

CONTRACT #8
RFS # 331.50-00711
FA # Pending

Education

VENDOR:
US Education Delivery Institute

RECEIVED

JUL 23 2010

FISCAL REVIEW



STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
Division of Career and Technical Education
4th FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0383

PHIL BREDESEN
GOVERNOR

TIMOTHY K. WEBB, Ed.D.
COMMISSIONER

TO: Mr. James White, Fiscal Review Committee
FROM: Timothy K. Webb, Commissioner *TKW*
DATE: July 23, 2010
SUBJECT: Request to appear before Fiscal Review Committee regarding Request for Non-Competitive Contract RFS 33150-00711

Please consider the enclosed information regarding a request for Non-Competitive Contract between the Department of Education and the U.S. Education Delivery Institute.

The proposed contract will allow the vendor to assist the Tennessee Department of Education in building its Education Delivery Unit to support effective implementation of its First to the Top reform plan to meet the state's goals for student performance.

The State surveyed the field of consultants capable of providing services regarding the structures, processes and strategies to drive effective implementation to impact student performance, and found that USED I is the only organization with the required expertise in building state education agency delivery units to drive education performance. Further, USED I was specifically named in the grant to provide these services.

With the Race to the Top grant being announced in early April, work on this contract could not begin until that time. There have been extensive negotiations into the various aspects of the services provided under the contract, and has caused a necessary delay in finalizing the scope of work and payment methodology. Furthermore, the Director of the Education Delivery Unit in the Tennessee Department of Education also needed to be identified and began work as of July 1, 2010.

Thank you for your consideration.

CC: Ms. Cory Curl
Ms. Rachel Woods
Mr. Bruce Opie
Ms. Gwendolyn Watson
Ms. Kristen McKeever

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Cory Curl	*Contact Phone:	615-741-0591
*Original Contract Number:	To be assigned by OCR	*Original RFS Number:	33150-00711
Edison Contract Number: (if applicable)	000000000000000000 0021766	Edison RFS Number: (if applicable)	33150-00711
*Original Contract Begin Date:	6/1/2010	*Current End Date:	6/30/2012
Current Request Amendment Number: (if applicable)	N/A		
Proposed Amendment Effective Date: (if applicable)	N/A		
*Department Submitting:	Department of Education		
*Division:	Education Delivery Unit		
*Date Submitted:	July 23, 2010		
*Submitted Within Sixty (60) days:	No		
If not, explain:	Work on this contract began after announcement of Tennessee's Race to the Top grant in early April, required extensive negotiations and the involvement of new staff including the Director of the Education Delivery Unit who began work July 1, 2010.		
*Contract Vendor Name:	US Education Delivery Institute		
*Current Maximum Liability:	\$300,000.00		
*Current Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)			
FY: 2010	FY: 2011	FY: 2012	FY: FY
\$ 25,000.00	\$145,000.00	\$130,000.00	\$ \$
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from STARS or FDAS report)			
FY: 2010	FY: 2011	FY: 2012	FY: FY
\$ N/A	\$ N/A	\$ N/A	\$ \$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:	N/A		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the	N/A		

Supplemental Documentation Required for Fiscal Review Committee

carry forward provision:	
<p>For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.</p> <p>If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.</p>	

IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		N/A	
*Contract Funding Source/Amount:	State:	N/A	Federal: \$300,000.00
Interdepartmental:	N/A		Other: N/A
If "other" please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
N/A		N/A	
Method of Original Award: <i>(if applicable)</i>			
*What were the projected costs of the service for the entire term of the contract prior to contract award?		N/A	

Supplemental Documentation Required for
Fiscal Review Committee

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.					
Deliverable description:	FY:	FY:	FY:	FY:	FY:
Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.					
Deliverable description:	FY:	FY:	FY:	FY:	FY:
Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.					
Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:

NON-COMPETITIVE CONTRACT REQUEST

This request is NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

APPROVED

COMMISSIONER OF FINANCE & ADMINISTRATION

AGENCY REQUEST TRACKING # 33150-00711	
1	PROCURING AGENCY Department of Education
2	SERVICE Technical Assistance to develop the Tennessee First To The Top Education Delivery Unit
3	APPROVAL CRITERIA (select one) <input type="checkbox"/> non-competitive negotiation is in the best interest of the state <input checked="" type="checkbox"/> only one uniquely qualified service provider able to provide the service
4	PROPOSED CONTRACTOR US Education Delivery Institute
5	CONTRACT BEGIN DATE (attach explanation if < 60 days after F&A receipt) June 1, 2010
6	CONTRACT END DATE (with ALL options to extend exercised) June 30, 2012
7	MAXIMUM CONTRACT COST (with ALL options to extend exercised) \$ 300,000.00
8	SERVICE DESCRIPTION The US Education Delivery Institute (EDI) will provide direct support to the Tennessee Department of Education (TDOE) to build their capacity to deliver services to Local Education Agencies (LEAs) with increased efficiency. Building TDOE's capacity includes but is not limited to: implementing data-driven methods for setting goals and trajectories for achieving them, metrics for measuring progress and regular reporting, and conducting ground-level assessments to inform the process. Further, EDI will assist TDOE to build a knowledge base of best practices and "case stories" of delivery by participating in a cohort group of states implementing delivery units. This will occur through a variety of activities which shall include, but is not limited to: on the ground coaching for the Tennessee Delivery Unit Leader and Commissioner of Education from EDI's senior leadership; coaching for education leaders in Tennessee to use tools of delivery; the appointment of a "state liaison and a state Associate to ensure a high level of capacity is developed to ensure the required innovative strategies needed to realize the goals of the Race To The Top Grant met.
9	EXPLANATION OF NEED FOR OR REQUIREMENT PLACED ON THE STATE TO ACQUIRE THE SERVICE Tennessee Department of Education has the primary role and responsibility to effectively implement and provide for the implementation of the First To the Top Grant in a comprehensive and coherent manner that results in increased student achievement. As such, TDOE will need to employ a data- driven, focused approach to service delivery and monitor a plethora of projects for efficiency and effectiveness. TDOE will need to engage and monitor external service providers for effectiveness, as well as assist Local Education Agencies (LEAs) think and act differently about how to promote ambitious expectations for student success and enhance their capacity to serve students with increased efficiency.

AGENCY REQUEST TRACKING # 33150-00711

10 HAS THE PROCURING AGENCY EVER BOUGHT THE SERVICE BEFORE? YES or NO
IF SO, WHAT PROCUREMENT METHOD WAS USED?

11 NAME & ADDRESS OF THE CONTRACTOR'S PRINCIPAL OWNER(S) (NOT required for a TN state education institution)

Alexander Harris, Director
US Education Delivery Institute
1250 H Street NW, Suite 700
Washington, DC 20005

12 EVIDENCE OF THE CONTRACTOR'S EXPERIENCE & LENGTH OF EXPERIENCE PROVIDING THE SERVICE

The approach employed by EDI has a proven track record. The UK Prime Minister's Delivery Unit, founded in 2001 under Tony Blair, pioneered an approach to public sector management—**delivery**—that is widely credited with helping Blair's government meet its policy targets for a range of public services. EDI and its partners have introduced many of the same processes, techniques and vehicles of delivery to higher education and K-12 leaders in the US.

13 OFFICE FOR INFORMATION RESOURCES SUPPORT (required for information technology service)

ATTACHED or NOT APPLICABLE (N/A only to non-information technology service & THDA)

14 eHEALTH INITIATIVE SUPPORT (required for health-related professional, pharmaceutical, laboratory, or imaging service)

ATTACHED or NOT APPLICABLE

15 HUMAN RESOURCES SUPPORT (required for state employee training service)

ATTACHED or NOT APPLICABLE

16 DESCRIPTION OF EFFORTS TO IDENTIFY REASONABLE, COMPETITIVE, PROCUREMENT ALTERNATIVES

The Department conducted research into performance management organizations that have expertise specifically in K-12 education and research into companies that have a proven track record of developing education reform managers in public education administrations. The Education Delivery Institute was the only performance management vendor identified who had the experience, knowledge and on the ground assistance background to meet the needs of the Tennessee Department of Education.

