10 Conflict of Interest**

During the Term of Consultant's service to Region One ESC, Consultant shall not, directly or indirectly, whether for Consultant's own account or for or with any other person or entity whatsoever, employ, solicit or endeavor to entice away any person who is employed by Region One ESC.

### **Article 11 Felony Conviction Notice**

Contractor acknowledges receipt of the Felony Conviction Notice (see Exhibit D) and represents to Region One ESC that Contractor has accurately completed, executed and delivered the Notice to Region One ESC.

Contractor's failure to provide such notice shall result in a material breach of this Contract. Region One ESC may terminate this Contract with Contractor upon determination that Contractor failed to give notice as required by this Article and Felony Conviction Notice or that Contractor misrepresented the conduct resulting in the conviction as indicated on Felony Conviction Notice.

### **Article 12 Indemnity**

Consultant shall protect, hold harmless, and indemnify Region One ESC from any and all claims, assessments, and suits of law or in equity, expenses, attorneys' fees, and damages arising from Consultant's acts or omissions in connection with the services described in this Contract.

### **Article 13 Non-Appropriation of Funds**

The Term of this Contract is a commitment of Region One ESC current revenue only.

### **Article 14 Non-Exclusivity**

Nothing in this Contract may be construed to imply that Consultant has the exclusive right to provide Region One ESC professional services. During the Term of this Contract, Region One ESC reserves the right to use all available resources to procure other professional services as needed and doing so will not violate any rights of Consultant.

### **Article 15 Performance**

Consultant agrees that Consultant is not an employee of Region One ESC and is solely responsible for all social security, unemployment compensation and taxes, both State and Federal. Consultant further agrees that Consultant's services will be performed with reasonable care, skill, judgment, and experience and in a professional business-like manner, with no direct supervision from Region One ESC. If Consultant is unable to complete the work in this manner based on the mutually agreed upon time, Consultant shall notify Department Director in writing.

### **Article 16 Termination**

Either party for any reason upon thirty (30) days written notice may terminate this Contract without cause. Region One ESC will be responsible for payment for services that have been accepted by Region One ESC up to the termination date.

Region One ESC may by written notice, terminate this Contract if Consultant has defaulted in whole or in part, refuses or fails to comply with the provisions of this Contract, fails to make progress, does not cure such failure after written notice within a reasonable period of time, or fails to perform the services within the time period specified or any written extension thereof. In such event, Region One ESC may obtain comparable services elsewhere and either deduct the costs of obtaining such services from any amount owed Consultant or Consultant shall reimburse Region One ESC for such costs incurred by Region One ESC.

### **Article 17 Notice**

Any notice provided under the Terms of this Contract by either party to the other shall be in writing and may be affected by certified mail, return receipt requested. Notice to shall be sufficient if made or addressed as to the address listed below Article 22 Invoices.

Each party may change the address at which notice may be sent to that party by giving notice of such change to the other party by certified mail, return receipt requested.

### **Article 18 Governing Law & Venue**

This Contract shall be governed by and construed in accordance with the laws of the State of Texas. The mandatory and exclusive venue for the adjudication or resolution of any dispute arising out of this Contract shall be in Hidalgo County, Texas.

### **Article 19 Entire Agreement**

This Contract is the sole agreement by which the above parties will abide relative to the purpose(s) of this Contract. The Contract, Exhibit A, and Scope of Work represent the entire and exclusive agreement between the parties thereto and replaces in their entirety any previous agreements, written or oral.

### **Article 20 Severability**

In the event that any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

### **Article 21 Debarment and Suspension**

Pursuant to 7 C.F.R. 3017, during any period in which a person is suspended, debarred, proposed for debarment, ineligible, or voluntarily excluded from eligibility for covered transactions by any Federal department or agency, that person shall be excluded from any and all work hereunder that is considered a covered transaction including, but not limited to, participation

in any Region One ESC Program or purchase of any goods or services from Region One ESC. Generally, work that is expected to equal or exceed the Federal procurement small purchase threshold as defined in 7 C.F.R. 3017.110 (currently \$100,000) is considered a covered transaction. With respect to work hereunder that is considered a covered transaction, Contractor agrees to comply with any and all requirements of 7 C.F.R. 3017 including, but not limited to, obtaining and/or providing the certification attached hereto as Exhibit C and providing immediate written notice upon discovery of any errors in a certification previously obtained and/or provided, as necessary for such compliance. Contractor acknowledges that, with respect to debarment and suspension, Federal law may impose additional, more specific, and/or more restrictive requirements for certain work hereunder that is considered a covered transaction; Contractor agrees to comply with any and all such requirements.

#### **Article 22 Proposer/Vendor Certification Forms**

\_\_\_\_\_ (Name of Contractor) agrees that the certifications and agreements included on the Region One ESC Vendor Certification Forms, attached hereto as Exhibit C and incorporated by reference in the \_\_\_\_\_ (type of contract) for all purposes, is true and correct.

#### **Article 23 Invoices**

Consultant is required to submit original invoices to the Region One ESC Business Office ATTN: Accounts Payable. The invoices can be mailed through the postal service to Region One ESC Business Office ATTN: Accounts Payable, 1900 W. Schunior St., Edinburg, Texas 78541 or emailed to [accounts payable@esc1.net](mailto:accounts payable@esc1.net).

