



**State of Oklahoma
Office of Management and
Enterprise Services
Information Services Division**

Solicitation

1. Solicitation#: 2650000285

2. Solicitation Issue Date: April 10, 2014

3. Brief Description of Requirement:

The State of Oklahoma (State), Office of Management and Enterprise Services (OMES), Information Services Division (ISD), on behalf of the Oklahoma State Department of Education (OSDE), issues this solicitation to select a qualified supplier to realign the current alternate achievement rubric to the Oklahoma Academic Standards, develop new content for the rubrics as needed, provide an electronic portfolio submission system, provide standard setting and all resulting psychometric components and facilitate the scoring process for alternate assessments for children with disabilities in the State of Oklahoma.

4. Response Due Date: May 14, 2014

Time: 3 p.m. Central Time

5. Issued By and Return Sealed Bid To:

Office of Management and Enterprise Services
ISD Procurement Division
ATTN: / Allen Cook
3115 N. Lincoln Blvd.
Oklahoma City, OK 73105

6. Contracting Officer:

Name: Allen Cook

Email: allen.cook@omes.ok.gov



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A. GENERAL PROVISIONS

The following provisions shall apply where applicable to the solicitation.

A.1. Definitions

As used herein, the following terms shall have the following meaning unless the context clearly indicates otherwise:

- A.1.1. "Acquisition" means items, products, materials, supplies, services and equipment acquired by purchase, lease purchase, lease with option to purchase, or rental pursuant to applicable state law.
- A.1.2. "Addendum" means a written modification to a contract.
- A.1.3. "Alteration" means a modification a Supplier makes to a solicitation response prior to the response due date.
- A.1.4. "Alternate" or "Alternative Offer" means an offer, which contains an intentional substantive variation to a basic provision, specification, term or condition of the solicitation.
- A.1.5. "Amendment" means a written restatement of or modification to a Contract Document executed by both parties.
- A.1.6. "Bid" means an offer in the form of a bid, proposal or quote a Supplier submits in response to a solicitation.
- A.1.7. "Bidder" means an individual or business entity that submits a bid or proposal in response to an invitation to bid or a request for proposal. When used in this Chapter, bidder is synonymous with a "supplier", "vendor", or "offeror" responding to a solicitation.
- A.1.8. "Business Entity" means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, limited liability limited partnership, sole proprietorship, joint stock company, consortium, or other legal entity recognized by statute.
- A.1.9. "COTS" means software that is commercial off the shelf.
- A.1.10. "Contract" means this document, as may be amended from time to time, which together with other Contract Documents, evidences the final agreement between the parties with respect to this contract for the Products and/or Services.
- A.1.11. "Contract Document" means, when executed by all applicable parties, this Contract, Attachments to this Contract, any statement of work, work order, rider or similar document related hereto, any purchase order related hereto, other statutorily required or mutually agreed documents related hereto, and any Amendment to any of the foregoing.
- A.1.12. "Contractor" means the Business Entity with whom the State enters into a contract.
- A.1.13. "Close of business" means 5:00PM Central Time.
- A.1.14. "Closing Date" is the date the RFP closes, also proposal opening date, and response due date,
- A.1.15. "Interlocal Entity" means, with respect to any state other than Oklahoma, any authority, office, bureau, board, council, court, commission, department, district, institution, unit, division, body or house of any branch of such state government, any political subdivision of such state, and any organization related to any of the foregoing.
- A.1.16. "Minor Deficiency" or "minor informality" means an immaterial defect in a response or variation in a bid from the exact requirements of a solicitation that may be correct or waived without prejudice to other Suppliers. A minor deficiency or informality does not affect the price, quantity, quality, delivery or conformance to specifications and is negligible in comparison to the total cost or scope of the acquisition.
- A.1.17. "Offer" shall be synonymous with "bid", "proposal", "quote" or other similar term.
- A.1.18. "OMES" means the Office of Management and Enterprise Services for the State of Oklahoma.
- A.1.19. "OSDE" or "SDE" means the Oklahoma State Department of Education
- A.1.20. "Procuring Agency" means the State of Oklahoma Agency initiating the procurement.
- A.1.21. "Request for Information (RFI)" means a non-binding procurement practice used to obtain information, comments, and feedback from interested parties or potential suppliers prior to issuing a solicitation.
- A.1.22. "State" means the government of the State of Oklahoma, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of Oklahoma.
- A.1.23. "State Entity" means any authority, office, bureau, board, council, court, commission, department, district, institution, unit, division, body or house of any branch of the State government, any political subdivision of the State, and any organization related to any of the foregoing.
- A.1.24. "State CIO" is the State Chief Information Officer, as used herein the CIO has the same authority as the State Purchasing Director for all IT and Telecommunications purchasing and are used interchangeably.

- A.1.25.** "Solicitation" means a request or invitation by the State Purchasing Director or a State agency for a Supplier to submit a priced offer to sell acquisitions to the State. A solicitation may be an invitation to bid, request for proposal, or a request for quotation.
- A.1.26.** "Supplier" shall be synonymous with "vendor", "bidder", "offeror" or other similar term.
- A.1.27.** "Utilities" means Supplier's reusable or pre-existing proprietary intellectual property that forms the basis for a customized or developed software deliverable for the State and which is specifically identified as such by the Supplier in writing prior to execution of this Contract.

A.2. Offer Submission

- A.2.1.** Submitted offers shall be in strict conformity with the instructions to Supplier, and shall be submitted with a completed "Responding Bidder Information" OMES Form 076, and any other forms completed as required by the solicitation.
- A.2.2.** Offers shall be submitted to the State Agency identified in the front page of this solicitation, in a single envelope, package, or container and shall be sealed. The name and address of the Supplier shall be inserted in the upper left corner of the single envelope, package, or container. Solicitation number and solicitation response due date and time must appear on the face of the single envelope, package, or container.
- A.2.3.** The required certification statement, "Certification for Competitive Bid and/or Contract (Non-Collusion Certification)", OSF Form 004, must be made out in the name of the Supplier and must be properly executed by an authorized person, with full knowledge and acceptance of all its provisions.
- A.2.4.** All offers shall be legibly written or typed. Any corrections to offers shall be initialed. Penciled bids and penciled corrections shall not be accepted and shall be rejected as non-responsive.
- A.2.5.** All offers submitted shall be consistent with the Oklahoma Central Purchasing Act, the Central Purchasing Rules, and subject to the Information Services Act and other statutory regulations as applicable, these General Provisions, any Special Provisions, solicitation specifications, required certification statement, and all other terms and conditions listed or attached herein, all of which are made part of this solicitation.
- A.2.6.** By submitting a proposal, Supplier agrees not to make any claims for damages or have any rights to damages, because of any misunderstanding or misrepresentation of the specifications or because of any misinformation or lack of information.
- A.2.7.** If a Supplier fails to notify the State of an error, ambiguity, conflict, discrepancy, omission or other error in the Solicitation, known to the Supplier, or an error that reasonably should have been known by the Supplier, the Supplier shall submit a proposal at its own risk; and if awarded the contract, the Supplier shall not be entitled to additional compensation, relief, or time, by reason of the error or its later correction. If a Supplier takes exception to any requirement or specification contained in the Solicitation, these exceptions must be clearly and prominently stated in their response.
- A.2.8.** Supplier should note that this solicitation reflects those changes in the existing operation to increase efficiencies and streamline business environment in the State of Oklahoma. All previous solicitations or resultant contracts should not be either depended upon, perceived or interpreted to have any relevance on this exclusive solicitation.

A.3. Solicitation Amendments

- A.3.1.** If an "Amendment of Solicitation", OMES Form 011 (or other format as provided), is issued, then the Supplier shall acknowledge receipt of any/all amendment(s) to solicitations by signing and returning the solicitation amendment(s). Amendment acknowledgement(s) may be submitted with the offer or may be forwarded separately. If forwarded separately, amendment acknowledgement(s) must contain the solicitation number and response due date and time on the front of the envelope. The State must receive the amendment acknowledgement(s) by the response due date and time specified for receipt of bids for the offer to be deemed responsive. Failure to acknowledge solicitation amendments may be grounds for rejection.
- A.3.2.** No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the solicitation. All amendments to the solicitation shall be made in writing by the State.
- A.3.3.** It is the Supplier's responsibility to check the State's website frequently for any possible amendments that may be issued. The State is not responsible for the Supplier's failure to download any amendment documents required to complete a solicitation.

A.4. Offer Change

If the Supplier needs to change an offer prior to the solicitation response due date, a new offer shall be submitted to the State with the following statement "This offer supersedes the offer previously submitted" in a single envelope, package, or container and shall be sealed. The name and address of the Supplier shall be inserted in the upper left corner of the single envelope, package, or container. Solicitation number and solicitation response due date and time must appear on the face of the single envelope, package,

or container.

A.5. Certification Regarding Debarment, Suspension, and Other Responsibility Matters

By submitting an offer to this solicitation:

- A.5.1.** The Supplier certifies that their principals or participants:
 - A.5.1.1.** Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal, state or local department or agency;
 - A.5.1.2.** Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract; or for violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - A.5.1.3.** Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the foregoing offenses enumerated in this certification; and
 - A.5.1.4.** Have not within a three-year period preceding this Contract had one or more public (federal, state or local) contracts terminated for cause or default.
- A.5.2.** Where the Supplier is unable to certify to any of the statements in the certification above, Supplier shall attach an explanation to this offer.
- A.5.3.** The prospective primary participant and any subcontractor certifies to the best of their knowledge and belief, that they and their principals or participants:
 - A.5.3.1.** Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal, State of Oklahoma or local department or agency;
 - A.5.3.2.** Have not within a three-year period preceding this solicitation been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) contract; or for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - A.5.3.3.** Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph A.5.3.1 of this certification; and
 - A.5.3.4.** Have not within a three-year period preceding this solicitation had one or more public (Federal, State or local) contracts terminated for cause or default.
- A.5.4.** Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its offer.

A.6. Offer Public Opening

Sealed offers may be opened upon public request, by the requesting agency identified in the front page of this solicitation, at the time and date specified in the solicitation as Response Due Date and Time.

A.7. Offers Subject to Public Disclosure

- A.7.1.** Unless otherwise specified in the Oklahoma Open Records Act, Central Purchasing Act, or other applicable law, documents and information a Supplier submits as part of or in connection with an offer are public records and subject to disclosure. Suppliers claiming any portion of their offer as proprietary or confidential must specifically identify what documents or portions of documents they consider confidential and identify applicable law supporting their claim of confidentiality. It is the sole discretion of the State CIO shall make the final decision as to whether the documentation or information is confidential pursuant to 74 O.S. §85.10.
- A.7.2.** If the CIO agrees the information is proprietary, ISD will maintain the information as Confidential. If the CIO does not acknowledge the information as proprietary, ISD will return or destroy the information with proper notice to the Supplier and the evaluation will be completed without consideration of the information marked Proprietary.
- A.7.3.** Proposals marked, in total, as proprietary and/or confidential shall not be considered.

A.8. Oklahoma Open Records Act

Proposals are subject to public disclosure in accordance with the Open Records Act. To the extent permitted by the Oklahoma Open Records Act, 51 O. S. (2001) § 24A.1-27, the Suppliers proposals will not be disclosed, except for purposes of evaluation, prior to approval by the CIO of the resulting contract. All material submitted becomes the property of the State of Oklahoma. Proposals will

not be considered confidential after a contract is awarded except that information in the proposal determined to be confidential by the CIO shall continue to be considered confidential.

A.9. Late Offer

Offers received by the State after the response due date and time shall be deemed non-responsive and shall NOT be considered for any resultant award.

A.10. Legal Contract

A.10.1. Submitted offers are rendered as a legal offer and when accepted by the State, shall constitute a contract.