17 JUSTIFICATION FOR NON-COMPETITIVE NEGOTIATION RATHER THAN A COMPETITIVE PROCESS

The U.S. Education Delivery Institute (EDI) is an innovative, nonprofit organization launched by The Education Trust and Achieve. EDI helps turn system reform plans into real student outcomes. To do this, EDI adapts and applies a proven performance management approach pioneered in the United Kingdom under Tony Blair by the Prime Minister's Delivery Unit. Sir Michael Barber, former head of the Prime Minister's Delivery Unit, has provided founding leadership and continuing guidance to the group.

The approach employed by EDI will provide Tennessee with the means to organize highly complex First to the Top strategies. Specifically, these techniques will ensure that public funds and efforts collectively drive towards a clear set of goals, and ultimately improve the state's chances to successfully implement its action plan.

The approach employed by EDI has a proven track record. The UK Prime Minister's Delivery Unit, founded in 2001 under Tony Blair, pioneered an approach to public sector management—**delivery**—that is widely credited with helping Blair's government meet its policy targets for a range of public services. EDI and its partners have introduced many of the same processes, techniques and vehicles of delivery to higher education and K-12 leaders in the US.

EDI is uniquely positioned to provide consulting services to help the Tennessee Department of Education set up an internal delivery unit that will improve implementation and monitor performance. No other organization can provide the same type of in-depth on-the-ground assistance with the same history of success elsewhere.

For this reason, the Tennessee Department of Education has chosen to award a sole source contract to the US Education Delivery Institute.

AGENCY REQUEST TRACKING # 33150-00711

AGENCY HEAD SIGNATURE & DATE

(MUST be signed & dated by the ACTUAL procuring agency head as detailed on the current Signature Certification on file with OCR— signature by an authorized signatory is acceptable only in documented exigent circumstances)

Timothy K. Webb

7/22/10

**CONTRACT**

(FA-type fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

Agency Tracking # 33150-00711	Edison ID 0000000000000000000021766
Contractor US Education Delivery Institute	Contractor Federal Employer Identification or Social Security # <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 30-0041047

Service
Technical assistance to develop Tennessee's First to the Top Education Delivery Unit

Contract Begin Date June 1, 2010	Contract End Date June 30, 2012	Sub recipient or Vendor <input type="checkbox"/> Sub recipient <input checked="" type="checkbox"/> Vendor	CFDA #(s) 84.395
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FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2010	\$0.00	\$25,000.00	\$0.00	\$0.00	\$25,000.00
2011	\$0.00	\$150,000.00	\$0.00	\$0.00	\$145,000.00
2012	\$0.00	\$130,000.00	\$0.00	\$0.00	\$130,000.00
TOTAL:	\$0.00	\$300,000.00	\$0.00	\$0.00	\$300,000.00

American Recovery and Reinvestment Act (ARRA) Funding - YES NO

OCR USE FA	Agency Contact & Telephone # Cory Curl- 615-741-0591
	Agency Budget Officer Approval (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred)
	Speed Code Account Code 70803000

Contractor Ownership/Control

African American Person w/ Disability Hispanic Small Business Government
 Asian Female Native American NOT Minority/Disadvantaged Other

Contractor Selection Method

RFP Competitive Negotiation * Alternative Competitive Method *
 Non-Competitive Negotiation * Other *

***Procurement Process Summary**

The U.S. Education Delivery Institute (Contractor) is an innovative, nonprofit organization launched by The Education Trust and Achieve. The contractor helps turn system reform plans into real student outcomes. To do this, the contractor adapts and applies a proven performance management approach pioneered in the United Kingdom under Tony Blair by the Prime Minister's Delivery Unit. Sir Michael Barber, former head of the Prime Minister's Delivery Unit, has provided founding leadership and continuing guidance to the group. The Contractor is supported through contracts as well as philanthropic funding. From its current resources, the contractor provides a unique value proposition for the State. The contractor will be providing additional services beyond the contracted amount. The value of these services is expected to be the equivalent of \$300-500,000. Because it is a mission-driven non-profit organization, the contractor is able to provide these through the philanthropic funding base that is already in place and at no additional cost to the State.

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF EDUCATION
AND
US EDUCATION DELIVERY INSTITUTE**

This Contract, by and between the State of Tennessee, Department of Education, hereinafter referred to as the "State" and the US Education Delivery Institute, hereinafter referred to as the "Contractor," is for the provision of technical assistance to develop the Tennessee First to the Top Education Delivery Unit, as further defined in the "SCOPE OF SERVICES."