The invoice should include the following:

1. Date of invoice
2. Period of service (e.g. month of)
3. Invoice Number
4. Contact Information
5. Deliverables under the Contract
6. Certification of service provided through a signature by company representative

Failure to send the invoices to the Accounts Payable Office will delay payment. Contractor certifies that no work has been performed before the effective date of this Contract. Invoices submitted by Contractor for work performed prior to the effective date of the Contract may not be honored by Region One ESC, in Region One ESC's sole discretion.

In witness whereof, Region One ESC and Consultant have executed this Contract to be effective on the date specified in Term above:

Region One Education Service Center

(Printed Individual or Company Name)

By: By:

(Signature) (Signature)

Name: Dr. Cornelio Gonzalez

Title: Executive Director

Address 1: 1900 W. Schunior

Address 2: Edinburg, TX 78541

Phone: Phone: 956-984-6005

Fax: Fax: 956-984-7640

Email: [cgonzalez@esc1.net](mailto:cgonzalez@esc1.net)

**EXHIBIT A: SCOPE OF WORK**

DRAFT TEMPLATE

## Exhibit C

### REGION ONE EDUCATION SERVICE CENTER PROPOSER/VENDOR CERTIFICATION FORMS

#### CERTIFICATION OF COMPLIANCE WITH TEXAS FAMILY CODE PROVISION

**As per Section 14.52 of the Texas Family Code, added by S.B. 84, Acts, 73rd Legislature, R.S. (1993), all bidders must complete and submit with the bid the following affidavit:**

I, the undersigned vendor, do hereby acknowledge that NO sole proprietor, partner, majority shareholder of a corporation, or an owner of 10% or more of another business entity is 30 days or more delinquent in paying child support under a court order or a written repayment agreement. I understand that under this provision, a sole proprietorship, partnership, corporation or other entity in which a sole proprietor, partner, majority shareholder or a corporation, or an owner of 10% or more of another entity is 30 days or more delinquent in paying child support under a court order or a written repayment agreement is NOT eligible to bid or receive a state contract.

#### REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS – APPENDIX II TO 2 CFR PART 200

**The following provisions are required and apply when federal funds are expended by Region One ESC for any contract resulting from this procurement process.**

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Pursuant to Federal Rule (A) above, when federal funds are expended by Region One ESC, Region One ESC reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

(B) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

Pursuant to Federal Rule (B) above, when federal funds are expended by Region One ESC, Region One ESC reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor, in the event vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. Region One ESC also reserves the right to terminate the contract immediately, with written notice to vendor, for convenience, if Region One ESC believes, in its sole discretion that it is in the best interest

of Region One ESC to do so. The vendor will be compensated for work performed and accepted and goods accepted by Region One ESC as of the termination date if the contract is terminated for convenience of Region One ESC. Any award under this procurement process is not exclusive and Region One ESC reserves the right to purchase goods and services from other vendors when it is in the best interest of Region One ESC.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

Pursuant to Federal Rule (C) above, when federal funds are expended by Region One ESC on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

Does vendor agree to abide by the above?

YES \_\_\_\_\_ Initials of Authorized Representative of vendor

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Pursuant to Federal Rule (D) above, when federal funds are expended by Region One ESC, during the term of an award for all contracts and subgrants for construction or repair, the vendor will be in compliance with all applicable Davis-Bacon Act provisions.

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of

mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Pursuant to Federal Rule (E) above, when federal funds are expended by Region One ESC, the vendor certifies that during the term of an award for all contracts by Region One ESC resulting from this procurement process, the vendor will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act.

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor  
(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Pursuant to Federal Rule (F) above, when federal funds are expended by Region One ESC, the vendor certifies that during the term of an award for all contracts by Region One ESC resulting from this procurement process, the vendor agrees to comply with all applicable requirements as referenced in Federal Rule (F) above.

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor  
(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to Federal Rule (G) above, when federal funds are expended by Region One ESC, the vendor certifies that during the term of an award for all contracts by Region One ESC

resulting from this procurement process, the vendor agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

**(H)** Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (H) above, when federal funds are expended by Region One ESC, the vendor certifies that during the term of an award for all contracts by Region One ESC resulting from this procurement process, the vendor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

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(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to Federal Rule (I) above, when federal funds are expended by Region One ESC, the vendor certifies that during the term and after the awarded term of an award for all contracts by Region One ESC resulting from this procurement process, the vendor certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that:

(1) No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

**RECORD RETENTION REQUIREMENTS FOR CONTRACTS PAID FOR WITH FEDERAL FUNDS –****2 CFR § 200.333**

When federal funds are expended by Region One ESC for any contract resulting from this procurement process, the vendor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. The vendor further certifies that vendor will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

**CERTIFICATION OF COMPLIANCE WITH EPA REGULATIONS****APPLICABLE TO GRANTS, SUBGRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS IN EXCESS OF \$100,000 OF FEDERAL FUNDS**

When federal funds are expended by Region One ESC for any contract resulting from this procurement process in excess of \$100,000, the vendor certifies that the vendor is in compliance with all applicable standards, orders, regulations, and/or requirements issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15.