A.10.2. The contract resulting from this solicitation shall consist of the following documents in order of preference: State of Oklahoma Statutes, contract award documents, including but not limited to the Purchase Order, Contract Modifications, required certification statement, and change orders; the solicitation including any amendments; and the successful offer to the extent that the offer does not conflict with the requirements of the contract award documents or solicitation or applicable law. In the event there is a conflict between any of the preceding documents, the contract award documents prevail over the solicitation, and both the contract award documents and the solicitation shall prevail over the successful offer.

A.10.3. Any contract(s) awarded pursuant to the solicitation shall be legibly written or typed.

A.10.4. All transactions related to this solicitation, and any contract resulting therefrom, may be conducted by electronic means pursuant to the Oklahoma Uniform Electronic Transactions Act.

A.11. Pricing

A.11.1. Offers shall remain firm for a minimum of one-twenty (120) days from the solicitation closing date.

A.11.2. Suppliers guarantee unit prices to be correct.

A.11.3. In accordance with 74 O.S. §85.40, ALL travel expenses to be incurred by the contractor in performance of the contract shall be included in the total bid price/contract amount.

A.11.4. All costs incurred by the Suppliers for proposal preparation and participation in this competitive procurement shall be the sole responsibility of the Suppliers. The State of Oklahoma shall not reimburse any Supplier for any such costs.

A.12. Firm Fixed Price

Unless the solicitation specifies otherwise, a Supplier shall submit a firm, fixed price for the term of the contract.

A.13. Pricing Requirements

If Supplier pricing does not meet requirements of a solicitation, the offer may be considered non-responsive.

A.14. Manufacturers' Name and Approved Equivalents

Unless otherwise specified in the solicitation, manufacturers' names, brand names, information, and/or catalog numbers listed in a specification are for information and not intended to limit competition. Supplier may offer any brand for which they are an authorized representative, which meets or exceeds the specification for any item(s). However, if offers are based on equivalent products, indicate on the offer form the manufacturer's name and number. Supplier shall submit sketches, descriptive literature, and/or complete specifications with their offer. Reference to literature submitted with a previous offer shall not satisfy this provision. The Supplier shall also explain in detail the reason(s) why the proposed equivalent will meet the specifications and not be considered an exception thereto. Offers that do not comply with these requirements are subject to rejection.

A.15. Rejection of Offer

The State reserves the right to reject any offers that do not comply with the requirements and specifications of the solicitation. An offer may be rejected when the Supplier imposes terms or conditions that would modify requirements of the solicitation or limit the Supplier's liability to the State. Other possible reasons for rejection of offers are listed in OAC 580:15-4-11

Attempts to impose unacceptable conditions on the State, or impose alternative terms not in the best interest of the State shall not be tolerated. Continued attempts to impose unacceptable conditions or terms on the State shall result in a determination of your non-responsiveness of your offer due to the lack of compliance with the terms and conditions of negotiation or the solicitation.

A.16. Award of Contract

A.16.1. The State may award the contract to more than one Supplier by awarding the contract(s) by item or groups of items, or may award the contract on an all or none basis, whichever is deemed by the State to be in the best interest of the State of Oklahoma.

- A.16.2.** Contract awards shall be made to the lowest and best offer(s) unless the solicitation specifies that best value criteria is being used.
- A.16.3.** In order to receive an award or payments from the State of Oklahoma, Supplier must be registered. The Supplier registration process can be completed electronically through the DCS website at the following link:
<https://www.ok.gov/dcs/vendors/index.php>.
- A.16.4.** It is the preference of the State to award to a single Supplier. However, the State reserves the right to award to multiple Suppliers when it has been determined to be in the best interest of the State.

A.17. Contract Modification

- A.17.1.** The contract issued as a result of this solicitation is under the authority of the State personnel signing the Contract. The contract may be modified only through a written Contract Modification, signed by the State.
- A.17.2.** Any change to the contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the Office of Management and Enterprise Services - ISD in writing, or made unilaterally by the contractor, is a breach of the contract. Unless otherwise specified by applicable law or rules, such changes, including unauthorized written Contract Modifications, shall be void and without effect, and the contractor shall not be entitled to any claim under a contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the resultant contract.

A.18. Delivery, Inspection and Acceptance

- A.18.1.** All deliveries shall be F.O.B. Destination. The Supplier shall prepay all packaging, handling, shipping and delivery charges and prices quoted shall include all such charges. Any Products delivered pursuant to this Contract shall be subject to final inspection and acceptance by the procuring entity at Destination and the procuring entity has no responsibility for the delivered Products prior to acceptance. Title and risk of loss or damage to all items shall be the responsibility of the Supplier until accepted. The Supplier shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance. "Destination" shall mean delivered to the receiving dock or other point specified in the applicable purchase order.
- A.18.2.** Supplier shall be required to deliver Products as offered on or before the required date. Deviations, substitutions, or changes in the Products shall not be made unless expressly authorized in writing by the State or Interlocal Entity, as applicable.

A.19. Invoicing and Payment

- A.19.1.** Upon submission of an accurate and proper invoice, the invoice shall be paid in arrears after products have been delivered or services provided and in accordance with applicable law. Invoices shall contain the purchase order number, a description of the products delivered or services provided, and the dates of such delivery or provision of services.
- A.19.2.** State Acquisitions are exempt from sales taxes and federal excise taxes.

A.20. Audit and Records Clause

- A.20.1.** As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting any contract with the State, the Supplier agrees any pertinent state or federal agency shall have the right to examine and audit all records relevant to execution and performance of this Contract.
- A.20.2.** The Supplier is required to retain records relative to this Contract for the duration of this Contract and for a period of seven (7) years following completion and/or termination of this Contract. If an audit, litigation, or other action involving such records is started before the end of the seven-year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.

A.21. Non-Appropriation Clause

The terms of this Contract and any purchase order issued for multiple years under this Contract are contingent upon sufficient appropriations being made by the applicable state legislature, federal government or other appropriate government entity. Notwithstanding any language to the contrary in this Contract, or any other Contract Document, any State Entity or Interlocal Entity may terminate its obligations under this Contract if sufficient appropriations are not made by the Oklahoma Legislature, federal government or other appropriate governing entity to pay amounts due for multiple year agreements. The decision as to whether sufficient appropriations are available shall be accepted by, and be final and binding on, the Supplier.

A.22. Choice of Law and Venue

- A.22.1.** Any claims, disputes or litigation relating to the Contract Documents, singularly or in the aggregate, or the execution, interpretation, performance, or enforcement thereof shall be governed by the laws of the State of Oklahoma, or in the case of an Interlocal Entity, in the state in which the Interlocal Entity is located, without regard to application of choice of law principles.
- A.22.2.** Venue for any action, claim, dispute, or litigation relating in any way to the Contract Documents shall be in Oklahoma County, Oklahoma, or in the case of an Interlocal Entity, as agreed to between such Interlocal Entity and Supplier or as otherwise provided by applicable law.

A.23. Termination for Cause

- A.23.1.** The Supplier may terminate this Contract in whole or in part for default with both a thirty (30) day written request and upon written approval from the State. The State may terminate this Contract in whole or in part for default or any other just cause upon a thirty (30) day written notification to the Supplier.
- A.23.2.** The State may terminate this Contract immediately, in whole or in part, without a thirty (30) day written notice to the Supplier, when violations are found to be an impediment to the function of the State and detrimental to the cause of a procuring State Entity, when conditions preclude the thirty (30) day notice, or when the State determines that an administrative error occurred prior to Contract performance. Similarly, an Interlocal Entity may terminate its obligations to Supplier immediately upon any of the foregoing conditions in this subsection.
- A.23.3.** If this Contract or certain obligations hereunder are terminated, the State, State Entity or Interlocal Entity, as applicable, shall be liable only for payment for Products delivered and accepted and such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law.

A.24. Termination for Convenience

- A.24.1.** The State may terminate this Contract, in whole or in part, for convenience if the State Chief Information Officer determines that termination is in the State's best interest. The State shall terminate this Contract by delivering to the Supplier a notice of termination for convenience specifying the terms and effective date of termination. The Contract termination date shall be a minimum of sixty (60) days from the date the notice of termination is issued by the State. Similarly, an Interlocal Entity may terminate its obligations to Supplier upon a determination by the proper authority for such Interlocal Entity that termination is in the Interlocal Entity's best interest and notice of termination by such Interlocal Entity shall be provided in accordance with the foregoing requirements set forth in this subsection.
- A.24.2.** If this Contract or certain obligations hereunder are terminated pursuant to this section, the State, State Entity, or Interlocal Entity, as applicable, shall be liable only for Products delivered and accepted and such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law.

A.25. Insurance

The Supplier shall maintain and promptly provide proof to the State of the following insurance coverage, and any renewals, additions or changes thereto, as long as the Supplier has any obligation under a Contract Document:

- a) Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.
- b) Commercial General Liability Insurance on a per occurrence basis with limits of liability not less than \$1,000,000 per occurrence and aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage;
- c) Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence combined single limit including bodily injury and property damage and with coverage, if applicable, for all owned vehicles, all non-owned vehicles, and all hired vehicles;
- d) Professional Errors and Omissions Insurance which shall include Consultant's Computer Errors and Omissions Coverage with limits not less than \$1,000,000 per claim and in the aggregate; and
- e) Additional coverage required by the State in writing in connection with a particular Acquisition.

A.26. Employment Relationship

This Contract does not create an employment relationship between the parties. Individuals performing services required by this Contract are not employees of the State, a State Entity or an Interlocal Entity and, accordingly, shall not be eligible for rights or benefits accruing to such employees including but not limited to health insurance benefits, workers' compensation insurance, paid vacation or other leave, or any other employee benefit.

A.27. Compliance with the Oklahoma Taxpayer and Citizen Protection Act of 2007

The Supplier certifies that it is registered and participates in the Status Verification System, available at www.dhs.gov/E-Verify, as

required under applicable State law and is in compliance with applicable federal immigration laws and regulations. Supplier agrees that compliance with the certification set forth in this section shall be a continuing obligation.

A.28. Compliance with Applicable Laws

A.28.1. In connection with its performance of obligations under the terms of this Contract, the Supplier shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances and orders, as amended, including but not limited to the following:

- a) Drug-Free Workplace Act of 1988 and as implemented at 45 C.F.R. part 76, Subpart F;
- b) Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use under nonexempt Federal contract, grant or loans of facilities included on the EPA List of Violating Facilities;
- c) Prospective participant requirements set forth at 45 C.F.R. part 76 in connection with debarment, suspension and other responsibility matters;
- d) 1964 Civil Rights Act, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990 and Executive Orders 11246 and 11375;
- e) Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93;
- f) Obtaining certified independent audits conducted in accordance with Government Auditing Standards and Office of Management and Budget Circular A-133 with approval and work paper examination rights of the applicable procuring entity; and
- g) Be registered as a business entity licensed to do business in the State, have obtained a sales tax permit and be current on franchise tax payments to the State, as applicable.

A.28.2. The Supplier shall maintain all applicable licenses and permits required in association with its obligations hereunder.

A.28.3. The Supplier shall inform its employees or agents who perform services for the State under this Contract of the Supplier's obligations hereunder and shall require its employees or agents to comply accordingly. At the request of the State, Supplier shall promptly provide adequate evidence that such persons are its employees or agents and have been informed of their obligations hereunder.

A.29. Gratuities

The rights of Supplier under the terms of this Contract may be immediately terminated, in whole or in part, by written notice if it is determined that the Supplier, its employee, agent or another representative offered or gave a gratuity (e.g., an entertainment or gift) to any State or Interlocal Entity employee directly involved in this Contract. In addition, a Supplier determined to be guilty of such a violation may be suspended or debarred.

A.30. Preclusion from Resulting Contracts

Any Supplier that has provided any consulting services or technical assistance that resulted in any specifications or concepts in this solicitation, either directly or indirectly, is precluded from the award of such contract and from securing a sub-contractor that has provided such services.