The Contractor is a non-profit corporation.

Contractor Federal Employer Identification or Social Security Number: 30-0041047

Contractor Place of Incorporation or Organization: Washington, DC

A. SCOPE OF SERVICES:

A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.

A.2. Contract Definitions:

Delivery Unit Team- Staff of the State Education Delivery Unit

State Leaders- State senior leadership, Governor's office leadership, higher education leadership, and other education, business, and community leaders influential in education policy and implementation

State Liaison- A senior level member of the Contractor's staff responsible for higher-level consulting and management for the State Leaders, State Chief Executive Officer, and Delivery Unit Team

State's Chief Executive Officer- the Contractor's Chief Executive Officer

State Associate- A member of the Contractor's staff responsible for supporting the Delivery Unit Team in data analysis and research, training and communications, and performance management

Tennessee First to the Top Education Delivery Unit- The organizational unit of the Tennessee Department of Education accountable for ensuring that the State meets its goals for student performance under First to the Top. The Unit includes a Director and a small team.

A.3. The Contractor shall provide a team of contracted staff and consultants to support and communicate with stakeholders such as SCORE, legislators, the business community, etc, both internal and external to the department, about performance goals in the implementation of the First to the Top agenda.

A.4. The Contractor shall provide documents and verbal guidance in the organizational structure and work of the Delivery Unit.

A.5. The Contractor shall arrange meetings with officials and experts from other states who lead similar offices.

A.6. The Contractor shall facilitate meetings within Tennessee.

A.7. The Contractor shall analyze state data, create and review documents such as powerpoints and excel spreadsheets.

- A.8. The Contractor shall hold weekly and monthly conference calls to identify and solve problems.
- A.9. The Contractor shall staff a team to support the State leaders and Delivery Unit team. The State will be assigned a State Liaison, who will operate under the direction of the State's Chief Executive Officer. The State Liaison will oversee all engagement work within the State and other staff from the contractor. He or she will devote approximately 100 days of full-time effort through monthly/bi-monthly visits, phone calls, webinars, and ongoing support work.
- A.10. The Contractor shall assign the State one State Associate who will provide approximately 180 days (8 hours per day) of full-time, on-site support. The State & Contractor leadership will determine how to spread this support – either condensed into an intensive upfront effort with lighter follow-up or spread more consistently over a longer period of time.
- A.11. The Contractor shall ensure the State Commissioner of Education and Delivery Unit Director receives expert coaching from the Contractor's senior leadership (e.g., the Chief Executive Officer, Senior Advisors, & founder Sir Michael Barber) through monthly calls and semi-annual on-site visits.
- A.12. The Contractor shall conduct two in-depth capacity reviews to identify the areas where the system has strengths in implementation capacity and the areas in which it must improve. The first will be completed by June 10, 2010 and the second by March 1, 2011. The reviews will consist of interviews and focus groups, analyzing results and making recommendations on ways to improve the implementation capacity of the State. The reviews will be submitted as slide decks in .pdf format to the State Commissioner of Education.
- A.13. The Contractor shall provide technical and strategic guidance to the State as they set up an internal delivery unit. This guidance will address the scope of services, responsibilities and the necessary lines of authority that a delivery unit must have to function well.
- A.14. The Contractor shall provide consultation support during the interview processes. Once a leader of the Delivery Unit is selected, the Contractor will assist in troubleshooting problems and identifying actionable solutions.
- A.15. The Contractor's training and consultations shall be accompanied by appropriate written and/or web based materials intended for reference by those trained, and to serve as a basis for initial communication about the work to others on an as needed basis.
- A.16. The Contractor shall provide quarterly reports, electronically in .doc format, to the State detailing work activities.
- A.17. The Contractor shall provide ongoing assistance in the following areas:
- a. Technical assistance, review and support in the introduction and implementation of all fifteen areas of delivery. This includes support in helping leaders to sequence and prioritize as they draft delivery plans that describe the processes the system will use to meet its aspirations. The delivery plans should contain clear goals, delivery chain, data trajectories, tactics and strategies, leading and lagging indicators, and regular routines to take stock of progress. This support will be accompanied by documentation as appropriate. Contractor's staff will review the plans and support the State delivery team in communicating to stakeholders, both internal and external to the department.
 - b. Technical assistance and support to work with a guiding coalition that can help the State remove obstacles and drive progress. The guiding coalition is a group of influential stakeholders that can remove bureaucratic barriers, use their influence to support the Unit's work, and provide counsel and advice.