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

**CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT**

When federal funds are expended by Region One ESC for any contract resulting from this procurement process, the vendor certifies that the vendor will be in compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

**CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS**

Vendor certifies that vendor is in compliance with all applicable provisions of the Buy America Act. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

**CERTIFICATION OF NON-COLLUSION STATEMENT**

Vendor certifies under penalty of perjury that its response to this procurement solicitation is in all respects bona fide, fair, and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or legal entity.

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

**Vendor agrees to comply with all federal, state, and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that vendor certifies compliance with all provisions, laws, acts, regulations, etc. as specifically noted above.**

Vendor's Name/Company Name: \_\_\_\_\_

Address, City, State, and Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Printed Name and Title of Authorized Representative: \_\_\_\_\_

Email Address: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_

Date: \_\_\_\_\_

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### Addendum A Independent Consultant

**Introduction:** Texas Education Code Chapter 22 requires an independent consultant who provides services to a school district to submit to a criminal history review if the independent consultant will have continuing duties related to the contracted services and direct student contact. Each independent consultant must certify to the Center that the consultant has complied.

A covered independent consultant with a disqualifying criminal history is prohibited from serving at a school district or any Center workshop. The following offenses are disqualifying if, at the time of the offense, the victim was under 18 or enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state. The Center reserves the right to designate other convictions or other criminal history information as disqualifying.

I certify that I have obtained all required criminal history record information regarding myself through the Texas Department of Public Safety's Fingerprint-based Applicant Clearinghouse of Texas (FACT). I further certify that I do not have a disqualifying criminal history. I agree to notify the Center in writing within 3 business days if I am arrested or adjudicated for a disqualifying reason during the contract term. I agree to provide the Center, upon request, my full name and any other requested information so that the Center may obtain my criminal history record information. I understand that the Center may terminate my services at any time if the Center determines, at its sole discretion, that my criminal history is not acceptable.

Noncompliance or misrepresentations regarding this certification may be grounds for contract termination.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name Date

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## Addendum B Consultant Employees

**Introduction:** Texas Education Code Chapter 22 requires entities that contract with school districts to provide services to obtain criminal history record information regarding covered employees. Consultants must certify to the district that they have complied. Covered employees with disqualifying criminal histories are prohibited from serving at a school district.

**Definitions:**

*Covered employees:* Employees of a consultant who have or will have continuing duties related to the service to be performed at the Center/District and have or will have direct contact with students. The Center will be the final arbiter of what constitutes direct contact with students.

*Disqualifying criminal history:* Any conviction or other criminal history information designated by the Center, or one of the following offenses, if at the time of the offense, the victim was under 18 or enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state.

On behalf of \_\_\_\_\_ ("Consultant"), I certify that  
[check one]:

None of the employees of Consultant are *covered employees*, as defined above. If this box is checked, I further certify that Consultant has taken precautions or imposed conditions to ensure that the employees of Consultant will not become *covered employees*. Consultant will maintain these precautions or conditions throughout the time the contracted services are provided.

Or

Some or all of the employees of Consultant are *covered employees*. If this box is checked, I further certify that:

(1) Consultant has obtained all required criminal history record information regarding its covered employees. None of the covered employees has a disqualifying criminal history.

(2) If consultant receives information that a covered employee subsequently has a reported criminal history, Consultant will immediately remove the covered employee from contract duties and notify the Center in writing within 3 business days.

(3) Upon request, Consultant will provide the Center with the name and any other requested information of covered employees so that the Center may obtain criminal history record information on the covered employees.

(4) If the Center objects to the assignment of a covered employee on the basis of the covered employee's criminal history record information, Consultant agrees to discontinue using that covered employee to provide services at the Center

Noncompliance or misrepresentation regarding this certification may be grounds for contract termination.

\_\_\_\_\_  
Date \_\_\_\_\_ Print Name

\_\_\_\_\_  
Signature



# Region One Education Service Center

1900 W. Schunior • Edinburg, TX 78541 • Phone (956) 984-6000 Fax (956) 984-7655

Cornelio Gonzalez, Ph.D.  
Executive Director

## CRIMINAL HISTORY INFORMATION REQUEST

### Addendum C Confidential

Region One Education Service Center is required by Texas Education Code Chapter 22, Subchapter C to review the criminal history of applicants, employees, independent contractors, student teachers, and certain volunteers. The information requested below is necessary to obtain criminal history record information.

*Please print.*

Name \_\_\_\_\_

Last First Middle \_\_\_\_\_

Date of birth \_\_\_\_\_ Driver's License \_\_\_\_\_

Mailing Address \_\_\_\_\_

Street City State Zip \_\_\_\_\_

Email Address \_\_\_\_\_

Sex: Male Female Ethnicity: Black White/Other

I understand that the information I am providing about age, sex, and ethnicity will not be used to determine eligibility for employment but will be used *solely* for the purpose of obtaining criminal history record information.\*

Signature \_\_\_\_\_

Date \_\_\_\_\_

Date Revised 9/2015