A.31. Mutual Responsibilities

The State and Supplier agree that under this Agreement:

- A.31.1.** Neither party grants the other the right to use any trademarks, trade names, or other designations in any promotion or publication without express written consent by the other party.
- A.31.2.** This is a non-exclusive agreement and each party is free to enter into similar agreements with others.
- A.31.3.** Each party grants the other only the licenses and rights specified in the Contract Document.
- A.31.4.** Except as otherwise set forth herein, where approval, acceptance, consent, or similar action by either party is required under this Contract, such action shall not be unreasonably delayed or withheld

A.32. Background Checks and Verifications

At the sole discretion of the State, State Entity or Interlocal Entity, as applicable, employees of the Supplier and any subcontractor of the Supplier may be subject to background checks. If background check information is requested, the Supplier must submit, or cause to be submitted, the required information in a timely manner and the Supplier's access to facilities, data and information may be withheld prior to completion of background verification acceptable to such State, State Entity or Interlocal Entity.

A.33. Confidentiality

- A.33.1.** The Supplier shall maintain strict security of all State data and records entrusted to it or to which the Supplier gains access, in accordance with and subject to applicable federal and state laws, rules, regulations and policies and shall use any such data or records only as needed by Supplier for performance of its obligations hereunder. The Supplier further agrees to evidence such confidentiality obligation in a separate writing if required under such applicable federal or state laws, rules and regulations. If Supplier utilizes a permitted subcontractor, Supplier shall obtain specific written assurance, and provide a copy to the State, that the subcontractor shall maintain this same level of security of all data and records entrusted to or accessed by the subcontractor and agree to the same obligations as Supplier, to the extent applicable. Such written assurance may be set forth in the required subcontractor agreement referenced herein.
- A.33.2.** No State data or records shall be provided or the contents thereof disclosed to a third party unless specifically authorized to do so in writing by the State Chief Information Officer, the Director of a procuring State Entity or in compliance with a valid court order. The Supplier shall immediately forward to the State and the State Chief Information Officer any request by a third party for data or records in the possession of the Supplier or any subcontractor or to which the Supplier or subcontractor has access and Supplier shall fully cooperate with all efforts to protect the security and confidentiality of such data or records in response to a third party request.

A.34. Unauthorized Obligations

At no time during the performance of this Contract shall the Supplier have the authority to obligate any other party hereto for payment of any goods or services over and above those set forth in this Contract. If the need arises for goods or services over and above the Products, Supplier shall cease the project and contact the appropriate procuring entity for written approval prior to proceeding.

A.35. Electronic and Information Technology Accessibility

Supplier shall comply with federal and state laws, rules and regulations related to information technology accessibility, as applicable, including but not limited to Oklahoma Information Technology Accessibility Standards ("Standards") set forth at http://www.ok.gov/cio/documents/isd_itas.pdf and Supplier shall provide a Voluntary Product Accessibility Template ("VPAT") describing such compliance, which may be provided via a URL linking to the VPAT. If the Products will require development or customization, additional requirements and documentation may be required and compliance shall be necessary by Supplier. Such requirements may be stated in appropriate documents including but not limited to state bids, request for proposals, statements of work, riders, agreements, purchase orders and Amendments. Accordingly, in each statement of work or similar document issued pursuant to this Contract, Supplier shall describe such compliance and identify, if and as applicable, (i) which exception to the Standards applies or (ii) a description of the tasks and estimated cost to make the proposed products and/or services compliant with applicable Standards.

All representations contained in the VPAT provided will be relied upon by the State for accessibility compliance purposes.

A.36. Patents and Copyrights

- A.36.1.** Without exception, the Products prices shall include all royalties or costs owed by the Supplier to any third party arising from the use of a patent or copyright.
- A.36.2.** If a third party claims that any portion of the Products provided by Supplier under the terms of this Contract infringes that party's patent or copyright, the Supplier shall defend the State against the claim at the Supplier's expense and pay all related costs, damages, and attorneys' fees incurred by, or assessed to, the State, provided the State (i) promptly notifies the Supplier in writing of the claim and (ii) to the extent authorized by the Attorney General of the State, allows the Supplier to control the defense and any related settlement negotiations. If the Attorney General of the State does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall be granted authorization to equally participate in any proceeding related to this section but Supplier shall remain responsible to indemnify the State for all associated costs, damages and fees incurred by or assessed to the State.
- A.36.3.** If such a claim is made or appears likely to be made, the Supplier shall enable the State to legally continue to use, or modify for use, the portion of Products at issue or replace such potential infringing Products with at least a functional non-infringing equivalent. If the Supplier determines that none of these alternatives is reasonably available, the State shall return such portion of the Products at issue to the Supplier, upon written request, in exchange for a refund of the price paid for such returned goods as well as a refund, if applicable, of other Products which are rendered materially unusable as intended due to removal of the portion of Products at issue.
- A.36.4.** Supplier has no obligation regarding a claim based on any of the following: (i) modification of a product by any party other than Supplier, its employee, agent, representative, permitted subcontractor, or any State employee acting in conjunction with the Supplier; (ii) a program's use in other than its specified operating environment; (iii) the combination, operation, or use of a product with other products not provided by Supplier as a system or (iv) infringement solely by a non-Supplier product that has not been provided to the State by, through or on behalf of the Supplier as opposed to its combination with products Supplier provides to or develops for the State as a system.

A.37. Assignment

Supplier's obligations under a Contract Document may not be assigned or transferred to any other person or entity without the prior written consent of the State which may be withheld in its sole discretion. Ownership of Products purchased under the terms of this Contract and rights granted under the terms of this Contract may be assigned or transferred, at no additional cost, to other entities within the State.

A.38. Severability

If any provision for this contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

A.39. Paragraph Headings

The headings used in this Contract are for convenience only and do not constitute part of the Contract.

A.40. Failure to Enforce

Failure by the State, as applicable, at any time to enforce a provision of, or exercise a right under, any Contract Document shall not be construed as a waiver of any such provision. Such failure to enforce or exercise shall not affect the validity of any Contract Document, or any part thereof, or the right of the State to enforce any provision of, or exercise any right under, a Contract Document at any time in accordance with its terms. Likewise, a waiver of a breach of any provision in a Contract Document shall not affect or waive a subsequent breach of the same provision or a breach of any other provision in a Contract Document.

A.41. Conflict of Interest

A.41.1. Supplier must provide immediate disclosure of any contractual relationship or any other relevant contact with any State personnel or another State contractor or Supplier involved in the development of a Supplier's response to any solicitation resulting in this Contract. Any conflict of interest shall, at the sole discretion of the State, be grounds for termination of project involvement.

A.41.2. In addition to any requirement of law or through a professional code of ethics or conduct, the Supplier and the Supplier's employees performing services for the State are required to disclose any outside activity or interest that conflicts or may conflict with the best interest of the State. Further, without prior written approval of the State, such employees shall not plan, prepare, or engage in any activity that conflicts or may conflict with the best interest of the State as long as the Supplier has an obligation under this Contract. Prompt disclosure is required under this section if the activity or interest is related, directly or indirectly, to any person or entity currently under contract with or seeking to do business with the State, its employees or any other third-party individual or entity awarded a contract with the State.

A.42. Limitation of Liability

To the extent any limitation of liability in any Contract Document is construed by a court of competent jurisdiction to be a limitation of liability in violation of applicable law, such limitation of liability shall be void.

A.43. Media Ownership (Disk Drive and/or Memory Chip Ownership)

A.43.1. In accordance with the State of Oklahoma Information Security Policy, Procedures, Guidelines set forth online at <http://www.ok.gov/cio/documents/InfoSecPPG.pdf> ("Electronic Media Retention Requirements"), any disk drives and memory cards purchased with or included for use in leased or purchased equipment under this Contract remain the property of the State.

A.43.2. Personal Identification Information may be retained within electronic media devices and components; therefore, the State shall not allow the release of electronic media either between State Entities or for the resale of refurbished equipment that has been in use by State Entities, by the Supplier to the general public or other entities. Electronic Media Retention Requirements shall also be applied to replacement devices and components, whether purchased or leased, the Supplier may supply during the downtime (repair) of equipment purchased or leased through this Contract. If a device has to be removed from a location for repairs, the State shall have sole discretion, prior to removal, to determine and enforce sufficient safeguards (such as a record of hard drive serial numbers) to protect Personal Identification Information that may be stored within the hard drive or memory of the device.

A.44. Offshore Services

No offshore services are provided for under this Contract. State data shall not be used or accessed internationally, for troubleshooting or any other use not specifically provided for herein without prior written permission, which may be withheld in the State's sole discretion, from the appropriate authorized representative of the State.

A.45. Failure to Provide

The contractor's repeated failure to provide defined services, without reasonable basis as determined by the sole discretion of the State of Oklahoma's Chief Information Officer, shall constitute a material breach of the contractor's obligations, which may result in cancellation of the contract.

A.46. Agency Policies

The contractor's employees and/or sub-contractors must adhere to the agency policies pertaining to acceptable use of Internet and electronic mail, facility and data security, press releases, and public relations. It is up to the contractor to review and relay agency policies covering the above to the consulting staff.

A.47. Compliance with Technology Policies

The Supplier agrees to adhere to the State of Oklahoma "Information Security Policy, Procedures, and Guidelines" available at:

www.ok.gov/OSF/documents/StateOfOklahomaInfoSecPPG_osf_12012008.pdf

A.48. High Technology System Performance and Upgrades

A.48.1. If an Acquisition pursuant to this Contract includes a "high technology system" as defined under Oklahoma law, the Supplier shall provide documentation of the projected schedule of recommended or required system upgrades or improvements to such system for the three (3) year period following the target purchase date. If Supplier does not plan such system upgrades or improvements, the Supplier shall provide documentation that no system upgrades or improvements to the high technology system are planned for the three (3) year period following the target purchase date.

A.48.2. Any Acquisition pursuant to this Contract of an upgrade or enhancement to a high technology system shall be conditioned upon the Acquisition being provided at no charge to the State; the Acquisition being provided to the State at no additional charge pursuant to a previous agreement with the Supplier; the Supplier providing documentation that any required or recommended upgrade will enhance or is necessary for performance of the applicable State agency duties and responsibilities; or the Supplier providing documentation that it will no longer supply maintenance assistance to the applicable State agency and the applicable State agency documenting that the functions performed by the high technology system are necessary for performance of the State agency duties and responsibilities.

A.49. Emerging Technologies

The State of Oklahoma reserves the right to modify the terms of this contract at any time to allow for technologies not identified elsewhere under this document. If there are repeated requests for an "emerging technology" and the State feels it is warranted to add such technologies, the State reserves the right to include such technology hereunder or to issue a formal modification or amendment to the contract.

A.50. Ownership Rights

A.50.1. Any software developed by the Supplier is for the sole and exclusive use of the State including but not limited to the right to use, reproduce, re-use, alter, modify, edit, or change the software as it sees fit and for any purpose. Moreover, except with regard to any deliverable based on the Supplier's Utilities, the State shall be deemed the sole and exclusive owner of all right, title, and interest therein, including but not limited to all source data, information and materials furnished to the State, together with all plans, system analysis, and design specifications and drawings, completed programs and documentation thereof, reports and listing, all data and test procedures and all other items pertaining to the work and services to be performed pursuant to this Contract including all copyright and proprietary rights relating thereto. With respect to Utilities, the Supplier grants the State, for no additional consideration, a perpetual, irrevocable, royalty-free license, solely for the internal business use of the State, to use, copy, modify, display, perform, transmit and prepare derivative works of Utilities embodied in or delivered to the State in conjunction with the Products.

A.50.2. Except for any Utilities, all work performed by the Supplier of developing, modifying or customizing software and any related supporting documentation shall be considered as Work for Hire (as defined under the U.S. copyright laws) and, as such, shall be owned by and for the benefit of State.

A.50.3. In the event that it should be determined that any portion of such software or related supporting documentation does not qualify as "Work Made for Hire", Supplier hereby irrevocably grants to the State, for no additional consideration, a non-exclusive, irrevocable, royalty-free license to use, copy, modify, display, perform, transmit and prepare derivative works of any such software and any Utilities embodied in or delivered to the State in conjunction with the Products.