- c. Data and analytical support to evaluate past and present performance in Tennessee. Specifically, Contractor will coach the delivery unit and relevant research staff in how to use the data proactively for decision-making and to measure interim progress through such tools and analyses as trajectories, gap analysis, leading/lagging indicators, and decision trees and how to present critical information to inform decision-making and resource allocation.
 - d. Support to help the delivery team shift the regular meetings or routines of senior leadership so that they become focused on driving and monitoring performance. This includes helping to set the agenda mechanisms to ensure that problems are identified early and solved quickly in order of priority.
 - e. Communications with all relevant stakeholders, to include the State, State Board of Education, Governor's Office of Policy and Planning, District superintendents, and principals and other educators to ensure aligned and consistent messages.
- A.18. The Contractor shall be committed to keep all designated information from Tennessee confidential, and as such, staff will not release or share that information with other parties outside of the State or Governor's Office of Policy and Planning without prior approval.

B. CONTRACT TERM:

This Contract shall be effective for the period commencing on June 1, 2010 and ending on June 30, 2012. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Three Hundred Thousand Dollars and No Cents (\$300,000.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
 - b. The Contractor shall be compensated for said units, milestones, or increments of service, based upon the following payment rates:

Service Description	Amount (per compensable increment)
Capacity review (A.7)	\$15,000.00/each upon completion
Technical and Strategic guidance on how to set up an internal delivery unit (A.8)	\$500.00/month
Training and Consultation (A.9-A.10)	\$5,500.00/month
Quarterly Reports (A.11)	\$2,500.00/report
Technical assistance and support to draft delivery plans (A.12.a)	\$1,000.00/month
Technical assistance and support to establish a guiding coalition (A.12.b).	\$500.00/month
Data and analytical support to evaluate past and present performance in Tennessee (A.12.c).	\$1,000.00/month
Technical assistance and support to establish the routines to drive and monitor performance (A.12.d)	\$1,000.00/month
Communications with all relevant stakeholders (A.12.e)	\$500.00/month

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

- a. The Contractor shall submit invoices no more often than bi-annually, with all necessary supporting documentation, to:

Cory Curl
 Director of Delivery Unit
 Tennessee Department of Education
 Andrew Johnson Tower, 6th Floor
 710 James Robertson Parkway
 Nashville, TN 37243

- b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

- (1) Invoice/Reference Number (assigned by the Contractor);
- (2) Invoice Date;
- (3) Invoice Period (period to which all invoiced charges are applicable);
- (4) Contract Number (assigned by the State to this Contract);
- (5) Account Name: Department of Education-Commissioner's Office;
- (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
- (7) Contractor Name;
- (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
- (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
- (10) Contractor Remittance Address;
- (11) Complete Itemization of Charges, which shall detail the following:

- i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
 - iv. Amount Due by Service; and
 - v. Total Amount Due for the invoice period.
 - c. The Contractor understands and agrees that an invoice to the State under this Contract shall:
 - (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
 - (2) not include any future work but will only be submitted for completed service; and
 - (3) not include sales tax or shipping charges.
 - d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.
 - e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.
- C.6. Payment of Invoices. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credit) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.
- D. STANDARD TERMS AND CONDITIONS:**
- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.

- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least forty-five (45) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not

knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.

- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.*
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Dr. Timothy K. Webb, Commissioner of Education
Tennessee Department of Education
710 James Robertson Parkway
Andrew Johnson Tower, 6th Floor

Nashville, TN 37243
 tim.webb@tn.gov
 Telephone # 615-741-5158
 FAX # 615-532-4791

The Contractor:

Kathy Cox, Chief Executive Officer
 US Education Delivery Institute
 1250 H Street, Suite 700
 Washington, DC 20005
 kcox@deliveryinstitute.org
 Telephone # 202-349-3425
 FAX # 202-293-2605

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.
- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
 - b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.

- c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: www.state.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

- E.6. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.7. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.8. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of *Tennessee Code Annotated*, Section 12-7-101, *et. seq.*, shall be printed unless a printing

authorization number has been obtained and affixed as required by *Tennessee Code Annotated*, Section 12-7-103 (d).