A.50.4. Supplier shall assist the State and its agents, upon request, in preparing U.S. and foreign copyright, trademark, and/or patent applications covering software developed, modified or customized for the State. Supplier shall sign

any such applications, upon request, and deliver them to the State. The State shall bear all expenses that incurred in connection with such copyright, trademark, and/or patent applications.

- A.50.5.** If any Acquisition pursuant to this Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation owned by the State may be shared with other publicly funded agencies at the discretion of the State without permission from or additional compensation to the Supplier.
- A.50.6.** It is understood and agreed that the Software is being developed by the Supplier for the sole and exclusive use of the State of Oklahoma. Moreover, except with regard to any deliverable based on Supplier's reusable or pre-existing intellectual property ("Utilities"), the State of Oklahoma shall be deemed the sole and exclusive owner of all right, title, and interest therein, including all copyright and proprietary rights relating thereto.
- A.50.7.** Except for any utilities, all work performed by the contractor of software and any supporting documentation therefore shall be considered as Works for Hire (as such are defined under the U.S. Copyright Laws) and, as such, shall be opened by and for the benefit of State of Oklahoma.

A.51. Source Code Escrow – Reference Title 62 O.S. § 34.31

If required under applicable Oklahoma law relating to customized computer software developed or modified exclusively for a state agency, the Supplier shall have a continuing obligation to comply with such law and place the source code for such software and any modifications thereto into escrow with an independent third party escrow agent. Supplier shall pay all fees charged by the escrow agent and enter into an escrow agreement, the terms of which are subject to the prior written approval of the State, with the escrow agent including terms that provide the State receives ownership of all escrowed source code upon the occurrence of any of the following:

- a) A bona fide material default of the obligations of the Supplier under the agreement with the agency;
- b) An assignment by the Supplier for the benefit of its creditors;
- c) A failure by the Supplier to pay, or an admission by the Supplier of its inability to pay, its debts as they mature;
- d) The filing of a petition in bankruptcy by or against the Supplier when such petition is not dismissed within sixty (60) days of the filing date;
- e) The appointment of a receiver, liquidator or trustee appointed for any substantial part of the Supplier's property;
- f) The inability or unwillingness of the Supplier to provide the maintenance and support services in accordance with the agreement with the agency;
- g) The ceasing of a Supplier of maintenance and support of the software; or
- h) Such other condition as may be statutorily imposed by the future amendment or enactment of applicable Oklahoma law.

A.52. Right to Renegotiate

Prior to exercising the State's right to cancel a contract, the State may renegotiate an existing contract with a contractor for the purpose of obtaining more favorable terms for the State, provided that the term of the contract is not modified.

A.53. Used or New Products

Supplier shall offer new items of current design unless the solicitation specifies used, reconditioned, or remanufactured products are acceptable. Warranties in both cases should be the same.

A.54. Publicity

The award of this Contract to Supplier is not in any way an endorsement by the State of Supplier or the Products and shall not be so construed by Supplier in any advertising or publicity materials. Supplier agrees to submit to the State all advertising, sales promotion, and other publicity matters relating to this Contract wherein the State's name is mentioned or language used from which the connection of the State's name therewith may, in the State's judgment, be inferred or implied as an endorsement. Supplier further agrees not to publish or use such advertising, sales promotion, or publicity matter or release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this Contract without obtaining the prior written approval of the State.

A.55. Mandatory and Non-Mandatory Terms

- A.55.1.** Whenever the terms "shall", "must", "will", or "is required" are used in this RFP, the specification being referred to is a mandatory specification of this RFP. Failure to meet any mandatory specification may cause rejection of the Supplier's Proposal.
- A.55.2.** Whenever the terms "can", "may", or "should" are used in this RFP, the specification being referred to is a desirable item and failure to provide any item so termed shall not be cause for rejection.

A.56. Non Tobacco – Smoke Free

By order of the Governor's Executive Order 2012-01, effective August 06, 2012 the use of any tobacco product shall be prohibited on any and all properties owned, leased or contracted for use by the State of Oklahoma, including but not limited to all buildings, land and vehicles owned, leased or contracted for use by agencies or instrumentalities of the State of Oklahoma.

A.57. OMES/ISD / Agency Relationship

Pursuant to the Oklahoma Information Technology Consolidation and Coordination Act (62 O.S. §§ 35.1 – 35.9), OMES/ISD is the entity designated to purchase information technology assets on behalf of the State of Oklahoma. The Act directs OMES/ISD to acquire necessary hardware and software, and directs OMES/ISD to authorize the use of these assets by other State agencies. OMES/ISD, as the owner of information technology assets, allows other State agencies to use these assets while retaining ownership and the right to reassign them upon written notification to the Supplier.

A.58. Federal Terms and Conditions

The following terms apply if federal monies are used to fund this solicitation:

A.58.1. Equal Opportunity and Discrimination

The Supplier certifies they are an Equal Opportunity Employer, a provider of services and/or assistance, and is in compliance with the 1964 Civil Rights Act, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, as amended and Executive Orders 11246 and 11375. The provider assures compliance with the Americans with Disabilities Act of 1990 (Public Law 101-336), all amendments to, and all requirements imposed by the regulations issued pursuant to this act

A.58.2. Lobbying

The Supplier certifies compliance with the Anti-Lobbying law, Section 1352, Title 31 of the U.S. Code, and implemented at 45 CFR Part 93, for persons entering into a grant or cooperative agreement over \$100,000.00 as defined at 45 CFR 93, Section 93.105 and 93.110.

A.58.3. Drug-Free Workplace

The Supplier certifies compliance in providing or continuing to provide a drug-free workplace in accordance with the Drug-Free Workplace Act of 1988, and implemented at 45 CFR part 76, Subpart F, for grantees, as defined at 45 CFR Part 76, Sections 76.605 and 76.610

A.58.4. Environmental Protection

If the payments pursuant to the contract are expected to exceed \$100,000.00, then the Supplier must comply with all applicable Federal Laws such as Section 306 of the Clean Air Act (42 U.S.C. 1857 (L)), Section 508 of the Clean Water Act (33 U.S.C. 1638), Executive Order 11738, and Environmental Protection Agency Regulations (40 C.F.R Part 15), which prohibit the use under nonexempt Federal contract, grant or loans of facilities included on the EPA List of Violating Facilities

A.59. Acceptance of Request for Proposal Content

Unless otherwise provided in Section One of the Supplier's response to this Request for Proposal, all Offers shall be firm representations that the responding Supplier has carefully investigated and will comply with all terms and conditions contained in this Request for Proposal. Upon award of any contract to the Successful Supplier, the contents of this Request for Proposal, as may be amended by the Supplier's response in Section One, shall become contractual obligations between the parties. Failure to provide all proposed amendments to the terms and conditions contained in this Request for Proposal in Section One of the Supplier's response may cause the bid to be rejected from consideration for award.

A.60. Special Provisions

Special Provisions apply with the same force and effect as these General Provisions. However, conflicts or inconsistencies shall be resolved in favor of the Special Provisions.

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B. SPECIAL PROVISIONS

B.1. Contract Term, Renewal and Extension Option

- B.1.1.** The initial contract period shall begin on July 1, 2014 and shall extend thru June 30, 2015 unless renewed, extended, or terminated in accordance with applicable contract provisions. The contractor shall not commence work, commit funds, incur costs, or in any way act to obligate the State until so notified in writing of the approval of the contract. The authorized State representative is the only individual who can transmit that approval to the contractor.
- B.1.2.** Under Oklahoma law, the State may not contract for a period longer than one (1) year. By mutual consent of the parties hereto, it is intended that there shall be three (3) options to renew, each for duration of one (1) year.
- B.1.3.** After the initial term of one year, the Agreement may be renewed annually upon mutual written consent of the parties. Prior to each renewal, the State will review the terms and conditions to determine validity with current state statues and rules. If required prior to renewal, the State will work with the contractor to incorporate any required changes to this agreement.
- B.1.4.** The State, at its sole option, may choose to exercise an extension for 90 days beyond the final renewal option period, at the contract compensation rate for the extended period. If this option is exercised, the State shall notify the contractor in writing prior to contract end date. The State, at its sole option, may choose to exercise subsequent 90 day extensions, by mutual consent and at the contract compensation rate, to facilitate the finalization of related terms and conditions of a new award or as needed for transition to new contractor.
- B.1.5.** Notification to exercise the option to renew the contract shall be set forth, in writing, by the State at least 30 days prior to the end of each contract period. The contract shall be contingent upon approval by the State.
- B.1.6.** Term Extensions – The State CIO reserves the right to extend any contract awarded if it is determined to be in the best interest of the State.

B.2. Obligations of Permitted Subcontractor

- B.2.1.** The Supplier is not permitted to utilize subcontractors in support of this Contract, the Supplier shall remain solely responsible for its obligations under the terms of this Contract and for its actions and omissions and those of its agents, employees and subcontractors.

B.3. Warrants

Supplier warrants and represents that products or deliverables specified and furnished by or through the Supplier shall individually, and where specified by Supplier to perform as a system, be substantially uninterrupted and error-free in operation and guaranteed against faulty material and workmanship for a warranty period of a minimum of ninety (90) days from the date of acceptance or the maximum allowed by the manufacturer. During the warranty period, defects in the products or deliverables specified and furnished by or through the contractor shall be repaired or replaced by contractor at no cost or expense to the State.

B.4. Manufacturer Accessibility VPAT Website

The Supplier may provide a URL link for a website maintained by the Supplier or product manufacturer which provides VPAT's for all products offered through the resulting contract.

B.5. Commercial Off-The-Shelf (Cots) Software

In the event that Supplier specifies terms and conditions or clauses in an electronic license agreement notice that conflict with the terms of this Contract, the additional terms and conditions or conflicting clauses shall not be binding on the State and the provisions of this Contract shall prevail.

B.6. Supplier Cooperation

- B.6.1.** The implementation for Oklahoma's 2014-2015 Social Studies (grades 5,7,8 and End of Instruction (EOI) United States History) and Science (grades 5,8 and EOI Biology) alternate assessment via a secure web-based site for spring and winter testing administration component will require the coordination of activities between the Supplier, the Oklahoma State Department of Education (OSDE), and other possible Suppliers providing services within the Oklahoma Academic Standard (OAS) either currently or in the future. The selected Supplier will be expected to provide full cooperation when working with one or more of the parties involved in various aspects of the OAS.

B.7. Confidentiality

B.7.1. The Supplier agrees to abide by all state and federal laws and rules as well as OSDE policy respecting confidentiality of records. The Supplier further agrees to divulge no information concerning individual records to anyone without the approval of the State's designee.

B.7.2. Storage of Materials and Data Files

B.7.2.1. On completion of the scoring and reporting, each group of answer documents, header sheets and security forms will be bound, labeled for identification, and stored in a secure area. The bundled test materials will be stored for a minimum of twelve months, beginning on June 1 of each contract year. Retrieval of individual documents may be requested by the OSDE. Individual student test data, including online testing responses, will be electronically stored on computer files for a minimum of five years. Authorized deletion of students' individual records may occur during the sixth year from June 1 of each contract year.

B.8. Copyright

B.8.1. For any copyrighted materials, the testing company will obtain copyright privileges for OSDE use in the test instrument as well as for release by the OSDE as a sample test item, in paper or on the OSDE Web site. The copyrighted material may appear on the Web page and in OSDE developed publications and presentations. For instance, PDF computer files will be provided to the OSDE of the Parent, Student, and Teacher Guides, Test Preparation Manuals, Test Administration Manuals, and Test Interpretation Manuals each year for use on the OSDE Web site. Copyright privileges must be acquired and retained in Oklahoma's name to ensure use of items or passages on future test forms or documents which will appear on the Web site. In addition, Oklahoma retains ownership of commissioned passages and all components of items developed by the contractor for use on Oklahoma assessments.

B.8.2. School personnel are prohibited from "reproduction in any form of any copyrighted test materials including test documents. Photocopying of these materials constitutes a violation of federal copyright laws."