- E.9. Competitive Procurements. This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or contracted services. Such procurements shall be made on a competitive basis, where practical. The Contractor shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Contract. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification, approved by the Tennessee Department of Education Commissioner, for such decision and non-competitive procurement.
- E.10. Work papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.
- E.11. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.
- E.12. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.
- E.13. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; 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;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- E.14. Federal Economic Stimulus Funding. This Contract requires the Contractor to provide products and/or services that are funded in whole or in part under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, (Recovery Act). The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of the Recovery Act are met and that the Contractor provides information to the State as required.

The Contractor (and any subcontractor) shall comply with the following:

- a. Federal Contract Award Documents, as applicable.
- b. Executive Office of the President, Office of Management and Budget (OMB) Guidelines as posted at www.whitehouse.gov/omb/recovery_default/, as well as OMB Circulars, including but not limited to A-102 and A-133 as posted at www.whitehouse.gov/omb/financial_offm_circulars/.
- c. Office of Tennessee Recovery Act Management Directives (posted on the Internet at www.tnrecovery.gov).
- d. The sub recipient Contractor, if covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, agrees to specifically identify Recovery Act expenditures separately for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133.
- e. The Recovery Act, including but not limited to the following sections of that Act:
 - (1) Section 1604 – Disallowable Use. No funds pursuant to this Contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.
 - (2) Section 1512 – Reporting and Registration Requirements.
 - i. The Contractor must report on use of Recovery Act funds provided through this Contract. Information from these reports will be made available to the public.
 - ii. The sub recipient Contractor must maintain current registrations in the Central Contractor Registration (www.ccr.gov) at all times during which they have an active Contract funded with Recovery Act funds.
 - (3) Section 1553 – Recovery Act Whistleblower Protections. An employee of any non-Federal employer receiving covered funds under the Recovery Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is evidence of one or more of the following related to the implementation or use of covered funds:
 - i. gross mismanagement,
 - ii. gross waste,
 - iii. substantial and specific danger to public health or safety,

- iv. abuse of authority, or
- v. violation of law, rule, or regulation (including those pertaining to the competition for or negotiation of a Grant Contract).

Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any pre dispute arbitration agreement. No pre dispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: The Contractor and any subcontractor shall post notice of the rights and remedies as required under Section 1553. (Refer to Section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 located at www.recovery.gov, for specific requirements of this section and prescribed language for the notices.)

- (4) Section 902 – Access Of Government Accountability Office. The Contractor shall provide that the Comptroller General and his representatives are authorized:
 - i. to examine any records of the Grantee or any of its subcontractors, that directly pertain to, and involve transactions relating to, this Grant Contract or a subcontract; and
 - ii. to interview any officer or employee of the Grantee or any of its subcontractors regarding such transactions.
- (5) Section 1514 – Inspector General Reviews. Any inspector general of a federal department or executive agency has the authority to review, as appropriate, any concerns raised by the public about specific investments using such funds made available in the Recovery Act. In addition, the findings of such reviews, along with any audits conducted by any inspector general of funds made available in the Recovery Act, shall be posted on the inspector general's website and linked to the website established by Recovery Act Section 1526, except that portions of reports may be redacted to the extent the portions would disclose information that is protected from public disclosure under sections 552 and 552a of title 5, United States Code.
- (6) Section 1515 – Access of Offices of Inspector General to Certain Records and Employers. With respect to this Contract, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:
 - i. to examine any records, of the Contractor or any of its subcontractors, that pertain to and involve transactions relating or pursuant to this Contract; and
 - ii. to interview any officer or employee of the Contractor or any subcontractors regarding such transactions.
- (7) Section 1606 – Wage Rate Requirements. All laborers and mechanics employed by pursuant to this Contract shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. All rulings and

interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference.

For purposes of this Contract, laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards.

(8) Section 1605 – Buy American Requirements for Construction Material – Buy American, Use of American Iron, Steel, and Manufactured Goods. None of the funds provided by this Contract may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

- f. The Contractor agrees to comply with any modifications or additional requirements that may be imposed by law and future guidance and clarification of Recovery Act requirements.
- g. If the Contractor enters into one or more subcontracts for any of the services performed under this Grant Contract, each subcontract shall contain provisions specifically imposing on the subcontractor all requirements set forth in this Contract Section E.14, "Federal Economic Stimulus Funding."

E.15. FERPA Compliance. The State and Contractor shall comply with the Family Education Rights and Privacy Act of 1974 (20 U.S.C. § 1232g) (FERPA) and its accompanying regulations (34 C.F.R. 99). Contractor warrants that it is familiar with requirements of FERPA and its accompanying regulations and that it will comply with all applicable FERPA requirements in the performance of its duties in this contract. Contractor agrees to cooperate with the State as required by FERPA and its regulations in the performance of its duties in this contract. Contractor agrees to maintain the confidentiality of all education records and student information and use such records and information for the exclusive purpose of performing its duties in this contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the Authorization and Acknowledgement of Compliance document at Attachment B.

IN WITNESS WHEREOF,

US EDUCATION DELIVERY INSTITUTE

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF EDUCATION

TIMOTHY K. WEBB, COMMISSIONER

DATE

ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	U S Education Delivery Institute
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	30-0041047

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

ATTACHMENT B
AUTHORIZATION AND ACKNOWLEDGEMENT OF COMPLIANCE

Whereas, State has contracted with US Education Delivery Institute on June 1, 2010 through June 30, 2012 (33150-00711), for Technical Assistance to develop the Tennessee First to the Top Education Delivery Unit, and

Whereas, The above referenced contract may require the disclosure by the State to US Education Delivery Institute of certain personally identifiable student information that is confidential under the Family Educational Rights and Privacy Act (FERPA), and

Whereas, 34 C.F.R. 99.31 and 34 C.F.R. 99.35, authorize an educational agency or institution to disclose personally identifiable information from an education record of a student without the consent required by Sec. 99.30 to authorized representatives of State and local educational authorities in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs.

Therefore, the State and US Education Delivery Institute hereby agree as follows:

1. US Education Delivery Institute is authorized to maintain certain student information for the sole purpose of compliance with the requirements of the above referenced contract. This student information may include: name, social security number, achievement data, address, phone number, and parent/guardian name.
2. US Education Delivery Institute as authorized representative of State for the sole purpose of complying with the requirements of the above contract, agrees to comply fully with FERPA by maintaining the confidentiality of all student information and to use the information solely to fulfill its obligations under the above referenced contract with the state.
3. US Education Delivery Institute agrees to destroy all confidential student information when it is no longer needed for purposes of fulfilling its obligations under the above referenced contract.

State

Date

US Education Delivery Institute

Date

FA CONTRACT INFORMATION SUPPLEMENT FOR ALL FA-TYPE CONTRACTS — COMPLETE EITHER SECTION A OR SECTION B	
Contract RFS #	33150-00711
Contractor:	US Education Delivery Institute
SECTION A— CONTRACTOR IS AN INDIVIDUAL	SECTION B— CONTRACTOR IS A COMPANY (e.g., sole proprietorship, partnership, or corporation)
Is or has the contractor been a state employee? <input type="checkbox"/> NO (no additional information required) <input type="checkbox"/> YES	Does an individual, who is or has been a state employee, own controlling interest in (or own) the contractor company? <input type="checkbox"/> NO (no additional information required) <input type="checkbox"/> YES
Was such employment within the past six months? <input type="checkbox"/> NO <input type="checkbox"/> YES (an approved rule exception permitting a contract within six months of employment is also required)	Was such employment within the past six months? <input type="checkbox"/> NO <input type="checkbox"/> YES (an approved rule exception permitting a contract within six months of employment is also required)
Does the contractor receive Tennessee Consolidated Retirement System (TCRS) retirement benefits? <input type="checkbox"/> NO <input type="checkbox"/> YES (the procuring agency general counsel MUST sign an analysis of this procurement using the TCRS analysis guidelines)	Does the individual who owns controlling interest in the contractor company receive Tennessee Consolidated Retirement System (TCRS) retirement benefits? <input type="checkbox"/> NO <input type="checkbox"/> YES (the procuring agency general counsel MUST sign an analysis of this procurement using the TCRS analysis guidelines)
CONTRACTOR SIGNATURE	
CONTRACTOR	DATE