B.9. Embargo

B.9.1. The OSDE requires the contracting Supplier to place an embargo on the sale, sampling, and/or distribution of test materials utilized in the OAS to any person or organization in Oklahoma (other than the official distribution of such materials purchased for the OAS by the OSDE). This embargo is to be enforced from the first day of the contract with the OSDE throughout the use of this test and until the OSDE has given notice that the test is no longer going to be used in the OAS. Violation of this agreement by a contracting test publisher can result in automatic and immediate forfeiture of the contract and reimbursement to the OSDE (by the contracting Supplier) of any funds expended in the conduct of the OAS and/or as a result of this violation.

B.9.2. No test items are to be released by the Supplier within or outside the State of Oklahoma without the State designee's written permission. No person or organization either private or public shall obtain copies of any test materials utilized in the OAS other than through the official distribution of test materials to public schools immediately prior to administration of the annual OAS or through the permission of the OSDE. Any person or organization attempting to order such materials from the contracting test publisher (or from other scoring companies handling the OAS) shall be reported by the Supplier to the State Superintendent of Public Instruction or the State's Designee.

B.10. Indemnification

B.10.1. Any and all claims which hereafter arise on the part of any and all persons as a direct or indirect result of Supplier's or its employees' or agents' performance or failure to perform duties pursuant to this agreement, shall be Supplier's sole obligation, and Supplier shall indemnify and hold harmless the State of Oklahoma in full for any and all such acts or failures to act on the part of Supplier or its employees or agents.

B.11. Independent Supplier Status of Supplier

B.11.1. The Supplier and Supplier's employee(s) and agent(s) shall perform all duties pursuant to this agreement as an independent Supplier. The State of Oklahoma shall not withhold or pay any taxes on behalf of Supplier or Supplier's employee(s) or agent(s).

B.12. Non-Discrimination

B.12.1. No person shall, on the grounds of race, creed, color, national origin, gender, or marital status or the presence of any sensory, mental, or physical handicap, unlawfully be excluded from participation in, be denied the benefits, or be otherwise subjected to discrimination under any activity performed pursuant to this agreement.

B.13. Ownership of Work Products and Restriction against Dissemination

- B.13.1.** All rights of ownership of all physical materials or products including but not limited to test booklets, commissioned passages, test items, administration and in- service manuals, training presentations and materials, scoring rubrics and performance levels, writing prompts, and score reports that are produced under or as a result of this contract become the property of the OSDE upon payment of the consideration specified herein. Such products must be retained for the exclusive use of the Social Studies (grades 5,7,8 and End of Instruction (EOI) United States History) and Science (grades 5,8 and EOI Biology). Further, all test items developed for this contract shall remain secured for exclusive use of this project until the State releases said items for distribution within or outside the State of Oklahoma.
- B.13.2.** The Supplier will provide the OSDE an electronic item bank, provided in a common, non-proprietary format with annual updates of new items developed and approved. The item bank will be, at a minimum, searchable by standard, objective, depth of knowledge level, p-value, and administration date. All statistics and graphics will be included with each item. The proposal should include type and format of items in item bank. Passages must include Title/Author, Commission /Permission, Genre, and Readability.
- B.13.3.** Supplier will provide the OSDE annual documentation of the status of the item bank. The electronic spreadsheet report will include by content standard and objective the number of useable items used that were already owned by Oklahoma, the number written for and therefore owned by Oklahoma, and the total in the Oklahoma OSDE item bank.
- B.13.4.** The Oklahoma OSDE retains sole rights to all items developed by the contractor in the development of the testing program, as well as all items existing in the current item bank, other test content, and ancillary documents. Items shall be developed in a way that can be easily and expediently (not to exceed three weeks) transferred to the State or additional Suppliers without the concern of intellectual or proprietary rights. In addition, items shall be in a format that is production or camera-ready for the state or additional Suppliers. Specific materials and/or computer programs for the management or implementation of the program may be specified to the State as contractor-owned rights. Each Supplier must clearly and specifically identify in their proposal all intellectual property, any materials and proprietary computer programs which will be utilized by the Supplier on the project and in which the Supplier retains the rights. Each Supplier shall also identify any derivative works they anticipate they will retain the rights to.

B.14. Performance Penalty or Termination

B.14.1. Performance Penalty

- B.14.1.1.** Once completion dates are mutually agreed upon, and the Supplier fails to perform any of the services and/or make deliveries within the time specified in the contract, or any extension period, the Supplier shall, in place of actual damages, pay the state of Oklahoma the sum of \$10,000 per calendar day for delayed services/deliveries.
- B.14.1.2.** Should the Supplier see that they will not be able to meet a delivery date; the Supplier may request an extension in writing. This request may or may not be granted at the discretion of the State. If written approval is granted by the State, liquidated damages will not be assessed for the duration of the extension.
- B.14.1.3.** Failure to correct any errors in materials that negatively alter the ability to administer the test, to use the score reports, or that denigrates confidence in the testing program will be viewed as a violation of the contract and the Supplier will pay liquidated damages to the OSDE in the amount of 3% of the total annual contract amount for each day during which the document is incorrect until a corrected document approved by the OSDE is distributed by the Supplier. OSDE agrees that when liquidated damages become a possibility, it will expedite its responses and requirements in this regard in an effort to limit the amount of liquidated damages.

B.14.2. Termination

- B.14.2.1.** The State of Oklahoma may terminate this agreement at any time upon 60 days written notification to the Supplier.
- B.14.2.2.** If for any reason the contract should be terminated, the OSDE shall have the right to ownership and full copyright and use of the products produced specifically for this contract. The use of such test items or other products within a subsequent contract with a Supplier that is other than the original Supplier is maintained as a right of the State.
- B.14.2.3.** In the event of termination by the State, the Supplier shall be entitled to an equitable portion of the total compensation provided for herein for uncompensated services which have been satisfactorily performed as of the date and time of termination, and to the reimbursement of expenses incurred as of the date and time of termination but solely to the extent such expenses are reimbursable pursuant to the provisions of this agreement. The Supplier shall agree to transition all state-owned products and technical information (including but not limited to item bank and associated statistics, art, etc.) to the new Supplier within three

weeks of the termination of non-renewal date. The Supplier shall agree that during transition, all products associated with the Oklahoma Academic Standards shall be in a useable camera-ready file format that will not impede the efforts of the OSDE or the new Supplier to continue development and/or delay the continuation of the program.

B.14.2.4. The State reserves the right, at the unilateral option of the OMES, to rebid the program at any time. Failure of the Supplier to meet quality standards, to meet agreed upon deadlines, or to provide any of the products or services described in the RFP, and/or contracted with the OSDE may provide the basis for the State's decision to rebid the program.

B.15. Employee Hiring

B.15.1. The Supplier and the OSDE acknowledge and agree that each of them has invested substantial time and expense in recruiting, hiring, training, and retaining employees. Both the Supplier and the OSDE agree not to hire an employee of the other as a result of the exposure of such employee or independent Supplier to the Supplier or the OSDE in the course of activities hereunder within one hundred and eighty (180) days from completion or termination of this project. This agreement shall not restrict the hiring of any person who

B.15.1.1. Has not been involved in rendering or receiving services, on behalf of the Supplier or the OSDE under this agreement.

B.15.1.2. Has been terminated from employment by the other party for one hundred eighty (180) or more days.

B.16. Prohibition against Assignment

B.16.1. Neither this contract nor any interest therein may be assigned by either party without first obtaining the written consent of the other party.

B.17. Subcontracting

B.17.1. The OSDE shall contract with one Supplier for the total work to be accomplished. The Supplier may subcontract any portion of the work to be accomplished and such subcontractor must be named in the Proposal. Credentials for the subcontracting Supplier must be established, and shall include the following:

B.17.1.1. Current name of company subcontracted by Supplier and name of proposed director for the Oklahoma program;

B.17.1.2. Company name(s) under which the subcontractor existed in the past;

B.17.1.3. Work experience and documentation of success directly related to the work by subcontractor in relation to this RFP;

B.17.1.4. Names of at least three other states (with appropriate State Agency contact persons' names and current telephone numbers) for which the specific work to be subcontracted for the RFP have been accomplished by proposed subcontractor; and

B.17.1.5. The subcontracting Supplier must be approved by the OSDE and OMES. The OSDE must approve any change in subcontractors.

B.18. Student Data Accessibility, Transparency and Accountability

When and where applicable, Supplier's ability to provide services under this Agreement requires OSDE to share student data containing confidential personally identifiable information ("PII") from education records maintained by OSDE with Supplier. Supplier agrees to comply with all state and federal laws relating to student data and privacy, including the Family Educational Rights and Privacy Act, (20 U.S.C § 1232g; 34 CFR Part 99) ("FERPA") and the Oklahoma Student Data Accessibility, Transparency, and Accountability Act of 2013, (70 O.S. § 3-168).

Agreement must include the Purpose of the Agreement; must specifically include all data points to be released by OSDE and what the Supplier will do with the student data.

Student data released to Supplier will be limited to data points specifically listed in this Agreement. If Supplier determines that there is a legitimate need to receive or access additional student data/information and that such information is necessary to perform required duties/responsibilities, Supplier shall submit a written request to OSDE detailing the information needed and state the purpose of the disclosure. If OSDE determines that access is necessary and appropriate, this Agreement may be modified in accordance with request. No information shall be provided until the Agreement is modified to reflect additional/subsequent data disclosures.

Supplier will safeguard the confidentiality and integrity of all data received pursuant to this Agreement, place limitations on its use, and maintain compliance with all applicable privacy laws. Supplier shall establish appropriate administrative, technical and physical safeguards to ensure the security and confidentiality of all student data.

Student information from education records cannot be published in a way that would allow individual students or their parents to be identified. Any reports or published information that is a result of or derived from confidential student data containing PII provided by

OSDE shall not allow individuals to be directly or indirectly identified and shall contain no student level data. Supplier may use student information from education records to perform contractual duties as required by this Agreement, but any published results must be presented in a manner which protects the privacy and confidentiality of individuals involved. The OSDE shall be provided the opportunity to review all results prior to publication.

Supplier shall require all staff to comply with the data security and confidentiality provisions set forth herein. Only those employees that are directly involved in performing tasks outlined herein and who have a legitimate interest in providing services according to the terms of this Agreement shall be entitled to access student data. Supplier shall take steps to maintain the confidentiality of student information from education records. [The Agreement must specifically state the offices or employees within the Supplier who will have access to the student data disclosed by OSDE.]

This Agreement does not constitute a release of student-level data for the requestor's discretionary use. Access to (or disclosure of) confidential student information contained from education records pursuant to the terms of this Agreement shall not constitute an assignment of ownership of the information provided. OSDE retains all ownership rights to the data transferred pursuant to this Agreement, and Supplier shall not obtain any right, title, or interest in any of the data furnished by OSDE.

OSDE data may only be used to carry out responsibilities throughout the duration of the projects/task/assignments specified herein. OSDE data may only be used to perform the duties specified in this Agreement. Any unauthorized use of the data files beyond the terms specified in the Agreement is not permitted. Supplier shall not use the data for purposes other than the projects/task/assignments identified herein. [May contain brief description of how Supplier will access the information.]

Supplier shall immediately notify the OSDE if there is any unauthorized access or breach to the information provided by the OSDE and take reasonable steps to mitigate any breach. In the event a breach occurs, Supplier will take reasonable steps and implement corrective procedures to ensure that further breaches do not occur.

OSDE shall be notified immediately if Supplier receives a request for the student data containing PII provided by the OSDE. If Supplier becomes legally compelled to disclose any confidential PII (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise, then Supplier shall use all reasonable efforts to provide OSDE with prior notice before disclosure so that OSDE may seek a protective order or other appropriate remedy to prevent the disclosure. If a protective order or other remedy is not obtained prior to when any legally compelled disclosure is required, Supplier shall only disclose that portion of the confidential PII that it is legally required to disclose.

Supplier may determine that it is necessary to employ a contractor or subcontractor to fulfill contractual obligations under the Contracts. Supplier shall ensure, by written agreement, that any contractor or subcontractor employed by Supplier remains in compliance with (FERPA), 20 USC § 1232g; 34 CFR Part 99, and the Oklahoma Student Data Accessibility, Transparency, and Accountability Act of 2013, 70 O.S. § 3-168. OSDE shall enter into a Data Sharing Agreement with any contractor or subcontractor employed by Supplier prior to the release of any student data or personally identifiable information.

The OSDE will immediately terminate this agreement and this agreement shall not be renewed due to the breach of any of the terms and conditions of the data security and confidentiality provisions set forth herein by Supplier and OSDE may revoke any other existing RFP's or contract with Supplier. (OAC 580:16-3-23 and OAC 580:16-9-9)

The OSDE may seek monetary, retribute and punitive damages against Supplier for a breach of any of the terms and conditions of the data security and confidentiality provisions set forth herein as allowed by law.

Upon notification of a breach in the terms and conditions of the data security and confidentiality provisions set forth herein, the OSDE will not release any additional confidential personally identifiable information ("PII") from education records maintained by OSDE to the Supplier.

Upon completion of the services detailed in this agreement or upon termination of this agreement, Supplier shall immediately destroy all PII that was disclosed by the OSDE and provided to Supplier for the purposes detailed in this agreement. Within ten (10) days of destruction, Supplier shall provide written notification to the OSDE of the date and method of destruction of these records.

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C. SOLICITATION SPECIFICATIONS

- C.1.** The intent of this Request for Proposal (RFP) is to select a qualified Supplier to realign the current alternate achievement rubric to the (OAS) Oklahoma Academic Standards, develop new content for the rubrics as needed, provide an electronic portfolio submission system, provide standard setting, and all resulting psychometric components, and facilitate the scoring process for alternate assessments for children with disabilities in the State of Oklahoma.
- C.2.** This contract is to provide an electronic portfolio submission system (there will be no paper & pencil tests, participation will depend on if the schools have students in these particular grade levels for participation) Oklahoma's 2014-2015 social studies (grades 5, 7, 8, and End of Instruction (EOI) United States History) and Science (grades 5, 8, and EOI Biology) alternate assessment via a secure web-based site for spring and winter testing administration.
- C.3.** The successful Supplier will develop a secure, web-based server enabling Oklahoma educators to include all teachers that are working with special education students, special education coordinators, and potential other district personnel to upload and store electronic portfolio evidence (video, documents, audio, photos) in a system designed to align portfolio evidence to Oklahoma's alternate assessment blueprints.
- C.3.1.** Development of ALL COMPONENTS of the portfolio submission site should be completed by August 1 of every year of the contract.
- C.3.2.** OSDE must be provided with real-time (live, not delayed) access to stored artifacts and data.
- C.3.3.** All Oklahoma districts should be provided access at the administrative and District Test Coordinator levels to set up user accounts within their district for appropriate personnel.
- C.3.4.** Site should have adequate capabilities to accommodate simultaneous data upload.
- C.3.5.** OSDE must be provided full administrative access (access should include the ability to see all user roles at all districts in the state) to the submission site as well as access to a test site with mock test participants to allow state personnel to experience the submission process first hand.
- C.4.** The successful Supplier should determine the video and file format requirements compatible with the web-based site which will then be provided to OSDE for approval.
- C.4.1.** List of acceptable video/file formats should be available no later than July 1 of each contract year.
- C.5.** The successful Supplier is to provide a technical assistance helpline to Oklahoma educators regarding electronic portfolio submission.
- C.5.1.** The Technical support helpline is to be available to Oklahoma Educators from August 1 – June 15 of each contract year.
- C.6.** The successful Supplier is to update and revise the web-based portfolio submission site as needed to incorporate changes made in the assessment with approval from OSDE.
- C.6.1.** Programming changes within the web-based site must be completed and the site must be operational no later than August of the contract year.
- C.7.** The successful Supplier should utilize the work performed by committees of Oklahoma educators to align current rubrics that are included with the assessment the schools will be graded thru the A-F system based on student performance in social studies (grades 5, 7, 8, & EOI US History) and science (grades 5, 8, & EOI Biology) to the new Oklahoma Academic Standards and develop new rubric content where needed.
- C.7.1.** Rubric content changes is to be incorporated in the online assessment system no later than August 31 of the contract year.
- C.7.2.** Rubric work will be completed by July 15 of each contract year.
- C.7.3.** New rubrics will be made available to OSDE for approval by July 15 of each contract year and posted on portfolio submission site by August 1 of each contract year.
- C.8.** The successful Supplier should organize and facilitate the Performance Level and Identify the Performance standard to be measured and the expected performance level of the contract.
- C.8.1.** Standard Setting is to be completed during summer 2015

- C.9.** The successful Supplier should utilize work performed by committees of Oklahoma educators to develop new task specifications, blueprints, and performance level descriptors for social studies (grades 5, 7, 8, and EOI US History) and Science (grades 5, 8, and EOI Biology).
 - C.9.1.** Changes are to be incorporated in the online assessment system no later than August 1 of each contract year.
 - C.9.2.** Rubric work should be completed by July 15 of each contract year.
 - C.9.3.** New task specifications, blueprints and performance level descriptors must be made available to OSDE by August 1 of the contract year and posted on portfolio submission site no later than August 1 of the contract year.
- C.10.** The successful Supplier must incorporate a test security acknowledgement question in the online system answered by all personnel submitting evidence.
 - C.10.1.** Test security acknowledgement should be incorporated in the system no later than August 1 of each contract year.
- C.11.** The successful Supplier must submit to OSDE a signed document stating that they have a test security extract (from electronic test security question built into the system answered by all personnel submitting evidence) a report that contains evidence that each portfolio test was secured to the OSDE.
 - C.11.1.** Test security extract should be provided within 60 days of the closure of the test window to OSDE.
- C.12.** The successful Supplier is to gather test information in the system (task description, level of communication, accommodations used, and disability category).
 - C.12.1.** Test information must be incorporated in the system no later than August 31 of each contract year. To include the following:
 - C.12.1.1.** Task description
 - C.12.1.2.** Level of communication
 - C.12.1.3.** Accommodations used
 - C.12.1.4.** Disability category
- C.13.** The successful Supplier is to provide test information extract to the OSDE that consists of task description, level of communication, accommodations used, and disability category.
 - C.13.1.** Test information extract must be provided to OSDE within 30 days of test window closure. These dates will be provided to the Supplier by OSDE
- C.14.** The successful Supplier must implement a system that provides two evidence submission windows.
 - C.14.1.** Open/closing dates of evidence submission windows:
 - C.14.1.1.** Spring window: Opening as early as October 1 and closing as late as May 1.
 - C.14.1.2.** Winter window: Opening as early as October 1 and closing as late as December 19.
- C.15.** The successful Supplier should implement a system that includes a 30 day district demographics clean-up window which will begin upon posting of preliminary scores reporting of student data file and remain open for 30 days.
- C.16.** The successful Supplier is to provide and facilitate the full portfolio scoring process for both the spring and winter administration.
- C.17.** The successful Supplier should recruit professional scorers with at least one team member for each scoring team holding teacher certification.
- C.18.** The successful Supplier should develop scorer training and validity sets.
 - C.18.1.** Training sets should include two anchors, three practices, and two qualification sets provided to OSDE for review 30 days before scoring.
- C.19.** The successful Supplier is to develop the scoring process and procedures.
 - C.19.1.** All evidence should be scored through a double-blind scoring method with third scorer resolution of non-adjacent scores unless otherwise directed by OSDE.
 - C.19.2.** 100% of Inter-Rater Reliability (IRR) reviews/reports and back-reading will be reviewed daily.

- C.19.3.** Supplier will be 100% responsible for providing the site, set-up and training materials for scoring.
- C.19.4.** All scorers must be trained before scoring portfolios by OSDE and Supplier.
- C.20.** The successful Supplier should develop and facilitate an annual planning meeting with OSDE.
 - C.20.1.** Planning meeting should occur by March 31 each contract year and will include discussions of all aspects of the alternate assessment process.
- C.21.** Reporting Oklahoma Alternate Assessment Scores:
 - C.21.1.** The successful Supplier is to provide to the OSDE and school districts Preliminary and Final "Individual/District/school/class Summary Report" for grades 3-8 & EOI via paper and electronic data files.
 - C.21.2.** Preliminary student data file should be posted no later than May 28 each school year and winter will be posted by February 15th each year.
 - C.21.3.** Preliminary spring district/school/class summary reports and roster reports posted no later than June 15 of the contract year and winter reports posted no later than January 25 school each year.
 - C.21.4.** Final student data file to be posted no later than June 28 of each school year and winter will be posted no later than by February 15 of each school year.
 - C.21.5.** Final spring district/school/class summary reports and roster reports and roster reports posted no later than July 15 of the contract year and winter reports posted no later than March 5 of the contract year.
 - C.21.6.** District/school/class/individual paper and media reports due in districts no later than August 1 of the contract year.
 - C.21.7.** Provide to school districts individual student labels for cumulative folders for grades 3-8 & EOI via paper and electronic data files no later than August 1 of the contract year.
 - C.21.8.** State level paper and media reports due to OSDE no later than July 15 of each contract year and winter no later than April 1 of each contract year.
- C.22.** The successful Supplier is to store all submitted evidence of student work samples that are uploaded into the electronic portfolio submission system including task descriptions on hard drives at the end of each scoring session.
 - C.22.1.** Provide OSDE hard drives containing submitted evidence within 90 days of each scoring session.
- C.23.** Develop technical manuals and training materials regarding electronic portfolio submission for dissemination to Oklahoma educators specifically special education teachers working with students participating in this assessment to also include other district personnel/educators.
- C.24.** Provide text to OSDE regarding electronic portfolio submission for integration into the Portfolio Administration Manual.
 - C.24.1.** Completion of text describing electronic portfolio submission process should be provided by July 1 of the contract year.
- C.25.** Provide portfolio electronic submission technical training to Oklahoma educators.
 - C.25.1.** Supplier should provide trainings which should occur between September 1 and September 30 of each contract year or time otherwise determined by the OSDE.
- C.26.** Provide a technical manual to SDE describing the technical aspects of the assessment with enough psychometric descriptor information to be utilized as evidence in the peer-review process to OSDE and will provide others based upon need.
 - C.26.1.** Provide Technical Manual to OSDE by December 31 of the each contract year and will be posted to the portfolio submission site by January 1 of each contract year.
- C.27.** Provide a Test Interpretation Manual describing all psychometric aspects of the assessment as well as how test scores are to be interpreted in language understandable to teachers and parents.
 - C.27.1.** Provide Test Interpretation Manual to OSDE by August 1 of each contract year and post on portfolio submission site by August 15th of each contract year.
- C.28.** Provide an annual technical report describing the technical ability of the system to handle large amounts of data.
 - C.28.1.** Provide OSDE annual technical reports by August 31 of each contract year.

- C.29.** Update and revise assessment system according to the needs of the OSDE.
 - C.29.1.** The successful Supplier is to review, analyze, and revise task specifications, rubrics, blueprints, and Performance Level Descriptors according to needs of OSDE.
 - C.29.2.** Revisions must be provided to OSDE for review 30 days before final changes are made.

- C.30.** Facilitate a committee organization for review, analysis, and revision of task specs, rubrics, blueprints and Performance Level Descriptors as needed.
 - C.30.1.** Supplier should retain facility for committee development.
 - C.30.2.** Supplier should provide agenda for development meetings.
 - C.30.3.** Supplier should provide all working materials needed for committee development.
 - C.30.4.** Supplier should recruit with assistance from OSDE educators to include Teachers/administrators, etc. to participate in committees.
 - C.30.5.** Supplier should coordinate and finalize any payment including travel costs, expenditures, and sub pay to 100% of committee members.

- C.31.** Maintain and provide to the OSDE technical data (demographic information) regarding committee members.
 - C.31.1.** Committee demographics reports should be provided to OSDE within 90 days of completion of committee work.

- C.32.** All contract monitoring and activities must be evaluated according to monthly written timeline reports documenting completion of goals.

- C.33.** Reporting and Billing:
 - C.33.1.** Provide OSDE with detailed invoices of activities that equal the sum of the invoice and a final itemized accounting of all expenditures made pursuant to this contract within 30 days following the end of the contractual period.
 - C.33.2.** Provide the OSDE with an inventory list of items, if any, purchased with IDEA funds through this award within thirty days following the end of the contractual period. All items purchased and materials developed within the scope of this RFP will be considered the property of the OSDE.

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D. EVALUATION

D.1. Evaluation and Award

D.1.1. Offers shall be evaluated on the “best value” determination in accordance with Title 74 § 85.

D.1.2. The State reserves the right to request demonstrations and question clarifications from any or all-responding Suppliers.

D.2. Proposal Clarification Questions

The State reserves the right, at its sole discretion, to request clarifications of technical proposals or to conduct discussions for the purpose of clarification with any or all Suppliers. The purpose of any such discussions shall be to ensure full understanding of the proposal. If clarifications are made because of such discussion, the Supplier(s) shall put such clarifications in writing. The clarification shall not alter or supplement the proposal.

D.3. Competitive Negotiations of Offers

The State of Oklahoma reserves the right to negotiate with one, selected, all or none of the Suppliers responding to this solicitation to obtain the best value for the State. Negotiations could entail discussions on products, services, pricing, contract terminology or any other issue that may mitigate the State's risks. The State shall consider all issues negotiable and not artificially constrained by internal corporate policies. Negotiation may be with one or more Suppliers, for any and all items in the Supplier's offer.

Firms that contend that they lack flexibility because of their corporate policy on a particular negotiation item shall face a significant disadvantage and may not be considered. If such negotiations are conducted, the following conditions shall apply:

D.3.1. Negotiations may be conducted in person, in writing, or by telephone.

D.3.2. Negotiations shall only be conducted with potentially acceptable offers. The State reserves the right to limit negotiations to those offers that received the highest rankings during the initial evaluation phase.

D.3.3. Terms, conditions, prices, methodology, or other features of the Supplier's offer may be subject to negotiations and subsequent revision. As part of the negotiations, the Supplier may be required to submit supporting financial, pricing, and other data in order to allow a detailed evaluation of the feasibility, reasonableness, and acceptability of the offer.

D.3.4. The requirements of the Request for Proposal shall not be negotiable and shall remain unchanged unless the State determines that a change in such requirements is in the best interest of the State Of Oklahoma.

D.3.5. BEST and FINAL – The State may request best and final offers if deemed necessary, and shall determine the scope and subject of any best and final request. However, the Supplier should not expect an opportunity to strengthen its offer and should submit its best offer based on the terms and condition set forth in this solicitation.

D.4. Selection Criteria

The best value criterion for this solicitation is as follows (in no particular order):

D.4.1. Cost/Price

D.4.2. Proposed Assessment

D.4.3. Management of the Contract

D.4.4. Quality of Products and Services

D.4.5. Online Testing

D.4.6. Corporate Experience

D.5. Evaluation Process

D.5.1. Determination of Solicitation Responsiveness

A responsive offer is defined as an offer that meets all the general mandatory requirements as outlined below:

- Responding Bidder Information Sheet complete Form 076
- Certification for Competitive Bid and Contract (Non-Collusion Certification) Form 004
- Accessibility / VPAT, Form 053
- Amendments, if issued, are acknowledged.

Meeting all requirements outlined above allows the offer to proceed in the evaluation process. Failure to meet all of the above may result in the proposal being disqualified from further evaluation.

Note: The following evaluation process is not presented in any sequence as any selection process may overlap the other in the evaluation.

D.5.2. Evaluation of Offer

The technical section of the offer is evaluated based on the submittals.

D.5.3. Evaluation of Cost

Cost comparisons are performed.

D.5.4. Demonstrations

If desired by the evaluation committee, the Supplier may be required to provide product/services demonstrations.

D.5.5. Best Value Evaluation of Product/Services

D.5.5.1. Selection

The selection and award of contractor is based upon which Supplier best meets the needs of the State.

The State reserves the right to negotiate with one or more Suppliers, at any point during the evaluation. The State may negotiate any and all content of the offer.

D.5.6. Suppliers should be prepared to participate in oral presentations and demonstrations to define their submittal, to introduce their team, and to respond to any and all questions regarding their offer if requested by the State prior to award.

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E. INSTRUCTIONS TO SUPPLIER

E.1. Introduction

Prospective Suppliers are urged to read this solicitation carefully. Failure to do so shall be at the Supplier's risk. Provisions, terms, and conditions may be stated or phrased differently than in previous solicitations. Irrespective of past interpretations, practices or customs, offers shall be evaluated and any resultant contract(s) shall be administered in accordance with the plain meaning of the contents hereof. The Supplier is cautioned that the requirements of this solicitation can be altered only by written amendment approved by the State and that verbal communications from whatever source are of no effect. In no event shall the Supplier's failure to read and understand any term or condition in this solicitation constitute grounds for a claim after contract award.

E.2. Preparation of Offer

- E.2.1.** Any usage amounts specified are estimates only and are not guaranteed to be purchased.
- E.2.2.** Information should be entered on the form provided or a copy thereof.

E.3. Submission of Offer

- E.3.1.** Completeness of offer(s): It is desirable that the Supplier respond in a complete, but concise manner. It is the Supplier's sole responsibility to submit information in the offer as requested by the solicitation. The Supplier's failure to submit required information may cause its offer to be rejected. However, unnecessary information should be excluded from the Supplier's offer.
- E.3.2.** Copies: Proposal should be paginated and indexed in alpha order with reference to RFP sections. Proposal must include an original (1) hardcopy.
- E.3.3.** The Supplier should include a "machine readable" version (1) of the original hardcopy on CD or DVD, of the Supplier's offer. The "machine readable" version should include the completed proposal, including the scanned documents of the OMES forms.

E.4. Proprietary and/or Confidential

- E.4.1.** Suppliers claiming any portion of their offer as proprietary or confidential must specifically identify what documents or portions of documents they consider confidential and identify applicable law supporting their claim of confidentiality. The CIO shall make the final decision as to whether the documentation or information is confidential pursuant to 74 O.S. §85.10.
- E.4.2.** If a Supplier believes particular information requested by the RFP for evaluation purposes is proprietary, the Supplier shall submit that information separate and apart from its response and mark it Proprietary and Confidential. If ISD in its sole discretion agrees the information is proprietary, ISD will maintain the information as Confidential. If ISD does not acknowledge the information as proprietary, ISD will return or destroy the information with proper notice to the Supplier and the evaluation will be completed without consideration of the information marked Proprietary. PROPOSALS MARKED, IN TOTAL, AS PROPRIETARY and/or CONFIDENTIAL SHALL NOT BE CONSIDERED.

E.5. Oklahoma Open Records Act

Proposals are subject to public disclosure in accordance with the Open Records Act and will not be considered confidential except as determined by the Oklahoma Chief Information Officer in his sole discretion.

E.6. Communications Concerning Solicitation

The contracting officer listed on the cover page of this solicitation is the only individual in which the Supplier should be in contact with concerning any issues with this solicitation. Failure to comply with this requirement may result in the Supplier response being considered non-responsive and not considered for further evaluation.

E.7. Administrative Review

- E.7.1.** Suppliers who believe solicitation requirements or specifications are unnecessarily restrictive or limit competition may submit a request for administrative review, in writing, to the Contracting Officer listed herein. To be considered a request for review must be received no later than 3:00PM Central Time on April 18, 2014. The State shall promptly respond in writing to each written review request, and where appropriate, issue all revisions, substitutions or clarifications through a written amendment to the solicitation. Requests for administrative review of technical or contractual requirements shall include the reason for the request, supported by information, and any proposed changes to the requirements.

E.8. General Solicitation Questions

Supplier may submit general questions concerning the specifications of the solicitation. All questions and answers regarding this RFP shall be posted to the IT procurement wiki at:

<https://wiki.ok.gov/display/itprocurement/2650000285>

E.8.1. Questions received via any other means will not be addressed. If your firm is not currently registered with the State of Oklahoma with wiki access, you may go to the link below to request access.

<https://wiki.ok.gov/display/itprocurement/Home>

E.8.2. In order to guarantee that your access is created prior to closing date for submitting questions for a solicitation, please request access at least 5 business days prior to the closing date for questions. The State of Oklahoma cannot be responsible for a Supplier's lack of access if the request is not made within this timeline.

E.8.3. When posing questions, every effort should be made to:

- a) be concise
- b) include section references, when possible
- c) do not use tables or special formatting, use simple lists

E.8.4. These questions shall be answered directly on the wiki and in the form of an amendment and posted on the OMES website and linked on the wiki. Suppliers are advised that any questions received after 3 p.m. Central Time on April 29, 2014, shall not be answered.

E.9. Electronic Funds Transfer (EFT)

The State of Oklahoma passed legislation in 2012 requiring funds disbursed from the State Treasury be sent electronically.

If awarded a contract will your company accept payment for invoices from the State by EFT?

Yes No (check one)

E.10. Deliverables

Responses should be bond, tabbed by section, and clearly marked as Original.

Note: Deliverables are to be in both hard copy and in a single machine-readable format on either CD or DVD.

E.10.1. Section One – Introduction

- a) Letter of Introduction / Cover Letter
- b) Completed "Responding Bidder Information" Form 076.
- c) Completed "Certification for Competitive Bid and Contract" Form 004.
- d) Signed Amendment(s), if any.
- e) Any exceptions to solicitation terms and conditions.

E.10.2. Section Two – References

- E.10.2.1.** Provide three (3) references from customers where similar work was performed. References provided must contain a contact person with full contact information (i.e., current employer, telephone number, mailing address, e-mail address, and fax number).
- E.10.2.2.** Suppliers are to provide resumes of all personnel associated with this contract. Supplier must show evidence, with resumes that staff assigned to this project possess experience and that a sufficient amount of time is allotted to the individuals to complete the task within the approved timeline.

E.10.3. Section Three – Company Information

- E.10.3.1.** Supplier must provide detailed information on its company, including principals involved, number of employees, location, years in existence, a statement of financial stability, and any litigation or pending litigation for the past five years, or a statement indicating there is no litigation. Supplier shall not have any pending or outstanding penalties with the State.
- E.10.3.2.** Suppliers are to present a company profile that shows the ability, capacity, and skill of the supplier to perform the services required. The profile must include detailed information of the supplier's experience with providing services of this scope, and number of years specializing in services of this type.
- E.10.3.3.** Supplier must have five (5) years prior experience in working on projects similar in size, scope, technical requirements, and function to the proposed contract.

E.10.4. Section Four – Response to Specifications

E.10.4.1. Provide detailed response to specifications and requirements.

E.10.4.2. The supplier should address each section of the scope of services section of this document, indicating compliance with or acceptance of the requirement and any additional explanation of their response.

E.10.5. Section Five – EITA Compliance

Provide adequate information defining your products level of EITA compliance by providing a Voluntary Product Accessibility Template (VPAT) that indicates compliance of all products offered with the provisions of Section 508 of the Rehabilitation Act Amendments included in the Workforce Investment Act of 1998. Please complete the attached VPAT & Accessibility - OMES Form 053 also attached is the VPAT Instructions Template.

Supplier may provide a URL link to a website providing VPAT for products deliverables through resulting contract.

E.10.6. Section Six – Supplier Agreements

Supplier shall provide any required software licenses, maintenance, or service agreements.

Note: Any software licensing, maintenance, or service agreements the Supplier requires, should they be the successful Supplier, not submitted with Supplier's original offer shall not be considered

E.10.7. Pricing

All information relating to costs are to be sent in a separate binder/envelope, clearly marked as "Price."

E.11. Services Offered

E.11.1. The supplier will assume responsibility for all services offered in the response/ whether or not they are performed or produced by the Respondent or by its sub-suppliers. The State Department of Education (SDE) will consider the supplier to be the sole point of contact for contractual matters, including payment of any and all contract invoices. All sub-suppliers must be acceptable to the SDE and to the Office of Management and Enterprise Services-Central Purchasing Division (OMES/CP); changes in sub-suppliers could be required prior to the contract award or during the life of the contract.

E.11.2. Section C of the RFP describes the work tasks designed to implement the Oklahoma Academic Standards. In their proposals, suppliers are expected to explain in detail their plans for completing the work tasks. Each of the work tasks identified in Sections C must be addressed separately in proposals in the order in which they are presented in the RFP. Proposals are expected to convey an understanding of the requirements of each work task and to explain proposed processes and solutions for accomplishing all work tasks.

E.11.3. The work tasks identified in Section C represent a common basis for the evaluation of proposals. All proposals must be designed to meet all requirements of the RFP.

E.11.4. This RFP defines the requirements for implementing the OAS. The RFP and the selected supplier's proposal, together with clarifying documents, define the work to be conducted under this contract.

E.11.5. The SDE reserves the right to substitute or modify work tasks on a generally equal basis. Substitutions or modifications will be made prior to the supplier's beginning significant efforts to complete the task. All design changes, substitutions, or modifications will be given to the supplier in writing. The SDE reserves the right to amend the contract resulting from this competition, either to add, modify, or delete designated work tasks, products, and/or services.

E.11.6. The supplier will work closely with the SDE to complete all work tasks. The SDE must approve all procedures, processes, and products used by the supplier to complete the contract work. Throughout the contract period, the supplier will confer with the SDE on a continuing and consistent basis and will be involved in frequent face-to-face meetings with the SDE.

E.12. Awardee Financial Status

Prior to award the state may choose to request information from the proposed awardee to demonstrate its financial status and performance, in the form of the last three years audited financial statements or the last three years of tax returns. A certified review may be accepted (clarification may be required). If the Supplier is a subsidiary of another entity, the last three years audited financial statements of three years tax returns for the parent company must also be submitted. The State reserves the right to withhold award to a Supplier who is deemed financially weak. The State reserves the right to determine financial status at their sole discretion.

Clarification or additional documents may be requested.

E.13. Notice of Award

A notice of award in the form of a PO or contract resulting from this solicitation shall be furnished to the successful Supplier and shall result in a binding contract.

F. PRICE AND COST

F.1. Submission

F.1.1. Suppliers must submit a complete detailed budget sheet for all years of this contract outlining all costs associated with this service, beginning with the first year of the contract period.

F.1.2. Please list any other anticipated cost that will be associated with this service.

F.2. Payments

F.2.1. Payment against this contract shall be firm fixed at the quoted price, and OSDE shall not pay, nor be liable for any other additional costs.

F.2.2. Payment for all services herein shall be made in arrears. OSDE shall not make any advance payments or advance deposits.

F.2.3. No payments will be made to the supplier for services performed pursuant to this contract by unapproved employees of the contractor.

F.2.4. Performance Payment Scale:

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**State of Oklahoma
Office of Management and Enterprise Services
Central Purchasing Division**

**Certification for Competitive
Bid and/or Contract
(Non-Collusion Certification)**

NOTE: A certification shall be included with any competitive bid and/or contract exceeding \$5,000.00 submitted to the State for goods or services.

Solicitation or Purchase Order #: _____

Supplier Legal Name: _____

SECTION I [74 O.S. § 85.22]:

A. For purposes of competitive bid,

1. I am the duly authorized agent of the above named bidder submitting the competitive bid herewith, for the purpose of certifying the facts pertaining to the existence of collusion among bidders and between bidders and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to said bid;
2. I am fully aware of the facts and circumstances surrounding the making of the bid to which this statement is attached and have been personally and directly involved in the proceedings leading to the submission of such bid; and
3. Neither the bidder nor anyone subject to the bidder's direction or control has been a party:
 - a. to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding,
 - b. to any collusion with any state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract, nor
 - c. in any discussions between bidders and any state official concerning exchange of money or other thing of value for special consideration in the letting of a contract, nor
 - d. to any efforts or offers with state agency or political subdivision officials or others to create a sole brand acquisition or a sole source acquisition in contradiction to 74 O.S. 85.45j.1.

B. I certify, if awarded the contract, whether competitively bid or not, neither the contractor nor anyone subject to the contractor's direction or control has paid, given or donated or agreed to pay, give or donate to any officer or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring this contract herein.

SECTION II [74 O.S. § 85.42]:

For the purpose of a contract for services, the supplier also certifies that no person who has been involved in any manner in the development of this contract while employed by the State of Oklahoma shall be employed by the supplier to fulfill any of the services provided for under said contract.

The undersigned, duly authorized agent for the above named supplier, by signing below acknowledges this certification statement is executed for the purposes of:

the competitive bid attached herewith and contract, if awarded to said supplier;

OR

the contract attached herewith, which was not competitively bid and awarded by the agency pursuant to applicable Oklahoma statutes.

Supplier Authorized Signature

Certified This Date

Printed Name

Title

Phone Number

Email

Fax Number



**State of Oklahoma
Office of Management and
Enterprise Services
Information Services Division**

Responding Bidder Information

"Certification for Competitive Bid and Contract" MUST be submitted along with the response to the Solicitation.

1. **RE: Solicitation #** _____

2. **Bidder General Information:**

FEI / SSN: _____ VEN ID (if unknown, leave it blank): _____

Company Name: _____

3. **Bidder Contact Information:**

Address: _____

City: _____ State: _____ Zip Code: _____

Contact Name: _____

Contact Title: _____

Phone #: _____ FAX#: _____

Email: _____ Website: _____

4. **Oklahoma Sales Tax Permit¹:**

YES – Permit #: _____

NO - Exempt pursuant to Oklahoma Laws or Rules

5. **Registration with the Oklahoma Secretary of State:**

YES – Filing Number: _____

NO - Prior to the contract award, the successful bidder will be required to register with the Secretary of State or must attach a signed statement that provides specific details supporting the exemption the supplier is claiming (www.sos.ok.gov or 405-521-3911).

6. **Workers' Compensation Insurance Coverage:**

Bidder is required to provide with the bid a certificate of insurance showing proof of compliance with the Oklahoma Workers' Compensation Act.

YES – include a certificate of insurance with the bid

NO – attach a signed statement that provides specific details supporting the exemption you are claiming from the Workers' Compensation Act (Note: Pursuant to Attorney General Opinion #07-8, the exemption from 85 O.S. 2001, § 2.6 applies only to employers who are natural persons, such as sole proprietors, and does not apply to employers who are entities created by law, including but not limited to corporations, partnerships and limited liability companies.)²

Authorized Signature

Date

Printed Name

Title

¹ For frequently asked questions concerning Oklahoma Sales Tax Permit, see <http://www.tax.ok.gov/faq/faqbussales.html>

² For frequently asked questions concerning Workers' Compensation Insurance, see http://www.ok.gov/oid/Consumers/Workers'_Compensation/index.html



The Voluntary Product Accessibility Template is a tool to assist in making preliminary assessments regarding the availability of electronic and information technology products and services with features that support accessibility.

The VPAT provides a summary view of criteria specific to various types of technologies identified in the Oklahoma Information Technology Accessibility Standards. There are three sections in each table. Section one of the Summary Table describes each section of the Standards. The second section describes the supporting features of the product or refers you to the corresponding detailed table, "e.g., equivalent facilitation." The third section contains any additional remarks and explanations regarding the product.

Oklahoma EITA Procurement Clause:

Pursuant to Title 74, Section 85.7d and OAC 580:15-6-21 electronic and information technology procurements, agreements, and contracts shall comply with applicable Oklahoma Information Technology Accessibility Standards issued by the Oklahoma Office of State Finance.

EIT Standards may be found at www.ok.gov/DCS/Central_Purchasing/index.html or http://www.ok.gov/OSF/documents/isd_itas.doc.

- 1) For Information Technology or Communications Products, Systems and Applications not requiring development and/or customization. The Contractor shall provide a description of conformance with the applicable Oklahoma Information Technology Accessibility Standards for the proposed product, system or application by means of either a Voluntary Product Accessibility Template (VPAT) or other comparable document, upon request.

The Contractor shall indemnify and hold harmless the State of Oklahoma and any Oklahoma Government entity purchasing the products, systems, or applications not requiring development and/or customized by the Contractor from any claim arising out of the Contractor's failure to comply with applicable Oklahoma Information Technology Accessibility Standards subsequent to providing certification of compliance to such Standards.

- 2) For Information Technology or Communications Products, Systems or Applications requiring development and/or customization. The Contractor shall provide a description of conformance with the applicable Oklahoma Information Technology Accessibility Standards for the proposed product, system, or application developed and/or customized by means of either a Voluntary Product Accessibility Template (VPAT) or other comparable document, upon request. Additional requirements and documentation may be required and compliance will be necessary on the Contractor's part. Such requirements will be stated in documents such as State Bids, Request for Proposals, Contracts, Agreements, Purchase Orders, and Amendments.

The Contractor shall indemnify and hold harmless the State of Oklahoma and any Oklahoma Government entity purchasing the products, systems, or applications from the Contractor, from any claim arising out of the Contractor's failure to comply with applicable Oklahoma Information Technology Accessibility Standards subsequent to providing certification of compliance to such Standards. However, the Contractor shall no longer have an obligation to indemnify the State for liability resulting from products, systems or applications developed and/or customized that are not in compliance with applicable Oklahoma Information Technology Accessibility Standards ("Standards") after the State has tested and confirmed that the product, system or application meets the accessibility requirements in the Standards.

How to Get Started - Begin with your product's specification or a list of its known features:

1. Determine which subsection(s) of the Oklahoma Information Technology Accessibility Standards (IT Standards) apply to your product. Document the product's ability to meet the standards in the applicable areas, such as software, operating system, and so on.
2. For each standard in the applicable area(s), determine if the product meets or supports the standard.
 - If the product appears to meet or support the standard, then you have the option of providing examples of features that are accessible or of specific accessibility features that exist.
 - If the product appears to not meet the standard, remember that the OK Information Technology Accessibility Standards allow for alternative products provided that they result in substantially equivalent or greater access. The product can meet the standard as long as the feature performs in the same manner as it does for any other user. This is called "functional equivalency."



- When the VPAT draft is complete, translate the technical language into language that will be understood by a state agency procurement officer. We encourage use of suggested language noted in the section "Suggested Language for Filling out the VPAT".
- Suggested Language for filling out the VPAT**
Suggested language below has been developed for use when filling out a VPAT. All or some of the language may be used. You are encouraged to use consistent language in VPATs throughout the form.

<u>Supporting Features</u>	
Supports	Use this language when you determine the product fully meets the letter and intent of the criteria.
Supports with Exceptions	Use this language when you determine the product does not fully meet the letter and intent of the criteria, but provides some level of access relative to the criteria.
Supports through Equivalent Facilitation	Use this language when you have identified an alternate way to meet the intent of the criteria or when the product does not fully meet the intent of the criteria.
Supports when combined with Compatible AT	Use this language when you determine the product fully meets the letter and intent of the criteria when used in combination with compatible AT. For example, many software programs can provide speech output when combined with a compatible screen reader (commonly used assistive technology for people who are blind).
Does not Support	Use this language when you determine the product does not meet the letter or intent of the criteria.
Not Applicable	Use this language when you determine that the criteria do not apply to the specific product.
Not Applicable - Fundamental Alteration Exception Applies	Use this language when you determine a fundamental alteration of the product would be required to meet the criteria (see the IT Standards for the definition of "fundamental alteration").

Remarks & Explanations (third section on VPAT)

Providing further explanation regarding features and exceptions is especially helpful. Use this section to detail how the product addresses the standard or criteria by:

- Listing accessibility features or features that are accessible;
- Detailing where in the product an exception occurs; and
- Explaining equivalent methods of facilitation (See Section 3.5 of the IT Standards for definition of "equivalent facilitation").